



## SYSTEM ACCESS ONLINE SERVICES AGREEMENT

Date of Last Revision: March 28, 2019

This Online Services Agreement (this "Agreement") is by and between iService Auto, Inc. and the Dealer and the Dealer's Authorized Agents. By using or accessing this and any other iService site, you agree to this Agreement, which may be updated from time to time, in accordance with Section 2 below.

iService provides online services consisting of iService's proprietary technology hosted on iService's cloud space and computers and accessed remotely by the Dealer (the "System") via iService's website which enables the Dealer to connect to the System and store data on the System. iService also provides software hosted on devices supplied to Dealer by iService for collecting and transferring data to the System (the "Devices"). iService further provides professional services related to implementation and customization of the System and the Devices (the "Professional Services"). The parties have agreed that iService will provide the System and the Devices to Dealer, as well as Professional Services as the parties may agree, now and pursuant to future statements of work ("SOWs"). Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

**1. DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. "AUP" means iService's acceptable use policy posted at [www.iServiceAuto.com](http://www.iServiceAuto.com)
- 1.2. "Dealer's Authorized Agents" means any agents, employees, customers or other third parties Dealer gives access to the System.
- 1.3. "Dealer Data" means data in electronic form managed or stored by the System and stored by or transferred by the Device, including without limitation data related to Dealer's Authorized Agents and other Users.
- 1.4. "Deliverables" means access to the System and delivery of the device(s) pursuant to any Order.
- 1.5. "Device" means the recording device leased by iService to the Dealer for capturing data and for transmitting the data to the System.
- 1.6. "Documentation" means any of iService's manuals, policies or procedures related to use of the System, as well as the Device.
- 1.7. "Feedback" refers to any suggestion or idea for improving or otherwise modifying any of iService's products or services
- 1.8. "IP" means intellectual property
- 1.9. "Licensed Software" means the iService proprietary software supporting the System and the iService proprietary software preloaded on the Device.
- 1.10. "Order" means an order from the Dealer for the purchase of access to the System and/or the purchase of access to the Devices on the form set forth as an attachment hereto and executed by each party.



- 1.11. "Privacy Policy" means iService's privacy policy, posted at [www.iServiceAuto.com](http://www.iServiceAuto.com)
- 1.12. "Professional Services" means the purchase by the Dealer of services to be rendered by iService as are set forth in an SOW.
- 1.13. "SOW" means a statement of work for Professional Services on the form set forth as an attachment hereto and executed by each party.
- 1.14. "SLA" means iService's standard service level agreement, posted at [www.iServiceAuto.com](http://www.iServiceAuto.com)
- 1.15. "System" means online services consisting of iService's proprietary technology hosted on iService's cloud space and computers and accessed remotely by the Dealer via iService's website which access enables the Dealer to connect to the System and store data on the System.
- 1.16. "Term" is defined in Section 13.1 below.
- 1.17. "User" means any company or individual who uses the System on Dealer's behalf or through Dealer's account or passwords, whether authorized or not, including without limitation Dealer's Authorized Agents.

## **2. CLOUD COMPONENTS & USE OF THE SYSTEM IN GENERAL.**

- 2.1. Use of the System. iService hereby grants Dealer and Dealer's Authorized Agents during the Term, a non-exclusive, non-transferable, right to access the System solely for its own business purposes subject to the terms and conditions of this Agreement. Dealer and Dealer's Authorized Agents may not access the System or use the Device if Dealer or Dealer's Authorized Agents currently compete or plan to compete with iService. In addition, Dealer and Dealer's Authorized Agents shall not access the System or use the Device for purposes of measuring performance or functionality of the System or the Device, or for any other benchmarking, reverse engineering or other competitive purpose. Dealer and Dealer's Authorized Agents shall not license, sell, transfer, assign, distribute or otherwise commercially exploit its access rights to the System; modify or make derivative works of the System or data or metadata contained therein; copy or reverse engineer or access the System or the Device or the data or the metadata contained therein in order to design a competitive product or service or design a product using similar ideas, features, functions or graphics of the System or the Device. Dealer and Dealer's Authorized Agents shall not use the System or the Device to store or transmit material in violation of third-party privacy rights or to store or transmit infringing, libelous, or otherwise unlawful or tortious material. Dealer and Dealer's Authorized Agents agree not to use the System or the Device to store or transmit material that violates any applicable statute, law, rule or regulation. Dealer's access and use of the System and the Device is also subject to all iService's policies (including without limitation any terms of service and/or use and/or privacy policies) posted on its Website at [www.iserviceauto.com](http://www.iserviceauto.com), as such policies may be updated from time to time and is subject to any SLA between the parties.
- 2.2. Service Levels. iService will provide the remedies listed in the SLA for any failure of the System or the Device. Such remedies are Dealer's sole remedy for any failure of the System or the Device, and Dealer recognizes and agrees that if the SLA does not list a remedy for a given failure, it has no remedy. Credits issued pursuant to the SLA apply to outstanding or future invoices only and are 'forfeited upon termination or expiration of this Agreement. iService is not required to issue refunds or to make payments against such credits under any



