

By accepting this end user license agreement, you agree to all program and/or provider content below.

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Master Terms and Conditions of Use and End User License Agreement

IMPORTANT -READ CAREFULLY: Sanctus, LLC, a limited liability company doing business as Shift Digital (“Shift Digital”), makes the Services, as defined below, available as part of the Harley-Davidson® Dealer Digital Program Terms. This “**Agreement**” includes these Master Terms and Conditions of Use and End User License Agreement, the Shift Digital Dealer Data Access Agreement, the Harley-Davidson® Dealer Digital Program Terms, and the Additional Service Terms. Although the Harley-Davidson® Dealer Digital Program is sponsored by Harley-Davidson Motor Company, Inc. (“**H-D**”), H-D is not providing or otherwise responsible for the Services and is not a Party to this Agreement. This Agreement is a legal contract between you, the automotive dealer (“**Dealer**”) subscribing to the Services, and Shift Digital. The Services are subject to the terms set forth in this Agreement.

Dealer’s enrollment for any Services authorizes Shift Digital to begin providing Services and billing Dealer immediately. Dealer agrees to pay the applicable fees for Services as set forth in the electronic enrollment portal or order form, incorporated herein by reference.

IN ORDER TO USE THE SERVICES, DEALER MUST FIRST AGREE TO THE TERMS SET FORTH IN THIS AGREEMENT BY COMPLETING ENROLLMENT ON THE ENROLLMENT PORTAL OR BY SELECTING SERVICES AND SIGNING A SERVICES ENROLLMENT FORM. DEALER MAY NOT USE THE SERVICES IF DEALER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT. DEALER CAN ACCEPT THE TERMS OF THIS AGREEMENT BY ENROLLING FOR AND/OR BY USING THE SERVICES, IN WHICH CASE, DEALER UNDERSTANDS AND AGREES THAT SHIFT DIGITAL WILL TREAT DEALER’S USE OF THE SERVICES AS ACCEPTANCE OF THE TERMS OF THIS AGREEMENT.

1. Services.

The “**Services**” are the products and services, including, without limitation, the websites, software, tools, digital advertising, and related content and services, the electronic enrollment portal, informational web pages, and/or online reporting service provided by Shift Digital and/or the Service Providers (defined below).

Shift Digital agrees to provide the Services to Dealer in accordance with the terms and conditions of this Agreement. Shift Digital may provide all or part of the Services through one or more third party service providers (“**Service Providers**”) that Dealer or Shift Digital selects. Shift Digital, in its sole discretion, may change any Service Provider, at any time and for any reason.

2. Use of the Services.

In order to access certain Services, Dealer may be required to provide information about Dealer and Dealer’s business (such as identification, billing or contact details). Dealer agrees that any information Dealer provides will be accurate, complete, and up to date. Dealer agrees to maintain the confidentiality of passwords associated with any account Dealer uses to access the Services and is responsible for any unauthorized activity that occurs under Dealer’s account as a result of a compromised or lost password. Dealer acknowledges that the Services may allow Dealer to designate administrators for the Services, thereby granting certain rights and authorizations relating to, among other things, selection of, and preferences for, Services and billing. Dealer agrees that Dealer is solely responsible for all fees, costs or other expenses charged related to any selections made by Dealer or Dealer’s designees.

Certain Services may be subject to certain Additional Service Terms. Dealer agrees to the applicable Additional Service Terms, and Dealer understands that it may not use such Services unless it agrees to the applicable Additional Service Terms.

DEALER SHALL, AS REQUIRED BY APPLICABLE LAW OR REGULATION, PROVIDE NOTICE TO DEALER'S CUSTOMERS AND OBTAIN CONSENT FROM DEALER'S CUSTOMERS FOR USE OF THE SERVICES. DEALER WILL MAINTAIN AND MAKE AVAILABLE TO ITS CUSTOMERS A PRIVACY POLICY AS REQUIRED BY LAW OR REGULATION.

Dealer will ensure that all websites or other Services provided to Dealer during the term of the Agreement that are accessible to consumers contain privacy statements complying with all applicable laws governing the use, collection, protection, or other processing of personal information. "**Personal information**" generally means information that identifies, relates to, describes, is reasonably capable of being associated with, or could or reasonably be linked, directly or indirectly, with identifiable individuals or households. Without limiting the generality of the foregoing, Dealer's privacy policy will state how the consumer's Personal Information will be used, collected, stored, protected, and otherwise processed including in connection with the Services. Dealer does not provide and during the term of the Agreement will not provide Personal Information to Shift Digital except in a manner consistent with its published privacy policies, in full compliance with all laws pertaining to such information, and in a manner that provides safe and secure storage and protection of such Personal Information.

3. Restrictions on Use of Services.

Dealer agrees to not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services). Without limiting the foregoing, Dealer agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of any Service or other program associated with the Services.

4. Compliance with Applicable Laws

Shift Digital shall provide the Services and perform its obligations under this Agreement, and Dealer shall use the Services and perform its obligations under this Agreement, in compliance with all applicable laws and regulations. Dealer may use the Services only for purposes that are permitted hereunder and in accordance with applicable laws and regulations. Dealer shall at all times comply with all applicable laws, legislation, rules, regulations, governmental requirements and industry standards with respect to Dealer's use of the Services and the performance by Dealer of Dealer's 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 or other federal, state, and local laws, rules, regulations, and ordinances governing the privacy and security of customer information that apply to Dealer. Dealer agrees to protect, use, and maintain the privacy of such information accordingly.

