

TERMS AND CONDITIONS

The terms and conditions listed below govern use of the web-based platform and all related user documentation provided by BCIT, LLC, a Delaware limited liability company that from time to time will do business as Dealer360 (“BCIT”). “Customer” shall mean the entity (e.g., company, corporation, partnership, sole proprietor, etc.) entering into the Agreement with BCIT. Customer and BCIT are each occasionally referred to herein individually as a “Party” or together as the “Parties”. The “Agreement” shall mean the Subscription Agreement (the “Subscription Agreement”) together with these Terms and Conditions.

I. DEFINITIONS

“Agreement” has the meaning set forth in the introductory paragraph.

“Affiliates” means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise.

“Additional Support” has the meaning set forth in Section 5.2.

“BCIT Indemnified Parties” has the meaning set forth in Section 10.2.

“Confidential Information” has the meaning set forth in Section 6.2.

“Creations” means inventions, discoveries, improvements processes, developments, designs, marks, data, computer programs and formulae, creations, original works of authorship, mask works, or methods of conducting business, whether patentable, copyrightable or trademarkable or whether it is protectable as trade secret information or otherwise constitutes proprietary information with value to the disclosing Party.

“Data” means any and all electronic data submitted by Customer to BCIT or its Affiliates.

“Documentation” means without limitation, (a) all of the written, printed, electronic or other format materials published or otherwise made available by BCIT that relate to the functional, operational and/or performance capabilities of the Services; and (b) all user, operator, system administration, technical, support and other manuals and all other written, printed, electronic or other format materials published or otherwise made available by BCIT that describe the functional, operational and/or performance capabilities of the Services.

“Liabilities” has the meaning set forth in Section 10.2.

“Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“Person” means an individual, partnership, limited liability company, association, corporation, or other entity.

“Services” means the online, web-based reporting applications and platform provided by BCIT via the website(s) designated.

“Subscription” means the non-exclusive, non-transferrable, limited right to access and use the Services within the Territory.

“Subscription Agreement” has the meaning set forth in the introductory paragraph.

“Territory” means the United States of America.

Any capitalized terms not defined herein shall have the meaning ascribed to them in the Subscription Agreement. In the event of a conflict between the terms and conditions of the Subscription Agreement and these Terms and Conditions, the Subscription Agreement shall control and govern.

II. SUBSCRIPTION AND USE

2.1 Future Functionality. Customer represents and warrants that its subscription for the Services hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by BCIT, its Affiliates, or their representatives regarding future functionality or features. BCIT may add, modify or terminate any functionality of the Services from time to time in its sole discretion.

2.2 Reservation of Rights. BCIT reserves all rights not expressly granted to Customer and nothing in this Agreement shall be construed as limiting BCIT’s rights in the Services and Documentation including selling, distributing or otherwise using the Services and Documentation within the Territory.

2.3 Prohibited Use. Customer shall not assign, transfer, or sublicense Customer’s rights as a user of, or subscriber to, the Services. Customer will not, without BCIT’s prior written permission, which can be withheld in BCIT’s sole discretion: (i) permit any third parties to access or otherwise use the Documentation; (ii) copy, translate, rent, lease, sublicense, sell, loan, remarket or otherwise transfer the Services or Documentation; (iii) create or distribute derivative works based upon the Services or merge the Services or any portion thereof with any other platform, software or applications; (iv) alter, destroy or remove any proprietary or other legend or restrictive notice; (v) use the Services to develop any platform, application or program having the same primary features or function as the Services; (vi) alter, copy, or duplicate by any means all or any portion of the Services or the Documentation, including, without limitation, any features, functions or graphics thereof; (vii) use the Services or Documentation outside the Territory; (viii) use, link or interface the Services with any equipment, software, data, network or communications system, in any manner or in connection with any function, not specifically authorized by BCIT; (ix) use the Services for the purposes of monitoring the availability, performance or functionality of the Services, or for any other benchmarking or competitive purposes; or (x) use the Services or Documentation for any purposes not specifically contemplated hereunder. Customer shall promptly notify BCIT of any unauthorized use of the Services. Customer shall not use the Services to store or transmit Malicious Code.

