

## **RESPONSE™ ACCESS AGREEMENT**

This Response Access Agreement (this “Agreement”) is dated as of the date (the “Effective Date”) that a representative of Dealer Customer (as defined below) either submits the digital order form when signing up for the services or executes a written order form (either the digital or written order form, the “Order Form”) which references this Agreement. This is a legal contract between Sanctus LLC doing business as Shift-Digital (“Shift Digital”) and the other party (“Dealer Customer”) that signed the Order Form or on whose behalf the Order Form was signed. This Agreement sets forth the terms and conditions for use of the RESPONSE services (the “Services”) described in the Order Form.

Dealer Customer has requested access to the Services, and Shift Digital has agreed to grant access to the Services, in accordance with the terms and conditions of this Agreement. By using the Services, Dealer Customer hereby acknowledges and agrees that an authorized representative of Dealer Customer has read and agrees to all terms and conditions of this Agreement. The parties agree as follows:

### **1. PROVISION OF THE SERVICES BY US**

1.1 In this Agreement, “we” means Shift Digital, and “you” means the Dealer Customer. We have affiliated legal entities, contractors, vendors, partners and other third parties (collectively “Our Affiliates,”) that may provide Services to you on our behalf. You acknowledge and agree that Our Affiliates will be entitled to provide the Services to you, and that to the extent permitted by applicable law, Our Affiliates shall be third party beneficiaries of this Agreement with respect to the Services licensed to us by Our Affiliates, as applicable, and sublicensed to you herein.

1.2 During the term of this Agreement, we will provide access to the Services to you in accordance with the terms and conditions of this Agreement.

1.3 We may make changes to the Services in order to improve the Services. You agree that we can make changes to the Services from time to time and/or stop providing any features within the Services to you at our sole discretion, without prior notice to you. We can also discontinue providing the Services to you at any time upon 30 days prior written notice. Except as set forth on the Order Form, you can cancel the Services at any time upon giving us 30 days prior written notice as provided in.

You will be responsible to continue to pay for the Services unless you provide the notice set forth in this Agreement.

1.4 We may disable access to your account for non-payment of Services. You acknowledge and agree that if we disable access to your account, you may be prevented from accessing the Services, your account details or any files or other content which is contained in your account. You acknowledge and agree that we will not be liable in any way for any inconvenience, delay, damages, losses or other claims related to disabling access to your account.

### **2. USE OF THE SERVICES BY YOU**

2.1 You, and each of your employees, contractors or agents who you authorize (each a “User”) may access and use the Services for your internal business purposes only and only in accordance with the terms and conditions of this Agreement. The terms and conditions of this Agreement

applicable to you shall be applicable to each User, and You agree to be responsible for the use of the Services by each User in accordance with this Agreement.

2.2 You agree that you will not reproduce, duplicate, copy, sell, trade or resell the Services for any purpose. You agree not to access (or attempt to access) any of the Services by any means other than through the interface that is provided by us. You agree that you will not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services).

2.3 In order to access the Services, you may be required to provide information about yourself and your business (such as identification, billing or contact details). You agree that any information you give to us will always be accurate, correct and up to date.

2.4 You understand and agree that you are responsible for maintaining the confidentiality of your passwords used to access the Services. You agree to instruct all Users to protect, keep secure and confidential and not disclose their Passwords to anyone and to use the Services in accordance with this Agreement and all applicable laws and regulations. You agree to immediately notify us of any known or suspected unauthorized use or disclosure of a password or unauthorized access to the Services or any information contained therein. In addition, you agree to comply with all security measures that we may from time to time request or require.

2.5 The Services may contain hyperlinks to other Web sites that are not operated by us. We do not control these websites and are not responsible for the contents of those sites. The existence of such links does not mean we endorse such sites or are associated with the owners or operators of sites. Such hyperlinks are provided for your reference only.

2.6 You understand that your use of the Services requires you have and maintain appropriate hardware and software, including a compatible Internet browser (collectively, the "Operating Environment"). You are responsible for (i) all fees imposed by a telephone or Internet service provider in connection with your access and use of the Services and (ii) the cost of procuring and maintaining the Operating Environment, including use of appropriate antivirus software. You acknowledge that there are certain security, corruption, transmission error, and access availability risks associated with using networks such as the Internet, and you expressly assume such risks.