5. Ownership of Content and Services.

Dealer acknowledges and agrees that all materials and information (such as data files, written text, computer software, music, audio files or other sounds, photographs, manuals, documents, illustrations, pricing information, videos or other images) which are provided by Shift Digital, its Service Providers, or H-D in connection with the Services, or which Dealer may have access to as part of, or through Dealer's use of, the Services (the "**Provided Content**"), together with the Services, including any copyright and/or

other intellectual property rights in the Services and the Provided Content, are owned by Shift Digital, H-D, the Service Providers and/or their licensors. Dealer may not reproduce, adapt, publish, perform, or publicly display the Provided Content or the Services or create derivative works based on the Provided Content or the Services (either in whole or in part), except as provided in this Agreement. Dealer further acknowledges that the Services may contain information which is designated by Shift Digital as confidential. Dealer agrees not to use such confidential information for any purpose not expressly authorized by this Agreement or to disclose such confidential information without Shift Digital's prior written consent.

6. Dealer Content

Dealer agrees that it is solely responsible for all content, materials and information provided by Dealer or that Dealer (or any third party, excepting H-D and the Service Providers, in each case acting on behalf of Dealer) creates, approves, transmits, or displays while using the Services ("**Dealer Content**") and for the consequences of these actions (including any loss, liability, fine or damage). Shift Digital reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse, or remove any or all Dealer Content from any Service in Shift Digital's sole discretion. Dealer represents, warrants, and covenants that the Dealer Content shall not contain anything that infringes copyrights, trademarks, publicity, or any other rights of others; violates any law or regulation, is defamatory or libelous; is abusive, harassing, or threatening; is obscene, vulgar, or profane; is fraudulent or deceptive; is discriminatory; or violates someone's privacy.

8. Licenses.

Provided Dealer is not in default of any obligation under this Agreement, and provided Dealer has paid all applicable fees, subject to the terms and conditions of this Agreement, Shift Digital grants Dealer a limited, restricted, revocable, personal, royalty-free, non-assignable, nontransferable, non-sub-licensable and non-exclusive license to use the Services and the Provided Content provided to Dealer in the United States and Canada. This license is for the sole purpose of enabling Dealer to use and enjoy the benefit of the Services in the manner permitted by this Agreement. Dealer retains any copyright and/or other intellectual property rights Dealer already holds in Dealer Content. The products and services of the Service Providers may contain license terms specific to such products or services, and Dealer agrees to comply with all such license terms included in any click through or shrink wrap license or of which Shift Digital otherwise makes Dealer aware. Dealer may not (and Dealer may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile, or otherwise attempt to extract the source code of the software used to provide the Services (the "**Software**") 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. Dealer may not assign (or grant a sublicense of) any rights to use the Software, or any of the other proprietary elements of the Service, grant a security interest in or over Dealer's rights to use the Software or any other proprietary elements of the Service, or otherwise transfer any part of Dealer's rights to use the Software or any other proprietary elements of the Service. Dealer agrees not to remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services.

By submitting, posting, or displaying the Dealer Content, Dealer grants Shift Digital, and each Service Provider to which Shift Digital provides the Dealer Content for the purposes of providing the Services, a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify,

translate, publish, publicly perform, publicly display, and distribute the Dealer Content in order to provide the Services as contemplated in this Agreement. This license is for the sole purpose of enabling Shift Digital and the Service Providers to provide the Services as contemplated in this Agreement. Dealer understands that Shift Digital and the Service Providers, in performing the Services, may (a) transmit or distribute the Dealer Content over various public networks and in various media; and (b) make such changes to the Dealer Content as are necessary to conform and adapt the Dealer Content to the technical requirements of connecting networks, devices, services, or media. Dealer agrees that this license shall permit Shift Digital and the Service Providers to take these actions. Dealer represents and warrants that it has all the rights, power, and authority necessary to grant the above license. Shift Digital and the Service Providers shall use the Dealer Content in accordance with the license and rights granted by Dealer herein for the purpose of providing the Services to Dealer.

9. Modification to Services; Termination of the Services.

Shift Digital reserves the right to modify or change the Services provided hereunder by modifying current features, deleting features, and/or adding features, upon prior notice to Dealer. Some modifications or changes may result in a fee increase or decrease for such Services. Dealer's continued use of the Services hereunder after notice will constitute Dealer's acceptance of the change in the Services and Dealer's agreement to pay the fees associated with such change in Services. Dealer acknowledges and agrees that Shift Digital may stop (permanently or temporarily) providing the Services, or any part thereof, to Dealer if: (a) Dealer has breached any provision of this Agreement (or has acted in manner which reasonably shows that Dealer does not intend to, or is unable to comply with the provisions of this Agreement); or (b) Shift Digital is required to do so by law (for example, where the provision of the Services to Dealer is, or becomes, unlawful); or (c) the Service Provider selected by Dealer or Shift Digital to provide the Services has terminated its relationship with Shift Digital or ceases to offer the Services, or any part thereof, to Dealer; or (d) the provision of the Services to Dealer by Shift Digital is, in Shift Digital's sole opinion, no longer commercially viable; or (e) Shift Digital provides Dealer with thirty (30) days prior written notice of its intent to terminate the Services, or any part thereof, with or without cause. If Dealer wishes to stop using the Services at any time, Dealer agrees to provide Shift Digital with prior written notice of its intent to cancel receiving the Services in accordance with the provisions of Section 13, below. In addition, Shift Digital may disable access to Dealer's account for nonpayment of Services. Dealer acknowledges and agrees that if Shift Digital disables access to Dealer's account, Dealer may be prevented from accessing the Services, Dealer's account details, or any files or other content contained in Dealer's account. Dealer acknowledges and agrees that Shift Digital and the Service Providers will not be liable in any way for any inconvenience, delay, damages, losses, or other claims related to disabling Dealer's access to the account.