2.4 Ownership. Customer acknowledges and agrees that it is entitled to use the Services and Documentation solely by reason of, and in accordance with, the limitations set forth in this Agreement, and that such use shall in no way entitle Customer to claim any ownership, interest or proprietary right in the Services or Documentation under any circumstances. BCIT owns all right, title and interest,

including all intellectual property rights, in and to the Services and the Documentation, including all past, current and future modifications, copies, translations, adaptations, derivative works, corrections, updates, and enhancements thereto whether made by BCIT, Customer or any third party, and the globally unique identifiers (GUIDs) over which the Services are provided. BCIT shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services and/or Documentation any suggestions, enhancement requests, recommendation or other feedback provided by Customer.

2.5 Availability of the Services. BCIT shall use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime, of which BCIT will give at least 24 hours notice via the Services and which will be scheduled during the hours of 11:00pm to 3:00am MST, all to the extent practicable; (ii) any unavailability caused by circumstances beyond BCIT's reasonable control including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terrorism, strikes or other labor disputes, or internet service provider failures or delays. Customer acknowledges that it is Customer's duty and sole responsibility to provide adequate internet service to its desired locations for use of the Services. BCIT shall have no responsibility related to providing internet service or any connectivity or speed issues related to such internet service obtained by Customer.

2.6 Links. This Agreement only applies to the Services, and not to the websites of any other person or entity. BCIT may provide, or third parties may provide, links to other websites or resources. Customer acknowledges and agrees that BCIT is not responsible for the availability of such external sites or resources, and does not endorse (and are not responsible or liable for) any content, advertising, products or other materials on or available from such websites or resources. Customer acknowledges and agrees that, under no circumstances, will BCIT be held responsible or liable, directly or indirectly, for any loss or damage that is caused or alleged to have been caused to Customer in connection with Customer's use of, or reliance on, any content, advertisements, products or other resources available on any other website (regardless of whether BCIT directly or indirectly links to such content, advertising, products or other resources).

III. FEES AND PAYMENTS

3.1 Additional Fees. Additional training, support, and other services Customer may elect to receive shall be billed at BCIT's then-current rates.

3.2 Taxes. Fees payable pursuant to this Agreement are exclusive of any federal, state, municipal or other governmental, occupational, sales, excise, use or similar taxes now in force or which may be enacted in the future. Customer agrees to pay any tax BCIT may be required to collect or pay now or at any time in the future (including interest and penalties imposed by any governmental authority) which are imposed upon any of the transactions contemplated hereby. Such tax will be paid by a commensurate increase in the amounts to be paid to BCIT hereunder. Customer will pay such increased amount within thirty (30) days of invoice. If a certificate of exemption or similar document is to be obtained or any proceeding is to be pursued in order to exempt the applicable transaction(s) from sales or use tax liability, Customer will obtain and pursue such certificate, document or proceedings at its own expense.

3.3 Late Payments. In the event Customer fails to make any payment within thirty (30) days of its due date, BCIT reserves the right to suspend performance of its obligations hereunder, access to Data and/or access and use of the Services. Customer will be responsible for all reasonable expenses (including

reasonable attorneys' fees) incurred by BCIT in collecting any amounts due hereunder. Upon termination of this Agreement by either Party, any amounts owed by Customer to BCIT shall become immediately due and payable. If such amounts are not paid within ten (10) days of termination, the amount due shall accrue interest, calculated from the termination date, as set forth above. Payment obligations hereunder are non-cancellable and Fees paid are non-refundable.

3.4 Pricing Increases for Renewal Terms. The User Fees for the first Renewal Term shall be increased by five percent (5%) over the User Fees for the Initial Term. Thereafter, User Fees for any Renewal Term shall be at BCIT's then-current prices.

IV. TERM AND TERMINATION

4.1 Term. The Term of this Agreement is for one-year from the latter of:

- (a) the date of signing of the Agreement, or
- (b) the date of the first monthly payment.

4.2 Renewal. This Agreement will auto-renew annually on the date specified in Section 4.1 (the Renewal Date) unless cancelled in writing by client 60 days prior to Renewal Date.

4.3 Termination by Customer. Customer may terminate this Agreement in the event that:

(a) BCIT is in breach or default of a material provision of this Agreement and BCIT fails to cure such breach or default within thirty (30) days of its receipt of written notice from Customer of the applicable breach or default; or

(b) BCIT files for bankruptcy and such bankruptcy filing is not withdrawn within ninety (90) days, becomes insolvent, a receiver is appointed for any of BCIT's assets, any assignment is made by BCIT for the benefit of its creditors, or proceedings to reorganize BCIT are instituted.

