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BAYWATCH SUBSCRIPTION TERMS AND CONDITIONS

These BayWatch Subscription Terms and Conditions (these “**Terms**”), Appendix A attached hereto, the BayWatch Subscription Insertion Order subject to these Terms that was executed by the company identified therein (“**Customer**”) and BayWatch Holdings, LLC (“**BayWatch**”) (the “**Insertion Order**”), and all appendices to the Insertion Order, collectively form the agreement between BayWatch and Customer.

- 1. Definitions** – Capitalized words used in these Terms will have the meanings set forth in Appendix A attached hereto, and any capitalized words used but not defined in Appendix A will have the meanings set forth in the Insertion Order.
- 2. BayWatch Subscription** – If Customer has purchased a subscription to the BayWatch Solution (as evidenced by a fully executed Insertion Order), then BayWatch will grant each User a non-exclusive, non-sublicensable, non-transferable and revocable license to:
 - (a) install BayWatch Hardware in Customer’s and a Customer Location’s (if any) motor vehicle service bay during the Term as directed by BayWatch, unless BayWatch has agreed to perform such installation;
 - (b) use such BayWatch Hardware during the Term as directed by BayWatch and solely to the extent required to use the BayWatch Solution in accordance with the Agreement;
 - (c) access the BayWatch Software via the BayWatch Website (or via any other means agreed to by BayWatch in writing) during the Term and use the BayWatch Software during the Term solely:
 - (i) on behalf of Customer or the Customer Location, as applicable, at which such User is employed;
 - (ii) to capture or input information about motor vehicles that enter Customer’s and/or a Customer Location’s (as applicable) motor vehicle service bay during the Term; and
 - (iii) to: (A) view certain BayWatch Content made available via the BayWatch Software about such motor vehicles; and (B) disclose such BayWatch Content to the individual customer whose motor vehicle had entered Customer’s and/or a Customer Location’s (as applicable) motor vehicle service bay during the Term, in each case solely for the purpose of assessing whether such motor vehicle had sustained damage prior to entering such motor vehicle service bay,

provided that: (I) Customer pays BayWatch all of the then-current fees as set out in the Insertion Order and all other amounts set out herein in accordance with these Terms; (II) Customer, each Customer



BAYWATCH

TECHNOLOGIES

Location (if applicable) and each User remains at all times in compliance with the Agreement; and (III) BayWatch has the rights to grant Customer such license (the “**BayWatch Subscription**”).

- 3. Login Credentials** – BayWatch will, at BayWatch’s sole discretion, assign either: (a) each User a username and password to access the BayWatch Software; or (b) Customer and/or a Customer Location one or more usernames and passwords for use by their Users to access the BayWatch Software. Customer acknowledges and agrees that: (i) each such username and password will be used: (A) by a User only; (B) solely on behalf of Customer or the Customer Location, as applicable, at which such User is employed; and (C) solely for the purposes set forth in the Agreement; and (ii) Customer, each Customer Location and each User are each responsible for maintaining the confidentiality of the usernames and passwords assigned.

4. Restrictions and Obligations Applicable to the BayWatch Subscription

- (a) Customer will not (and will ensure that each Customer Location, if any, and each User does not): (i) modify, make derivative works of, disassemble, reverse-compile or reverse-engineer the BayWatch Solution, in whole or in part; (ii) except as expressly permitted in the Agreement, copy, reproduce, distribute, transmit, publish, display or otherwise disclose the BayWatch Solution, in whole or in part; (iii) license, sublicense, sell, rent, lease, distribute, host or otherwise commercially exploit the BayWatch Solution, in whole or in part; (iv) submit, input or otherwise provide any PII using or via the BayWatch Solution, in whole or in part, including, for greater certainty, as part of any User Content; (v) access, use or attempt to access or use the BayWatch Software, BayWatch Hardware or any BayWatch Content by any means except via the BayWatch Website; (vi) access or use the BayWatch Solution, in whole or in part, to develop, create, use or test any business, product or service that competes or could reasonably compete with, the businesses of or any product or service offered or otherwise made available by BayWatch, including, for greater certainty, the BayWatch Solution; (vii) upload or otherwise transmit or introduce via the BayWatch Solution, in whole or in part, any viruses, malware, Trojan Horse, worm or other software intended to damage or interfere with the security, integrity or operation of the BayWatch Solution, in whole or in part; (viii) use “bots” or “spiders” to access the BayWatch Software or the BayWatch Website, or to retrieve BayWatch Content therefrom; (ix) remove or destroy any copyright notices or other proprietary markings contained in the BayWatch Solution, including any BayWatch Marks; (x) share login credentials to access the BayWatch Software with any Third Party; or (xi) distribute, share, disclose or otherwise make available the Insertion Order, in whole or in part, to any Third Party, except to Users or Customer Locations who have a need to know and solely to the extent required for Customer and such Customer Locations to exercise their rights and/or to perform their obligations under the Agreement.
- (b) Customer will: (i) install BayWatch Hardware in Customer’s and/or a Customer Location’s (as applicable) motor vehicle service bay during the Term as directed by BayWatch, or (if BayWatch



