

DEALER AGREEMENT

1. **SERVICES.** This Agreement establishes the terms and conditions by which Company will provide services to Dealer ("Services"). The Services include a non-exclusive, non-transferable license to use the materials that Company owns or has a right to license, including software and other intellectual property (including all interfaces) ("Software"), and associated services therewith, as more fully described in an Order Form that references this Agreement (each an "Order").

2. **TERM AND TERMINATION.**

a. Unless otherwise provided for in an Order, the initial term of this Agreement shall be two (2) years ("Initial Term") commencing upon the activation of the Software ("Activation Date") and automatically renews for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, the "Term") unless either party gives written notice to the other of not less than thirty (30) days prior to the expiration of the Initial Term or any Renewal Term, as applicable; in which event this Agreement shall terminate as of the last day of the Initial Term or such Renewal Term.

b. In the event of a change in Dealer's ownership during the Term of this Agreement, this Agreement must either be assigned to and become the obligation of Dealer's new owner or the Total Monthly Fees for the remainder of the current Term shall be immediately due and payable in full.

c. If either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement, including all Orders, provided that it has given the other party written notice of the breach and, if the breach is capable of cure, at least thirty (30) days to cure; provided however that: (i) Company may terminate immediately with no notice for Dealer's (1) unsatisfactory credit, (2) delinquency in payment of any Fees, or (3) breach of Section 4(c); and (ii) Dealer may terminate immediately if Company fails to comply with any applicable privacy law and regulation.

d. Company may in its sole discretion discontinue offering a component or add-on to the Software or Services. If Company discontinues, the component or add-on will be removed from the Order for the discontinued period(s), the Fees will be adjusted, and any applicable pre-paid Fees will be refunded to reflect the discontinuation.

3. **PAYMENT.**

a. Dealer agrees to pay Company, in advance, the Fees set forth in the applicable Order without offset, withholding or deduction. All payment amounts shall be in U.S. Dollars. Unless authorized to charge Dealer's credit card, Company will invoice Dealer by e-mail posting or by mail. If Dealer fails to pay the invoice within fifteen (15) days of due date, in addition to any other remedy, Company may disconnect the Services. To reactivate its Services, Dealer will be charged the then current reactivation fee, which can be found at <https://www.jdpower.com/business/legal-product-terms> (Darwin Additional Service Fees). All Fees and other amounts payable by Dealer under this Agreement and the Order are exclusive of taxes and similar assessments. Dealer agrees to pay all sales, use and excise taxes, and any other similar taxes, duties and charges related to the Services, other than taxes imposed on Company's income. Acceptance of any partial moneys due hereunder, or Company's failure to act in the event of default by Dealer, shall not constitute a waiver by Company of any rights or remedies it may have at law or in equity.

b. **Total Monthly Fee.** Dealer's Total Monthly Fee as reflected in the Order Form, except as may be adjusted for partial months or by addendum hereto, shall be for the Software and Services. The Total Monthly Fee shall be paid to Company in advance in regular monthly installments commencing upon the Activation Date.

c. **Additional Fees.** If requested by Dealer, Company may provide the following additional Services at the then current rates, which can be found at <https://www.jdpower.com/business/legal-product-terms> (Darwin Additional Service Fees): (i) a migration fee in the event Dealer migrates to another Dealer Management System ("DMS") provider; (ii) a website migration fee for the migration of websites if Dealer utilizes Darwin Digital Retail; (iii) a product mapping fee if Dealer requests migration of five (5) or more products; (iv) a state mapping fee if Dealer requests more than five (5) state mappings; and (v) a programming form fee if Dealer requests more than five (5) programmed forms.

d. If an Order provides for automatic renewal, each automatic renewal will be on the same terms and conditions as existing prior to the renewal except that the Fees will include a four percent (4%) increase annually effective as of the start of the next Renewal Term.

e. Company utilizes application program interfaces (APIs) with many DMS providers. The majority of these DMS "approved", "certified", "partner", or like programs have costs ("DMS Charges") associated which are already incorporated into the Fees in the Order. From time to time, DMS providers may elect to increase the DMS Charges associated with these API's which may be conveyed by Company to the Dealer by providing thirty (30) days' written notice of increase. If the Dealer is not willing to accept the additional DMS Charges associated with the DMS API's, the Dealer may elect to cancel the associated Services by providing written notice to Company.