2.7 You acknowledge that as part of the Services you may receive use of and access to certain toll-free and local tracking phone numbers, as well as other services relating to such numbers (collectively, the "Number(s)"). You acknowledge and understand that when a person (the "Caller") calls a Number, the Caller will be automatically advised that each call is subject to recording and monitoring prior to the connection of the telephone call to you through the Number (the "Recorded Call Message"). You represent, warrant and agree that in connection with your use of the Services, that you have reviewed the legality of recording, monitoring, and storing, and divulging telephone calls, that you are permitted to engage in such activities, and that you shall use the Number in full compliance with all applicable laws and regulations. You represent and warrant that you have had the opportunity to review the proposed usage of the Numbers with your legal counsel, and that you have established proper procedures to protect the privacy of, and otherwise comply with all applicable laws with respect to, Callers and the Call Receivers (defined below). In the event the Recorded Call Message requires a revision in order

to comply with applicable law, then you shall promptly notify us in writing of that fact, advising us as to the exact language necessary to comply with the applicable laws. You agree and acknowledge that none of us, Our Affiliates, or any of our or their respective third party providers accept any responsibility for (1) the legality of recording, monitoring, storing and/or divulging telephone calls and (2) the legality of the language used in the Recorded Call Message. You agree and acknowledge that applicable laws and regulations may require that you provide notice to and/or receive express consent and permission from, in writing or otherwise, all agents (including employees), independent contractors, and/or other persons who receive telephone calls recorded by the Numbers (the “Call Receivers”). You agree, acknowledge, represent and warrant that you will provide and/or obtain all notices, consents, and permission relating to Call Receivers, as required by applicable laws and regulations. You agree to indemnify, defend and hold harmless us, Our Affiliates, and our and their respective third party providers, and each of their affiliates, officers, shareholders, directors, employees and agents (collectively, the “Indemnified Parties”), from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, charges, expenses (including attorneys' and accountants' fees and disbursements) and costs (“Claims”), incurred by, borne by or asserted against any of the Indemnified Parties to the extent such Claims relate to, arise out of or result from: (i) intentional or willful misconduct or negligence by you or of any of your employees, agents or subcontractors; (ii) breach of any of your representations, warranties or covenants contained herein; or (iii) your use of the Numbers.

2.8 You agree to comply with all applicable laws, rules, regulations, governmental requirements and industry standards with respect to your use of the Services and the performance by you of your obligations hereunder, including, but not limited to, any applicable provisions of Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 and regulations promulgated under that Act, the CAN-SPAM Act of 2003, the Telephone Consumer Protection Act (TCPA), the Do-Not-Call Improvement Act of 2007, and any Immediate Disconnect, Permission to Continue, or No Rebuttal laws or regulations, as well as any laws regarding the export of data or software to and from the United States or other relevant countries, and laws and regulations governing the privacy and security of consumer information that apply to you.

### **3. DATA AND CONTENT**

3.1 Any data, information or other materials you or any User submits, posts or displays, or is submitted by a third party on your behalf or on behalf of any User (“Customer Content”), shall belong to you. We reserve the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Customer Content from any Service in our sole discretion. We will also have no duty to verify the content or accuracy of, or in any manner to analyze, any Customer Content. You understand and agree that you are solely responsible for (and that we have no responsibility to you or to any third party for) any Customer Content that you or any third party creates, transmits or displays while using the Services and for the consequences of these actions (including any loss, liability, fine or damage).

3.2 You acknowledge and agree that we and Our Affiliates or licensors own all legal right, title and interest in and to the Services, and all materials, systems and components included in or provided with the Services, including but not limited to user interface “look and feel” elements, creative assets, systems, features and operating methods (the “Shift Digital Content”) and such parts, components and Integrations, any applications, databases, or other content, and any modifications, updates, upgrades, copies, derivative works, augmentations or customizations to

the Services and/or Shift Digital Content, whether created by us, Our Affiliates, you, any User, or at your or any User's suggestion or request, including any intellectual property rights which subsist in the Services and Shift Digital Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist).

3.3 Except as otherwise permitted under this Agreement, You may not modify, rent, lease, loan, sell, distribute, or license the Services or Shift Digital Content or create derivative works based on the Services or any Shift Digital Content (either in whole or in part) unless you have been specifically notified that you may do so by us in a separate written agreement that we provide to you. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the Services. Nothing herein gives you a right to use any of our or Our Affiliate's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features, except in strict compliance with the license granted below. All rights not expressly granted to you herein are reserved to us and Our Affiliates and licensors, as applicable.