BAYWATCH

TECHNOLOGIES

has agreed to perform such installation) grant BayWatch access to the premises of Customer and/or such Customer Location (as applicable) and provide all reasonable assistance required by BayWatch to complete such installation; (ii) permit, and ensure that each Customer Location (if any) permits, only Users to use the login credentials to access the BayWatch Software; (iii) immediately notify BayWatch in writing if Customer knows or has any reason to believe that any login credentials used to access the BayWatch Software have been compromised or otherwise shared or used in any manner that is not in compliance with the Agreement; (iv) immediately notify BayWatch in writing if any Customer Location ceases to be Controlled by Customer; (v) comply with all trademark guidelines provided or made available to Customer by BayWatch in respect of Customer's and/or Customer Locations' (if any) use of the BayWatch Marks; (vi) ensure that each Customer Location (if any) and each User complies at all times with the Agreement; and (vii) at all times be wholly responsible and liable to BayWatch for the actions and omissions of all Customer Locations (if any) and all Users, including, for greater certainty, all activities that occur using the login credentials assigned, provided or otherwise made available by BayWatch to Customer, Customer Locations and/or Users to access the BayWatch Solution.

5. Maintenance and Support Services

- (a) Maintenance Services – From time to time during the Term, BayWatch may cause software updates to be electronically pushed to BayWatch Hardware located on Customer's and/or a Customer Location's (if any) premises. Customer hereby acknowledges and agrees on its own behalf and on behalf of each Customer Location (if any): (i) to accept and receive all such updates; and (ii) that failure to accept and receive any such update may impact a User's access to and/or use of the BayWatch Solution, in whole or in part, including inoperability of the BayWatch Software and/or any BayWatch Hardware.
- (b) Support Services – During the Term, BayWatch will use commercially reasonable efforts to assist Customer and Customer Locations (if any) in-person or remotely via telephone or email (in each case at BayWatch's sole discretion) to remediate any errors or difficulties Customer and/or Customer Locations (if any) may experience when installing BayWatch Hardware and/or using the BayWatch Solution. Customer acknowledges and agrees that BayWatch may (at BayWatch's sole discretion) charge Customer additional fees for any assistance that is provided in-person.

6. Trademarks

- (a) BayWatch hereby grants Customer a non-exclusive, non-sublicensable, non-transferable and revocable license to use the trademark "BayWatch" and other BayWatch trademarks and logos provided or otherwise made available by BayWatch to Customer (collectively, the "**BayWatch Marks**") solely in connection with Customer's and/or a Customer Location's use of the BayWatch Solution in compliance with the Agreement, provided BayWatch has agreed in writing (email acceptable) beforehand to such use in each instance (the "**BayWatch Marks Licence**"). Customer



BAYWATCH

TECHNOLOGIES

acknowledges and agrees that Customer's and each Customer Location's use of the BayWatch Marks will inure to BayWatch's benefit.

- (b) Customer hereby grants BayWatch a non-exclusive, non-sublicensable, non-transferable and revocable license to use Customer's name and other Customer trademarks and logos provided or otherwise made available by Customer to BayWatch (collectively, the "**Customer Marks**") solely to promote the BayWatch Solution, provided Customer has agreed in writing (email acceptable) beforehand to such use in each instance (the "**Customer Marks Licence**"). BayWatch acknowledges and agrees that BayWatch's use of the Customer Marks will inure to Customer's benefit.

7. Fees and Payment Terms

- (a) Fees – Customer will pay BayWatch all fees set forth in the Insertion Order and these Terms in accordance with Section 7(d).
- (b) Monthly Vehicle Limit – Customer acknowledges and agrees that no more than the number of motor vehicles set forth in the Insertion Order as the "Monthly Vehicle Limit" will be useable in connection with the BayWatch Solution each month during the Term. For greater certainty, once the Monthly Vehicle Limit has been reached during any month during the Term, the BayWatch Solution will not capture any videos or photos of, or information about, any motor vehicles that enter Customer's and/or a Customer Location's (as applicable) motor vehicle service bay during such month.
- (c) Changes to Fees – BayWatch may, in its sole discretion, change any fees payable to BayWatch as set out in the Insertion Order by providing Customer with written notice of such change at least 30 days prior to the commencement of a Renewal Term, and such change will take effect as of the commencement of such Renewal Term.
- (d) Payment Terms – Following the end of each month during the Term, BayWatch will, at BayWatch's sole discretion, charge to the credit card of Customer on file with BayWatch or invoice Customer for the fees set forth in the Insertion Order (as such fees may be changed in accordance with these Terms). Customer hereby authorizes BayWatch to charge Customer's credit card on file with BayWatch for all amounts payable and owing to BayWatch in accordance with the Agreement. If BayWatch invoices Customer instead of charging Customer's credit card, then Customer will pay all amounts invoiced by BayWatch within 30 days following the date of such invoice. The Parties may, at any time, agree in writing to payment terms that are different from those set forth in this Section 7(d).
- (e) No Refunds or Setoff – Except where otherwise expressly provided in the Agreement, no fees or other amounts received by BayWatch will be refunded under any circumstances, and Customer



BAYWATCH

TECHNOLOGIES

will have no recourse or claim of any kind against any such amounts. For greater certainty and without limiting the generality of the foregoing, Customer will not be entitled to exercise any right of set off in respect of any amounts owing to BayWatch under the Agreement.