10. Payment of Fees and Billing.

Dealer agrees to pay the fees for the Services in the amounts set forth in the online registration process or, if an order form was used, on the order form. The fees for the Services shall be billed to and Dealer agrees to pay the fees for the Services through, and in accordance with the terms of, Dealer's H-D parts statement; provided, that Shift Digital may invoice Dealer directly for the Services if authorized by H-D to do so, and Dealer agrees to pay such invoice within 30 days of receipt. Cancellations are subject to the terms set forth in Section 13 below. Any changes in advertising packages (e.g., to increase or reduce the amount of the package) will take effect as of the first day of the month following the month in which Dealer requests the change so long as Dealer makes the request not less than five (5) business days prior

to the end of the month. Except as set forth otherwise herein, all charges under this Agreement will be due and payable as specified on and consistent with the payment terms of Dealer's H-D parts statement. Shift Digital may increase fees by giving Dealer not less than sixty (60) days written notice prior to the effective date of the price increase. If Dealer fails to pay for the Services timely through its H-D parts account, Dealer agrees to pay to Shift Digital, 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, Shift Digital expressly reserves the right to terminate the Services and disable Dealer's access to the Services for non-payment.

By entering Dealer's billing information, Dealer is authorizing Shift Digital to charge Dealer's credit card or withdraw funds from a bank account for use of the Services. Dealer is 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 Dealer is charged on a monthly cadence.

Please note a 3.5% processing fee will be applied to all credit card interactions. "Shift Digital" may appear as the entity name on invoices and the Dealer's credit card statements in connection with the billing for Services. If Dealer resides 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. Dealer in other states may be notified if Services become taxable in their state. Regardless of whether Dealer is notified, Dealer is responsible for all applicable local, state, federal, and any other taxes imposed on the purchase of Services, if any.

11. Taxes.

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. Dealer assumes 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 Shift Digital or Service Providers. The Dealer's H-D parts statement may include any such taxes that H-D determines it is obligated to collect from Dealer with respect to the Services, and Dealer agrees to timely remit the same to H-D.

12. Dealer Warranties.

DEALER HEREBY REPRESENTS AND WARRANTS THAT ANY AND ALL DEALER CONTENT SUBMITTED FOR PUBLICATION OR DISPLAYED ON DEALER'S WEBSITE OR IN DIGITAL ADVERTISING, OR IN ANY SOCIAL MEDIA, WILL NOT VIOLATE OR OTHERWISE INFRINGE UPON ANY COPYRIGHT, TRADEMARK, PATENT, STATUTORY, COMMON LAW, OR PROPRIETARY RIGHT OF OTHERS, OR CONTAIN ANYTHING CONSIDERED OBSCENE OR LIBELOUS.

13. Term & Termination.

The Term of this Agreement shall commence on the date that Dealer enrolls for the Services and will continue until terminated in accordance with the terms hereof. With respect to each Service, certain Service Providers may require different term durations. Although the standard term is month to month, if Dealer selects a Service Provider with a different term duration as stated on the enrollment site, then the term stated on the enrollment site shall prevail for purposes of that Service, and the term will automatically renew for consecutive terms equal to the length of the term for the Service selected).

This Agreement and/or the applicable Services may be terminated or suspended as provided below:

Dealer may cancel the Services online through its account, if online cancellation functionality is available, or, if not available, by providing written notice to Shift Digital delivered by email to info@harley-davidsondigital.com. For Services with a term other than month to month (as stated on the enrollment site), cancellations that occur on or before the 10th day of the last month of the then-current term will be effective as of the end of the current term, and cancellations that occur after the 10th day of the last month of the then-current term will be effective as of the end of the next Service term (e.g., if it is a Services with an annual term, then it will be effective as of the end of the twelfth month of the next term). For all Services on a month to month term, cancellations that occur after the 10th day of the month will be effective at the end of the next following month, and cancellations that occur on or before the 10th day of the month will be effective as of the end of the then-current month. The cancellation may be subject to Publishers' policies or the ability to re-schedule reserved inventory or cancel Advertisements already in production. Cancelled Advertisements may be published despite cancellation if cancellation of the Advertisements occurs after any applicable commitment date as set forth in advance by Shift Digital or the applicable Service Provider, in which case Dealer must pay for those Advertisements. Upon cancellation or expiration of this Agreement, Dealer will be responsible for any Advertisements already run. If Shift Digital materially defaults in its performance under this Agreement and fails to substantially cure such default within thirty (30) days after receiving written notice specifying the default or, for those defaults that cannot reasonably be cured within thirty (30) days, fails to promptly commence curing such default and thereafter proceed with all due diligence to substantially cure the default, then Dealer may terminate this Agreement by written notice to Shift Digital.

Dealer acknowledges and agrees that Shift Digital may stop (permanently or temporarily) providing the Services, or any part thereof, to Dealer and/or may terminate this Agreement if: (a) Dealer has breached any provision of this Agreement (or has acted in a manner which clearly shows that Dealer does not intend to, or is unable to comply with the provisions of this Agreement); (b) Shift Digital is required to do so by law (for example, where the provision of the Services to Dealer is, or becomes, unlawful); (c) the Service Provider selected by Dealer or Shift Digital to provide the Services has terminated its relationship with Shift Digital or ceases to offer the Services, or any part thereof, to Dealer; (d) the provision of the Services to Dealer by Shift Digital is, in Shift Digital's sole opinion, no longer commercially viable, or (e) Shift Digital provides Dealer with thirty (30) days prior written notice of termination of the Services, or any part thereof, with or without cause. In addition, Shift Digital may disable access to Dealer's account if Dealer fails to pay the fees owed for the Services when due. Dealer acknowledges and agrees that if Shift Digital disables access to Dealer's account, Dealer may be prevented from accessing the Services, Dealer's account details or any files or other content which is contained in Dealer's account. Dealer acknowledges and agrees that Shift Digital, H-D and the Service Providers will not be liable in any way for any inconvenience, delay, damages, losses or other claims related to disabling Dealer's access to the account due to such non-payment.

This Agreement will automatically terminate without requirement of notice by either party effective on the date of the expiration or termination of Dealer's franchise agreement or distribution agreement with H-D for any reason.

