

## TERMS AND CONDITIONS FOR THE LOTLINX MASTER SERVICES AGREEMENT

These Terms and Conditions for the LotLinx Master Services Agreement (the “Terms”), together with all enrollment forms and Orders submitted by Customer, are the Master Services Agreement (the “Agreement”) that governs Customer’s use of the LotLinx Services whether free, paid, subscription, beta, or trial.

THE PERSON SIGNING THE AGREEMENT, CLICKING A BOX INDICATING ACCEPTANCE, EXECUTING AN ORDER, OR USING THE SERVICES (WHETHER PAID, BETA, OR FREE) ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, INCLUDING SECTION 13 THAT REQUIRES THE USE OF BINDING ARBITRATION TO RESOLVE DISPUTES RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND THE CUSTOMER.

These Terms were last updated on July 25, 2021.

1. **Definitions.** All capitalized terms used in this Agreement shall have the meanings specified herein and shall be equally applicable to both the singular and plural forms. The word “person(s)” shall include any legal entity(ies) as well as natural person(s). The words “including,” “include,” and “includes” shall each be deemed to be followed by the words “without limitation.”
  - 1.1. “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
  - 1.2. “Beta Program” means a service or software that LotLinx makes available to certain customer, including to Customer upon mutual agreement of LotLinx and Customer, prior to making such available to the general public.
  - 1.3. “Budget” means a dynamic budget for spending Digital Media Expenses related to each VIN in Customer’s inventory set through the Software or otherwise agreed upon by LotLinx and Customer from time to time.
  - 1.4. “Customer Content” means the data and content that Customer submits to the Services or to LotLinx in performance of this Agreement, including inventory related data, images, copyrighted works including marketing material, Customer’s logos, marks, trademarks, and other intellectual property.
  - 1.5. “Customer” means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity. Direct competitors of LotLinx shall not be proper Customers of LotLinx and are prohibited from enrolling in or otherwise accessing the Services or Software.

- 1.6. “Digital Media Expenses” means the amounts incurred by LotLinx to run digital marketing campaigns through the Services on behalf of Customer, which are reimbursable by Customer. Digital Media Expenses are incurred by LotLinx and reimbursable by Customer for certain Services as specified on each Order.
- 1.7. “Documentation” means all documents describing the Services subject to an Order that are made available by LotLinx including usage guides, policies, and online help documents as updated from time to time.
- 1.8. “Initial Commitment Term” means a period of time specified in each Order, as applicable, wherein Customer may not terminate the Order.
- 1.9. “LotLinx” means LotLinx, Inc. along with its Affiliates.
- 1.10. “Marketing Account” means an account and associated login credentials, associated with Customer, used to execute marketing campaigns through the Services.
- 1.11. “Order” means all enrollment forms, ordering documents (whether electronic or paper form), order forms, insertion orders, or statements of work, including any addenda and supplements thereto, submitted by or on behalf of Customer referencing this Agreement or in furtherance of the provision of the Services to Customer. All Orders shall be incorporated into this Agreement.
- 1.12. “Rooftop” means an automotive dealership at one physical address identified on an Order.
- 1.13. “Service Fee” means a fee that it, as stated on an Order, either recurring monthly or one-time, owed by Customer to LotLinx for the use of the Services and the Software.
- 1.14. “Service Provider” means a third-party that is authorized to act on behalf of LotLinx to provide certain of the Services, including affiliates and/or online publishers and affiliates that LotLinx has a relationship with.
- 1.15. “Services” or “LotLinx Services” means the products and services that are ordered by Customer through an Order, whether paid, as part of a free trial, or a Beta Program and as further described by the Documentation.
- 1.16. “Software” means web-based and/or mobile applications provided by LotLinx and accessed by Customer to utilize the Services and to view and interact with data, information, text, photos, images, graphics, code, marks, logos, audio, video, footage, animations, analyses, studies, downloads, and the like.
- 1.17. “VIN” means a unique number used to identify a single vehicle.

## 2. **Enrollment in and Activation of the Services**

- 2.1. Customer will cooperate with LotLinx to activate and enable the Services. That cooperation will include, but not be limited to:

- (a) grant LotLinx access to Customer's Google Analytics account and inventory feed and grant LotLinx "Edit and Collaborate" permissions using the Google Tag Manager WHICH SHALL BE GOVERNED BY THE THEN-CURRENT STANDARD TERMS AND CONDITIONS OF THE SOFTWARE LICENSOR (e.g., Google);
- (b) instruct each of its website administrators to facilitate the integration of a LotLinx Tracking Code, which will inform Google Analytics when visitors are looking at the pictures on Customer's Website;
- (c) where applicable, provide access to all billing, reporting, and tracking for all digital marketing programs (including all DMS transaction data) for the 6-month period prior to enrollment in the Services and while enrolled in the Services; and
- (d) obtain all rights necessary to provide the Customer Content to LotLinx.

