

# Master Services Agreement

This Master Services Agreement (the "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is by and between Canadian International Auto Show Ltd. an Ontario corporation with offices located at 50 Leek Crescent, Suite 2B, Richmond Hill, Ontario L4B 4J3 ("**Provider**"), and [CUSTOMER NAME], [a/an] [Province/Territory] [corporation/limited partnership] with offices located at [ADDRESS] ("**Customer**").

WHEREAS, Provider is in the business of providing website portal hosting services and related services and facilities; and

WHEREAS, Customer wishes to procure from Provider the Services defined and described herein, and Provider wishes to provide such Services to Customer, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

"**Action**" has the meaning set forth in Section 13.1.

"**Acceptance Tests**" has the meaning set forth in Section 3.2.

"**Agreement**" has the meaning set forth in the preamble.

"**Alberta OIPC**" means the Office of the Information and Privacy Commissioner of Alberta.

"**AB PIPA**" means the *Alberta Personal Information Protection Act*, S.A. 2003, c P-6.5.

"**BC PIPA**" means the *British Columbia Personal Information Protection Act*, S.B.C. 2003, c. 63.

"**Confidential Information**" means, with respect to a party, information that such party treats as confidential or proprietary, including trade secrets, technology, and information pertaining to business operations, strategies, customers, pricing, marketing, and information that such party is contractually or otherwise legally obligated to treat as confidential. Without limiting the foregoing, Customer's Confidential Information includes: (a) Platform Content; (b) Personal Information; (c) Usage Data; and (d) the terms of this Agreement.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Indemnitee**" has the meaning set forth in Section 13.1.

"**Customer Materials**" means, collectively, or individually any of, the Platform, Platform Content, Personal Information, and Usage Data.

"**Customer Service Provider**" has the meaning set forth in Section 2.3.

"**Disclosing Party**" has the meaning set forth in Section 7.1.

"**Effective Date**" has the meaning set forth in the preamble.

"**End User**" means any individual who accesses or uses the Platform via the internet.

"**Fees**" has the meaning set forth in Section 9.1.

"**Force Majeure Event**" has the meaning set forth in Section 15.1.

"**Harmful Code**" means any: (a) virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive Customer of its lawful right to use such computer program.

"**Hosting Environment**" means the Primary Hosting Environment and/or the Secondary Hosting Environment.

"**Hosting Services**" means the website portal hosting and related services set forth in Section 4 and described more fully in Schedule A.

"**Indemnified Party**" has the meaning set forth in Section 13.3.

"**Indemnifying Party**" has the meaning set forth in Section 13.3.

"**Initial Term**" has the meaning set forth in Section 11.1.

"**Intellectual Property Rights**" means all or any intellectual property rights in any part of the world, whether registered or unregistered, and including all applications for and renewals or extensions of such rights, including rights comprising or relating to: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, domain names, and similar designations of source, sponsorship, association, or origin, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs); and rights in data and databases; (d) trade secrets, know-how, and other confidential information; and (e) all similar or equivalent rights and forms of protection.

"**Launch Date**" means the date the Platform is first available to End Users through the Hosting Services.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any federal, provincial, territorial, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Losses**" mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable legal fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**OPC**" means the Office of the Privacy Commissioner of Canada.

"**Operational Period**" means the period running from February 11-22, 2021.

"**Person**" means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, governmental authority, or any other entity.

"**Personal Information**" means any personal information as defined in PIPEDA about an identifiable individual, information that identifies, can identify or confirm the identity of, or is otherwise associated with, a specific individual or device, including information: (a) from which a specific individual or device can be located or contacted; or (b) that identifies a specific individual's or device's behaviour on the internet, including use of the Platform or other materials. Personal Information includes any of the information described in the preceding sentence that is provided by, through, or on behalf of Customer or the identified or identifiable individual, and information collected by or through the use of network or other tracking technology, including personal information Usage Data.

"**PIPEDA**" means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

"**Primary Hosting Environment**" means all servers, server software, hosting platforms, storage space, telecommunications connectivity and equipment, and other hardware, software, technology, and other materials Provider is required to, or otherwise does, use, provide, or provide access to as part of the routine day-to-day Hosting Services, but specifically excluding the Secondary Hosting Environment.

"**Provider**" has the meaning set forth in the preamble.