3.4 You acknowledge and agree that we and Our Affiliates shall have the right to monitor your and each User's use of the Services, access all Customer Content in the Services, and transmit and display to Mercury Marine, a division of Brunswick Corporation, and their third party suppliers the Customer Content and any information concerning your and any User's use of the Services and the Customer Content, including summaries, analyses, and reports regarding any use, activity or inactivity.

#### **4. LICENSES FROM US**

4.1 Subject to your compliance with all of the terms and conditions set forth herein, we hereby grant to you and each User a worldwide, royalty-free, non-exclusive, revocable, non-assignable, nontransferable, and non-sub-licensable license and right to access and use the Services and all Shift Digital Content, including the right to access and use the proprietary software, trademarks, copyrights and other proprietary elements of the Services. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided for herein, in the manner permitted by this Agreement.

4.2 You may not (and you may not permit anyone else to) copy, modify, create a derivative work of the Services or any Shift Digital Content, or reverse engineer, decompile or otherwise attempt to extract any source code for the Services or any part thereof, or any of the other proprietary elements of the Service, or allow any third parties to use the Services, or any portion thereof, in any way, except as authorized under this Agreement. The products and services of Our Affiliates may contain terms specific to their products or services, and you agree to comply with all third party license terms of which we make you aware.

#### **5. CONTENT LICENSE FROM YOU**

You hereby grant to us a worldwide, royalty-free, and non-exclusive license to use, reproduce, transmit, adapt, modify, translate, publish, publicly perform, publicly display, distribute and create derivative works of any Customer Content, including any data extracted from a dealer management system or other application, and to authorize others to exercise the foregoing rights. This license is for the sole purpose of enabling us to provide the Services to you. You agree that this license includes a right for us and Our Affiliates to make such Customer Content available to other companies, organizations or individuals with whom we have relationships for the provision

of these Services. You understand that we, in performing the required technical steps to provide the Services to you, may (a) transmit or distribute the Customer Content over various public networks and in various media; and (b) make such changes to the Customer Content as are necessary to conform and adapt the Customer Content to the technical requirements of connecting networks, devices, services or media. You confirm and warrant to us that you have all the rights, power and authority necessary to grant the above license. Notwithstanding anything to the contrary in this Section 5, we will not disclose or use identifiable non-public personal information contained in the Customer Content other than as may be permitted by applicable law.

## **6. SAFEGUARDING OF PERSONAL INFORMATION**

To the extent required by applicable law, we and you will implement and maintain reasonable physical, organizational and technological safeguards intended to protect consumer personal information to which we or you have access pursuant this Agreement against loss, theft, and unauthorized access, disclosure, copying, use, or modification. Such safeguards shall include appropriate procedures designed to: (i) protect the security and confidentiality of such information, (ii) protect against anticipated threats or hazards to the security or integrity of such information and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any consumer customer of Dealer Customer.

Shift Digital will process personal information only for the nature and purpose of fulfilling the Services and in accordance with your written instructions, which are documented in this Agreement and as further identified in the Order Form. Notwithstanding the foregoing, we may also process personal information as necessary for us to comply with applicable laws and regulations. Except as otherwise set forth herein, Shift Digital will not (i) sell or share personal information; (ii) retain, use, or disclose personal information for any purpose other than the specific purpose of performing its obligations under this Agreement.

## **7. LICENSE FEES; PAYMENT FOR SERVICES**

You agree to pay the monthly fees ("License Fees") stated in the Order Form for the Services in accordance with the terms of this Agreement. Billing will commence on the Activation Date. The "Activation Date" is the date we make the Services available to you. We will invoice you monthly, and you agree to pay the License Fees stated in the Order Form for the Services within 15 days of the date of invoice.

If you fail to pay for the Services timely, you agree to pay us, in addition to the fees for the Services: (i) a finance charge equal to the lower of 1.5% per month or the maximum amount permitted by law, and (ii) all costs incurred in connection with collection of past due amounts (including collection agency fees and reasonable attorney fees). In addition to the other rights reserved hereunder, we expressly reserve the right to terminate the Services and disable your access to the Services for non-payment.

By entering or providing your billing information, you are authorizing Shift Digital to charge your credit card or withdraw funds from a bank account for use of the Services. You are responsible for maintaining accurate and current account information. If a charge for Services is denied for any reason, use of the Services will be terminated. Services provided are on a pre-paid basis and you are charged on a monthly cadence.