circumstances, including without limitation after termination or expiration of this Agreement.

- 2.3. Documentation: Dealer may reproduce and use the Documentation solely as necessary to support Users' use of the System.
- 2.4. System Revisions. iService may revise the SLA or the features and functions of the System or the Device at any time.

### **3. LICENSED SOFTWARE.**

- 3.1. License. iService hereby grants Dealer a nonexclusive license to use the Licensed Software relating to both the System and the Device, in such quantities as are set forth on the applicable Order, as necessary for Dealer's internal business purposes and solely as a component of the System and/or the Device, provided Dealer complies with the restrictions set forth below in Section 3.2 (*Restrictions on Software Rights*). Such internal business purposes do not include use by any parent, subsidiary, or affiliate of Dealer, or any other third party other than Dealer's Authorized Agents as specifically set forth in this Agreement, and Dealer will not permit any such use.
- 3.2. Restrictions on Software Rights. Dealer receives no title to or ownership of any copy or of the Licensed Software itself. Furthermore, Dealer receives no rights to the Licensed Software other than those specifically granted in Section 3.1 above. Without limiting the generality of the foregoing, Dealer and Dealer's Authorized Agents will not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Licensed Software; (b) use the Licensed Software in any way forbidden by Section 7.1 below; or (c) reverse engineer, decompile, disassemble the Device or the Licensed Software, or otherwise attempt to derive any of the Licensed Software's source code.
- 3.3. Delivery. iService will use its best efforts to provide the Licensed Software to Dealer, through the System and/or the Device, within ten (10) business days of the execution of the Order.
- 3.4. Hosting & Management. Dealer will use and manage its access to the System as required by the policies set forth at [www.iServiceAuto.com](http://www.iServiceAuto.com). iService will have no responsibility or liability for any failure of the System or the Device, including without limitation pursuant to the SLA, resulting from Dealer's failure to comply with the requirements set forth in the policies set forth at [www.iServiceAuto.com](http://www.iServiceAuto.com), with the SLA between the parties if any, and with the terms of this Agreement and any attachments hereto including any Orders or SOWs.
- 3.5. Deliverables.
  - (a) *Acceptance & Rejection*. Deliverables will be considered accepted ("Acceptance") upon delivery of or access to the Deliverables. Dealer must provide iService with written notice of rejection within seven (7) days after delivery. Dealer may reject a Deliverable only in the event that it materially deviates from its specifications and requirements, if any listed in the Order, and only via written notice setting forth the nature of such deviation. In addition, if such rejection involves any device, Dealer must return any rejected device to iService immediately. In the event of rejection, iService will use its best efforts to correct the deviation and redeliver the Deliverable within ten (10) days after receiving the written notice and/or the rejected Deliverable. After redelivery pursuant to the previous sentence, the parties will again follow the acceptance procedures set forth in this Subsection 3.5(a). This Subsection 3.5(a), in conjunction with Dealer's right to terminate for material breach where applicable and in conjunction with any SLA between the



parties, sets forth Dealer's only remedy and iService's only liability for failure of Deliverables.

- (b) *Incorporation of Deliverables.* Upon Acceptance, each Deliverable will constitute an element of the Licensed Software, as further specified in an applicable Order if any, and will thereafter be subject to this Agreement's terms including without limitation license and indemnity provisions and any other terms, conditions and agreements set forth in any policies on iService's website, in any SLA between the parties, and in any Order or SOW between the parties. Dealer receives no right, title, or interest in or to Deliverables except as specifically set forth in this Agreement.

