

SOFTWARE AS A SERVICE LICENSE AGREEMENT

PLEASE READ THIS SOFTWARE AS A SERVICE LICENSE AGREEMENT ("Agreement") CAREFULLY BEFORE USING THIS SOFTWARE.

BY USING THESE SERVICES AND THIS SOFTWARE, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS END USER AGREEMENT, DO NOT USE THE SERVICES AND/OR THE SOFTWARE.

Single User License. Subject to the terms and conditions of this Agreement, LotWing, LLC ("LotWing") and its affiliates grant to you ("End User") a non-exclusive, non-transferable license to use LotWing's internet-accessible service that provides access to, and use of, LotWing's inventory search and management Software hosted by LotWing and made available to the End User over an online network on a monthly term-use basis (the "SaaS Services").

1. Definitions

"Authorized Users" means each End User's employee authorized by the End User to access and use of the SaaS Services on End User's behalf.

"Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in California are not open for business.

"Host" means the computer equipment on which the Software is installed and which is owned and operated by LotWing.

"Inventory Data" means vehicle inventory data and related information provided by the End User to LotWing on a periodic basis for upload and storage on the Host, for access and use by the End User through the SaaS Services.

"SaaS Services" means LotWing's internet-accessible service that provides access to, and use of, LotWing's inventory search and management Software hosted by LotWing and made available to the End User over an online network on a monthly term-use basis.

"Software" means the object code version of the inventory search and management software (desktop and mobile versions) designed, developed and owned by LotWing to which the End User is provided an online access as part of the SaaS Services, including any updates or new versions.

2. **Grant of Right to Access and Use the SaaS Services.** Subject to the terms and conditions of this Agreement and for the Term, LotWing hereby grants to the End User, including to all Authorized Users, a non-exclusive, non-assignable, revocable, royalty-free right to access and use the SaaS Services solely for the End User's internal business operations.
3. **Acknowledgement by the End User.** The End User acknowledges and agrees that LotWing grants a non-exclusive, non-assignable, royalty free, revocable and limited right to access and use the SaaS Services to the End User as per the terms and conditions stated herein. The End User acknowledges that this Agreement is an online services

agreement and LotWing will not be delivering copies of the Software to the End User as part of the SaaS Services.

4. **Improvements, modification, updates.** LotWing may, from time to time, develop and implement certain improvements, variations, updates, upgrades, modifications, and enhancements to the SaaS Services for the purpose of enhancing the capability, efficiency and productivity of the SaaS Services. All such improvements, variations, updates, upgrades, modifications, and enhancements shall be solely owned by LotWing and the End User shall have no right, title and/ or interest in such improvements, modifications and/or updates.
5. **Term and Termination.** This Agreement is effective until terminated. End User's license rights under this Agreement will terminate immediately without notice from LotWing if End User fails to comply with any provision of this Agreement. Upon termination, End User must immediately cease using the Software and the SaaS Services. Immediately upon termination of this Agreement or suspension of the SaaS Services for any reason whatsoever, all rights granted to the End User under this Agreement shall cease and terminate and the End User shall have no right thereafter to access and use, and shall cease the use of, the SaaS Services or any portion thereof. The End User shall immediately pay to LotWing all amounts outstanding as of the date of, and any amounts outstanding as a result of, termination.
6. **Inventory Data Collection and Storage.** The SaaS Services shall include the collection and storage of Inventory Data. The End User shall provide to LotWing a periodic feed of the Inventory Data in an electronic file format that is accessible to LotWing. Upon receipt of the Inventory Data from the End User, LotWing shall upload the Inventory Data on the Host computer for the purpose of accessibility and storage. The End User acknowledges that LotWing's ability to deliver the SaaS Services in the manner provided in this Agreement depends upon the accuracy and timeliness of providing such information.
7. **Ownership of Inventory Data.** The End User shall retain ownership and intellectual property rights in and to the Inventory Data. The Inventory Data is and shall remain the sole and exclusive property of the End User and all right, title, and interest in the same is reserved by the End User. The End User shall at all times solely be liable for the content of the Inventory Data and LotWing shall not assume any liability in respect of the same.
8. **License from the End User to LotWing.** Subject to the terms and conditions of this Agreement, the End User shall grant to LotWing a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Inventory Data solely as necessary to provide the SaaS Services to the End User. The End User is solely responsible for ensuring that the Inventory Data does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious.
9. **End User's Suggestions.** LotWing shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the SaaS Services any suggestions, enhancement requests, recommendation or other feedback provided by the End User, including its Authorized Users, relating to the operation of the SaaS Services.

10. **Authorized User Access.** The End User shall be solely responsible for the acts and omissions of its Authorized Users. LotWing shall not be liable for any loss of data or functionality caused directly or indirectly by the Authorized Users.

