

TERMS AND CONDITIONS

For good and valuable consideration, _____ (“Dealership” or “Licensee”) and Strategic Marketing Services, LLC, its affiliates, partners, and agents (“Licensor”) enter into the following Terms and Conditions:

1. **STRATEGICTRACK SYSTEM:** Licensee acknowledges Licensor has developed the StrategicTrack System (the “System”), a multi-channel lead management system, which includes, but is not limited to, direct mail, list analytics, lead generation, web applications, email marketing, and proprietary lead management system, of which Licensor owns exclusive rights to and all intellectual property thereto.

2. **LICENSE GRANT:** In accordance with the Agreement, Licensor grants Licensee a limited non-transferable, non-exclusive License (the “License”) to use the System. The System is licensed and not sold to Licensee. The relationship of the parties is and shall at all times remain that of Licensor and Licensee, nothing in these Terms and Conditions shall be construed as to create or imply an employer-employee or agency relationship.

3. **RESERVATION OF RIGHTS AND OWNERSHIP:** The System and updates of the System are proprietary to Licensor, and all title, rights, and ownership thereto remains with Licensor, including but not limited to, all rights in confidential and trade secret material, trademarks, service marks, patents, copyrights, and other worldwide intellectual property rights (collectively “Proprietary Rights”). Licensee does not have any right, title, or interest in such Proprietary Rights, whether express or implied, arising by estoppel, or otherwise. All rights not expressly granted in these Terms and Conditions and the Agreement are reserved to Licensor.

4. **LICENSE RESTRICTIONS:** The License granted is for a onetime use for the dates specified in the Agreement. Licensee SHALL NOT, directly or indirectly: (i) access or attempt to access any of the System programs or data not expressly available for Licensee’s use under the Agreement; (ii) copy, reproduce, disclose, transmit, distribute or make available to any third party, any documents, materials, data, confidential information, trade secrets, or any other content received or obtained from the System; (iii) create and/or publish any derivative works from the System; (iv) assist or permit any third party to benefit from the use or functionalities of the System; (v) transfer any of rights granted to Licensee under the Agreement; or (vi) otherwise use the System except as expressly permitted under these Terms and Conditions and the Agreement. Any violation of these License Restrictions may result in criminal prosecution to the fullest extent of the law, in addition to all other remedies available to Licensor.

5. **LICENSEE CONDUCT AND CONTENT:** Licensee expressly agrees its use of the License shall be only for those purposes expressly set forth in the Agreement. Licensee shall be responsible for the content of transmissions of any files by virtue of its use of the System and assumes sole responsibility for compliance with all applicable federal and state law concerning the content of the marketing under the Agreement. The Parties reserves the right to take any action it deems necessary or appropriate, in its sole discretion, if it has reason to believe Licensee’s transmission or use of the System is not in compliance with any applicable law or in Licensor’s best interests. Licensee hereby agrees: (1) to comply with all laws, rules, and regulations that may be applicable to the use of the System and transmission of any files, including, but not limited to, the Driver’s Privacy Protection Act, 18 U.S.C. § 2721 et seq., as amended, the Gramm-Leach-Bliley Act (the “GLB Act”), 15 U.S.C. § 6801 – 6810, and any other federal or state laws governing the transmission and/or use of such information generally contemplated under the scope of the Agreement (collectively “federal and state law”); (2) not to use the System or any incidental services for illegal purposes; (3) not to interfere or disrupt networks connected to the System; (4) not to use the System to infringe any third party’s copyright, patent, trademark, trade secret, other proprietary rights, or rights of publicity or privacy; and (5) not to transmit any unlawful, harassing, libelous, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature through the System. Licensee acknowledges Licensor relies upon Licensee’s representations herein.

6. **SYSTEM PROTECTIONS:** The System employs industry standard encryption technology to reduce the probability of an unauthorized interception of customer database / mailing list(s) (collectively “customer database”) maintained or transmitted using the System. Licensee expressly acknowledges and agrees that no form of encryption is foolproof. Licensor shall comply with industry standards and take the same actions to protect such information as it would its own. Licensee acknowledges the transmission of customer database(s) to the System, other than through the proper use of the System may not be secure and Licensor shall not be responsible for any customer database(s) or other information transmitted through any means other than the System. Licensee shall be solely responsible for maintaining the confidentiality and security of any customer database(s) maintained in any location other than on the System (e.g., on Licensee’s hard drive). Licensor shall be responsible to ensure that any confidential information transmitted through the System is secure.