**4. PROFESSIONAL SERVICES.** iService will provide the Professional Services, and Dealer will provide any assistance and cooperation necessary or convenient to facilitate the Professional Services, or called for in any SOW attached hereto.

**5. FEES & REIMBURSEMENT.** Dealer will: (a) pay iService the fee set forth in each Order for installation and initial training (the "Startup Fee"), access to the System (the "Subscription Fee") for each Term, the fee set forth in each Order for the use of any Devices (the "Device Fee"), as well as such fees as are set forth in each SOW ("Professional Service Fees"); and (b) reimburse such expenses as iService reasonably incurs in provision of Professional Services. Amounts listed in SOW's are estimates of Professional Services fees and will not be binding, except to the extent that the SOW specifically provides to the contrary. iService will not be required to refund any Fees under any circumstances except as otherwise provided in any SLA or SOW between the parties or herein.

#### **6. DEALER DATA & PRIVACY.**

- 6.1. Use of Dealer Data. Unless it receives Dealer's prior written consent, iService: (a) will not access, process, or otherwise use Dealer Data other than as necessary to facilitate the System; and (b) will not intentionally grant any third party access to Dealer Data, including without limitation iService's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, iService may disclose Dealer Data as required by applicable law or by proper legal or governmental authority. iService will give Dealer prompt notice of any such legal or governmental demand and reasonably cooperate with Dealer in any effort to seek a protective order or otherwise to contest such required disclosure, at Dealer's expense.
- 6.2. Data Security Audits. iService represents that it will retain a certified public accounting firm to perform an annual audit of the System's data protection features and to provide a SOC 2 Type II report, pursuant to the standards of the American Institute of Certified Public Accountants (the "AICPA"), or such other report as AICPA may promulgate to replace SOC 2 Type II. Reasonably promptly after Dealer's request, iService will provide a copy of its most recent such report, provided such report will be iService's Confidential Information pursuant to Article 9 below.
- 6.3. Privacy Policy. The privacy policy set forth on the iService website found at [www.iServiceAuto.com](http://www.iServiceAuto.com) applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System or by iService's staff.
- 6.4. Risk of Exposure. Dealer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, Dealer



assumes such risks. iService offers no representation, warranty, or guarantee that Dealer Data will not be exposed or disclosed through errors or the actions of third parties.

- 6.5. Data Accuracy. iService will have no responsibility or liability for the accuracy of data uploaded to the System by Dealer, including without limitation Dealer Data and any other data uploaded by Users.
- 6.6. Data Deletion. iService may permanently erase Dealer Data if Dealer's account is delinquent, suspended, or terminated so long as such delinquency, suspension or termination has been for 30 days or more.
- 6.7. Data Transfer. iService may transfer any Dealer Data as necessary for backup, or as additional functions and features of iService are developed, so long as security and data integrity is maintained. iService reserves the right to control where videos created with the iService devices are stored or uploaded.
- 6.8. Excluded Data. Dealer represents and warrants that Dealer Data does not and will not include, and Dealer has not and will not upload or transmit to iService's System or Device or computers or other media, any data that violates any applicable statute, law, rule or regulation including without limitation private data (for example, social security numbers, dates of birth) protected by any statutes, laws, rules or regulation ("Excluded Data"). DEALER RECOGNIZES AND AGREES THAT: (a) iSERVICE HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS TO THE EXCLUDED DATA OR TO OTHERWISE PROTECT EXCLUDED DATA; AND (b) iSERVICE'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 6.9. Aggregate & Anonymized Data. Notwithstanding the provisions above of this Article 6, iService may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Dealer Data with the following removed: personally identifiable information and the names and addresses of Dealer and any of its Users.) This includes any videos created of customer vehicles, so long as the data is anonymized by obscuring customer specific information such as license plates.