4.4 Termination by BCIT. BCIT may terminate this Agreement in the event that (a) Customer fails to pay BCIT any Fees or other amounts within ten (10) days of the date such payment was due hereunder;

(b) Customer is in breach or default of a material provision of this Agreement not related to the payment of Fees or other amounts and Customer fails to cure such breach or default within thirty (30) days of its receipt of written notice from BCIT of the applicable breach or default; or

(c) Customer files for bankruptcy and such bankruptcy filing is not withdrawn within ninety (90) days, becomes insolvent, a receiver is appointed for any of Customer's assets, any assignment is made by Customer for the benefit of its creditors, or proceedings to reorganize Customer are instituted; provided, however, that no bankruptcy proceedings filed by Customer will exempt Customer from performing all obligations under this Agreement, including but not limited to, payment of Fees.

4.5 Effect of Termination. Upon any termination of this Agreement, the Subscription shall automatically terminate, Customer shall immediately cease and desist from using the Services and the Documentation, and each Party shall comply with its obligations to return or destroy the other's Trade Secrets and Confidential Information pursuant to Article VI.

V. ADDITIONAL SERVICES

5.1 Maintenance and Support. BCIT will provide Customer with commercially reasonable initial set-up support until the Services are accessible to Customer via the internet. Once the Services are accessible to the Customer via the internet, additional support requested by Client shall be billed at BCIT's then-current rates. Additional support shall be billed in one (1) hour increments, with a minimum charge of one (1) hour per event.

5.2 Additional Services. Additional training, support and other services ("Additional Support") will be provided on an as-available basis. Upon request for Additional Support from Customer, BCIT will determine in its sole and absolute discretion whether to provide such support.

5.3 Exclusions. BCIT's Fees specifically do not include any of the following: (a) reconstruction of the Data; (b) all support rendered outside the type of coverage and period of coverage contracted and paid for; (c) support of accessories, attachments or products not specified herein or on subsequent orders; (d) support for any third party software; and (e) any other support or services not specifically covered by this Article V.

VI. CONFIDENTIALITY

6.1 Receipt and Treatment of Confidential Information. Each Party acknowledges and agrees that it may receive Confidential Information (as defined below) which is the exclusive property of the disclosing Party. During the Term and at all times thereafter, the receiving Party and its employees and agents will maintain the confidentiality of all Confidential Information and take all reasonable steps and precautions to maintain the confidential and proprietary nature of the Confidential Information, including limiting access to any such Confidential Information to those employees and agents having a specific need for such access in the performance of their duties, consistent with the purpose of this Agreement, and, if requested by the disclosing Party, shall obtain the agreement, enforceable by the disclosing Party from any employees and agents given such access, sufficient to maintain the confidentiality and trade secret protection. Each Party agrees to be jointly and severally liable to the other for any breach by its employees or agents of said agreements. Each Party further agrees as follows:

(a) it will not remove, obscure, alter, or permit to be removed from, any notice of copyright, patent, trademark, or any other notice of proprietary right from the Confidential Information of the other Party;

(b) it shall ensure that notices or proprietary rights are reproduced on every backup copy made of any Confidential Information of the other Party; provided, however, this provision shall not imply that Customer is permitted to copy or duplicate by any means the Services or any part thereof without the prior written consent of BCIT.

(c) it will not sell, license, publish, copy, display, distribute, disclose or otherwise make available or communicate the Confidential Information of the other Party or any part thereof to any third party nor use such information except as authorized by this Agreement.

6.2 Definition of Confidential Information. "Confidential Information" means any trade secret, proprietary or other information, in whatever form or format, of the disclosing Party and includes, without limitation: Creations, processes, techniques, methodologies, formulae, processes, compilations

of information, research and development data, source code, object code, drawings, proposals, job notes, reports, records, specifications, prices it obtains or has obtained, or pays or has paid, for the licensing of products and services, customer lists and related customer information, contract terms, contracting policies, sales data, sales programs, budgets, business plans, financial information and data, personnel and payroll data, or any other information concerning the business of the disclosing Party and the disclosing Party's good will; including information provided to the disclosing Party from its Affiliates, clients or customers that is subject to a confidentiality obligation. Confidential Information shall not include (a) information that was known to the receiving Party prior to the Effective Date as demonstrated by the receiving Party with competent evidence, (b) information independently developed without the use of Confidential Information as demonstrated by the receiving Party with competent evidence, (c) information which is or becomes publicly known through no breach of this Agreement or any other confidentiality agreement relating to Confidential Information, or (d) is required to be disclosed pursuant to a valid subpoena or court order, provided that the receiving Party cooperates with the disclosing Party in seeking a protective order and in obtaining the maximum extent of confidentiality protection reasonably available.