14. NO WARRANTIES.

DEALER EXPRESSLY UNDERSTANDS AND AGREES THAT DEALER'S USE OF THE SERVICES AND THE PROVIDED CONTENT IS AT DEALER'S SOLE RISK AND THE SERVICES AND THE PROVIDED CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE". IN PARTICULAR, SHIFT DIGITAL, THE SERVICE PROVIDERS AND THEIR AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT TO DEALER THAT: (A) DEALER'S USE OF THE SERVICES OR THE PROVIDED CONTENT WILL MEET DEALER'S REQUIREMENTS, OR (B) DEALER'S USE OF THE SERVICES OR PROVIDED CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES, INCLUDING ANY PROVIDED CONTENT, IS DONE AT DEALER'S OWN DISCRETION AND RISK AND THAT DEALER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO DEALER'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DEALER DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY DEALER FROM SHIFT DIGITAL, ANY SERVICE PROVIDER, OR H-D, OR THROUGH OR FROM THE USE OF THE SERVICES SHALL CREATE ANY WARRANTY. SHIFT DIGITAL AND EACH SERVICE PROVIDER EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND THE PROVIDED CONTENT INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

15. LIMITATION OF LIABILITY.

SUBJECT TO APPLICABLE LAW, DEALER UNDERSTANDS AND AGREES THAT NEITHER SHIFT DIGITAL, NOR THE SERVICE PROVIDERS, NOR ANY OF THEIR AFFILIATES OR LICENSORS SHALL BE LIABLE TO DEALER FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY DEALER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS; (B) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY DEALER, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF: (I) ANY CHANGES WHICH SHIFT DIGITAL OR ANY SERVICE PROVIDER MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES); (II) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY DEALER CONTENT, DEALER DATA, AND/OR OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH DEALER'S USE OF THE SERVICES; (III) DEALER'S FAILURE TO PROVIDE SHIFT DIGITAL OR ANY SERVICE PROVIDER WITH ACCURATE ACCOUNT INFORMATION; OR (IV) DEALER'S FAILURE TO KEEP DEALER'S PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL. DEALER AGREES THAT THE AGGREGATE MAXIMUM LIABILITY OF SHIFT DIGITAL UNDER THIS AGREEMENT FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY DEALER DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE LAST EVENT GIVING RISING TO LIABILITY. THE ABOVE LIMITATIONS ON LIABILITY SHALL APPLY REGARDLESS OF WHETHER A PARTY IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

DEALER ACKNOWLEDGES AND AGREES WITH SHIFT DIGITAL THAT (A) H-D HAS MADE NO REPRESENTATIONS OR WARRANTIES TO DEALER AS TO ANY SERVICES PROVIDED BY SHIFT DIGITAL OR ANY SERVICE PROVIDER, (B) DEALER AGREES NOT TO MAKE ANY CLAIM WHATSOEVER, AND HEREBY

WAIVES ALL CLAIMS IT MAY HAVE, AGAINST H-D WITH RESPECT TO ANY SERVICES PROVIDED BY SHIFT DIGITAL OR ANY SERVICE PROVIDER.

16. INDEMNIFICATION.

DEALER WILL DEFEND, INDEMNIFY AND HOLD SHIFT DIGITAL, THE SERVICE PROVIDERS, H-D, AND EACH OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, MANAGERS, SHAREHOLDERS, AGENTS, REPRESENTATIVES, AND AFFILIATES (COLLECTIVELY, THE “**INDEMNIFIED PARTIES**”) HARMLESS FROM AND AGAINST ALL THIRD PARTY CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, AND ADMINISTRATIVE OR REGULATORY ACTIONS OF WHATEVER KIND OR CHARACTER, AND INCLUDING ANY RELATED LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, FINES, JUDGMENTS, SETTLEMENTS, CHARGES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS’ FEES AND ACCOUNTANTS’ FEES AND DISBURSEMENTS (COLLECTIVELY, “**CLAIMS**”) TO THE EXTENT THAT SUCH CLAIMS RELATE TO, ARISE OUT OF OR RESULT FROM: (I) ANY INTENTIONAL OR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY DEALER OR OF ANY OF DEALER’S EMPLOYEES, AGENTS, OR SUBCONTRACTORS; (II) A BREACH OF THIS AGREEMENT BY DEALER, INCLUDING A BREACH OF ANY OF DEALER’S REPRESENTATIONS, WARRANTIES, OR COVENANTS UNDER THIS AGREEMENT; (III) DEALER’S USE OF THE SERVICES; (IV) DEALER’S FAILURE TO COMPLY WITH DEALER’S PRIVACY POLICY; OR (V) DEALER’S VIOLATION OF APPLICABLE LAW, BUT EXCLUDING, IN EACH CASE, CLAIMS, DEMANDS AND CAUSES OF ACTIONS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PERSON OR ENTITY SEEKING INDEMNIFICATION.

17. AUTHORIZED THIRD PARTY BENEFICIARIES.

H-D AND EACH SERVICE PROVIDER SHALL BE DEEMED A THIRD PARTY BENEFICIARY OF THE INDEMNIFICATION AND LIMITATION OF LIABILITY PROVISIONS OF THIS AGREEMENT.

18. Force Majeure.

Each party hereto shall be excused from performance hereunder, except for payment obligations, and to the extent that it is prevented from performing any obligation hereunder, in whole or in part, as a result of delays caused by the other party or an act of God, war, civil disturbance, court order, labor dispute, third party nonperformance, or other cause beyond its reasonable control, including failures, fluctuations, or non-availability of electrical power, heat, light, air conditioning, computing, or information systems, or telecommunications equipment, or the inability of hardware or software leased or acquired by sale or license from third parties to process without error or malfunction any data. Such nonperformance shall not be a default or ground for termination as long as reasonable means are taken to remedy expeditiously the problem causing such nonperformance.

19. Relationship of Parties.

Shift Digital and the Service Providers are independent contractors, and no agency, partnership, joint venture, employer-employee or other similar relationship is intended or created between or among Dealer, Shift Digital, or any Service Provider under this Agreement.