“Shift Digital” may appear as the entity name on invoices and credit card statements in connection with the billing for Services. If you reside in AZ, CT, IN, LA, MA, MS, NM, NY, OH, PA, SC, SD, TN, TX, UT, or WA certain products may incur applicable state taxes. If you reside in other states, you may be notified if Services become taxable in your state. Regardless of whether you are notified, you are responsible for all applicable local, state, federal, and any other taxes imposed on the purchase of Services, if any.

All fees stated hereunder are subject to applicable sales, use, excise, or similar taxes, whether or not included at the time the fees are billed. You assume exclusive liability for, and shall pay before delinquency, all sales, use, excise, and other taxes, charges, or contributions of any kind now or hereafter imposed on, with respect to, or measured by the Services except for taxes based on the net income of us.

## **8. DEALER CUSTOMER’S REPRESENTATIONS AND WARRANTIES**

8.1 Dealer Customer represents, warrants and covenants to Shift Digital that: (i) Dealer Customer is duly licensed, in good standing, and authorized to do business as an automobile dealer; (ii) Dealer Customer has the power and authority to enter into this Agreement and do all things necessary to its proper performance of this Agreement; (iii) the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Dealer Customer; and (iv) this Agreement constitutes the legal, valid and binding obligation of Dealer Customer, enforceable against Dealer Customer in accordance with its terms.

8.2 Dealer Customer, on its behalf and on behalf of each of its Users, represents, warrants and covenants to Shift Digital that: (i) that its use of the Services will comply at all times with all applicable federal, state and local laws, rules and regulations; (ii) that it will not use the Services or access or use any information stored or accessed through the Services: (1) for a purpose other than that for which access to the Services is provided pursuant to this Agreement; (2) to access, collect, use or disclose personal information in breach of any applicable third party privacy agreement; or (3) for any other purpose that is improper or that violates this Agreement, or any applicable federal or state law, rule or regulation.

## **9. TERMINATION AND SURVIVAL**

9.1 This Agreement will continue until terminated by you or us as set forth below. Except as otherwise set forth on the Order Form, you may terminate the Services by providing us with at least 30 days prior written notice. You will continue to be obligated to pay for the Services for and comply with this Agreement for either the longer of the term set forth on the Order Form or 30 days following our receipt of such notice. Notwithstanding anything to the contrary herein, if you enroll on or before March 31, 2025, to receive the promotional 50% discount on the monthly fee, you shall be obligated to pay for the Services monthly until March 31, 2026, and any cancellation or termination will not be effective until March 31, 2026.

We may terminate this Agreement in whole or in part: (1) upon 30 days prior written notice to you if you or any the Users materially breaches any warranty, representation or covenant set forth herein and fails to cure such breach within such 30 day period; or (2) immediately, if (i) you fail to pay any amount due hereunder within 30 days of the due date; (ii) you cease to carry on your business or are no longer a licensed automobile dealer; (iii) a proceeding under any bankruptcy or insolvency law is commenced by or against you, or a receiver or similar officer is

appointed for you, and is not dismissed within 30 days; (iv) you become insolvent, are adjudicated bankrupt or make an assignment for the benefit of creditors or other arrangement of similar import; or (v) we are required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful). We may suspend, modify, delete or discontinue the Services, or any part of them, at any time and without notice and in all cases without any liability to you. We may suspend access to the Services to any or all Users at any time and without liability to you and for any reason.

9.2 The provisions of Sections 2.6, 2.7, 2.8, 3.1, 3.2, 3.3, 3.4, 4.2, 6, 7, 8.1, 8.2, 9.1, 9.2, 10, 11.1, 11.2, 11.3, 12, 13, 14, 15 and 16 shall survive the termination of this Agreement.