2.2. Throughout the term of this Agreement, LotLinx will:

- (a) obtain all rights necessary to provide the Services to Customer under this Agreement.
- (b) make the Services available to Customer on a recurring subscription basis pursuant to this Agreement, and the applicable Orders;
- (c) provide applicable standard support for the Services to Customer at no additional charge, and/or upgraded support if purchased;
- (d) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime, in which case LotLinx will use commercially reasonable efforts to give advance notice to Customer; (ii) in the case of a Beta Service or a free trial, which shall be provided AS IS and AS AVAILABLE; and (iii) any unavailability caused by circumstances beyond LotLinx's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack;
- (e) develop a benchmark analysis to determine aging, gross margin, engagement, cost, and cost per sale trends for inventory classes and model designations as well as all digital marketing activities of Customer made through the Services;
- (f) provide the Services in compliance with all applicable laws, rules, and regulations; and
- (g) maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Content in accordance with its Privacy Statement (located at: <https://www.lotlinx.com/privacy-statement/>) as amended from time to time.

### **3. Free Trials and Beta Programs**

- 3.1. **Generally.** LotLinx may, from time to time, offer free trials and/or Beta Programs for various Software and Services either free of charge or at a discounted rate. An Order must be submitted by Customer and accepted by LotLinx for all free trials and Beta Programs and Customer's participation in such shall be governed by these Terms and the special product terms specified on the applicable Order.
- 3.2. **Free Trials.** Any free trials of the Software or Services made available to Customer by LotLinx shall terminate the earlier of the date when: (a) LotLinx, in its sole discretion, at any time, and for any reason, terminates such free trial in which case the Order shall be terminated; (b) the effective date of any paid Order for the Software or Services offered under the applicable free trial; or (c) the expiration of the free trial period, as specified on the applicable Order. A free trial is subject to an Initial Commitment Term as specified in any Order.
- 3.3. **Beta Programs and Feedback.** As consideration for LotLinx allowing Customer to take part in any Beta Program, Customer agrees to provide feedback to LotLinx regarding the functionality, performance, and other characteristics of the Software and Services made available to Customer. Specifically, during the Beta Program, Customer will make available to LotLinx members of Customer's management for monthly meetings, upon reasonable notice by LotLinx, to discuss such feedback, suggest improvements, and evaluate possible features. Such management includes but is not limited to Customer's general manager, used car manager, new car manager, marketing manager, controller, and general sales manager. LotLinx may terminate Customer's participation in any Beta Program where Customer does not, in the opinion of LotLinx, make a good faith effort to meet the meeting and feedback requirements of this Section.
- 3.4. **Publicity.** Following Customer's successful completion of a free trial or participation in a Beta Program, LotLinx may, with prior written permission from Customer: (i) include Customer's name and/or logo in current customer lists, on its website, and on other promotional material to be shared with prospective customers; and (ii) use, reproduce and display testimonials, white papers and other materials approved by Customer on the LotLinx website and in other promotional materials. Upon Customer's direction, LotLinx will discontinue its use of any pre-approved use of Customer's name, logo, or testimonials covered by this Section, but LotLinx shall have no duty to destroy any material featuring Customer's name, logo, or testimonials.
- 3.5. **WARRANTY AND LIABILITY APPLICABLE TO FREE TRIALS AND BETA PROGRAMS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY TERMS ATTACHED TO AN ORDER RELATING TO A FREE TRIAL OR A BETA PROGRAM, CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT EACH OF THE FOLLOWING APPLIES TO CUSTOMER'S USE OF ANY SOFTWARE OR SERVICES MADE AVAILABLE BY LOTLINX AS A FREE TRIAL OR A BETA PROGRAM:
  - (a) SUCH USE IS AT CUSTOMER'S SOLE RISK AND IS PROVIDED "AS IS" AND "AS AVAILABLE." IN PARTICULAR, LOTLINX, THE SERVICE PROVIDER(S) AND THEIR AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT CUSTOMER'S USE OF SUCH SERVICES OR SOFTWARE, OR ANY CONTENT ASSOCIATED THEREWITH, WILL: (I) MEET CUSTOMER'S SUBJECTIVE REQUIREMENTS; (II) BE UNINTERRUPTED, TIMELY, SECURE OR