"**Quebec Act**" means the *Quebec Act respecting personal information in the private sector*, CQLR, c. P-39.1.

"**Receiving Party**" has the meaning set forth in Section 7.1.

"**Representatives**" means a party's employees, officers, agents, and legal advisors. Customer's Representatives also includes Customer's service providers and independent contractors.

"**Secondary Hosting Environment**" means all servers, server software, hosting platforms, storage space, telecommunications connectivity and equipment, and other hardware, software, technology, and other materials Provider is required to, or otherwise does, use, provide, or provide access to as part of the routine day-to-day Hosting Services, but specifically excluding the and/or the Primary Hosting Environment.

**"Service Error"** means a failure of the Hosting Services to perform in accordance with the Specifications.

**"Services"** means, collectively, the Hosting Environment, Hosting Services, Support Services, and all related services Provider is required to, or otherwise does, provide under this Agreement.

**"Specifications"** means the specifications for the Services set forth in Schedule A.

**"System Ready Date"** has the meaning set forth in Section 3.1.

**"System Ready Notice"** has the meaning set forth in Section 3.1.

**"Term"** has the meaning set forth in Section 11.1.

**"Testing Period"** has the meaning set forth in Section 3.2.

**"Usage Data"** means any information regarding access to or use of the Platform or any of its features or functionality, including information that is collected automatically through cookies or other tracking technology, whether or not such information does or is capable of identifying a single user, account, device, or organization.

**"Platform"** means the address of the portal described herein to be hosted by Provider hereunder so that it is accessible by End Users and via which the Customer may provide access to and make available the Platform Content during the Term.

**"Platform Content"** means all audio, visual, audiovisual, and digital content and information provided by or on behalf of Customer or any End Users to be included on, or delivered by or through, the Platform, including illustrations, graphics, photographic images, music, sound effects, lyrics, narration, text, film, data, video, animation, characters, interface layouts, designs, and downloadable software code, whether or not the same qualify for or are protected by any Intellectual Property Rights.

## 2. Service Management.

2.1 Service Liaisons. Throughout the Term and any Migration Period, each party shall employ a service liaison with the necessary qualifications, skill, and organizational authority to serve as such party's primary point of contact for day-to-day communications, consultation, decision-making, consents, and approvals regarding the Services, and shall identify such liaison to the other party. Either party may change its service liaison upon written notice to the other party.

2.2 Third-Party Facilities and Services. Except as may be expressly set forth in Schedule A or Customer otherwise consents in writing, Provider shall perform all Services on its own premises and using (a) servers and equipment that are solely owned, or otherwise controlled, and maintained by Provider, and (b) the services of its own employees.

2.3 Customer Service Providers. Provider acknowledges and agrees that Customer may engage third parties to perform services related to the Platform (each, a "**Customer Service Provider**") and that all rights and licences granted to Customer hereunder may be exercised by any Customer Service Provider in the performance of services to Customer related to the Platform. Provider shall reasonably cooperate with all such Customer Service Providers to the extent reasonably required hereunder as if their functions were being performed by Customer's employees, *provided that* all such Customer Service Providers enter into confidentiality agreements and comply with Provider's policies for accessing Provider's premises and systems. Customer shall be responsible and liable for all acts and omissions of the Customer Service Providers.

3. Portal Environment.

3.1 Primary Hosting Environment Set-up. Promptly after the Effective Date, Provider shall build and configure the Primary Hosting Environment so it is available for Customer to upload the Platform Content on or prior to January 15, 2021 (the "**System Ready Date**"). Promptly after the Primary Hosting Environment is ready, Provider shall provide written notice thereof to Customer's service liaison and such other persons as Customer may designate (the "**System Ready Notice**") and provide Customer with secure, password protected administrative access to the Primary Hosting Environment to allow Customer to transmit, upload, and test the Platform.

3.2 Acceptance Testing and Acceptance. Upon receipt of the System Ready Notice, Customer shall promptly upload its Platform Content or provide the same to Provider to upload to the Primary Hosting Environment for testing by Customer in accordance with this Section 3.2 to ensure the Primary Hosting Environment conforms to and performs adequately ("**Acceptance Tests**"). Customer will have seven (7) days to conduct Acceptance Tests ("**Testing Period**"). On Customer's request, Provider shall make suitable employees available to observe or participate in such Acceptance Tests and otherwise cooperate with and assist Customer in connection with the Acceptance Tests.