- (f) Taxes – All fees set out in the Agreement are exclusive of taxes. Customer will pay all applicable taxes as required by applicable laws.
- (g) Currency – Except where otherwise expressly provided, all references to currency in the Agreement are to the lawful money of the United States.

8. Term, Termination and Suspension

- (a) Term – The Agreement will commence on the Start Date, and will continue in effect during the Initial Term, unless terminated earlier in accordance with the Agreement. Upon the expiration of the Initial Term, the Agreement will automatically renew for successive Renewal Terms, unless either Party provides the other Party with written notice of non-renewal at least 60 days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.
- (b) Termination by Customer – Customer may terminate the Agreement in its entirety for any reason and at any time by providing BayWatch with at least 60 days' prior written notice, provided that Customer, prior to the effective date of such termination and as a condition precedent to the effectiveness of such termination, pay BayWatch: (i) an amount equal to the monthly fees set out in the Insertion Order that are payable to BayWatch during the Term, multiplied by the total number of months remaining in the Term as at the effective date of such termination; (ii) the Hardware Installation Fee; and (iii) all amounts (if any) payable and owing to BayWatch pursuant to these Terms, including Section 8(e), as of the effective date of such termination.
- (c) Suspension or Termination by BayWatch – Customer acknowledges and agrees that if BayWatch reasonably believes that Customer, a Customer Location or any User has violated the Agreement or is in breach of any provisions of the Agreement, in whole or in part, including, for greater certainty, if BayWatch reasonably believes that: (i) an individual who is not a User has accessed or used the BayWatch Software, in whole or in part, and such access or use was permitted, facilitated or otherwise made available by or with the knowledge of Customer, a Customer Location and/or a User or any other personnel of Customer and/or a Customer Location; (ii) Customer, a Customer Location or a User has disclosed, distributed or otherwise made available the Insertion Order, in whole or in part, to any individual or entity in violation of these Terms; or (iii) a User has accessed or used the BayWatch Solution, in whole or in part, on behalf of, or otherwise for the benefit of, any individual or entity other than Customer or a Customer Location (if any), then BayWatch may, in its sole discretion, immediately upon notice to



BAYWATCH

TECHNOLOGIES

Customer: (A) temporarily or permanently disable any login credentials assigned to Customer, any one or more Customer Locations and/or any one or more Users; (B) terminate or suspend the Agreement in its entirety; and/or (C) temporarily or permanently revoke or suspend any BayWatch Subscriptions granted to any Users. Notwithstanding the foregoing, BayWatch may revoke any BayWatch Subscription granted to any User who ceases to be employed by and at Customer and/or any Customer Location.

- (d) Effects of Suspension – In the event BayWatch terminates or suspends the Agreement, in whole or in part, pursuant to Section 8(c), then, in addition to all rights or remedies available to BayWatch at law: (i) all amounts payable to BayWatch as of the effective date of such termination or suspension; and (ii) all amounts that would have been payable to BayWatch during the remainder of the Term but for such termination or suspension, will collectively become immediately due and payable to BayWatch. If BayWatch reinstates Customer's access to the BayWatch Solution that was previously suspended or terminated pursuant to Section 8(c), BayWatch may require payment by Customer of reactivation fees to be determined in BayWatch's sole discretion.
- (e) Effects of Expiration or Termination – Upon the expiration or earlier termination of the Agreement or any one or more BayWatch Subscriptions for any reason: (i) such BayWatch Subscriptions (or all BayWatch Subscriptions in the case where the Agreement has expired or has been terminated in its entirety) will be revoked with immediate effect; (ii) Customer will cease all access to and use of, and will ensure that all Customer Locations and all Users cease all access to and use of, the BayWatch Solution; (iii) Customer will return, and will ensure that each Customer Location (if any) returns, BayWatch Hardware to BayWatch at Customer's or such Customer Location's (as applicable) expense within 14 days following the effective date of such expiration or termination; (iv) the BayWatch Marks License and the Customer Marks License will be revoked with immediate effect; (v) BayWatch will promptly cease all use of the Customer Marks; (vi) Customer will promptly cease all use of the BayWatch Marks; and (vii) each Party will comply with its obligations to return or destroy Confidential Information of the other Party in accordance with Section 9(c). Customer acknowledges and agrees that any failure to return BayWatch Hardware to BayWatch in accordance with Section 8(e)(iii) will incur a one-time Hardware Replacement Fee of \$400 per lane in the Customer's and/or Customer Location's (as applicable) motor vehicle service bay, which will become immediately due and payable by Customer to BayWatch.

9. Confidentiality Obligations

- (a) Each Party, in its capacity as a Receiving Party: (i) will use at least the same degree of care in safeguarding and maintaining the confidentiality of all Confidential Information of the Disclosing Party that the Receiving Party uses to safeguard and maintain the confidentiality of its own Confidential Information of a similar nature, but in no event will a Receiving Party exercise less



BAYWATCH

TECHNOLOGIES

than due diligence and reasonable care; (ii) will not release, disclose, divulge, sell or distribute any Confidential Information of the Disclosing Party without the Disclosing Party's prior written consent, except that the Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's employees or contractors or the employees or contractors on a "need to know basis", provided the Receiving Party first instructs such employees or contractors, as applicable, to maintain the confidentiality of such Confidential Information and such employees or contractors, as applicable, are bound by written confidentiality obligations that are no less onerous than those contained in this Section 9; (iii) may only use and copy the Disclosing Party's Confidential Information as is necessary to carry out the Receiving Party's activities contemplated by the Agreement and for no other purpose. Without limiting the generality of the foregoing, a Receiving Party will not use the Disclosing Party's Confidential Information in any way that is, directly or indirectly, detrimental to the Disclosing Party; and (iv) will not alter or remove from any Confidential Information of the Disclosing Party any proprietary legend or BayWatch Marks.