FREE FROM ERROR; (III) PROVIDE CUSTOMER WITH A MINIMUM NUMBER OF SALES LEADS, SHOPPERS, OR ACHIEVE A SPECIFIC NUMBER OF CONVERSIONS OF SALES. CUSTOMER USES ANY SOFTWARE OR SERVICES MADE AVIALABLE BY LOTLINX AS A FREE TRIAL OR A BETA PROGRAM AT CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM LOTLINX OR ANY SERVICE PROVIDER OR THROUGH OR FROM THE USE ANY SOFTWARE OR SERVICES MADE AVIALABLE BY LOTLINX AS A FREE TRIAL OR A BETA PROGRAM SHALL CREATE ANY WARRANTY. LOTLINX SHALL HAVE NO INDEMNIFICATION OBLIGATIONS OR LIABILITY OF ANY TYPE WITH RESPECT TO ANY SOFTWARE OR SERVICES MADE AVIALABLE BY LOTLINX AS A FREE TRIAL OR A BETA PROGRAM UNLESS REQUIRED UNDER APPLICABLE LAW, IN WHICH CASE LOTLINX'S LIABILITY WITH RESPECT TO SUCH SERVICES OR SOFTWARE SHALL NOT EXCEED \$1,000.00 (US).

- (b) LOTLINX IS NOT RESPONSIBLE FOR THE LOSS OR CORRUPTION OF ANY DATA OR CUSTOMER CONTENT PROVIDED BY CUSTOMER THROUGH ANY SOFTWARE OR SERVICES MADE AVIALABLE BY LOTLINX AS A FREE TRIAL OR A BETA PROGRAM. IT IS CUSTOMER'S SOLE RESPONSIBILITY TO SECURE, BACKUP, AND CONTROL ALL SUCH DATA OR CUSTOMER CONTENT AND TO EXPORT OR OTHERWISE REMOVE SUCH FROM THE SERVICES OR SOFTWARE PRIOR TO EXPIRATION OF THE FREE TRIAL OR BETA PROGRAM, OR SUCH DATA OR CUSTOMER CONTENT MAY BE IRRECOVERABLY LOST OT DESTROYED AND LOTLINX SHALL HAVE NO LIABILITY FOR SUCH LOSS OR DESTRUCTION.

#### 4. Rights and Licenses

- 4.1. **License to Customer.** Subject to the terms of this Agreement and Customer performing its obligations hereunder, including without limitation the obligation to pay all amounts owed by Customer under this Agreement, LotLinx grants to Customer a non-exclusive, revocable, non-sublicensable, limited right and license to use the LotLinx Software via the LotLinx Software Account (the "License"). The License allows the Customer to use the Services and the Software only for purposes that are permitted under this Agreement and Customer agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of any secure web service or other program associated with the Services and/or the Software.
- 4.2. **License by Customer in Customer Content.** Customer grants to LotLinx and each of its Service Providers a royalty-free and non-exclusive license to use, copy, encode, enhance, store, reproduce, edit, adapt, modify, translate, transmit, publish, syndicate, sublicense, and publicly display the Customer Content for the purposes of: (a) providing Customer with the Services; (b) consumer, vehicle, and industry research and reference; (c) evaluation of performance and product enhancement; (d) combining with other data to create proprietary reports and guides; and (e) generating market analysis data and related products. LotLinx may also sublicense

Customer Content, on those same terms, to Service Providers who may, among other things, enhance Customer Content to provide specific information related to such Service Provider's target audience. Customer will not obtain any ownership right or license to any LotLinx or Service Provider content or enhancements made to Customer Content and Customer will retain any copyright and any other rights Customer already had in the Customer Content that Customer submits, posts, or displays on or through the Services.

- 4.3. **License by Customer in its Feedback to LotLinx.** Customer grants to LotLinx a worldwide, perpetual, irrevocable, royalty-free license to use, license, sublicense, create derivative products from, and incorporate into any of its products and services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer relating to the Services or the Software, regardless of whether such Services or Software are used by Customer as part of a free trial or a Beta Program.