11. **Suspension of SaaS Services.** LotWing reserves the right to suspend delivery of the SaaS Services if LotWing reasonably concludes that the End User or its Authorized User's use of the SaaS Services is causing immediate and ongoing harm to LotWing or others. In the extraordinary case that LotWing must suspend delivery of the SaaS Services, LotWing shall immediately notify the End User of the suspension and the Parties shall diligently attempt to resolve the issue. LotWing shall not be liable to the End User or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the SaaS Services in accordance with this Section.

12. Service Levels

12.1. **Applicable Levels.** LotWing shall provide the SaaS Services to the End User with a System Availability of at least 98% during each calendar month.

12.2. System Availability Definition

- (a) **Percentage of Minutes per Month.** "System Availability" means the percentage of minutes in a month that the key components of the SaaS Services are operational.
- (b) **Not Included in "System Availability."** "System Availability" will not include any minutes of downtime resulting from:
 - (i) scheduled maintenance,
 - (ii) events of force majeure,
 - (iii) malicious attacks on the system,
 - (iv) issues associated with the End User's computing devices, local area networks or internet service provider connections, or
 - (v) LotWing's inability to deliver services because of the End User's acts or omissions.

13. **Restrictions on Use.** Any use of the SaaS Services not expressly permitted by this Agreement is prohibited. Without limiting the generality of the foregoing, the End User shall not:

- 13.1. permit persons other than Authorized Users to access or use the SaaS Services (or any part thereof); or
- 13.2. remove or modify any program markings or any notice of LotWing or its licensors' (if any) proprietary rights; or
- 13.3. either itself or permit any other person to modify, disassemble, decompile or reverse engineer the source code of the Software,

- 13.4. attempt to or copy or reproduce the Software and/or the SaaS Services,
- 13.5. access or use any other LotWing's clients' or their users' data through the SaaS Services,
- 13.6. maliciously reduce or impair the accessibility of the SaaS Services,
- 13.7. attempt to disable or circumvent any of the licensing mechanisms within the SaaS Services,
- 13.8. use the SaaS Services to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material, or
- 13.9. transmit or post any material that encourages conduct that could constitute a criminal offence or give rise to civil liability,
- 13.10. input any first name or telephone number information about any individual client or in any other way infringe upon any individual's privacy rights,
- 13.11. or use the SaaS Services (or any part thereof) in breach of any applicable laws or regulations.

14. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 14.1. The SaaS Services and the Software is and will remain the sole and exclusive property of LotWing. LotWing retains all intellectual property, proprietary, distribution rights, interest, title to the SaaS Services and the Software. LotWing's rights under this Section will include, but not be limited to: (i) the SaaS Services and the Software, in whole and in part; and (ii) modifications, improvements, upgrades, derivative works to the SaaS Services and/or the Software, (ii) all Intellectual Property Rights in the SaaS Services and the Software. For purposes herein, "**Intellectual Property Rights**" means patent rights and trademark rights (including pending applications, registrations and disclosures), copyrights (including, but not limited to, rights in audiovisual works and moral rights), trade secret rights, confidential know-how, website and internet domain name registrations, Moral Rights, rights of priority and any other intellectual property right recognized in any country or jurisdiction in the world. "Moral Rights" means any right to claim authorship to or to object to any distortion, mutilation, or other modification or other derogatory action in relation to a work, whether or not such would be prejudicial to the author's reputation, and any similar right, existing under common or statutory law or any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."
- 14.2. The End User may not remove any product identification, copyright, trademark or other notice from the Software and any third-party software (if any) provided in the SaaS Services. LotWing reserves any rights not expressly granted to the End User under this Agreement. The End User agrees that the SaaS Services and the Software and all associated trade secrets, including but not limited to, its configurations, architecture, communications and performance benchmarks, are

the exclusive property of LotWing. The End User agrees not to disclose, disseminate, transmit via any medium whatsoever, or make available the SaaS Services or any associated trade secrets to any third party without LotWing's prior written consent.

14.3. **"Confidential Information"** means all proprietary or confidential information that is disclosed to the recipient ("**Recipient**") by the discloser ("**Discloser**"), and includes, among other things (a) any and all information relating Discloser financial information, End Users, employees, products or services, including, without limitation, first names and telephone numbers or any other identifying information (except for surname) of any clients, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (b) as to the End User, the Software code and any third party software imbedded in the SaaS Services; and (c) the terms of this Agreement, including without limitation, pricing information. Confidential Information does not include information that Recipient can show (i) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (ii) is or becomes a matter of public knowledge through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (iv) is independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient:

- (A) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information; and
- (B) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser.

14.4. **Disclosure to Employees and Agents.** Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient's employees and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement.

15. End User's Obligations

15.1. **Hardware Obligations.** The End User shall be responsible for obtaining and maintaining all computer hardware, software, and communications equipment needed to access and use the SaaS Services, and paying all third-party access charges incurred while using the SaaS Services.