6.3 Return and Destruction. Promptly, but no more than ten (10) days, following termination of this Agreement, all Confidential Information embodied in any tangible medium that was disclosed or otherwise delivered under the terms of this Agreement shall be returned to the disclosing Party and, if not in a tangible medium (e.g., an electronic medium), such Confidential Information shall be removed, deleted or otherwise destroyed and certification of such removal, deletion or destruction shall be provided to the disclosing Party.

6.4 Equitable Relief. Each Party acknowledges and agrees that the Confidential Information is of a special, unique and extraordinary character and that any violation of this Article VI will constitute a material breach of this Agreement resulting in irreparable injury and damage to the disclosing Party. Each Party agrees that, in addition to any and all other rights available to the disclosing Party by law or by this Agreement, the disclosing Party will be entitled to equitable relief, including an injunction entered against the receiving Party to enjoin any further violations of this Agreement. No bond or other security shall be required in connection with any injunction.

VII. CUSTOMER MODIFICATIONS; CUSTOMER DATA

7.1 No Modifications. Customer will not alter, enhance, improve or otherwise attempt to modify any part of the Services or Documentation.

7.2 Modifications Inure to BCIT's Benefit. Any alteration, enhancement, improvement or other modification made by Customer to the Services or the Documentation will inure solely to BCIT's benefit.

7.3 Assignment of Modifications to BCIT. If by operation of law or otherwise, ownership of any right, title or interest in any alteration, enhancement, improvement or other modification made by Customer or a person under Customer's control to the Services or the Documentation does not vest automatically and exclusively in BCIT by virtue of this Article VII, Customer hereby irrevocably assign, or will cause any person under its control deemed to possess such rights to assign, to BCIT its or their entire right, title and interest thereto and Customer will execute, or cause any person under its control deemed to possess any rights in such items, to execute and deliver to BCIT all proper assignments and other instruments of conveyance as BCIT deems appropriate to vest it with all such right, title and interest.

7.4 Delivery of Modifications to BCIT. Customer will promptly deliver any alterations, enhancements, improvements or other modifications to BCIT.

7.5 Customer's Data. Customer shall be solely responsible for the accuracy, quality, integrity and legality of the Data and the means by which it acquired the Data. Customer shall retain all right, title and interest in and to the Data. Customer shall provide the Data to BCIT in the form required by BCIT from time to time. BCIT acknowledges and agrees that it will only access, copy and/or use the Data only for the provision of the Services and for the purposes contemplated by this Agreement. Customer represents and warrants that it has all rights and authority to the Data to grant the rights and approvals set forth herein, and that Customer grants BCIT a non-exclusive, non-terminable, royalty-free license to use and distribute the Data in connection with the Services.

VIII. REPRESENTATIONS AND WARRANTIES

8.1 BCIT Representations and Warranties. BCIT represents and warrants that: (a) it is duly organized and validly existing under the laws of its state of incorporation or formation and has full power and authority to enter into this Agreement and to carry out the provisions hereof; (b) the execution, delivery, and performance of this Agreement by BCIT does not conflict with any agreement, instrument or contract, to which BCIT is bound; and (c) any services provided to Customer hereunder will be provided in a professional and workmanlike manner consistent with industry standards within a commercially reasonable time.

8.2 BCIT DISCLAIMER OF WARRANTIES. THE ABOVE WARRANTIES ARE LIMITED WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND BCIT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF (a) MERCHANTABILITY, (b) FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES, THE DOCUMENTATION OR ANY BCIT SERVICES PROVIDED HEREUNDER OR (c) TITLE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BCIT SHALL CREATE A WARRANTY. BCIT DOES NOT WARRANT THAT THE SERVICES OR ANY FUNCTION CONTAINED IN THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICES OR THE SERVICES THAT MAKE THE SERVICES AVAILABLE ARE FREE OF MALICIOUS CODE. FURTHER, BCIT MAKES NO WARRANTIES UNDER THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE OR THAT ANY INFORMATION COLLECTED, COMPILED, PROCESSED, PROVIDED OR TRANSMITTED IS ACCURATE IN CONTENT.