## 5. Use of Services and Software

- 5.1. **Special Product Terms.** An Order may include terms that modify or compliment these Terms and the product, Software, or Service covered by such Order (whether paid, free trial, or Beta Program) shall be provided to Customer upon these Terms and the special product terms on the Order, collectively. In any event of a conflict between these Terms and the applicable Order, the special product terms of the Order shall prevail.
- 5.2. **Subscriptions.** Unless otherwise provided in an Order or described in the Documentation Services are purchased as recurring subscriptions that cannot be terminated by Customer during the Initial Commitment Term specified in the applicable Order and shall renew as specified in Section 12.2 below. Customer may purchase additional subscriptions for Service during an existing subscription term at the then-current term, price, and terms offered by LotLinx. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by LotLinx regarding future functionality or features.
- 5.3. **Limits to Usage.** Customer may use the Services and Software only within the limits specified on an Order or any Documentation, as applicable. LotLinx may, at its sole discretion, provide access to the Services or Software above such limits or work together with Customer to reduce usage to the specified limit, or Customer must promptly submit an Order to increase the limits available to Customer.
- 5.4. **Usage Restrictions.** Customer will not: (a) make any Service or Software available to anyone other than Customer or use the Services or Software for the benefit of anyone other than Customer, unless expressly stated otherwise in an Order accepted by LotLinx; or (b) use the Services or Software for purposes of competing with LotLinx.

## 6. Customer Content

- 6.1. **Inventory Polling.** Customer understands and agrees that LotLinx and/or its Service Providers may engage a data polling service to poll and transmit data from Customer's inventory systems

or feeds, and the Customer Website analytics (including Google Analytics) to provide the Services and that Customer will authorize, or otherwise enable such access.

- 6.2. **Responsibility for Customer Content.** Customer is solely responsible for the accuracy of Customer Content and Customer agrees to comply with all applicable laws, regulations, advertising policies relating to the Customer Content. Customer agrees not to provide LotLinx with Customer Content that Customer does not have the right to provide or that LotLinx does not have the right to publish or syndicate. Customer agrees not to provide any Customer Content that infringes or misappropriates any third-party rights, advertises illegal goods or services, or is defamatory, inaccurate, or otherwise tortious or criminal. If Customer discovers that Customer Content supplied to LotLinx violates the foregoing, Customer shall: (i) immediately upload new, corrected Customer Content; and (ii) notify LotLinx at operations@lotlinx.com. If LotLinx provides Customer with notice that Customer Content must be deleted or modified to avoid violating any law or third-party rights, then Customer will promptly do so or LotLinx may take such action with no liability to Customer. CUSTOMER AGREES TO DEFEND AND INDEMNIFY LOTLINX FOR ANY CLAIM RELATING TO CUSTOMER CONTENT, EXCEPT TO THE EXTENT SUCH CLAIM IS BASED ON MODIFICATION OR ALTERATION MADE TO SUCH CUSTOMER CONTENT BY LOTLINX.
- 6.3. **Modification of Customer Content.** LotLinx or the Service Providers may modify Customer Content to comply with any applicable law or regulation or to enhance the Services. Where LotLinx or a Service Provider has modified such Customer Content, LotLinx will be responsible for such modification.
- 6.4. **Customer Content Access Upon Termination.** In the event of termination of this Agreement, LotLinx shall retain the right to access the Customer's inventory feed and/or Media Accounts until Customer requests that LotLinx disables access to such, or until Customer disables LotLinx's access to such.

## 7. Fees and Payment

- 7.1. **Fees.** Except as otherwise specified in the Documentation, this Agreement, or in an Order: (i) fees are based on Services purchased and not actual usage by Customer or delivery by LotLinx; (ii) payment obligations cannot be canceled, and fees paid are non-refundable; and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- 7.2. **Payment of Service Fees.** As consideration for the License granted under this Agreement, and for receiving the Services, Customer agrees to pay, during the term, the Service Fee in the amount, and on the terms and method, specified on any Order.
- 7.3. **Payment Through OEM Marketing Program.** LotLinx may, from time to time, enter agreements to participate in OEM marketing programs and, at the sole discretion of LotLinx, may allow Customer to pay a portion of the Service Fees and/or Digital Media Expenses through such OEM marketing programs. If available, Customer may indicate on an Order that payment will be made through an OEM marketing program that LotLinx allows. Customer agrees that any discounts shown on any Order where an OEM marketing program is specified as the form

of payment, that such discounts shall be applicable only when payment is made in full by such OEM marketing program. Customer agrees that, in any instance where LotLinx does not receive full payment of Service Fees and/or Digital Media Expenses owed through an OEM marketing program designated by Customer on an Order, for any reason, that Customer shall be responsible for payment of such balance without setoff or any discounts that may have been applied to payment made through the OEM marketing program.