- (b) Other Permitted Disclosure – Disclosure of Confidential Information will be permitted if such Confidential Information is, at the written advice of counsel, required to be disclosed pursuant to applicable law or a lawful order of a governmental or regulatory authority, including pursuant to a final order or judgment of a court or tribunal of competent jurisdiction. In such case, the Parties will: (i) only disclose the minimal amount of Confidential Information that counsel advises in writing is required to comply with such applicable law; and (ii) cooperate with one another to attempt, if possible, to obtain an appropriate protective order or other reliable assurance that such governmental or regulatory authority will maintain the confidentiality of the Confidential Information.
- (c) Obligation to Return or Destroy Confidential Information – Upon the earlier of: (i) the Disclosing Party's written request; and (ii) the expiration or termination of the Agreement for any reason, regardless of whether a dispute may exist, the Receiving Party will return or destroy (as instructed by the Disclosing Party) all Confidential Information of the Disclosing Party in its possession or control and cease all further use thereof. Notwithstanding the foregoing, the Receiving Party may retain the Disclosing Party's Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under the Agreement or pursuant to Section 9(b).
- (d) Deemed Disclosure and Use – For purposes of the Agreement, the Receiving Party will be deemed to have made any disclosures of the Disclosing Party's Confidential Information that are made by its employees, contractors, advisors or agents, and to have engaged in any uses of the Disclosing Party's Confidential Information by its employees, contractors, advisors or agents.

10. Ownership



BAYWATCH

TECHNOLOGIES

- (a) BayWatch Property – All rights and title to, and interest in, the BayWatch Solution (except any User Content reproduced as part of BayWatch Content), the BayWatch Marks, and all data, information, materials, code, including source code, object code and Hypertext Markup Language, and application programming interfaces provided or made available by BayWatch to Customer and/or a Customer Location (if any), including, for greater certainty as part of BayWatch’s provision of Maintenance and Support Services, and all updates and modifications thereto and all copies thereof (collectively, the “**BayWatch Property**”), will at all times be vested in and remain the property of BayWatch. No change made to the BayWatch Property, in whole or in part or however extensive, will affect or negate the rights, title and interest of BayWatch in and to the BayWatch Property, in whole or in part, and no rights in or to the BayWatch Property, in whole or in part, are transferred to any individual or entity, including, for greater certainty, Customer, any Customer Location or any User. Except for the BayWatch Subscription and the BayWatch Marks License, nothing in the Agreement grants Customer, any Customer Location or any User any right or title to, or interest in, the BayWatch Property (in whole or in part), including, for greater certainty, all intellectual property rights therein. Customer will not take, and will ensure that no Customer Location or User takes, any actions adverse to BayWatch’s right and title to, and interest in, the BayWatch Property.
- (b) Customer Property – All rights and title to, and interest in, User Content and the Customer Marks, and all updates and modifications made by Customer, a Customer Location or a User to Customer Marks and all copies of Customer Marks (collectively, the “**Customer Property**”), will at all times be vested in and remain the property of Customer or the applicable Customer Location (as applicable). No change made to the Customer Marks, in whole or in part or however extensive, will affect or negate the rights, title and interest of Customer in and to the Customer Property, in whole or in part, and no rights in or to the Customer Property, in whole or in part, are transferred to any individual or entity, including, for greater certainty, BayWatch. Except for the Customer Marks License and the User Content License, nothing in the Agreement grants BayWatch any right or title to, or interest in, the Customer Property (in whole or in part), including, for greater certainty, all intellectual property rights therein.
- (c) User Content License – Customer hereby grants BayWatch and its affiliates a worldwide, perpetual, exclusive, irrevocable, sublicensable, transferable, royalty-free and fully-paid license, and all rights (including all patent, trademark, copyright, moral and other rights) to retain and use User Content in connection with, including as part of or to develop and/or maintain, products and/or services related to motor vehicles, including, for greater certainty, the BayWatch Solution (the “**User Content License**”).

11. Representations and Warranties

- (a) Each Party hereby represents and warrants to the other Party that:



BAYWATCH

TECHNOLOGIES

- (i) it is a business duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and has all requisite corporate power and authority to operate its business, execute and deliver the Agreement, and perform its obligations set out in the Agreement;
 - (ii) the execution, delivery and performance of the Agreement by such Party have been duly authorized by all necessary corporate action on the part of such Party, and will not contravene the constating documents of such Party (including any certificate of incorporation, by-laws, or charter, as applicable) and do not and will not conflict with or result in a breach or violation of: (A) any indenture, agreement, instrument, judgment, decree, order or ruling to which such Party is a party or is otherwise subject that would materially adversely affect such Party's ability to perform its obligations under the Agreement; (B) any applicable law; or (c) any obligation of such Party to another individual or entity;
 - (iii) the Agreement has been duly executed and delivered by such Party and is valid and binding on such Party, enforceable in accordance with its terms, except as enforcement thereof may be limited by or with respect to: (A) applicable insolvency, bankruptcy, fraudulent conveyance and other similar laws of general application relating to or affecting the rights and remedies of creditors; (B) application of equitable principles (whether enforcement is sought in proceedings in equity or at law); and (C) the fact that the remedy of specific enforcement or of injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought; and
 - (iv) it will comply with all applicable laws with respect to its performance of its obligations under the Agreement.
- (b) BayWatch hereby represents and warrants to Customer that BayWatch has all rights and has obtained all consents necessary to grant Users the BayWatch Subscription.
- (c) Customer hereby represents and warrants to BayWatch that:
- (i) Customer has all rights and has obtained all consents necessary to grant BayWatch the Customer Marks License and the User Content License;
 - (ii) Customer will, and will ensure that each Customer Location (if any) and each User will, comply at all times with all applicable laws, including, for greater certainty, all applicable privacy legislation and regulations, when installing and using BayWatch Hardware and the BayWatch Solution;



BAYWATCH

TECHNOLOGIES

- (iii) all User Content is truthful and accurate, and Customer is solely responsible for all User Content; and
- (iv) Customer will not, and will ensure that each Customer Location (if any) and each User will not, input or submit any User Content or use the BayWatch Solution, in whole or in part, in any manner that: (A) infringes or violates the rights, including intellectual property rights and proprietary rights, rights of publicity or privacy or any other rights, of any Third Party; (B) violates any applicable laws or is otherwise illegal; (C) is harmful, fraudulent, deceptive, threatening, abusive, tortious, defamatory, obscene, vulgar or libelous; (D) contains a virus, malware, Trojan Horse, worm or other harmful code, file or program; (E) constitutes or otherwise includes PII, in whole or in part; or (F) decompiles, reverse-engineers or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the BayWatch Solution, in whole or in part.

12. Usage Limitations and Disclaimers

- (a) Customer acknowledges and agrees that: (i) the BayWatch Solution is not error-free or 100 percent reliable and 100 percent available; (ii) proper functioning of the BayWatch Solution relies and is dependent on, among other things, a properly functioning computer and the transmission of data through Customer's and/or the Customer Location's (if applicable) wi-fi network and broadband internet access, for which BayWatch is not responsible; (iii) access to and/or use of the BayWatch Solution, in whole or in part, may be interrupted, delayed, refused, or otherwise limited for a variety of reasons, including insufficient power outages, termination of service and access, environmental conditions, interference, non-payment of applicable fees and charges, unavailability of radio frequency channels, system capacity, upgrades, and repairs or relocations (collectively, "**Service Interruptions**"); (iv) Service Interruptions may result in the BayWatch Solution, in whole or in part, being unreliable or unavailable for the duration of the Service Interruption; (v) BayWatch cannot and does not guarantee that Customer or any Customer Locations or Users will receive notifications within any given time, or at all, about Service Interruptions; (vi) the BayWatch Solution, in whole or in part, may be suspended temporarily, without notice, for security reasons, systems failure, maintenance and repair, or other circumstances, and Customer, Customer Locations and Users will not be entitled to any refund or rebate for any such suspensions; and (vii) Customer and/or a Customer Location (if applicable) is responsible for all fees charged by the internet service provider in connection with use of the BayWatch Solution, and compliance with all applicable agreements, terms of use/service and other policies of the internet service provider.
- (b) EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF BAYWATCH, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A



BAYWATCH

TECHNOLOGIES

PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT OF ANY INDIVIDUAL'S OR ENTITY'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS, OR RESULTS TO BE DERIVED FROM THE USE OF ANY BAYWATCH PROPERTY, IN WHOLE OR IN PART, OR OTHER ITEMS PROVIDED UNDER OR IN CONNECTION WITH THE AGREEMENT.

- (c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, BAYWATCH EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS, INCLUDING IMPLIED WARRANTIES OF ACCURACY, TIMELINESS, COMPLETENESS, MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, CUSTOM, USAGE OR TRADE.
- (d) BAYWATCH EXPRESSLY DOES NOT WARRANT THAT ANY BAYWATCH PROPERTY, IN WHOLE OR IN PART, WILL BE CURRENT, ACCURATE, COMPLETE, FREE OF ERRORS, UNINTERRUPTED OR SECURE, OR THAT THEY WILL MEET ANY INDIVIDUAL'S OR ENTITY'S, INCLUDING CUSTOMER'S, CUSTOMER LOCATIONS' OR USERS', REQUIREMENTS, OR THAT ACCESS TO ANY BAYWATCH PROPERTY, IN WHOLE OR IN PART, IS OR WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL BAYWATCH PROPERTY ARE PROVIDED OR OTHERWISE MADE AVAILABLE "AS IS" AND "AS AVAILABLE".
- (e) BAYWATCH MAKES NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN, USED OR ACCESSED THROUGH THE BAYWATCH SOLUTION, IN WHOLE OR IN PART, INCLUDING, FOR GREATER CERTAINTY, BAYWATCH CONTENT AND USER CONTENT, AND BAYWATCH WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF CONTENT, INCLUDING BAYWATCH CONTENT AND USER CONTENT AND ANY OTHER PHOTOS, VIDEOS, AUDIO, DATA AND INFORMATION, CONTAINED IN, USED OR ACCESSED THROUGH THE BAYWATCH SOLUTION, IN WHOLE OR IN PART.