8.3 Customer Representations and Warranties. Customer represents and warrants that: (a) it is duly organized and validly existing under the laws of its state of incorporation or formation and has full power and authority to enter into this Agreement and to carry out the provisions hereof; (b) the execution, delivery, and performance of this Agreement by Customer does not conflict with any agreement, instrument or contract, to which Customer is bound; (c) it shall comply with all applicable laws, regulations and rules; and (d) it will not transmit to BCIT any Malicious Code. Customer also agrees and acknowledges that it assumes full responsibility for the overall effectiveness and efficiency of the operating environment in which the Services is to function.

IX. LIMITATION OF LIABILITY

OTHER THAN A BREACH OF SECTION 2.4, ARTICLE VI, OR ARTICLE VII IN THE PERFORMANCE OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST OR ANTICIPATED PROFITS, LOST DATA, OR INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THIS AGREEMENT, UNDER ANY CIRCUMSTANCES, WHETHER BASED IN TORT OR BREACH OF CONTRACT OR ON ANY OTHER BASIS REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL BCIT'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO BCIT PURSUANT TO THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE ACT GIVING RISE TO THE CLAIM FOR DAMAGES.

X. INDEMNIFICATION

10.1 Intellectual Property Indemnity. BCIT shall, except as otherwise provided below, indemnify, and hold Customer harmless, and defend or settle any claim made or any suit proceeding, including reasonable attorney's fees, brought against Customer arising out of or relating to an allegation that the Services or the Documentation infringes a patent, copyright, trademark, or trade secret of any third party. Customer shall (a) promptly notify BCIT in writing of any such claim, (b) reasonably cooperate with BCIT in connection with the defense of such claim, and (c) give BCIT the sole authority to defend or settle the claim (at BCIT's expense). Subject to Article IX, BCIT shall pay all damages and costs finally awarded in any such suit or proceeding against Customer, or any settlement amount required to settle the claim. In the event the Services and/or the Documentation, as applicable, is held to infringe and the use of same is enjoined, BCIT may in its reasonable judgment and at its sole option and expense: (a) obtain for Customer the right to continue using the Services; (b) replace or modify the Services so that it becomes non-infringing while giving equivalent performance; or (c) if the remedies in (a) and (b) are not commercially feasible, BCIT may, at its sole option, terminate the Subscription for the infringing Services. Customer shall comply with any settlement or court order made in connection with such proceeding (e.g., as to the future use of any infringing Services). BCIT's obligation under this paragraph shall not apply to the extent any infringement claims arise from: (a) use of the Services other than in accordance with the Documentation and the terms of this Agreement; or (b) Customer's Data.

10.2 General Indemnity.

(a) BCIT Indemnification of Customer. BCIT shall indemnify, defend and hold Customer harmless from and against any and all liabilities, claims, demands, damages, costs and expenses or money judgments, including, without limitation, reasonable attorneys' fees ("Liabilities") asserted against, incurred by or rendered against it from third party claims or actions arising from BCIT's gross negligence, willful misconduct or breach of this Agreement. Notwithstanding the foregoing, BCIT

shall have no obligation to indemnify Customer for any Liabilities to the extent caused by Customer's gross negligence, willful misconduct, or breach of this Agreement.

(b) Customer Indemnification of BCIT. Customer shall indemnify, defend and hold BCIT, its Affiliates, and each of their respective officers, directors, stockholders, members managers, employees and agents (collectively, the "BCIT Indemnified Parties") harmless from and against any and all Liabilities asserted against, incurred by or rendered against it from third party claims or actions arising from Customer's use of the Services and the Documentation, or Customer's gross negligence, willful misconduct or breach of this Agreement. Notwithstanding the foregoing, Customer shall have no obligation to indemnify the BCIT Indemnified Parties for any Liabilities to the extent caused by BCIT's gross negligence, willful misconduct, or breach of this Agreement.

XI. REMEDIES

11.1 BCIT's Remedies. If Customer breaches or defaults under any provision of this Agreement and such breach or default is not cured within any applicable cure period, BCIT may: (i) terminate this Agreement and all support services by providing ten (10) days prior written notice to Customer; (ii) deactivate Customer's access to the Services; and (iii) take any and all other actions at law or equity to enforce Customer's performance of the applicable covenants contained herein or to recover damages for Customer's breach thereof.