- 7.4. **Budget per VIN.** Certain of the Services, as specified by the special product terms on each Order, require Customer to set a Budget for each VIN in inventory at each Rooftop. Unless the special product terms specify otherwise, the Budget for each VIN shall be set on a weekly basis.
- 7.5. **Unpaid Fees.** If any Digital Media Expenses owed by Customer remain unpaid for any reason, for seven (7) business days after they become payable to LotLinx, then LotLinx may, at its sole option, pause its performance under this Agreement, including its obligations to provide the Services and the licenses granted under this Agreement, without any liability to Customer. LotLinx may terminate this agreement with written notice, and without any further obligations to Customer, if any Digital Media Expenses or Service Fees remain unpaid, for any reason, for thirty (30) days after they become payable to LotLinx.
- 7.6. **Authorization to Bill Credit Card.** Customer hereby authorizes and agrees to do all other things necessary to authorize LotLinx to charge any credit card provided by Customer to LotLinx for payment of any amounts owed by Customer under this Agreement. Customer shall not, directly or indirectly, cause or allow any challenge, appeal, charge-back, or other action that prevents or otherwise reverses the charges authorized by Customer under this Agreement. Customer agrees that, in any instance where Customer breaches its obligations under this Section, that it shall pay all fees and costs incurred by LotLinx to collect payment for the Services, including all reasonable attorneys' and collections fees.
- 7.7. **Overdue Charges.** Without limiting all other remedies that LotLinx may have under this Agreement and applicable law, Customer will owe to LotLinx a charge on all amounts overdue under this Agreement that will accrue at the lesser of: (i) 1.5% per month; or (ii) the maximum interest rate allowed by applicable law. LotLinx may, in its sole discretion, condition any future renewals of this Agreement or its acceptance of future Orders on the payment of all amounts owed, including the overdue charges assessed under this Agreement.
- 7.8. **Taxes.** Unless otherwise specified in an Order, the fees owed by Customer under this Agreement do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying any applicable Taxes related to Customer's performance of this Agreement and Customer's use of the Services, except for taxes based on the net income of LotLinx or the Services Providers. If LotLinx has the legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, LotLinx will invoice Customer and Customer will pay that amount unless Customer provides LotLinx with a valid tax exemption certificate authorized by the appropriate taxing authority.



8. **Confidentiality.** Neither party will use or disclose the other party's Confidential Information for any purpose other than to perform this Agreement without the other party's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation, or court order; in which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing the Confidential Information. "Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within five business days, reduced to writing and marked "confidential" or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party; (iii) is received from a third party without breach of any obligation owed to the disclosing party; or (iv) was independently developed by the receiving party.

9. **Warranties and Disclaimers**

9.1. **Warranties.** LotLinx warrants that, in conformance with the terms of this Agreement and during each subscription term as specified in each Order: (a) LotLinx will not materially decrease the overall functionality or security of the Services or the Software; and (b) the Services will perform materially in accordance with the applicable Documentation. Customer's exclusive remedy for any breach of these warranties shall be those provided by Section 12.3 (Termination for Cause) below.

9.2. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT CUSTOMER'S USE OF THE SERVICES, THE SOFTWARE, AND ANY CONTENT ASSOCIATED THEREWITH IS AT CUSTOMER'S SOLE RISK. IN PARTICULAR, LOTLINX, THE SERVICE PROVIDER(S) AND THEIR AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES, THE SOFTWARE, OR ANY CONTENT ASSOCIATED THEREWITH WILL MEET CUSTOMER'S SUBJECTIVE REQUIREMENTS; OR (B) CUSTOMER WILL BE PROVIDED WITH A MINIMUM NUMBER OF SALES LEADS, SHOPPERS, OR ACHIEVE A SPECIFIC NUMBER OF CONVERSIONS OF SALES. CUSTOMER USES ALL MATERIAL AND CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE OR SERVICES AT CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM LOTLINX OR ANY SERVICE PROVIDER OR THROUGH OR FROM THE USE OF THE SERVICES OR

SOFTWARE SHALL CREATE ANY WARRANTY OTHER THAN EXPRESSLY PROVIDED HEREIN.