13. Limitation of Liability

- (a) To the maximum extent permitted by applicable law, in no event will BayWatch be liable for any indirect, consequential, exemplary, special, incidental or punitive damages, including any damages for lost data, information, media or other content, or any damages characterized as loss of savings or loss of profits of Customer, Customer Locations or Users, even if BayWatch knew, or should have known, of the possibility of such damages. BayWatch is not responsible for any personal injury, loss of life, property damage or other harm arising from or relating to any access to or use of the BayWatch Solution, in whole or in part, by any individual or entity.
- (b) In no event will BayWatch's total cumulative liability, in the aggregate, for any direct damages, property damage, personal injury, loss of life or any other damages based upon, arising from, in



BAYWATCH

TECHNOLOGIES

connection with or related to BayWatch Property and/or the Agreement, in each case in whole or in part, whether in contract or tort or otherwise, exceed the total monthly fees paid by Customer to BayWatch during the calendar month in which such liability first arose. Under no circumstances will BayWatch be liable in any way for any content, including, for greater certainty, User Content and BayWatch Content, and any errors or omissions in any content or any loss or damage of any kind incurred based upon, arising from, in connection with or related to the use of, or exposure to, any content posted, submitted, input, emailed, used, transmitted or otherwise accessed or made available via the BayWatch Solution. Customer acknowledges and agrees that: (i) this Section 13(b) will be Customer's, Customer Locations' (if any) and Users' sole and exclusive remedy for any matters arising from, in connection with or related to BayWatch Property and the Agreement, in each case in whole or in part; and (ii) the disclaimers, exclusions and limitations set forth in these Terms constitute an essential element of the Agreement and that in the absence of such disclaimers, exclusions and limitations, the fees and other terms and conditions in the Agreement would be substantially different.

- (c) Customer acknowledges and agrees that this Section 13 will apply even if BayWatch is found liable for any loss or damage, including due to breach of contract, breach of warranty, negligence of any kind or degree, strict liability, indemnification or contribution, or any other theory of liability.
- (d) Nothing in these Terms and, in particular, within this Section 13, will be interpreted or construed to limit or exclude any liability that cannot be so limited or excluded under applicable law.

14. Indemnity – Customer will defend, indemnify, and hold harmless the BayWatch Indemnitees from and against any and all Losses which the BayWatch Indemnitees may incur, become liable for or subject to as a result of any Claim brought by a Third Party based upon, arising from, in connection with, or relating to: (a) any breach of the Agreement, in whole or in part, by Customer, Customer Locations (if any) and/or Users; (b) any access to and/or use of any BayWatch Property, in whole or in part, by Customer, Customer Locations (if any) and/or Users; (c) any User Content, in whole or in part; (d) violation of any applicable law or the rights of any Third Party by Customer, Customer Locations (if any) and/or Users; (e) the use by BayWatch and/or its affiliates of any User Content and/or Customer Marks (provided such use is in compliance with the Agreement); and (f) any violation, infringement, or alleged violation or infringement by Customer, Customer Locations (if any) and/or Users of the rights of any individual or entity. BayWatch reserves the right, at Customer's expense, to assume the exclusive defense and control of any matter for which Customer is required to indemnify BayWatch, and Customer will cooperate fully with BayWatch's defense of such Claims. Customer will not settle any Claim without BayWatch's prior written consent. BayWatch will use commercially reasonable efforts to notify Customer of any such Claim upon becoming aware.



BAYWATCH

TECHNOLOGIES

15. Force Majeure – Without limiting any other provision in the Agreement, BayWatch will not have any liability for any failure or delay resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown, internet disruption or any other condition beyond the control of BayWatch affecting production or delivery hereunder in any manner.

16. General Provisions

- (a) Notices – Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given by BayWatch to Customer under the Agreement will be in writing and will be given by personal delivery or sent by prepaid registered mail, courier or email, in each case addressed to the recipient and at the address or email address set out in the Insertion Order. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given by Customer to BayWatch under the Agreement will be in writing and will be given by personal delivery or sent by prepaid registered mail or courier, in each case addressed to the recipient as follows:

BayWatch Holdings, LLC
1700 Sandhill Road G403
Orem, Utah
84058

Attention: CEO

Any notice: (i) given by personal delivery or email will be conclusively deemed to have been given on the day of actual delivery thereof; (ii) given by registered mail will be conclusively deemed to have been given on the fifth business day following the deposit of such notice in the mail; and (iii) given by overnight courier will be conclusively deemed to have been given on the first business day following deposit of such notice with the overnight courier. By giving to the other Party at least three business days' prior written Notice, either Party may, at any time and from time to time, change its address above for delivery or communication.

- (b) Headings and Extended Meanings – The division of these Terms and the Insertion Order into sections is for convenience of reference only and does not affect the construction or interpretation of these Terms or the Insertion Order. Wherever the words “include”, “includes” or “including” are used in the Insertion Order and these Terms, they will be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” will not be considered to set forth an exhaustive list.