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7. **SYSTEM MODIFICATIONS:** Licensor reserves the right, with or without notice, to make any modifications to the System, at any time, to maintain the security of the System or to comply with any applicable laws governing any aspect of the System, including transmission of customer database(s). Licensee's continued use of the System will constitute Licensee's acceptance of and agreement to any such modifications as may be reasonably necessary in Licensor's sole discretion.

8. **OWNERSHIP OF LICENSEE'S CUSTOMER DATABASE:** Licensee shall have exclusive ownership of all customer database(s) properly transmitted to and/or maintained on the System for storage or otherwise. Customer database(s) shall be used for marketing campaign related activities including data analytics. Licensor is not permitted to sell, rent, release, disclose, disseminate, make available, transfer or otherwise communicate orally, in writing, or by electronic or other means, personal identifiable customers records with a third party. In the event of a loss of Licensee's customer database transmitted to and/or maintained on the System by fire, vandalism, theft, or other cause to which Licensee is not at fault, Licensor will replace the customer database only if Licensee has a duplicate customer database or the source material from which it was compiled, and then only to the extent of reasonable costs involved in replacing such loss. Licensor does not otherwise assume any liability or responsibility for compiling customer database(s), replacement costs, or for any intangible or special value attached thereto.

9. **PROOF APPROVALS:** Licensor will submit proofs of mail pieces for Licensee's review and approval, prior to execution of such pieces. Licensee acknowledges and agrees Licensor retains the right to refuse, at any time, to print or mail any content, photograph, or illustration of any kind requested by Licensee. Licensee shall be responsible for communicating any revisions to Licensor by making such revision directly on the proof, initialing the proof, and timely returning the proof to Licensor. Licensee agrees time is of the essence for proof approval and Licensor shall not be responsible for any delays due to Licensee's failure to make revisions or approval of proofs and mail drops through the U. S. Postal Service. Licensor assumes any communication received from Licensee regarding proofs is authorized by Licensee. Licensor shall not be liable to Licensee or any third party for production errors: (a) undetected by Licensee in proofs; (b) when Licensee requires no proof; (c), the work or pieces are printed per Licensee approval or OK initialing; or (d) if Licensee's request for corrections are communicated orally. Licensee agrees to and shall indemnify Licensor as provided for in Section 12 below, for any and all content contained in any approved proof, including, but not limited to photographs and illustrations.

10. **FAILURE OF PERFORMANCE:** Neither Party shall be liable to Licensee or any third party for any failure of performance under these Terms and Conditions or the Agreement and any addendums thereto, if such failure is due to any cause(s) including, but not limited to, acts of God, fire, terrorism, explosion, vandalism, cable cut, storm or other similar occurrences; any law, order, regulation, direction, action or request of the United States government or of any other state or local governmental sector or of any civil or military authority; national emergencies, insurrections, riots, wars; or strikes, work stoppages or other labor difficulties; reliance upon representations of the other party; changes in specifications; Licensor's failures, shortages, breaches and delays due to U.S. Postal Service.

11. **LICENSEE'S FAILURES:** Any mistakes, accidents, omissions, interruptions, delays, errors or defects in transmission or service which are caused, directly by Licensee or by the use of Licensee-provided facilities or equipment, or by the use of facilities or equipment furnished by any other person using Licensee's facilities (collectively "Licensee's failures"), shall not result in the imposition of any liability upon Licensor.

12. **INDEMNITY:** Licensee hereby agrees, at its own expense, to indemnify, defend and hold Licensor harmless from and against any actual, threatened, pending, or completed, third-party claim, action, allegation, suit, or proceeding, whether civil, administrative, or investigative in nature, brought against Licensor for any loss, claims, damages, penalties, judgments, fines, liabilities, amounts paid in settlement, costs and expenses, including reasonable attorneys' fees through exhaustion of any appeal rights, that result from, arises out of Licensee's actions under this Agreement.