## 10. Mutual Indemnification

- 10.1. **In General.** To the extent permitted by applicable law, each party (the “Indemnifying Party”) will indemnify, hold harmless and defend the other party and its officers, members, managers, directors, employees, agents, investors, agents, and Affiliates (the “Indemnified Parties”), at the Indemnifying Party’s expense, from any and all third-party claims brought against any of the Indemnified Parties and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, reasonable attorneys’ fees and other litigation expenses) incurred by the Indemnified Party or any of its officers, members, managers, directors, employees, agents or affiliates, arising out of or relating to: (a) the Indemnifying Party’s breach of any term or condition of this Agreement; (b) any alleged negligent act, omission, or willful misconduct of the Indemnifying Party; (c) use of the Services or Software that is inconsistent with this Agreement; (d) the Indemnifying Party’s alleged violation of applicable laws, rules or regulations in connection with its performance of this Agreement; (e) violations of obligations of privacy to any third-party; (f) any allegation that any of the Indemnified Parties have infringed on a third-party’s intellectual property rights; and (g) any claims with respect to acts or omissions of any third-party in connection with the performance of this Agreement.
- 10.2. **Procedure.** The Indemnified Party must promptly give: (a) the Indemnifying Party written notice of the subject claim; (b) the Indemnifying Party control of the defense and settlement of such claim (except that the Indemnifying Party may not settle any claim the prejudices the Indemnified Party without written consent and unless it unconditionally releases the Indemnified Party of all liability); and (c) the Indemnifying Party all reasonable assistance, at the Indemnifying Party’s expense.
- 10.3. **Exclusive Remedy.** This “Mutual Indemnification” section states the Indemnifying Party’s sole liability to, and the Indemnified Party’s exclusive remedy against, the other party for any third-party claim described in this section.

## 11. LIMITATION OF LIABILITY

- 11.1. **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.
- 11.2. **Exclusion of Consequential and Related Damages.** TO THE EXTENT ALLOWED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST

PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

## 12. Term and Termination

12.1. **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all Orders have expired or have been terminated.

12.2. **Term of Purchased Subscriptions.** The Initial Commitment Term, the initial term ("Initial Term"), and any renewal term ("Renewal Term") will be specified in each Order. Except as otherwise specified in an Order, each Order will automatically renew for additional periods equal to the expiring Initial Term or the then expiring Renewal Term, unless either party gives the other party written notice (email acceptable) at least 30 days' notice prior to the last day of the then applicable Initial Term or Renewal Term. Except as expressly provided in each Order, renewal of any Order regardless of whether discounted, promotional, one-time, free trial, or Beta Program will be at the applicable list price in effect at the time of the applicable renewal. LotLinx will provide advance notice to Customer of pricing changes prior to renewal.

### 12.3. Termination for Cause

- (a) **By Either Party.** Either party may terminate this Agreement for cause: (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors; or (iii) as provided by any other provision of this Agreement.
- (b) **By LotLinx.** LotLinx may also terminate this Agreement for cause if, in the opinion of LotLinx, Customer uses the Services or Software in a manner that: (i) is not a good faith use; (ii) infringes a third-party's intellectual property rights; (iii) is illegal, unlawful, or malicious; (iv) is defamatory, threatening, abusive, intimidating, or otherwise violates the rights of other, including without limitation other's privacy rights or rights of publicity; (v) accesses or uses (or attempts to access or use) another account of any customer or another user of the Services; (vi) transmits any data, Customer Content, software, or materials that contain any viruses, worms, Trojan horses, defects, or other items of a destructive nature; (vii) frames or mirrors any portion of the LotLinx website or the Services; (viii) harvests or collects information about or from other customer of LotLinx; or (ix) probes, scans, or tests the vulnerability of the LotLinx website or the Services.
- (c) **Effect.** If Customer terminates this Agreement for cause, then LotLinx will refund Customer any prepaid fees covering the remainder of the term of all Orders after the effective date of termination. If LotLinx terminates this Agreement for cause, then Customer will pay any

unpaid fees covering the remainder of the term of all Orders to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to LotLinx for the period prior to the effective date of termination.

**12.4. Early Termination Fee.** If an Order includes a fee for terminating Services prior to the end of the Initial Term or a Renewal Term, except for termination by Customer permitted under Section 14, the Parties agree that, at least because of the uncertainty and variability of Digital Media Expenses from month to month, LotLinx would incur substantial economic damages and losses of types and in amounts which may be impossible to compute and ascertain with certainty if Customer attempts to terminate such Order prior to the expiration of the Initial Term or any Renewal Term. Accordingly, the Parties agree that any such early termination fee shown in an Order is liquidated damages that represent a fair, reasonable, and appropriate estimate of economic losses that LotLinx may experience in the event of an early termination.