## **7. DEALER'S RESPONSIBILITIES & RESTRICTIONS.**

- 7.1. Acceptable Use. Dealer will comply with any AUP set forth on iService's website. Dealer agrees that Dealer will not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System, except Dealer's Authorized Users as specifically authorized by this Agreement; (b) provide System passwords or other log-in information to any third party, except Dealer's Authorized Agents as specifically authorized by this Agreement; (c) share non-public System features or content with any third party; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. In the event that it suspects any breach of the requirements of this Section 7.1, including without limitation by Users, iService may suspend Dealer's access to the System without advanced notice, in addition to such other remedies as iService may have. Neither this Agreement nor any AUP will require that iService take any action against Dealer or any User or other third party for violating any AUP, this Section 7.1, or any other term of this Agreement, but iService is free to take any such action it sees fit.
- 7.2. Unauthorized Access. Dealer will take reasonable steps to prevent unauthorized access to the



System, including without limitation by protecting its passwords and other log-in information. Dealer will notify iService immediately of any known or suspected unauthorized use of the System or breach of its security and will use best efforts to stop said breach.

- 7.3. Compliance with Laws. In its use of the System and the Device, Dealer will comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Dealer Data.
- 7.4. Dealer's Authorized Agents & Other Users; System Access. Dealer is responsible and liable for: (a) Dealer's Authorized Agents and other Users' use of the System, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement; and (b) any use of the System through Dealer's account, whether authorized or unauthorized.

## **8. IP & FEEDBACK.**

- 8.1. IP Rights in the System and the Device. iService retains all right, title, and interest in and to the System and the Device, including without limitation all software used to provide the System and the Device and all graphics, user interfaces, logos, and trademarks reproduced through the System and/or the Device. This Agreement does not grant Dealer any intellectual property license or rights in or to the System or in or to the Device or any of the System's components or any of the Device's components, except to the limited extent that this Agreement specifically sets forth Dealer license rights to Licensed Software or Documentation. Dealer recognizes that the System and the Device and their components are protected by copyright and other laws.
- 8.2. Feedback. iService has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Dealer, Dealer's Authorized Agents, or other Users provide to iService, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict iService's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Dealer or the Dealer's Authorized Agents or other User in question. Dealer hereby grants iService a perpetual, irrevocable right and license to exploit Feedback in any and every way. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of iService's products or services.)

**9. CONFIDENTIAL INFORMATION.** "Confidential Information" refers to the following items iService discloses to Dealer: (a) any document iService marks "Confidential"; (b) any information iService orally designates as "Confidential" at the time of disclosure; (c) the Licensed Software, Documentation and the System, whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information of iService Dealer should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Dealer's possession at the time of disclosure; (ii) is independently developed by Dealer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Dealer's improper action or inaction; or (iv) is approved for release in writing by iService.

- 9.1. Nondisclosure. Dealer will not use Confidential Information for any purpose other than as reasonably necessary to access the System, the Device or the Professional Services (the "Purpose"). Dealer: (a) will not disclose Confidential Information to any employee or contractor of Dealer unless such person needs access in order to facilitate the Purpose and



executes a nondisclosure agreement with Dealer with terms no less restrictive than those of this Article 9; and (b) will not disclose Confidential Information to any other third party without iService's prior written consent. Without limiting the generality of the foregoing, Dealer will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Dealer will promptly notify iService of any misuse or misappropriation of Confidential Information that comes to Dealer's attention. Notwithstanding the foregoing, Dealer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Dealer will give iService prompt notice of any such legal or governmental demand and reasonably cooperate with iService in any effort to seek a protective order or otherwise to contest such required disclosure, at iService's expense.

- 9.2. **Injunction.** Dealer agrees that breach of this Article 9 would cause iService irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, iService will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 9.3. **Termination & Return.** With respect to each item of Confidential Information, the obligations of Section 9.1 above (*Nondisclosure*) will terminate seven years after the date of disclosure; provided that such obligations related to Confidential Information constituting iService's trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Dealer will return all copies of Confidential Information to iService or certify, in writing, the destruction thereof.
- 9.4. **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto. iService will retain all right, title, and interest in and to all Confidential Information.
- 9.5. **Exception & Immunity.** Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b) (the "DTSA"), Dealer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
- (a) ***IMMUNITY.*** An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
  - (b) ***USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT.*** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