15.2. **Anti-Virus Obligations.** The End User shall be responsible for implementing, maintaining, and updating all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or have destructive properties.

- 15.3. **End User's Compliance.** The End User shall (i) abide by all applicable local, state, national and international Laws and regulations applicable to its use of the SaaS Services, including laws related to data privacy, international communications, and the transmission of technical or personal data, (ii) use the SaaS Services only for legal purposes, and (iii) comply with all regulations, policies and procedures of networks connected to the SaaS Services.

16. Export Compliance

- 16.1. **No Representation by LotWing.** LotWing makes no representation that the SaaS Services are appropriate or available for use outside the United States.
- 16.2. **End User's Status.** End User represents that it is not located in, under the control of, or a national or resident of any country to which the United States has embargoed the import or export of goods, on the United States Treasury Department's list of Specially Designated Nationals or United States Commerce Department's Table of Deny Orders.

17. Indemnification

- 17.1. **Indemnification by the End User.** The End User shall indemnify LotWing against any and all losses and expenses arising out of any proceeding, including proceeding brought by third party, as a result of any breach by the End User of the terms, conditions, representation, warranties and covenants under this Agreement.
- 17.2. **Notice and Failure to Notify**
- (a) **Notice Requirement.** Before bringing a claim for indemnification, the indemnified party shall notify the indemnifying party of the indemnifiable proceeding, and deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.
- (b) **Failure to Notify.** If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying party will not be relieved of its indemnification obligations herein.
- 17.3. **Exclusive Remedy.** The Parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this Section 17.

18. NO WARRANTY AND DISCLAIMER

THE SAAS SERVICE IS PROVIDED TO THE END USER ON AN **"AS IS" "WHERE IS"** BASIS WITHOUT WARRANTY AND END USER'S USE THEREOF IS AT ITS OWN RISK. LOTWING DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, AND THE END USER RELEASES AND WAIVES, ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND PURPOSE, NON-INFRINGEMENT, TITLE, OR ANY WARRANTY ARISING UNDER STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, COURSE OF

PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOTWING DOES NOT WARRANT THAT THE SAAS SERVICES WILL MEET THE END USER'S REQUIREMENTS, WILL OPERATE IN ANY COMBINATION THAT MAY BE SELECTED FOR USE BY THE END USER OR IN COMBINATION WITH OTHER SOFTWARE, OR WILL OPERATE UNINTERRUPTED OR ERROR FREE. FURTHERMORE, LOTWING DOES NOT WARRANT THAT ANY ERRORS, DEFECTS OR INEFFICIENCIES IN THE SAAS SERVICES WILL BE CORRECTED, NOR DOES LOTWING ASSUME ANY LIABILITY FOR FAILURE TO CORRECT ANY SUCH ERROR, DEFECT OR INEFFICIENCY. LOTWING MAKES NO WARRANTY, AND THE END USER ASSUMES THE ENTIRE RISK, AS TO THE INTEGRITY OF ANY DATA (INCLUDING THE INVENTORY DATA) AND THE RESULTS, CAPABILITIES, SUITABILITY, USE, NON-USE OR PERFORMANCE OF THE SAAS SERVICES. IN NO EVENT SHALL LOTWING BE LIABLE TO THE END USER FOR ANY DAMAGES RESULTING FROM OR RELATED TO THE USE OR PERFORMANCE OF THE SAAS SERVICES.

19. **DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY.**

NEITHER PARTY IS LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE SAAS SERVICES OR ANY THIRD PARTY CODE OR SOFTWARE USED IN THE SAAS SERVICES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA, INCLUDING INVENTORY DATA), EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE AND IRRESPECTIVE OF NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT, CONTRACT LAW, STRICT PRODUCT LIABILITY OR OTHERWISE; OR (B) DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE AMOUNT OF ACTUAL, DIRECT DAMAGES UP TO THE TOTAL AMOUNT PAID TO LOTWING UNDER THIS AGREEMENT.

20. **General Provisions**

- 20.1. **Entire Agreement.** The parties intend that this Agreement represents the final expression of the parties' intent relating to the subject matter of this Agreement, contain all the terms the parties agreed to relating to the subject matter, and replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this Agreement.
- 20.2. **Non-Exclusive Service.** The End User acknowledges that the SaaS Services are provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict LotWing's ability to provide the SaaS Services or other technology, including any features or functionality first developed for the End User, to other parties.
- 20.3. **Assignment.** The End User may not assign this Agreement or any of their rights or obligations under this Agreement without LotWing's written consent.
- 20.4. **Relationship.** This Agreement does not create or imply any agency, partnership, joint venture, employment, franchise relationship between LotWing and the End

User. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

- 20.5. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules.
- 20.6. **Severability.** If any part of this Agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- 20.7. **Successors.** This Agreement shall be binding upon and will inure to the benefit of the Parties hereto and their respective representatives, successors and assigns, except as otherwise provided herein.