20. Waiver.

Any failure or delay by Shift Digital in exercising or enforcing any rights or remedies that are available under this Agreement (or that Shift Digital has the benefit of under any applicable law or otherwise) shall not be deemed to be a waiver of any other rights or remedies, and all such rights and remedies will remain available.

21. Notices.

Any notice to be provided under this Agreement shall be in writing and shall be delivered to the last known address of the party to receive the notice, which shall be considered delivered three days after mailing if sent certified mail, return receipt requested, or when received, if sent by e-mail, facsimile, prepaid courier, express mail, or personal delivery.

22. Entire Agreement.

This Agreement constitutes the entire agreement and understanding of the parties in respect of the subject matter contained herein and supersedes all prior agreements, consents and understandings relating to such subject matter. The parties agree that there is no oral or other agreement relating to such subject matter between the parties which has not been incorporated into this agreement.

23. Survival.

The provisions of Sections 2, 3, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Agreement, and any right or obligation of the parties in this Agreement which, by its express terms or nature and context, is intended to survive termination, will survive the termination of this Agreement and the Services.

24. Changes to this Agreement.

Shift Digital may make changes to this Agreement or put into place Additional Terms from time to time at its discretion. When these changes are made, Shift Digital will notify Dealer and make a new copy of this Agreement available on the maintenance tool point of entry for the Services.

Dealer understands and agrees that its use of the Services after the date on which this Agreement or any Additional Terms have changed shall constitute Dealer's agreement to and, acceptance of the updated Agreement or Additional Terms. Except as set forth herein, this Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

25. Severability.

If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. Headings used in this Agreement are for reference purposes only and are not a part of this Agreement.

26. Assignment.

Dealer may not assign this Agreement without the prior written approval of Shift Digital, except that no approval shall be required to assign this agreement to any person or entity which is, directly or indirectly, controlled by, controlling, or under common control with Dealer and is a licensed dealer authorized to sell and service automobiles under a franchise agreement with H-D. This Agreement and all rights of Shift Digital hereunder may be assigned by Shift Digital, including, without limitation, to H-D, without consent, payment, or other condition (excepting reasonable notice to Dealer). This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

27. Choice of Law; Venue.

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 28 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

28. Arbitration and Class Waiver.

28.1 Arbitration. Dealer 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'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, any such arbitration will be governed by the provisions of this Section 28.

28.2 Class Waiver. Any arbitration proceeding under this Section 28 will take place on an individual basis. Class arbitrations and class or representative proceedings of any kind are not permitted and Dealer 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's dispute with Shift Digital, this class waiver will continue to apply in litigation. Dealer agrees that this class waiver is an essential element of the agreement between Dealer 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 28 will be null and void.

28.3 Arbitrator Authority. Any dispute or claim subject to arbitration pursuant to this Section 28 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 other applicable Additional Terms between Dealer 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 16 in connection with any indemnification claim.

Shift Digital Dealer Data Access Agreement

1. Access to Dealer's Web Sites, Systems and Data. Dealer hereby authorizes Shift Digital and the Service Providers that produce, collect or receive data pertaining to the Dealer's website(s), advertising activity, sales leads, lead generation activity, Dealer's use of the Services, or any of Dealer's other business activities (the "**Dealer Data**"), to transfer, provide or otherwise make available the Dealer Data to Shift Digital, H-D, and Service Providers, which may include directly sharing Dealer Data with H-D and the Service Providers. H-D's use of the Dealer Data is subject to Dealer's agreement with H-D, to which Shift Digital and the Services Providers are not a Party. In the event the performance of the Services requires Shift Digital and/or the Service Providers to access Dealer's computer systems to collect Dealer Data or perform the Services, Dealer specifically requests and authorizes such access and will provide, and has all rights and authorizations required to provide, such access. Shift Digital and/or the Service Providers may access Dealer Data in accounts created and managed by Shift Digital and/or the Service Providers on the third party sites or, if Dealer provides its account information and authorizes access to accounts managed by Dealer, Shift Digital and/or the Service Providers may access Dealer's accounts directly on those third party sites.
2. Dealer Data Ownership. The Dealer Data shall continue to be owned by the Dealer. Neither Shift Digital nor the Service Provider will use the Dealer Data for any other purposes than those intended with the Services or as otherwise provided herein. Nothing in this Agreement shall obligate Shift Digital or any Service Provider to retain any Dealer Data.
3. Dealer License. Dealer hereby grants to Shift Digital and the Service Providers a royalty-free, non-exclusive, nontransferable, non-cancelable, perpetual license to use the Dealer Data, including without limitation any sales and inventory data (to the extent available) obtained from Dealer's computer systems or use of the Services for the purposes of (i) performing the Services; (ii) consumer, vehicle, and industry research and reference; (iii) evaluation of sales lead performance, (iv) combining with other data to create proprietary market price and incentive guides; (v) the generation of market analysis data and related products; (vi) development of reports for H-D; (vi) in promotional materials of Shift Digital and/or the Service Providers but only for such purpose when Dealer Data is aggregated, anonymized, or otherwise de-identified; and (vii) Shift Digital's and/or the Service Provider's business and operations, which may include (1) analyzing and reporting such aggregated and de-identified data in connection with the conduct of Dealer's business and operations, (2) creation of operational statistics for internal use only; (3) creation and inclusion in financial reporting of aggregate statistics regarding services performed; (4) creation and inclusion in marketing materials of aggregate statistics highlighting the capabilities of Shift Digital's and/or the Service Provider's products and services; and (5) advancing and improving existing products and services, creating new and enhanced product and services, and development and publication of market and industry intelligence and expertise by Shift Digital and/or the Service Provider.
4. Disclosure to H-D. In connection with the Services, Dealer instructs Shift Digital and the Service Providers to disclose all Dealer Data to which Shift Digital and the Services Providers have access, including without limitation Personal Information, to H-D on dealer's behalf.
5. Google AdWords and Analytics. Dealer expressly authorizes Shift Digital, and the Service Providers to access Dealer Data maintained by third parties, including Google in such services as Google AdWords and Google Analytics, on Dealer's behalf as Dealer's agent in order to provide the