4. **SOFTWARE AND SERVICES.**

a. **Software.** Company and its licensors retain all right, title and interest, including all copyright, patent, trade secret, trademark, and any other intellectual property rights (collectively, "Intellectual Property Rights"), in and to the Software and Services, including all upgrades, updates, enhancements, derivative works and modifications thereto, which are deemed part of the Software. The Software resides on servers and is maintained, updated and hosted by Company at its hosted facility. Dealer shall gain no right, title or interest in the Software or Services by virtue of this Agreement other than the limited non-exclusive licenses granted hereunder.

b. **Connection & Activation.** The Software is accessed by the Dealer exclusively via the internet. There will be no transfer of Software or manuals by any means to the Dealer, including electronic transfers, load and leave and/or sending discs/drives with information. Dealer is solely responsible for all physical connections and costs to access this Service, which includes its internet access. Company may, at its sole option and for additional agreed fees, assist Dealer in setting up Dealer's equipment and software.

c. **Restrictions.** Dealer shall not (i) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, outsource, or otherwise make available the Software; (ii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access

to the source of or methods used to compile the Software; (iii) remove any proprietary notices included in the Software; (iv) use the Services in any manner that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any party, or that violates any Applicable Law; (v) copy, modify, or create derivative works of the Software; (vi) disclose, release, distribute, or deliver the Software, or any portion thereof, to any third party other than Dealer's employees; or (vii) disclose any passwords or other security information in connection with the Software.

d. **Consumer Correspondence.** Dealer's correspondence or business dealings with the consumer including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between Dealer and such consumers. Company (and its affiliates or licensors) shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such consumer communication and/or dealings.

e. **Feedback.** Dealer grants to Company the right to use data and information related to Dealer's use of the Services on an aggregate, non-identifiable basis, including to compile statistical and performance information related to the provision and operation of the Services. If Dealer chooses to give Company feedback, such as suggestions to improve the Services, Company may act on Dealer's feedback without obligation to Dealer.

f. **Product Terms.** Certain Services may be subject to different or additional terms and conditions located at <https://www.jdpower.com/business/legal-product-terms> ("Product Terms"). If there is a conflict between the terms of this Agreement and the Product Terms, the Product Terms will prevail.

5. LIMITED WARRANTY & DISCLAIMER. DEALER REPRESENTS THAT THE SOFTWARE IS FOR ITS INTERNAL BUSINESS USE ONLY. COMPANY AND ITS LICENSORS DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS, IMPLIED WARRANTIES AND EXPRESS WARRANTIES, WITH RESPECT TO THE SOFTWARE OR SERVICES OFFERED AND THEIR CONDITION, THEIR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY COMPANY. WITHOUT LIMITING THE FOREGOING, COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE PRODUCTS, FIGURES AND LANGUAGE PRODUCED BY THE SOFTWARE CONFORMS WITH ANY APPLICABLE LAWS.

6. INDEMNITY

a. Company will defend, indemnify and hold harmless Dealer from and against all claims, losses, damages, liabilities, judgments and expenses incurred by Dealer, including reasonable attorney's fees and costs, arising out of any third-party claim against Dealer that the Software or Services, if used by Dealer in accordance with the terms of this Agreement, infringe any intellectual property right of a third party. In the event of such claim, Company will have the right to terminate this Agreement with respect to the allegedly infringing portion of the Software or Services by giving written notice to Dealer and by refunding to Dealer the pro rata share of any prepaid charges relating to such infringing portion of the Software or Services. THE INDEMNITY SET FORTH IN THIS SECTION STATES COMPANY'S ENTIRE OBLIGATION AND LIABILITY AND DEALER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY BY THE SERVICES.

b. Dealer will defend, indemnify and hold harmless Company and its licensors from and against all claims, losses, damages, liabilities, judgments and expenses incurred by Company, including reasonable attorneys' fees, arising out of, related to, or in connection with Dealer's breach of this Agreement or use of the Services purchased under this Agreement. Company will not be liable for any claim by Dealer based on any third-party claim.