## **10. REPRESENTATIONS & WARRANTIES.**

### **10.1. From iService.**

- (a) ***Re IP Rights in the System.*** Subject to the next sentence, iService represents and warrants that it is the owner of the System and of each and every component thereof, or the



recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. iService's representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsections 11.1(a) through 11.1(f) below. In the event of a breach of the warranty in this Subsection 10.1(a), iService, at its own expense, will promptly take the following actions: (i) secure for Dealer the right to continue using the System; (ii) replace or modify the System to make it noninfringing; or (iii) terminate the infringing features of the System and refund to Dealer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Dealer's right to terminate for breach where applicable, the preceding sentence states iService's sole obligation and liability, and Dealer's sole remedy, for breach of the warranty in this Subsection 10.1(a) and for potential or actual intellectual property infringement by the System.

- (b) *Re Professional Services.* iService represents and warrants that the Deliverables will conform to their specifications set forth in the applicable SOW for a period.
- (c) *Re Device.* iService represents and warrants that it is the owner of the Device and the Licensed Software preloaded on the Device, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party.

#### 10.2. From Dealer.

- (a) *Re Dealer Itself.* Dealer represents and warrants that: (i) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (ii) it has accurately identified itself and it has not provided any inaccurate information about itself to iService or through the System or the Device; and (iii) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.
- (b) *Re Dealer's Authorized Agents.* Dealer represents and warrants that, to the best of its knowledge: (i) Dealer will accurately identify each Dealer's Authorized Agent and will not provide any inaccurate information about a Dealer's Authorized Agent or other User to or through the System or Device; and (ii) each Dealer's Authorized Agent who is not an individual will be a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

10.3. Warranty Disclaimers. Except to the extent set forth in the SLA and in Section 10.1 above, DEALER ACCEPTS THE SYSTEM AND THE DEVICE "AS IS" AND AS AVAILABLE. And except as set forth above in this Article 10, iSERVICE PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) iSERVICE DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM OR THE DEVICE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) iSERVICE DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM OR THE DEVICE IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT DEALER DATA WILL REMAIN PRIVATE





OR SECURE.

## **11. INDEMNIFICATION.**

11.1. From iService. iService will defend and indemnify Dealer and Dealer's Associates (as defined below in Section 11.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging infringement of any patent, copyright, trade secret, or other intellectual property right by the System. iService's obligations set forth in this Section 11.1 do not apply to the extent that an Indemnified Claim arises out of: (a) Dealer's breach of this Agreement, Order, SOW or any policy listed on iService's website; (b) revisions to the Licensed Software or other System or Device components made without iService's written consent; (c) Dealer's failure to incorporate Licensed Software updates or upgrades that would have avoided the alleged infringement, provided iService offered such updates or upgrades not otherwise required pursuant to this Agreement; (d) iService's modification of Licensed Software in compliance with specifications provided by Dealer, including without limitation Deliverables to the extent created based on such specifications; (e) any Deliverable, if the SOW or Order or a disclosure provided at or before delivery states that such Deliverable or SOW incorporates third party software or other assets; or (f) use of the System or Device in combination with hardware or software not provided by iService.

11.2. From Dealer. Dealer will indemnify and defend iService and iService's Associates (as defined below in Section 11.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to Dealer's alleged or actual use of, misuse of, or failure to use the System or the Device, including without limitation: (a) claims by Dealer's Authorized Agents or other Users; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Dealer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the System or the Device through Dealer's account, including without limitation by Dealer Data; and (d) claims that use of the System or the Device through Dealer's account, including by Dealer's Authorized Agents or other Users, harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims pursuant to the preceding sentence also include (f) claims related to the injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of Dealer or of any of its agents, subcontractors, or employees. Indemnified Claims listed above in this Section 11.2 include, without limitation, claims arising out of or related to iService's negligence, but they exclude any claim that would constitute an Indemnified Claims pursuant to Section 11.1 above.

The Dealer or Dealer's Authorized Agents shall not, during the course of the Agreement with iService, nor at any time thereafter, directly or indirectly, in public or private, in any manner or in any medium whatsoever, deprecate, impugn or otherwise make any comments, writings, remarks or other expressions that would, or could be construed to, defame the iService reputation. Nor shall the Dealer or Employee assist any other person, firm or company in so doing.