**12.5. Surviving Provisions.** The provisions for Sections 1, 3.3, 4.2, 4.3, 6.4, 8, 9, 10, 11, 12.5, 15, 16, 17.4, and 17.6 shall survive any termination or expiration of this Agreement.

**13. Disputes.** Any and all disputes or claims arising out of or relating in any way to this Agreement, the Services, or representations made by LotLinx will be resolved in binding arbitration by a single neutral arbitrator of JAMS, rather than in court. This includes any disputes or claims concerning any prior event or agreement between the Parties or affiliated parties. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court and must follow and enforce this Agreement as a court would. All arbitrations under this Agreement shall be submitted to a single arbitrator to be chosen by mutual agreement of the Parties from the JAMS panel of arbitrators within thirty (30) days after the request for arbitration notice is received by a Party. If the Parties, within such time, cannot agree on an arbitrator, the arbitrator shall be chosen pursuant to the JAMS Comprehensive Arbitration Rules & Procedures from its panel of arbitrators. A copy of the Rules & Procedures can be found at <http://www.jamsadr.com/rules-comprehensive-arbitration>. The arbitration hearing shall be held in Peterborough, New Hampshire, United States of America, or at such other place that the Parties and the arbitrator mutually agree upon. Such agreement shall take place no later than thirty (30) days after the demand for arbitration is received in writing. The Parties agree that any arbitration hereunder will be subject to JAMS Expedited Procedures Rule 16.1 and 16.2 and any other JAMS Rules and Procedures not in conflict with the Expedited Procedure Rules shall apply. The Parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration clause and without abridgment of the powers of the arbitrator. CUSTOMER UNDERSTANDS THIS THIS SECTION DISCUSSES ARBITRATION AND AGREES TO SUBMIT ANY PRESENT AND FUTURE CLAIMS AGAINST LOTLINX TO BINDING ARBITRATION, AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF CUSTOMER'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES WITH LOTLINX.

**14. Changes to Terms.** LotLinx may make non-material changes to these Terms at any time without notice, but LotLinx will provide Customer with advance notice of any material changes to these Terms. In cases where changes to this Terms apply to LotLinx's customer at-large, the modified terms will be posted at <https://www.lotlinx.com/agreements/>. Unless agreed upon by the Parties in writing, any

changes to these Terms will not apply retroactively and will become effective 30 days after posting, except for any change to comply with any law, regulation, or order, which shall become effective immediately upon notice. Dealer may not cancel any Order or the Agreement because of a non-material or legal change to these Terms but notwithstanding any other provision of these Terms, Customer may terminate this Agreement or an Order to which the modified Terms apply by providing notice to LotLinx prior to the date the modifications become effective.

**15. Governing Law.** The law this Agreement is governed by depends on the where the Customer is domiciled as follows:

15.1. If the Customer is domiciled within the United States or its territories, then this Agreement shall be governed by and shall be construed in accordance with the Federal Arbitration Act, federal arbitration law, and the laws of the State of Delaware, without regard to principles of conflicts of laws. To the extent that any claim or dispute proceeds in court rather than in arbitration, the Parties hereby submit to the jurisdiction and venue of the state courts located in Hillsborough County, New Hampshire or the United States District for the District of New Hampshire, and waive all objections to venue or inconvenient forum, and any right to assert lack of personal jurisdiction. This section shall survive any termination of this Agreement.

15.2. If the Customer is domiciled within Canada, then this Agreement shall be governed by and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, which shall be deemed to be the proper law hereof. To the extent that any claim or dispute proceeds in court rather than in arbitration, the parties shall submit to the jurisdiction of the courts of Ontario for any disputes arising out of this Agreement.