11.2 Customer's Remedies. If BCIT breaches or defaults under any provision of this Agreement and such breach or default is not cured within any applicable cure period, Customer may: (a) terminate this Agreement and all support services by providing ten (10) days prior written notice to BCIT; (ii) provided that BCIT's breach or default is not caused by, or in response to, Customer's breach or default, take any and all other actions at law or equity to enforce BCIT's performance of the applicable covenants or to recover damages, as same may be limited by this Agreement, for the breach thereof.

11.3 Remedies Not Exclusive. The remedies provided for herein are cumulative and are in addition to all other remedies BCIT or Customer may have under applicable law.

XII. GENERAL PROVISIONS

12.1 Assignment. Customer shall not sell, assign or transfer this Agreement or any right or obligation hereunder without the prior written consent of BCIT, which consent may be withheld in BCIT's sole discretion. No such assignment shall relieve Customer of liability hereunder or extend the Subscription granted herein in any way. BCIT may assign this Agreement in its sole discretion without the consent of Customer. Notwithstanding the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties to the extent permitted herein.

12.2. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be deemed replaced as to such jurisdiction, with a valid and enforceable provision as similar as possible to the one replaced, or if it would be impossible to so replace the offending provision, it shall be deemed stricken from this Agreement and the balance of the Agreement shall remain in full force and effect. Any prohibition or unenforceability of a provision in any jurisdiction shall not invalidate or render the unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereby waive any provisions of law, which render any provision hereof prohibited or unenforceable in any such respect, but all of the provisions of this Agreement shall be enforced to the fullest extent permitted under applicable law.

12.3 Notices. All notices hereunder shall be in writing and shall be deemed given when sent by certified mail or registered mail, return receipt requested, postage prepaid, or by reputable overnight courier addressed to the other Party at its address set forth in the Subscription Agreement, or to such other address as either Party may designate in writing.

12.4. Entire Agreement. This Agreement, including, without limitation, the Subscription Agreement, any exhibits thereto, and these Terms and Conditions constitute the entire agreement between BCIT and Customer with respect to the subject matter hereof and thereof and supersede all previous communications, letters of understanding, and agreements, whether oral or written, between the Parties with respect to such subject matter.

12.5 Amendments. No provision of the Subscription Agreement may be changed, waived, amended or terminated except by written agreement specifying such change, waiver, amendment, or termination signed by both BCIT and Customer. Notwithstanding anything contained in the Agreement to the contrary, BCIT may amend these Terms and Conditions at any time by notifying Customer in writing that these Terms and Conditions have been amended or by posting the revised Terms and Conditions to the Website, in BCIT's sole discretion. Any waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.

12.6 Governing Law. This Agreement shall be governed by and construed in accordance with laws of the State of Colorado applicable to contracts as if wholly made and to be wholly performed in such State without regard to the conflict of law principals thereof.

12.7 Jurisdiction and Venue. Venue for any proceeding or dispute arising between any Parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be the City and County of Denver, Colorado. The Parties hereby consent to the exclusive jurisdiction of the federal and state courts of the State of Colorado, and waive any contention that any such court is an improper venue for enforcement of this Agreement.

12.8 Legal Fees. If any dispute arises between the Parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing Party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

12.9 Relationship of Parties. Each Party shall perform its obligations hereunder as an independent contractor. This Agreement shall not create a joint venture, partnership or principal and agent relationship between the Parties.

12.10 Force Majeure. If the performance of either Party is delayed or prevented at any time due to circumstances beyond its control, including, without limitation, those resulting from labor disputes, fire, floods, riots, civil disturbances, catastrophic weather conditions, control exercised by a governmental entity, unavoidable casualties or acts of God or a public enemy, performance will be excused for the period of delay caused by such event provided the party seeking to excuse its performance has used diligent efforts to timely perform notwithstanding such event and promptly notifies the other party of the occurrence thereof.

12.11 Survival. Articles III, VI, VII, VIII, IX, X, XII and all other provisions of this Agreement which may reasonably be interpreted or construed as surviving the termination of this Agreement shall survive the termination of this Agreement.

12.12 Headings. The headings and captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

12.13 Waiver of Jury Trial. THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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