11.3. Litigation & Additional Terms. The obligations of the indemnifying party ("Indemnitor") pursuant to Section 11.1 or 11.2 above: (a) include retention and payment of attorneys and payment of court costs, as well as settlement at Indemnitor's expense and payment of judgments; and (b) will be excused to the extent that the other contracting party's ("Indemnified Party's") or any of such Indemnified Party's Associates' failure to provide



prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (A party's "Associates" are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

## **12. LIMITATION OF LIABILITY.**

- 12.1. Dollar Cap. iSERVICE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING WITHOUT LIMITATION ANY LIABILITY ARISING OUT OF OR RELATED TO ANY ORDERS, SOWs, DELIVERABLES) WILL NOT EXCEED ALL AMOUNTS PAID BY DEALER UNDER THIS AGREEMENT AND ANY ORDERS OR SOWS ATTACHED HERETO.
- 12.2. Exclusion of Consequential Damages. IN NO EVENT WILL iSERVICE BE LIABLE TO DEALER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY ORDER OR SOW ATTACHED HERETO.
- 12.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 12 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF iSERVICE IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF DEALER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 12, iService's liability will be limited to the maximum extent permissible. For the avoidance of doubt, iService's liability limits and other rights set forth in this Article 12 apply likewise to iService's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

## **13. TERM & TERMINATION.**

- 13.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and continue for the period set forth in the Order. Thereafter, the Term will renew for successive periods, unless either party refuses such renewal by written notice before the renewal date as specified in the Order.
- 13.2. Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice, effective in 30 days unless the other party first cures such breach. Without limiting iService's other rights and remedies, iService may suspend or terminate a Dealer's Authorized Agent's or other User's access to the System or the Device at any time, without advanced notice, if iService reasonably concludes such Dealer's Authorized User or other User has conducted itself in a way that is not consistent with the requirements of the policies set forth on iService's website, with the requirements of any SLA or with any other requirements of this Agreement or in a way that subjects iService to potential liability as determined in iService's sole discretion.
- 13.3. Effects of Termination. Upon termination of this Agreement, Dealer will cease all use of the System and the Device and delete, destroy, or return all copies of the Documentation and Licensed Software in its possession or control. Any and all Devices must be returned to iService in normal working condition within ten (10) days of termination. If Devices are not



returned or returned damaged Dealer must pay an additional \$299 per non-returned or damaged Device. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Dealer to pay fees incurred before termination including non-return or damage fees of Device; (b) Articles and Sections 3.2 (*Restrictions on Software Rights*) 8 (*IP & Feedback*), 9 (*Confidential Information*), 10.2 (*Warranty Disclaimers*), 11 (*Indemnification*), and 12 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

#### **14. MISCELLANEOUS.**

- 14.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no iService employee or contractor is or will be considered an employee of Dealer.
- 14.2. Notices. iService may send notices pursuant to this Agreement to Dealer's email address provided by Dealer, and such notices will be deemed received 24 hours after they are sent. Dealer may send notices pursuant to this Agreement to [accounts@iserviceauto.com](mailto:accounts@iserviceauto.com), and such notices will be deemed received 24 hours after they are sent.
- 14.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 14.4. Assignment & Successors. Dealer may not assign this Agreement or any of its rights or obligations hereunder without iService's express written consent. Except to the extent forbidden in this Section 14.4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 14.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 14.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 14.7. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Delaware, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction at the choice of iService. iService reserves the right to use the American Arbitration Association to resolve any and all conflicts. This Section 14.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.



- 14.8. Conflicts. In the event of any conflict among the attachments to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of this Agreement; (2) any SOW, with more recent Statements of Work taking precedence over later ones; (3) any Order; and (4) any iService policy posted online, including without limitation any acceptable use policy, any privacy policy or any SLA. No SOW or Order or other attachment incorporated into this Agreement after execution of this main body will be construed to amend this main body or any earlier attachment unless it specifically states its intent to do so and cites the section or sections amended.
- 14.9. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 14.10. Technology Export. Dealer will not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by iService or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Dealer will not permit any third party to access or use the System or the Device in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 14.11. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 14.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 14.13. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 14.13, iService may revise any policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.