**16. Intellectual Property Rights of LotLinx.** The Services and Software, and all associated content, is owned by or licensed by LotLinx, and protected by law, including copyrights, trade secret, patent, and trademark laws of the United States and all applicable jurisdictions, as well as other applicable state, national, and international laws and regulations. The LotLinx Software is Copyright 2002-2021, LotLinx, Inc., all rights reserved. LotLinx also owns copyright rights in collective works and/or compilations and in all databases accessible on or through the Services and Software. "LotLinx" and all other marks displayed through the Services (collectively the "Trademarks") are registered and/or common law trademarks of LotLinx and/or various third parties. Except as expressly stated herein, nothing contained in the Services and Software may be construed as granting, by implication, estoppel, or otherwise, any grant, license or right to use any licensed copyright or trademark without the prior written permission of LotLinx or such other party that may own the trademarks or any licensed copyrights. The LotLinx Software, which includes any copyrights and all intellectual property rights therein is, and will remain, the property of LotLinx. All rights in and to the LotLinx Software not expressly granted to Customer in this Agreement are reserved and retained by LotLinx and its licensors without restriction, including, LotLinx's right to sole ownership of the LotLinx Services and Software and any Documentation and the right to modify the Services and Software at any time without notice to Customer. Without limiting the generality of the foregoing, Customer agrees not to (and not to allow any third-party to): (a) sublicense, distribute, or use the Services and Software outside of the scope of the License granted in this Agreement; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Software or otherwise attempt to discover any source code or trade secrets related to the Software; (c) rent, lease, sell, assign or otherwise transfer

rights in or to the Services and Software; (d) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Services and Software; (e) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Services and Software for any purpose without the express written consent of LotLinx; (f) register, attempt to register, or assist anyone else to register any trademark, trade name, marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with LotLinx; (g) transfer to another dealership or any other entity any sales leads, or any data included in any sales leads, delivered to Customer in connection with the Services; (h) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Software; or (i) challenge or contest, whether directly or indirectly, the validity of LotLinx's ownership of such copyrights, trademarks, or any other intellectual property, or assist any other third-party in doing so.

## 17. General Provisions

- 17.1. **Export Compliance.** Export of the Services, Software and all content associated therewith may be subject to compliance with the rules and regulations promulgated from time to time by the Bureau of Export Administration, United States Department of Commerce, which restrict the export and re-export of certain products and technical data. If the export of the Software is controlled under such rules and regulations, then the Software shall not be exported or re-exported, directly or indirectly: (a) without all export or re-export licenses and United States or other governmental approvals required by any applicable laws; or (b) in violation of any applicable prohibition against the export or re-export of any part of the Software. Some countries have restrictions on the use of encryption within their borders, or the import or export of encryption even if for only temporary personal or business use. Customer acknowledges that the implementation and enforcement of these laws is not always consistent as to specific countries. Although the following countries are not an exhaustive list there may exist restrictions on the exportation to, or importation of, encryption by: Belgium, China (including Hong Kong), France, India, Indonesia, Israel, Russia, Saudi Arabia, Singapore, and South Korea. Customer acknowledges that it is ultimately responsible to comply with any and all government export and other applicable laws and that LotLinx has no further responsibility after the initial license to Customer within the original country of sale. In addition, the Software and underlying information or technology may not be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, or any other country to which the United States has embargoed goods; or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nations or the United States Commerce Department's Table of Denial Orders. By downloading or using the Software Customer agrees to the foregoing and certifies to LotLinx that Customer is not located in, under the control of, or a national or resident of, any such country or on any such list.
- 17.2. **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

- 17.3. **Notices.** Any notices or other communications provided for by this Agreement may be made by e-mail, express courier service, or first-class mail provided that, if to Customer, then such shall be addressed to contact provided by Customer upon enrollment in the Services or any other address provided by Customer to LotLinx, and if to LotLinx, then such shall be addressed:

**If Customer is domiciled in the United States:**

LotLinx, Inc.  
ATTN: Chief Customer Officer and Legal Department  
20 Grove St., Suite 100  
Peterborough, NH 03458  
EMAIL: [legaladmin@lotlinx.com](mailto:legaladmin@lotlinx.com)

**If Customer is domiciled in Canada:**

LotLinx Canada Ontario, Inc.  
ATTN: Chief Customer Officer and Legal Department  
1090-120 King St. W  
Hamilton, ON L8P 4V2  
EMAIL: [legaladmin@lotlinx.com](mailto:legaladmin@lotlinx.com)

- 17.4. **No Waiver.** No delay in exercising any right, power, or remedy under this Agreement shall operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power, or remedy preclude any other or further exercise of that right, power, or remedy.
- 17.5. **Assignment.** Customer may not assign this Agreement, or the license granted by LotLinx, without the prior written approval of LotLinx, 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 Customer. LotLinx may assign this Agreement, so long as LotLinx provides notice to Customer as soon as commercially practicable. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.
- 17.6. **Severability.** If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions of this Agreement. Headings used in this Agreement are for reference and convenience only and are not part of this Agreement.
- 17.7. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties regarding Customer's use of the Services and the Software. This Agreement supersedes all prior agreements, consents, and understandings whether oral or written regarding the subject matter of this Agreement.