7. LIMITATION OF LIABILITY

a. Dealer is responsible for verifying all setups for accuracy, and Company shall have no liability for errors or omissions in the performance of its obligations under this Agreement to the extent such errors and omissions are not unusual in the data-processing or systems-integration industry, or for damages that could have been avoided if the Dealer had followed appropriate verification, back-up and security procedures. Dealer understands that computer systems, like all mechanical devices are subject to breakdown and agrees that a reasonable lack of system availability (downtime) shall not constitute a breach of this Agreement.

b. IN NO EVENT WILL COMPANY OR ITS LICENSORS HAVE ANY LIABILITY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, TO DEALER OR TO ANY THIRD PARTY, FOR LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER OR NOT CAUSED BY THE NEGLIGENCE OF COMPANY OR ITS LICENSORS, EVEN IF COMPANY OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, COMPANY AND LICENSOR'S MAXIMUM LIABILITY TO DEALER FOR ANY DAMAGES WITH RESPECT TO THE SERVICES PROVIDED UNDER ANY APPLICABLE ORDER WILL NOT EXCEED THE AGGREGATE TOTAL FEES PAID BY DEALER TO COMPANY DURING THE TWELVE (12) MONTH PERIOD PRECEDING SUCH CLAIM.

8. STATE AND FEDERAL PRIVACY LAW

a. For purposes of this Agreement, "Personal Information" is defined as all information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Without limiting the generality of the foregoing, Personal Information collected about Dealer's customers may include: name; address; income; Social Security number; application information; account numbers; payment history; loan or deposit balances and credit or debit card purchases; or information from a consumer report. Each party will (i) be individually responsible for its own compliance with state and federal privacy laws, including but not limited to the Gramm-Leach-Bliley Act ("GLBA"); and (ii) provide reasonable assistance to the other party as necessary for the other party to fulfill its obligations under any and all such applicable laws. In all instances where required by applicable law, Dealer will solicit "Do Not Sell," "Do Not Sell or Share," and other opt-out requests from consumers that must be honored under applicable laws, and Dealer will promptly inform Company of any such requests received from a consumer.

b. In those circumstances in which Company is a service provider, contractor, or processor as those terms are defined under applicable law, on Dealer's behalf, Company will not: (i) sell or share Personal Information; (ii) retain, use, or disclose Personal Information for any purpose other than for the specific purpose of performing the Services as set forth in the Agreement; (iii) retain, use, or disclose

Personal Information for a commercial purpose other than providing the Services as set forth in the Agreement; or (iv) retain, use, or disclose Personal Information outside of the direct business relationship between Dealer and Company.

c. When Company acts as a service provider, contractor, or processor, it will (i) permit Dealer to monitor Company's compliance with this Agreement through measures, including, but not limited to, ongoing manual reviews and automated scans and regular assessments, audits, or other technical and operational testing, at least once every twelve (12) months; (ii) if Company engages any other person to assist it in processing personal information for a business purpose on Dealer's behalf, or if any other person engaged by Company engages another person to assist in processing Personal Information for that business purpose, Company shall notify Dealer of that engagement, and the engagement shall be pursuant to a written contract binding the other person to observe all the requirements set forth in this section; and (iii) notify Dealer of any breach of security, or any actual or reasonably suspected unauthorized use of, access to or disclosure of Personal Information in violation of this Agreement or any Applicable Laws.

d. When Company acts as a service provider, contractor, or processor, Company certifies that it understands these restrictions and will comply with them.

e. For North Carolina and Maine Dealers: NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA.

9. CONFIDENTIALITY.

a. "Confidential Information" means any information that is disclosed in confidence in relation to this Agreement which a party designates as confidential or would reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding disclosure, including, in the case of Company, the Software.

b. The receiving party will: (i) hold Confidential Information in strict confidence and take reasonable precautions to protect the Confidential Information, including all precautions the receiving party employs with respect to its own confidential materials of a similar nature; (ii) not divulge any Confidential Information to any third party other than to its employees (for Dealer) and employees, affiliates and contractors (for Company) ("Representatives") with a legitimate "need to know" the Confidential Information in connection with the performance of its obligations under this Agreement; and (iii) not copy, reverse engineer or remove any proprietary markings from any Confidential Information. The receiving party is responsible for its Representatives' compliance with the terms of this Agreement.

c. Confidential Information does not include any information that: (i) is or becomes publicly known or available without the receiving party's breach of this Agreement; (ii) is, at the time of disclosure, already known to the receiving party as evidenced by written records; (iii) is obtained from a third party that the receiving party reasonably believes is without restriction on disclosure; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

d. Confidential Information may be disclosed by the receiving party to the extent required by valid subpoena, court order or other legal process (a "Compelled Disclosure"), provided that the receiving party: (i) gives prompt notice to the disclosing party to the extent permitted by Applicable Law; (ii) provides reasonable assistance in obtaining an order protecting or restricting the information from disclosure; and (iii) such disclosure is limited to the minimum extent necessary to comply with the legal requirement.