Services. DEALER ACKNOWLEDGES AND AGREES THAT (A) DEALER IS RESPONSIBLE FOR COMPLIANCE WITH GOOGLE ADWORDS AND GOOGLE ANALYTICS POLICIES, TERMS OF USE, AND APPLICABLE LAWS AND REGULATIONS, AND (B) WHEN SHIFT DIGITAL AND/OR THE SERVICE PROVIDERS ARE ACCESSING AND RETRIEVING ACCOUNT INFORMATION FROM THIRD PARTY SITES, SHIFT DIGITAL AND/OR SERVICE PROVIDERS ARE ACTING AS DEALER'S AGENT, AND NOT AS THE AGENT OF GOOGLE OR ANY OTHER THIRD PARTY. NEITHER SHIFT DIGITAL, H-D, THE SERVICE PROVIDERS, GOOGLE NOR ANY OTHER THIRD PARTY PROVIDES ANY WARRANTY OR GUARANTY (EXPRESS OR IMPLIED) OF ANY RESULTS OR OTHERWISE WITH RESPECT TO ACCESS OR USE OF DEALER DATA IN THE SERVICES.

6. Publisher Policies and Terms. Use of the Services is also subject to the applicable policies and terms of the search engine, website, or network publishers ("**Publishers**") on which display ads, videos, or other advertising media ("**Advertisements**") are posted or displayed in connection with the Services, including without limitation any Publisher's terms and conditions, editorial guidelines, privacy policies, trademark guidelines, and ad specification requirements ("**Policies**"). Dealer agrees to comply with the Policies during the term of this Agreement and agrees that it has or will enter into a contractual relationship directly with such Publishers for the publication of Advertisements and associated data collection and use that will permit Shift Digital and the Service Providers to provide the related Services in compliance with all applicable laws and regulations. Shift Digital or the Service Provider may modify Advertisements to comply with any Policies in its sole discretion. Dealer agrees not to access (or attempt to access) any of the Services by any means other than through the interfaces that are made accessible by Shift Digital or the Service Provider.
7. Personal Information processing. When Shift Digital is processing Personal Information on behalf of Dealer in connection with the Services, the following terms apply:
 - a. Shift Digital will process Personal Information only for the nature and purpose of fulfilling the Services and in accordance with Dealer's written instructions, which are documented in this Agreement and as further identified in the order form. Notwithstanding the foregoing, Shift Digital may also process Personal Information as necessary for Shift Digital to comply with applicable laws and regulations.
 - b. Data subjects whose Personal Information will be processed by Shift Digital in connection with the Services may consist of Dealer's employees, contractors, potential, actual, and former customers, and website visitors.
 - c. Categories of Personal Information to be processed by Shift Digital in connection with Services may include:
 - i. First and last name
 - ii. Street Address
 - iii. Vehicle of interest
 - iv. Phone number
 - v. Email address
 - vi. IP address
 - vii. Customer-owned VIN
 - viii. Dealer's business contact information
 - d. The duration of processing of Personal Information is equal to the term of the Agreement.

- e. 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 the Agreement, including retaining, using, or disclosing the Personal Information for a commercial purpose other than fulfilling its obligations under the Agreement; or (iii) retain, use, or disclose Personal Information outside of the direct business relationship between Company and Shift Digital. For purposes of this Agreement, to “**share**” Personal Information means to disclose Personal Information to a third party for cross-context behavioral advertising or targeted advertising purposes as contemplated by Applicable Privacy Laws. For purposes of this Agreement, to “**sell**” Personal Information means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Personal Information to a third party for monetary or other valuable consideration. This sub-section will not apply when Shift Digital is processing Personal Information for cross-context behavioral advertising purposes or combining Personal Information that Shift Digital processes on behalf of itself or third parties with Personal Information Shift Digital processes on behalf of Dealer (collectively, “**Third Party Service Components**”).
- f. Shift Digital will process Personal Information in accordance with all applicable laws and regulations, including, but not limited to, California Consumer Privacy Act (as amended by the California Privacy Rights Act), Connecticut’s Act Concerning Personal Data Privacy and Online Monitoring (effective July 1, 2023), Colorado Privacy Act (effective July 1, 2023), Utah Consumer Privacy Act (effective December 31, 2023), Virginia Consumer Data Protection Act, and other federal and state laws and regulations relating to privacy, data security, and the processing, storage, protection, and disclosure of Personal Information (collectively, “**Applicable Privacy Laws**”).
- g. All Personal Information will be deemed to be owned or licensed by Dealer and is Dealer Data subject to a duty of confidentiality. Dealer and all Shift Digital personnel and permitted subcontractors that process Personal Information are under a binding obligation to protect the confidentiality of such Personal Information.
- h. Dealer may, upon at least thirty (30) days prior written notice and not more than once per twelve-month period, at Dealer’s sole cost and expense, assess Shift Digital’s Personal Information processes for compliance with these terms and Applicable Privacy Laws. Dealer will use reasonable efforts to minimize the disruption to Shift Digital’s business operations from such assessment and will comply with all reasonable directives from Shift Digital if accessing Shift Digital’s facilities, systems, or documents. Dealer will reimburse Shift Digital for reasonable expenses incurred, including compensation for Shift Digital personnel time expended, in connection with such audit/review.
- i. Shift Digital will not disclose Personal Information to any sub-processors without the prior approval of Dealer. Dealer consents to Shift Digital’s disclosure of Personal Information to the sub-processors, including the Service Providers, identified on the program enrollment website, Shift Digital’s third party data center, and additional sub-processors as approved by Dealer in writing from time to time. Shift Digital will notify Dealer of any changes to the sub-processors that it uses to process Personal Information by updating the list available on the program enrollment website, and Dealer shall have ten (10)

business days to object to each such change beginning on the date Shift Digital updates the list (the “**Objection Period**”). If Dealer does not object to the changed sub-processors within the Objection Period, Dealer will be deemed to have irrevocably approved the changed sub-processors. This sub-section will not apply to Shift Digital’s processing of Personal Information for Third Party Service Components.