13. **DISCLAIMER OF WARRANTIES:** The System is provided on an "as-is" and "as available" basis. To the maximum extent permitted by applicable law, Licensor, its affiliates, partners, agents, service providers, and distributors disclaim any and all guarantees and/or warranties, express, implied or statutory, regarding the System and any incidental services, including any warranty of fitness for a particular purpose, title, merchantability. Licensee expressly agrees that use of the System is at Licensee's own risk. Licensor makes no warranty that the System and/or incidental services will meet Licensee's requirements or that the service will be uninterrupted, timely or error free, nor does Licensor make any warranty as to the results that may be obtained from use of the System, accuracy of any other information obtained through the System, or that any defects in the System will be corrected. Licensee understands and agrees that any customer database(s) or data uploaded or otherwise transmitted to the System is done at Licensee's own risk, and Licensee will be solely responsible for any damage to any computer system or

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loss of data that results from the transmission of such customer database(s) or data. No information or advice, whether oral or written, obtained by Licensee from Licensor or through the System and/or incidental services shall create any warranty not expressly made herein.

14. LIMITATION OF LIABILITY AND DAMAGES: To the maximum extent permitted by applicable federal and state law, Licensor shall not be liable for any direct or indirect, special, incidental, exemplary, or consequential damages or for any damages relating to loss of profits or business, telecommunication failures, loss, corruption, security or theft of customer database(s) or other data, viruses, spyware, or any other pecuniary loss, incurred by Licensee, or any other third party, whether based in contract, tort, negligence, breach of warranty, strict liability, product liability, and any other theory as a consequence of the use, operation, or support programs of the System or any updates thereto, even if Licensor or its suppliers have been advised of the possibility of such damages. By executing these Terms and Conditions and entering into the Agreement, Licensee acknowledges the extent of Licensor's liability being the amount paid for work performed adjudged to have directly caused the damage is fair, just, and reasonable under the circumstances.

15. CONFIDENTIALITY: By virtue of the License, Licensor shall have access to private and confidential customer information collected and/or maintained by Licensee, including, but not limited to, customer names, addresses, phone numbers, etc. (collectively "customer information"). During the term of the Agreement and anytime thereafter, Licensor shall not, directly or indirectly, disclose or use in any manner, confidential and proprietary information, except as may be necessary in the course of performing services for Licensee or as may be required by law. Upon request of Licensee, Licensor shall immediately return all existing copies of confidential and proprietary information or other material in its control. Licensor agrees to be bound by the terms of the NDA attached and incorporated hereto.

A. All customer information and/or written materials disclosed, made available to, or received by Licensor shall be considered "confidential and proprietary information", disclosed by Licensee in confidence to be maintained and used in accordance with the Driver's Privacy Protection Act (DPPA), 18 U.S.C. & 2721 et. seq., as amended.

B. Licensor shall comply with the applicable provisions of The Privacy Act of 1974, as amended at 5 U.S.C. § 552a, pertaining to the scope of work contemplated under the Agreement.

C. Licensor and Licensee each acknowledge and agree that it will substantially comply with the Gramm-Leach-Bliley Act; 15 U.S.C. §§ 6801 - 6810 ("GLB Act") and the Federal Trade Commission's implementing regulation, Regulation P, 16 C.F.R. Part 313 ("Regulation P"), relating to the authorized use, disclosure, and protection of customers' non-public, personal information. The parties further agree to keep confidential all customer non-public personal information received or obtained from any other party in accordance with the provisions of the GLB Act and Regulation P. Licensor may use customer non-public information received or obtained from Licensee for marketing services, data analytics and other such purposes as may be permitted under 16 C.F.R. §§ 313.14 and 313.15.

D. In the event of an intentional breach by Licensor of any of the provisions of this Section 15, Licensee shall have the right to seek injunctive relief to prevent or restrain any such breach by Licensor, its affiliates, partners, agents, representatives, employees, and/or any party with actual authority to act for Licensor.

E. In the event that the Licensor makes the determination they can no longer meet their obligations under federal or state privacy law relating to customer information then they shall notify the Licensee to inform them of such determination.

16. By executing these Terms and Conditions, Licensee hereby agrees to and shall comply with all rules and regulations set forth in the Strategic Marketing direct mail promotion lucky number and/or key match, if applicable.

17. The representatives for Licensee and Licensor executing this document below each warrant and represent that they have the power and the authority to enter into and execute these Terms and Conditions, and all documents delivered thereto, are valid, binding and enforceable upon them.