- (a) Promptly upon the completion of Acceptance Tests, Customer shall notify Provider in writing of its acceptance or, if it has identified any Non-Conformity(ies), rejection of the Primary Hosting Environment. Customer shall include in any rejection notice a reasonably detailed description of the tests conducted, the tests' results, and each identified issue. The Primary Hosting Environment will be deemed accepted by Customer upon the expiration of any Testing Period if Customer has not delivered a notice rejecting the Primary Hosting Environment prior thereto.
- (b) Following receipt of a rejection notice, unless such notice is accompanied by Customer's termination notice pursuant to the proviso set forth in Section 3.2(c), Provider shall make such modifications to the Primary Hosting Environment as are necessary to remedy all Non-Conformities as promptly as commercially possible and, in any case, within seven (7) days after the date of such receipt, and shall notify Customer in writing on completion of these

modifications, whereupon Customer will have an additional Testing Period to conduct Acceptance Tests.

- (c) The parties shall repeat the process set forth in Section 3.2(a) and Section 3.2(b) until Customer's acceptance (including deemed acceptance) of the Primary Hosting Environment, *provided that*, if Provider fails more than once to timely remedy a Non-Conformity, Customer may terminate this Agreement by providing, together with its rejection notice, termination notice pursuant to Section 11.2(b)(i).

### 3.3 Hosting Environment Changes.

- (a) Subject to Section 3.3(b), Provider shall, at its sole cost and expense, provide such additional servers, storage, bandwidth, and other facilities as may be necessary to provide the Hosting Services. Such obligation includes repairing and replacing hardware and software as necessary for such performance.
- (b) Customer shall notify Provider in writing if Customer wishes to make changes to the Hosting Services that may require changes to the Hosting Environment, including changes to support levels of Platform usage or add performance or new Platform features and functionality. Upon receipt of any such Notice, Provider shall promptly prepare and submit to Customer its proposal for Hosting Environment changes, if any, setting forth any cost to Customer for implementing such changes. Upon receipt of Customer's written approval of such changes, Provider shall promptly implement the same.
- (c) Provider shall at all material times maintain a Secondary Hosting Environment for back-up and redundancy purposes.

4. Services. After Customer completes Acceptance testing and for the duration of the Term, Provider shall perform the Services set forth in this Section 4 and Schedule A as set forth herein and therein, on a timely basis and in accordance with all provisions of this Agreement.

4.1 Administrative Access and Content Control. Customer has the right and responsibility to administer and manage its Platform Content as uploaded to the Platform, via the Provider.

- (a) Provider shall provide Customer with secure, password-protected administrative access to the Hosting Environment sufficient to allow Customer to transmit, upload, test, and implement updates, upgrades, enhancements, additions, and deletions of or to the Platform Content.

### 4.2 Service Monitoring.

- (a) During the Term and the Operational Period, the Provider shall actively monitor the Hosting Environment and Hosting Services to ensure ongoing performance of the Hosting Services.

- (b) If such monitoring identifies or Provider otherwise becomes aware of any material circumstance that, if not remedied, is reasonably likely to cause a Service Error, Provider shall take all commercially reasonable measures that are reasonably necessary to remedy such circumstance or otherwise prevent it from causing such Service Error.

4.3 Service Maintenance. Provider shall continuously maintain the Hosting Environment to ensure ongoing performance of the Hosting Services. Provider shall take all reasonable steps to perform all routine maintenance during non-peak usage hours.

5. Redundancy, Back-Ups, and Disaster Recovery.

5.1 Back-Up and Reporting. Provider shall back-up the Platform, including the Platform Content uploaded thereto and available to Provider for back-up, Usage Data, and Personal Information, regularly before and during the Operational Period.

6. Security; Personal Information and Usage Data; Data Breach Procedures.

6.1 Security. Provider shall employ sufficient security measures to ensure reasonable limits on unauthorized access to the Hosting Environment and Customer Materials, including all Platform administrative functionality (including any administrative tools, applications, or facilities).