## **10. EXCLUSION OF WARRANTIES**

YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE.” WE AND OUR AFFILIATES AND OUR LICENSORS EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, LEGAL OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED OR LEGAL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR PERFORMANCE. NEITHER WE NOR OUR AFFILIATES ARE RESPONSIBLE FOR ANY ERRORS IN OR OMISSIONS FROM FUNCTIONALITY OF THE SERVICES OR THE INFORMATION CONTAINED IN OR ACCESSED THROUGH THE SERVICES OR RESULTS OBTAINED FROM THE SERVICES. IN PARTICULAR, WE DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, (C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, AND (D) DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

## **11. LIMITATION OF LIABILITY**

11.1 YOU UNDERSTAND AND AGREE THAT NEITHER WE, NOR OUR AFFILIATES OR LICENSORS, SHALL BE LIABLE TO YOU FOR ANY DAMAGES WHICH MAY BE INCURRED BY YOU OR ANY THIRD PARTY FOR LOSS OF DATA SUFFERED; COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; ANY INTANGIBLE LOSS; AND ANY LOSS OR DAMAGE AS A RESULT OF: (I) ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY THIRD PARTY DURING YOUR USE OF THE SERVICES; (II) ANY CHANGES WHICH WE MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES); (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES; (IV) ANY DELAY, DIFFICULTY IN USE (INCLUDING, WITHOUT LIMITATION, DEALER CUSTOMER’S ABILITY TO COMMUNICATE DATA

TO THIRD PARTIES); (V) INACCURACY OF INFORMATION, COMPUTER VIRUSES, MALICIOUS CODE OR OTHER DEFECTS IN THE SERVICES OR SYSTEMS USED IN CONNECTION WITH THE SERVICES; OR (VI) THE INCOMPATIBILITY BETWEEN THE SYSTEM OR SERVICES AND THE DEALER CUSTOMER'S BROWSER OR OTHER SITE ACCESSING OR WITH ACCESS TO OR USE OF (OR INABILITY TO USE) THE SYSTEM OR SERVICES, OR RELIANCE ON ANY INFORMATION, RESULTS OR SERVICES PROVIDED BY THE SYSTEM ANY OTHER PROBLEMS EXPERIENCED BY DEALER CUSTOMER IN CONNECTION WITH THE SYSTEM OR SERVICES.

11.2 YOU UNDERSTAND AND AGREE THAT NEITHER WE, NOR OUR AFFILIATES OR LICENSORS, SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, MORAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LOST OPPORTUNITY, OR ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, REGARDLESS OF THE FORM OF ACTION, WHETHER RESULTING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), CIVIL OR EXTRA-CONTRACTUAL LIABILITY, GROSS NEGLIGENCE, STRICT LIABILITY, FUNDAMENTAL BREACH, THIRD PARTY CLAIMS OR ANY OTHER THEORY OF LIABILITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3 IN NO EVENT WILL OUR OR OUR AFFILIATES TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THE SERVICES, THE INFORMATION, FUNCTIONALITY CONTAINED IN OR PROVIDED THROUGH THE SYSTEM OR SERVICES, USE OF ANY OF THE FOREGOING BY YOU, USERS, OR ANY THIRD PARTY, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WITH RESPECT TO ANY EXPENSE, DAMAGE, LOSS, INJURY OR LIABILITY OF ANY KIND, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, EXCEED THE GREATER OF (A) THE AMOUNTS PAID BY DEALER CUSTOMER UNDER THIS AGREEMENT IN THE ONE (1) MONTH IMMEDIATELY PRECEDING THE EVENT(S) THAT GAVE RISE TO THE CLAIM, OR (B) \$1,000.

## **12. INDEMNIFICATION**

IN ADDITION TO ANY OTHER RIGHTS OR REMEDIES CONTAINED HEREIN OR AVAILABLE AT LAW OR EQUITY, DEALER CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS SHIFT DIGITAL, AND ITS AFFILIATES, AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS AND LICENSORS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, COUNTERCLAIMS, DAMAGES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS), ARISING OUT OF OR RELATING TO: (I) A BREACH BY DEALER CUSTOMER OR ANY OF ITS USERS OF ANY OF THE TERMS OF THIS AGREEMENT; (II) DEALER CUSTOMER'S OR ANY OF ITS USERS' NEGLIGENCE, FAULT, OMISSION OR MISCONDUCT IN CONNECTION WITH THE PERFORMANCE OF ANY OBLIGATIONS UNDER THIS AGREEMENT; AND (III) DEALER CUSTOMER'S OR ANY OF ITS USERS' ACCESS TO OR COLLECTION, USE OR DISCLOSURE OF ANY INFORMATION, DATA, CONTENT OR OTHER MATERIALS SUBMITTED TO OR RECEIVED THROUGH THE SYSTEM.

## **13. ASSIGNMENT**



We may assign this Agreement or any of our rights or obligations hereunder without your consent. We may also subcontract or delegate certain of our rights and obligations under this Agreement to Our Affiliates or other third parties without your consent. You may not assign this Agreement or any of your rights or obligations under this Agreement, without the prior written our consent, which may be withheld in our sole and absolute discretion.