- j. Shift Digital will either inform i) Dealer of any data subject request received by Shift Digital relating to Personal Information processed on behalf of Dealer or ii) the requesting data subject that they should make their request directly to the Dealer. Dealer will notify Shift Digital of any data subject request received by Dealer to which Shift Digital must comply and provide information reasonably necessary for Shift Digital to comply with such request.
- k. To the extent prohibited by Applicable Privacy Laws, Shift Digital will not combine Personal Information it processes on behalf of Dealer with Personal Information it processes on behalf of third parties or itself. This sub-section will not apply when Shift Digital processes Personal Information in connection with Third Party Service Components.
- l. Shift Digital will implement reasonable technical, administrative, organizational, and physical safeguards to protect Personal Information against unauthorized access, use, disclosure, alteration or destruction, including, to the extent applicable, a written information security program for the protection of “non-public personal information” as defined under GLBA and its implementing regulations.
- m. Shift Digital will notify Dealer in writing in the event that it determines it is no longer able to meet its obligations under Applicable Privacy Laws or this Agreement with regard to its processing of Personal Information under the Agreement. After providing reasonable notice to Shift Digital, Dealer may take actions that, in Dealer’s reasonable discretion and at Dealer’s cost, are appropriate to stop and/or remediate Shift Digital’s noncompliant processing of Personal Information.
- n. Upon termination of the Agreement or upon Dealer’s request, Shift Digital will promptly return or destroy (with written certification), at Dealer’s option except that Shift Digital may choose destruction if return is impractical, any or all of Dealer’s Personal Information in its possession or control unless (i) retention of such Personal Information is required by laws or regulations applicable to Shift Digital, (ii) Shift Digital determines, in its sole discretion, it needs to retain such Personal Information to pursue or defend against an actual or potential legal claim, (iii) such Personal Information is stored in an archive or backup system (only until such Personal Information is deleted from such system in the ordinary course of Shift Digital’s business), or (iv) Dealer consents to the retention thereof.

H-D Dealer Digital Program Terms

For the Harley-Davidson Dealer Digital Program

Dealer represents and warrants that it is a licensed automotive dealer authorized to sell and service vehicles under a franchise agreement with H-D.

H-D is a third party beneficiary of this Agreement as provided in Section 18 of the Agreement, however, Shift Digital does not have the power or authority to bind H-D through this Agreement or otherwise.

Dealer agrees to deliver all notices required hereunder to info@harley-davidsondigital.com.

[Additional Service Terms](#)

Additional service terms begin on the following page.

Call Tracking

Dealer acknowledges that, as part of the Services, Dealer may receive use of and access to certain tollfree and local tracking phone numbers, as well as other Services relating to such numbers (collectively, with the services, the “**Number(s)**”). Dealer acknowledges and understands 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 Dealer through the Number (the “**Recorded Call Message**”). Dealer represents, warrants, and agrees in connection with Dealer’s use of the Services, that Dealer has reviewed the legality of recording, monitoring, storing, and divulging telephone calls, that Dealer is permitted to engage in such activities, and that Dealer shall use the Number(s) in full compliance with all applicable laws and regulations. Dealer represents and warrants that Dealer has had the opportunity to review the proposed usage of the Numbers with Dealer’s legal counsel, and that Dealer has established proper procedures to protect the privacy of, and otherwise comply with all applicable laws and regulations 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 laws, then Dealer shall promptly notify Shift Digital in writing of that fact, advising Shift Digital as to the exact language necessary to comply with the applicable laws. Dealer agrees and acknowledges that neither Shift Digital, nor any Service Providers accept any responsibility for (a) the legality of recording, monitoring, storing and/or divulging telephone calls and (b) the legality of the language used in the Recorded Call Message.

Dealer agrees and acknowledges that applicable laws and regulations may require that Dealer 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 (the “**Call Receivers**”). Dealer agrees, acknowledges, represents, and warrants that Dealer will provide and/or obtain all notices, consents, and permissions relating to Call Receivers, as required by applicable laws and regulations.

Dealer will not use these Services in connection with any unsolicited or harassing messages (commercial or otherwise) including but not limited to unsolicited or unwanted SMS or text messages. Dealer will not improperly engage in activity which the United States Federal Communications Commission or other government authority has prohibited. Dealer is personally responsible for all SMS messages originated and sent via the chat Services provided to Dealer. Actions taken using Dealer’s credentials shall be deemed to be actions taken by the Dealer.

ARI Additional Terms

This Enrollment Addendum (“**Addendum**”) supplements the terms and conditions of the Agreement and applies to any Dealer who enrolls to receive Services from ARI Network Services, Inc. (“**ARI**”) through the H-D Dealer Digital Program. Shift Digital, ARI and the ARI Customer, as defined below, agree as follows:

- A. If Dealer selects ARI to provide a website package, then Dealer will be considered an “**ARI Customer**” under the Agreement with respect to the website package.
- B. Each ARI Customer will be bound by its contract with ARI (the “**ARI Contract**”) but must also agree to the Agreement and this Addendum in order to participate in the H-D Dealer Digital Program.
- C. Dealer understands and agrees that by selecting ARI to provide a website package it agrees to the ARI Contract, available at <https://www.leadventure.com/dealer-spike-tos/>.
- D. ARI will invoice fees for the website package to the ARI Customer in accordance the ARI Contract.
- E. As between the Agreement and the ARI Contract, the ARI Contract will control as to the fees and billing provisions of the website package.
- F. As between the ARI Customer and Shift Digital, the Agreement supersedes and controls over the terms of the ARI Contract. For purposes of the Agreement, the website package shall be considered a “**Service**” except that: i) Shift Digital makes no representations or warranties with respect to the website package; ii) Section 4 of the Agreement shall not apply to Shift Digital with respect to the website package; and iii) notwithstanding any provision of the Agreement to the contrary, Shift Digital shall not be responsible for the website package and shall not be liable for any act or omission of ARI.
- G. Further, as between ARI Customer and ARI, the ARI Contract shall supersede and control over the terms of the Agreement.
- H. Notwithstanding the foregoing, if an ARI Customer elects to receive any Services from a Service Provider other than ARI, then the Agreement shall control with respect to such Services.