e. Upon written request by the disclosing party, the receiving party will: (a) cease using the Confidential Information; (b) return to the disclosing party or destroy (if specified by the disclosing party) the Confidential Information and all copies, notes or extracts thereof; and (c) upon request of the disclosing party, confirm in writing that receiving party has complied with these obligations. Notwithstanding the foregoing, the receiving party may retain copies of Confidential Information (i) that are stored on the receiving party's IT backup and disaster recovery systems until the ordinary course deletion thereof or (ii) for purposes of legal or regulatory compliance or for use in pursuing, defending and/or resolving a claim arising under this Agreement. Such retained Confidential Information will continue to be bound by the confidentiality obligations of this Agreement.

f. The parties shall develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protects the confidentiality and prevents disclosure of Confidential Information, including Personal Information created, transmitted, maintained, or received in connection with the Services provided under this Agreement.

10. MISCELLANEOUS.

a. **Notices.** All notices, approvals, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes when mailed through a recognized courier company (i.e. FedEx, UPS, DHL), return receipt requested and effective on receipt, if delivery is confirmed by return receipt or other proof of delivery. Notices must be delivered to the addresses set forth above or as set out in an Order, as applicable. Notices to Company will be directed to the attention of the Legal Department. Either party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

b. **Assignment.** Company may assign this Agreement to any affiliated or successor company and may delegate any of its responsibilities hereunder to agents, representatives, and/or subcontractors. Dealer may not assign this Agreement or any of their obligations hereunder, to any third party. All covenants, representations, warranties, and agreement of the parties contained herein shall be binding and inure to the benefit of their respective successors and assigns, as permitted under this Agreement. Dealer acknowledges and agrees that portions of the Software may include third party Intellectual Property Rights and such licensor(s) are a third-party beneficiary of this Agreement and is entitled to the rights, interests, claims, and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

c. **Effect on Assignment or Change of Control.** Dealer acknowledges additional Fees may be payable for the Software or Services upon: (x) an assignment of this Agreement; or (y) a change of control, proposed merger, consolidation, combination, or reorganization involving Dealer.

d. **Injunctive Relief.** Dealer acknowledges and agrees that the Software and Services are the protected and valuable property rights of Company or its licensors, that any violation by Dealer, their employees, and/or their agents of the provisions of this Agreement would cause Company or such licensors irreparable injury for which they would have no adequate remedy a law, and that, in addition to any other remedy Company or such licensors may have, they shall be entitled to preliminary and other injunctive relief. Notwithstanding anything to the contrary, the restrictions set forth in this section shall survive any termination or expiration of this Agreement.

e. **DMS Access Authorization.**

i. Company agrees to access only the data that is required to activate and maintain the applicable DMS interface. Dealer authorizes Company and/or their authorized agents to access Dealer's DMS for the purpose of activating and maintaining the

Software for the Term of this Agreement. Dealer agrees that the contracts between Company and Dealer constitutes a service provider agreement and is subject to 313.13 of the regulations implementing GLBA. Company further agrees that it will, to the extent required by federal law, maintain the confidentiality of, and appropriately safeguard "customer information" as that term is defined in the GLBA and the Federal Trade Commission's implementing regulations. By execution of this Agreement, Dealer agrees it has the authority to make this request, and it authorizes Company and its third party DMS data provider (SIS) to access such Dealer's DMS.

ii. For Reynolds & Reynolds DMS Dealers Only: As part of the Reynolds Certified Interface program, Dealer's DMS provider the Reynolds & Reynolds Company or its affiliates (collectively "Reynolds") has developed certain processes that allow certain third-party software including Company's to receive from Reynolds certain data from Dealer's DMS and/or allow Company to send data to Dealer's DMS ("RCI Integration"). By agreeing to these terms, Dealer is providing consent to: (a) Reynolds' providing Company with access to data from Dealer's DMS; and (b) to Company providing Reynolds with access to Company data, both of which may include, without limitation, non-public information regarding Dealer's customers. By agreeing to these terms Dealer represents and agrees that: (a) Reynolds makes no representations, assurances, warranties or guarantees with respect to the Software or Company's obtaining access to data from Dealer's DMS through RCI Integration or otherwise; (b) Reynolds shall have no liability whatsoever for any damages you may suffer as a result of using the Software or because of Company's access to data from Dealer's DMS; (c) Reynolds has no responsibility for the activities of Company with respect to its access to data from Dealer's DMS, including without limitation, with respect to Dealer's customer's non-public information obtained or used by Company; (d) Reynolds may terminate the integration described in this Agreement at any time if Reynolds determines that such integration may conflict with or adversely affect the operation or security of Dealer's DMS (including without limitation the integrity or security of the data) or such access may violate any applicable laws or regulations; (e) problems caused by the data access described in this Agreement will not be covered by any software support and equipment maintenance services or fees previously agreed between Dealer and Reynolds; and (f) Reynolds has the right to enforce its rights under this Agreement.