BAYWATCH

TECHNOLOGIES

- (c) Priority of Documents – In the event of any conflict or inconsistency between the provisions of the Insertion Order and these Terms, the provisions of the Insertion Order will prevail.
- (d) Severability – If any provision of the Agreement is determined to be invalid or unenforceable by any court of competent jurisdiction, then: (i) such provision will be, solely to the extent of such invalidity or unenforceability, as applicable, deemed omitted, and the remaining provisions will continue in full force and effect; and (ii) such determination will not affect the legality, validity or enforceability of the remaining provisions of the Agreement or the legality, validity or enforceability of such provision in any other jurisdiction.
- (e) Changes – BayWatch reserves the right to discontinue or modify the BayWatch Solution, in whole or in part, at any time and from time to time. BayWatch also reserves the right to modify these Terms, in whole or in part, and/or impose new or additional terms or conditions at any time and from time to time, by posting them on BayWatch’s website with or without notice to Customer or any other individual or entity. Such modifications and additional terms and conditions will be effective immediately and incorporated into the Agreement. Customer, any Customer Location’s and/or any User’s continued use of the BayWatch Solution, in whole or in part, will be deemed acceptance thereof by Customer, all Customer Locations and all Users.
- (f) Governing Law – The Agreement will be governed by and construed solely under the laws of the State of Delaware. Customer irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and irrevocably consents and attorns to the jurisdiction of the courts located in the State of Delaware, for any and all matters (including claims) that are based upon, arising from, in connection with or related to the Agreement or BayWatch Property, in each case in whole or in part. Customer agrees that, in the event there is a dispute under the Agreement and such dispute is to be resolved in a court of law, such dispute will not be resolved by jury trial, and Customer hereby: (i) waives all rights to a trial by jury in any matter based upon, arising from, in connection with or related to the Agreement and any BayWatch Property; and (ii) agrees that such dispute will be conducted only on an individual basis and not in a class, representative, consolidated or mass action. If any part of this Section 16(f) is found to be unenforceable, the remainder of this Section 16(f) will still be given full force and effect.
- (g) Survival – The Insertion Order, Appendix A attached hereto and the following provisions in these Terms will survive the expiration and any termination of the Agreement: Section 1 (Definitions), Section 4 (Restrictions and Obligations Applicable to the BayWatch Subscription), Section 7 (Fees and Payment Terms), Section 8(d) (Effects of Suspension), Section 8(e) (Effects of Expiration or Termination), Section 9 (Confidentiality Obligations), Section 10 (Ownership), Section 11 (Representations and Warranties), Section 12 (Usage Limitations and Disclaimers), Section 13 (Limitation of Liability), Section 14 (Indemnity), Section 15 (Force Majeure), and this Section 16.



BAYWATCH

TECHNOLOGIES

- (h) Relationship of the Parties – The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Neither Party has the power to bind the other Party or incur obligations on the other Party's behalf without the other Party's prior written consent. The Parties acknowledge and agree that BayWatch may, at any time and from time to time, subcontract any of its obligations under the Agreement, in whole or in part, to any Third Party at BayWatch's sole discretion.
- (i) Third Party Beneficiaries – BayWatch's affiliates and their respective directors, officers, employees, contractors, suppliers, licensors, representatives and agents are Third Party beneficiaries for the purpose of the limitation of liability provisions and Customer's indemnity obligations contained in the Agreement. Except as otherwise specifically stated in this Section 16(i), the provisions in the Agreement are for the benefit of Customer, Customer Locations (if any) and BayWatch only, and nothing in the Agreement, express or implied, is intended to or will confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.
- (j) Cumulative Remedies – Unless otherwise expressly stated herein, the rights and remedies of the Parties are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.
- (k) Irreparable Harm – The Parties acknowledge and agree that any breach of the terms of Sections 4(a), 4(b), 9 and 11(c) may cause irreparable harm and damage to the aggrieved Party that will not be adequately compensable by monetary damages. The Parties further agree that each Party will be entitled to seek injunctive relief to prevent breaches of Sections 4(a), 4(b), 9 and 11(c), and to specifically enforce the terms and provisions of Sections 4(a), 4(b), 9 and 11(c), in addition to any other remedy to which such Party may be entitled, at law or in equity.
- (l) No Waiver – BayWatch's failure to insist upon or enforce strict performance of any provision of the Agreement will not be construed as a waiver of any provisions or right. Any waiver of the terms or conditions of the Agreement, in whole or in part, must be in writing and signed by an authorized officer of BayWatch expressly referencing the applicable provisions of the Agreement. Waiver of any provision of the Agreement in one instance will not preclude enforcement thereof on future occasions.
- (m) Assignment – Customer may not resell, assign or transfer the Agreement, in whole or in part, including, for greater certainty, any of Customer's or any Customer Location's rights or obligations hereunder, without the prior written consent of BayWatch, and any such resale, assignment or transfer without BayWatch's prior written consent will be void and of no effect.



BAYWATCH
TECHNOLOGIES

BayWatch may assign the Agreement, in whole or in part, to any individual or entity at any time without notice to Customer.

- (n) Entire Agreement. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and terminates and supersedes all previous agreements, whether oral or written, relating to the same subject matter.
- (o) Counterparts and Electronic Execution. The Insertion Order may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to the Insertion Order by either Party by electronic transmission will be as effective as delivery of a manually executed copy of the Insertion Order by such Party.