18. These Terms and Conditions become effective upon the date of execution by Licensor.

Insurance As a condition precedent to furnishing the Services. Licensor shall present such insurance as Dealer requests. All policies must offer coverage for the services to be provided and Dealer shall be named as an additional insured on such policies. Copies of such insurance policies shall be furnished to Dealer prior to Licensor furnishing any Services. At any time during the term hereof Licensor shall also provide copies of such insurance policies upon request by Dealer If Licensor utilizes a third party to extract the data from Dealer's DMS. Licensor shall have such third party comply with the insurance requirements set forth in this Section 7. Licensor and all those claiming by through or under Licensor shall work with Licensor at their own risk and Licensor and all those- claiming by through, or under Licensor hereby release Dealer and Dealer's agents, owners,

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officers, and affiliates to the fullest extent permitted by law from all claims of every kind, including loss of life, personal or bodily injury, damage to property. Arising directly or indirectly out of, or from, or on account of such Services performed by Licensor for Dealer. The Licensor may change the Privacy Policy at any time. To review the Privacy Policy, go to:
(<https://www.strategicmarketing.com/privacy-policy/>).

COVENANTS REPRESENTATIONS AND WARRANTIES

Upon execution of this Agreement and at the time of providing any Services, Licensor additionally covenants, represents and warrants as follows:

(a) Licensor's business, and all facets of it are in compliance with all applicable federal and state laws, rules or regulations that apply to it Licensor and its employees, contractors, agents, affiliates and assigns, comply with all applicable state and federal laws and regulations, including, without limitations, the CAN SPAM Act of 2003, the Telephone Consumer Protection Act., Regulation Z and Regulation M of the Truth in Lending Act, the Gramm-Leach Bliley Act, and Do-Not-Call Implementation Act of 2003, all as amended.

(b) To the extent the Services include email messages, in addition to complying with all other requirements of the CAN-SPAM Act, within all commercial e-mail sent, there is clear and conspicuous opt-out notice linking to the licensor's hosted unsubscribe page (which such link shall be functional for at least 30 days after the e-mail is sent and which opt out process shall not allow the opt-out option to expire or require the recipient of the e-mail message to do any of the following to opt out: (i) pay a fee, (ii) provide any information other than the recipient's email address and opt out preferences and (iii) take any steps other than sending a reply message or visiting a single website) and a procedure to process unsubscribe requests received by Licensor within ten (10) business days and that all opt-out requests have been communicated, in writing, to Dealer within seven (7) business days of such request. Licensor further represents and warrants that there has never been, and currently are no claims, litigation or other proceedings pending or threatened related to or arising out of a violation of the CAN SPAM Act.

(c) The person executing this Agreement on behalf of Licensor is authorized to execute the Agreement and its terms.

(d) Licensor owns or has the express right to use, free and clear of any claims or rights of others all trade secrets, inventions, Developments, customer lists, patents, copyrights, trademarks, software, proprietary rights of others and other information and know-how (if any) used in its business and in the provision of Services to Dealer and has all licenses or permits required by federal, state or local law relating to the Services.

INDEMNIFICATION Licensor shall defend, indemnify and hold harmless Dealer, its affiliates, insurers, owners, shareholders, directors, officers, employees, agents, successors, and assigns, against any and all losses. Damages, injury (including death), claims, fees, Interest, penalties, fines, causes of action, reasonable attorney fees or costs, or expenses of any kind whatsoever, sustained or incurred, arising directly from the Services and/or this Agreement ("Claims"), including without limitation, Claims arising directly out of Licensor. Its employees, agents, affiliates, and or contractors (collectively the "Indemnitors"), violations of any federal, state and or local laws, rule or regulation, negligence, access and or use of Dealership Data, or the Indemnitors' access to or entry on Dealer's premises. Dealer shall have the right to select counsel of its choice to represent it in resolving any claims covered by this provision.

GOVERNING LAW VENUE. This Agreement shall be governed by the laws of the State of Kentucky in which the Licensor's principal place of business is located, without regard to its conflicts of law provisions Venue for any dispute or legal action, including any arbitration, relating to this Agreement shall be exclusively in the State of Kentucky in which the Licensor's principal place of business is located.

NO USE OF DEALERS NAME. Licensor agrees that it shall not use Dealer's name or trademarks or mention or describe this Agreement or its relationship with the Dealer in any press release, advertising, marketing or promotional materials, or any other publications or public disclosure without Dealers prior written consent.