f. **Data.** Dealer understands that Company may share any and all information received by Company from Dealer's DMS and information that Company acquires from Dealer while providing the Services (collectively, "Dealer Data") to Dealer with unaffiliated third parties, including but not limited to companies that also provide services directly to Dealer. Dealer promises that:

- Dealer has all the rights needed to provide Company with access to Dealer Data and Dealer's DMS and for Company and such third parties to use Dealer Data without violating applicable law or Dealer's commitments to third parties.
- Dealer has provided its customers and potential customers with legally sufficient privacy notices and choices where it is required to do so to allow the use and sharing of their data in connection with Dealer's use of Services or Dealer's disclosure or sharing of Dealer Data under the terms of this Agreement, and have honored any such choices, including but not limited to any notices and choices required under applicable laws.
- Dealer has obtained all necessary consents from the applicable individuals for the disclosure of their Personal Information in the Dealer Data and its use by Company and such third parties as contemplated herein or in connection with the Services including, without limitation, the ability for such personal information to be transferred to a foreign country for processing and acknowledgement that courts, law enforcement, regulators, and national security authorities may access such personal information in the foreign jurisdiction.

g. **Force Majeure.** Except for the Dealer's payment obligations that cannot be excused for any reason whatsoever, including for an event of "force majeure", any delay or failure of either party to perform its obligations will be excused for the period of, and to the extent caused by, an event or occurrence beyond the reasonable control of such party. A "force majeure" event may include, but is not limited to, earthquake, fire, storm or other natural disaster, act of God, civil disturbance, labor disputes, governmental regulations or controls, communication line failures and data availability interruptions not the fault of the affected party, changes in law which adversely impact the provision of Services, act of terrorism, or war. The affected party will give written notice of such delay or failure to perform to the other party within seven (7) days of the force majeure event.

h. **Agent/Agency Access.** The Agent / Agency is permitted access to the Software for purposes including, but not limited to: auditing, product setup, reporting, and utilization monitoring. No additional third-party credentials will be provided without the written consent of the Dealer.

i. **Entire Agreement and Severability.** This Agreement, together with any related order, addendum, schedules, exhibits, attachment or documents that references this Agreements, represents the entire Agreement between the parties hereto with respect to the subject matter hereof as of its date and execution. This Agreement further supersedes any and all prior agreements, letters of intent, negotiations, representations, and proposals, be they written or oral, relating to the subject matter of this Agreement. The provisions and terms of any purchase order or other agreement issued by Dealer will not in any way extend or modify the terms and conditions of this Agreement. No change or waiver of any provision of this Agreement shall be valid or enforceable unless in writing and executed by the party against whom such change or waiver is sought to be enforced. Any additional terms or conditions subsequent to the execution of this Agreement that are inconsistent with those contained herein, shall be of no force and effect unless expressly agreed to in writing and signed by an authorized representative of both parties. Should any provision of this Agreement be found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under said provision, and each and every provision not so affected shall continue to be valid and enforceable. If any terms contained in an Order conflict with any of the terms contained in this Agreement, the terms of this Agreement shall prevail, unless the Order expressly provides that such terms contained therein shall prevail.

j. **Applicable Law and Venue.** This Agreement will be governed by the laws of the State of New York, without regard to the conflicts of law rules of such state. Any dispute that arises under or relates to this Agreement (whether in contract, tort or both) commenced by either party shall be resolved in state or federal court in New York, New York, and the parties hereby expressly and irrevocably waive any jurisdictional and/or right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

k. **Compliance with Laws.** Each party will comply with all laws, rules, regulations, industry standards, terms, and policies ("Applicable Laws") applicable to this Agreement, including, without limitation, anti-corruption and data privacy laws. Dealer represents that any information or content Dealer provides, or causes to be provided, including without limitation the Dealer Data, to Company in connection with the Services was obtained in compliance with Applicable Laws, and Dealer has the right to share and disclose to Company such information for the purpose of providing the Services.

l. **Survival**. All terms that must survive termination in order to have their customary effect, including Sections 4-10, will survive termination or expiration of this Agreement.

m. **Counterparts**. This Agreement, including Orders, Addenda and change requests, may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the parties.

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