BAYWATCH

TECHNOLOGIES

APPENDIX A

DEFINITIONS

“Agreement” means collectively, these Terms, this Appendix A, the Insertion Order, and all appendices to the Insertion Order.

“BayWatch Content” means all content, including all media (including all photos and videos), data, information and User Content, processed by, and/or made available to Users via, the BayWatch Solution.

“BayWatch Hardware” means all hardware provided or otherwise made available by BayWatch to Customer and/or a Customer Location (as applicable) to use the BayWatch Solution, including all cameras, peripherals, and all equipment required to install such cameras and peripherals.

“BayWatch Indemnitees” means BayWatch, its affiliates and their respective directors, officers, employees, contractors, suppliers, licensors, representatives and agents.

“BayWatch Marks” has the meaning set out in Section 6(a) of these Terms.

“BayWatch Marks License” has the meaning set out in Section 6(a) of these Terms.

“BayWatch Property” has the meaning set out in Section 10(a) of these Terms.

“BayWatch Software” means the software entitled “BayWatch”, as such name and/or software may be updated or otherwise modified by BayWatch from time to time and at any time, hosted, offered, provided or otherwise made available by BayWatch for use by Users via the BayWatch Website.

“BayWatch Solution” means the solution offered, provided or otherwise made available by BayWatch for the purposes of capturing and viewing certain videos and photos of, and certain information about, motor vehicles that enter Customer’s and/or a Customer Location’s (as applicable) motor vehicle service bay. For greater certainty, such videos, photos and information constitute BayWatch Content, and the BayWatch Solution includes BayWatch Hardware, the BayWatch Software, the BayWatch Website and BayWatch Content.

“BayWatch Subscription” has the meaning set out in Section 2 of these Terms.

“BayWatch Website” means the website accessible at <https://baywatchtechnologies.com>, as such uniform resource locator may be changed by BayWatch from time to time and at any time.

“Claim” means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding or any other claim or demand.



BAYWATCH

TECHNOLOGIES

“Confidential Information” of a Party (the **“Disclosing Party”**) means any and all information (in whatever form communicated or maintained, whether orally, in writing, electronically, in computer readable form or otherwise) of the Disclosing Party that the Disclosing Party maintains and protects as confidential, marks or otherwise identifies as confidential, is disclosed in circumstances of confidence, or would be understood by the Parties, acting reasonably, to be confidential, that has come into the possession or knowledge of the other Party (the **“Receiving Party”**) in connection with or as a result of the performance of any obligations under or related to the Agreement. Notwithstanding the foregoing, **“Confidential Information”** does not include information that is: (a) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party; (b) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind; (c) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party; or (d) received by the Receiving Party in good faith without an obligation of confidence of any kind from a Third Party.

“Control” of an entity is held by an individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management of such entity, whether through ownership of voting securities, by contract or otherwise, and **“Controlled”** will have the corresponding meaning.

“Customer Location” means a subsidiary, motor vehicle dealership (in the case where Customer is an auto dealership or an auto dealership group) or location that is operated, owned or Controlled by Customer and is set forth in, and located at the address identified as the address of such subsidiary, motor vehicle dealership or location (as applicable) set forth in, Appendix A attached to the Insertion Order. If no Appendix A is attached to the Insertion Order, or if Appendix A attached to the Insertion Order has not been completed by the Parties, then there are no Customer Locations for the purposes of the Agreement.

“Customer Marks” has the meaning set out in Section 6(b) of these Terms.

“Customer Marks License” has the meaning set out in Section 6(b) of these Terms.

“Customer Property” has the meaning set out in Section 10(b) of these Terms.

“Disclosing Party” has the meaning set out in the definition of “Confidential Information” in this Appendix A.

“Losses” means any and all losses, costs, expenses (including reasonable legal fees, experts’ fees, and costs), fines, assessments, taxes, sanctions, settlements, penalties, damages, and other liability, of any and every kind, arising from any Claim brought by a Third Party.



BAYWATCH

TECHNOLOGIES

“Maintenance and Support Services” means the maintenance and support services described in Section 5 of these Terms.

“Party” means BayWatch or Customer, and **“Parties”** means collectively, BayWatch and Customer.

“PII” means “personally identifiable information”, as such term is defined in privacy legislation and regulations applicable to Customer and/or the Customer Location (as applicable).

“Receiving Party” has the meaning set out in the definition of “Confidential Information” in this Appendix A.

“Service Interruptions” has the meaning set out in Section 12(a)(iii) of these Terms.

“Term” means collectively, the Initial Term and all Renewal Terms (if any).

“Third Party” means an individual or entity other than BayWatch or Customer.

“User” means an individual employed: (a) by Customer at the address of Customer set forth in the Insertion Order; or (b) by a Customer Location at the address of such Customer Location set forth in Appendix A attached to the Insertion Order, in each case whom Customer or such Customer Location, as applicable, has authorized to access and use the Service Offerings on its behalf.

“User Content” means all media (including all photos and videos), data and information input or submitted by a User via the BayWatch Solution, or captured or collected by the BayWatch Solution, in the course of a User’s use of the BayWatch Solution.

“User Content License” has the meaning set out in Section 10(c) of these Terms.

Last Updated: June 27, 2018