Kenect Additional Terms

Dealer's use of the Kenect services is provided by Kenect, LLC ("**Kenect**"). In addition to the Agreement, the following Additional Terms and Conditions ("**Additional Terms**") apply to Dealer's use of the Kenect Services. All capitalized terms used in these Additional Terms which are not defined below shall have the meanings given to them in the Agreement. NOTE TO DEALER: THESE ADDITIONAL TERMS INCLUDE PROVISIONS THAT SUPPLEMENT TERMS IN THE AGREEMENT:

1. General Restrictions. Dealer must not (and must not allow any third party to): (i) rent, lease, copy, transfer, sublicense or provide access to the Kenect Service to a third party (except Authorized Users as specifically authorized above); (ii) incorporate the Kenect Service (or any portion thereof) into, or use it with or to provide, any site, product or service; (iii) use the Kenect Service (or any portion thereof) for time sharing purposes or for a third party's benefit; (iv) publicly disseminate information regarding the performance of the Kenect Service (which is deemed Kenect's Confidential Information); (v) modify or create a derivative work of the Kenect Service or any portion thereof; (vi) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Kenect, except to the extent expressly permitted by applicable law and then only upon advance notice to Kenect; (vii) break or circumvent any security measures or rate limits for Kenect Services; (viii) distribute any portion of the Kenect Service other than as specifically permitted above; or (ix) remove or obscure any proprietary or other notices contained in the Kenect Service including in any reports or output obtained from the Kenect Service.
2. Term and Payment.
 - (a) With respect to the Kenect Services, this Agreement shall commence on the date of enrollment by the Dealer for the Kenect Services and continue in effect for twelve (12) months (the "**Initial Term**"), unless this Agreement is terminated by a Party in accordance with the provisions hereof. This Agreement shall automatically renew for consecutive additional twelve (12) month terms (each a "**Renewal Term**") after the Initial Term, unless a Party elects not to renew this Agreement by giving not less than thirty (30) days prior written notice thereof to the other Party. The Initial Term and Renewal Term may be referred to herein collectively as the "**Term**."
 - (b) Shift Digital will invoice Dealer for the Services at the beginning of each Term, and Dealer agrees to pay the fees for each Term upfront within thirty (30) days of the date of invoice. If Dealer cancels or elects not to renew during any Term, Dealer will not receive a refund for any prepaid amounts for unused Services.
3. Dealer Obligations:
 - (a) Representations Regarding Messages:
 - i. Dealer warrants and represents that it and its Authorized Users will not use the Kenect Service in a manner that would violate any obligation with respect to the Telephone Consumer Protection Act of 1991, any policy or decision made by the Canadian Radio-television and Telecommunications Commission, Canada's Anti-Spam Legislation, the Health Insurance Portability and Accountability Act of 1996,

FERPA, the Gramm-Leach-Bliley Act of 1999, Electronic Signatures in Global and National Commerce Act, any Joint Commission requirements or standards, COPPA, and any other applicable federal, state, or international law and amendments thereto.

- ii. Dealer further represents and warrants that (i) it, and not Kenect nor Shift Digital, is the “sender” of all Messages transmitted using the Services; (ii) Dealer has consent to send automated Messages to the telephone numbers in the Submitted Data for purposes that include marketing, and Dealer acknowledges and agrees that it is solely responsible for ensuring such consent has been obtained; (iii) Dealer has procured all rights and licenses and has all power and authority necessary to use and text enable those phone numbers it registers or associates with Dealer’s account; (iv) Dealer will not use the Services on a phone number that has been exchanged, rented, or purchased from a third party without the permission of the phone number owner; and (v) the phone number is not a mobile subscriber phone number.
- iii. Dealer acknowledges and agrees that Kenect and Shift Digital have no obligation to screen content for compliance with the TCPA, telemarketing, do-not-call or privacy laws, and Dealer acknowledges and agrees that it is solely responsible for such compliance.

(b) Representations Regarding Reviews and Ratings. If monitoring and managing Dealer’s online reviews or ratings is included in the Kenect Service, Dealer hereby represents and warrants that (a) Dealer (“**you**”) is authorized to provide Shift Digital and Kenect (collectively, “**us**” or “**we**”) with any Customer, Dealer or Authorized User information that you provide to us in connection with such services (the “**Information**”), including any personally identifying information of those parties; (b) our possession and use of the information on your behalf in connection with the Kenect Service will not violate any contract, statute, or regulation; (c) any content that you and your authorized representative(s) submit for publication on an online review or ratings website as a provider of goods or services will be true and accurate, is the original work of your authorship, and will only concern you and the goods and services that you provide; (d) you and your authorized representative(s) will only request reviews via the Kenect Service from bonafide Customers; and (e) you and your authorized representative(s) will only provide Information for Customers whose most recent transaction with your business occurred less than 12 months from the date you provide their information to us. Additionally, if an integration or auto-connector is included in the Kenect Service you order, you grant us the right to access your Information or CRM system directly or through a third-party service for the purposes of fulfilling our obligations under the Agreement, and you warrant that you are not restricted by law or applicable agreement from granting us such right. We will not be held liable for any consequences of false or inaccurate content published to an online review or ratings website through the Kenect Service.