#### **14. CHANGES TO THIS AGREEMENT**

The terms of this Agreement may be amended by us at any time effective upon notice to you by e-mail, via notice provided through the Services or by written notice to you at the last address you provided to us. Any use of the Services after we send you notice of such amendment will constitute your agreement to the amendment. If you and we agree to make any other change, modification, amendment or alteration to this Agreement, the same will only be binding on you and us if it is in writing and signed by an authorized representative of you and us.

#### **15. GOVERNING LAW, ARBITRATION, AND CLASS WAIVER**

##### **15.1 Governing Law.**

This Agreement shall be construed in accordance with the substantive laws of the State of Michigan without reference to its conflicts of law principles. The parties expressly disclaim any application to this Agreement of the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. Any action to enforce any arbitration proceeding, and any other legal action, suit or proceeding that is not otherwise subject to mandatory arbitration pursuant to Section 15.2 and arises under or relates this Agreement or the use of the Services shall be heard exclusively in the either the state courts located in the County of Oakland, Michigan, U.S.A. or the Federal court located in the County of Wayne, Michigan, U.S.A., and the parties hereby submit to the jurisdiction thereof and venue therein. Notwithstanding the foregoing, a party may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any appropriate jurisdiction

##### **15.2 Arbitration and Class Waiver.**

Arbitration. Dealer Customer hereby agrees to arbitrate any dispute or claim that it may have with Shift Digital or its affiliates that arises out of or relates in any way to this Agreement or Dealer Customer's use of or access to any Services. Such arbitration will be final and binding. If Shift Digital elects in its discretion to submit to arbitration any dispute or claim that it may have against Dealer Customer, any such arbitration will be governed by the provisions of this Section 15.

Class Waiver. Any arbitration proceeding under this Section 15 will take place on an individual basis. Class arbitrations and class or representative proceedings of any kind are not permitted and Dealer Customer expressly waives its ability to participate in a class or representative proceeding against Shift Digital or its affiliates. If the arbitration clause is found inapplicable to Dealer Customer's dispute with Shift Digital, this class waiver will continue to apply in litigation. Dealer Customer agrees that this class waiver is an essential element of the agreement between Dealer Customer and Shift Digital and that this class waiver may not be severed. In the event that this class waiver is deemed invalid or unenforceable, then the entire agreement to arbitrate in this Section 15 will be null and void.

Arbitrator Authority. Any dispute or claim subject to arbitration pursuant to this Section 15 must be submitted to binding arbitration before a single arbitrator administered by JAMS pursuant to JAMS Streamlined Rules. The arbitrator will be bound by and will strictly enforce this Agreement and any additional terms between Dealer Customer and Shift Digital, including any limitations of liability contained therein, and may not limit, expand or otherwise modify any of the provisions of the foregoing. Any arbitration will be held in Birmingham, Michigan, unless otherwise agreed upon by the Parties in writing. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator will award the applicable Party any costs and fees to which it may be entitled under Section 12 in connection with any indemnification claim.

## **16. GENERAL LEGAL TERMS**

This Agreement, as it may be amended and updated from time to time in accordance with the terms hereof, constitutes the entire and exclusive agreement between the parties with respect to the subject matter of this Agreement, and supersedes any previous or contemporaneous negotiations, proposals, understandings, representations, warranties and all oral and written agreements between the parties relating to the subject matter of this Agreement.

You agree that we may provide you with notices, including those regarding changes to these Terms, by email, regular mail, or postings on the Services.

No failure or delay by either party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power or remedy. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, invalid or unenforceable, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and, in any event, the remaining provisions of this Agreement will remain in full force and effect. Shift Digital and its personnel, agents, suppliers and affiliates, in performing this Agreement, are acting as independent contractors and not as employees or agents of Dealer Customer. The parties agree that: (i) this Agreement may be executed by means of electronic signatures, (ii) each copy to which such electronic signatures are affixed will be deemed to be an original and (iii) if executed by means of electronic signatures, this Agreement will be legally valid and enforceable in accordance with its terms to the same extent as if each party had executed this Agreement using written signatures. The parties agree that the transmission of a party's signature on this Agreement, via an online enrollment form (e.g., check box) will be sufficient to bind such party to the terms and conditions thereof.