6.2 Personal Information and Usage Data. Provider acknowledges that all Usage Data is Customer's Confidential Information. Provider shall not collect, store, process, record, reproduce, transfer, disclose, use, or perform any other acts, or cause, authorize, or permit any Person to undertake any of the foregoing, with respect to any Usage Data or Personal Information, other than as strictly necessary to perform the Services for the benefit of Customer in accordance with the terms and conditions of this Agreement and, *provided, that* any Person receiving access to Personal Information or Usage Data is bound by written confidentiality agreements that are at least as protective of, and impose such obligations with respect to, such information as are set forth in Section 6 and Section 7 of this Agreement. Customer acknowledges and agrees that it is the controller of all Personal Information.

6.3 Data Breach Procedures. Customer shall with respect to any breach of security of Personal Information:

- (a) if PIPEDA, BC PIPA, or the Quebec Act applies to it and it is reasonable to believe that the breach creates a real risk of significant harm to an individual, as soon as feasible after discovering the breach, notify (i) the affected individual by any means of direct notification unless prohibited by law or notification could cause further harm, and (ii) the OPC in writing. Customer shall also keep records of the data breach for 24 months from the date of the breach and provide the OPC with access to these records;
- (b) if AB PIPA applies to it, in addition to the requirements of Section 6.3(a), notify the Alberta OIPC without unreasonable delay if an incident both: (i)

involves the loss, unauthorized access to, or disclosure of Personal Information; and (ii) creates a real risk of significant harm to an individual;

- (c) maintain a data breach plan that meets the criteria set forth in Schedule F; and
- (d) promptly implement the procedures required under such data breach plan upon the occurrence of a Data Breach (as defined in such plan).

## 7. Confidentiality.

7.1 Obligation of Confidentiality. Each party (for purposes of this Section 7, the "**Receiving Party**") acknowledges that in connection with this Agreement it may gain access to Confidential Information of the other party (for purposes of this Section 7, the "**Disclosing Party**"). As a condition to being furnished with access to the Disclosing Party's Confidential Information, the Receiving Party shall:

- (a) not use the Disclosing Party's Confidential Information other than as strictly necessary to exercise its rights or perform its obligations under this Agreement;
- (b) not use the Disclosing Party's Confidential Information, directly or indirectly, in any manner to the detriment of the Disclosing Party or to obtain any competitive benefit with respect to the Disclosing Party;
- (c) not disclose the Disclosing Party's Confidential Information, *provided, however, that* the Receiving Party may disclose the Disclosing Party's Confidential Information to its Representatives that: (i) have a "need to know" for purposes of the Disclosing Party's performance under this Agreement; (ii) have been informed in writing of this restriction; and (iii) are themselves bound by written non-disclosure agreements at least as restrictive as those set forth in this Section 7; and
- (d) safeguard the Disclosing Party's Confidential Information from use by or disclosure to anyone other than as permitted by this Agreement employing at least the same degree of care it uses to protect its own similarly Confidential Information, but no less than a reasonable degree of care.

The Disclosing Party is responsible for ensuring its Representatives' compliance with, and shall be liable for any breach by its Representatives of, this Section 7.

## 7.2 Exclusions and Exceptions.

- (a) Subject to Section 7.2(b), the provisions of Section 7.1 do not apply to a Receiving Party with respect to information that: (i) was already known to the Receiving Party without restriction on use or disclosure prior to its receipt of or access to such information in connection with this Agreement; (ii) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or any of its



Representatives; (iii) was or is received by the Receiving Party from a third party who was not or is not, at the time of such receipt, under any obligation to the Disclosing Party or any other Person to maintain the confidentiality of such information; or (iv) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party's Confidential Information.

- (b) Notwithstanding any other provisions of this Agreement, none of the exclusions set forth in Section 7.2(a) apply to any: (i) Personal Information or Usage Data, whether: (A) controlled by or provided by or on behalf of Customer or any End User; or (B) generated or derived from operation of, access to, or use of the Platform or Hosting Services; or (ii) information that is based on or derived from any such Usage Data or Personal Information, in each case, regardless of whether such Personal Information or Usage Data may be publicly available or otherwise would, but for this Section 7.2(b), qualify for exclusion under Section 7.2(a).
- (c) For clarity, Section 7.2(b) does not prohibit or limit Provider from any use or disclosure of any: (i) information that may be the same as any Personal Information obtained by Provider through the Platform or otherwise through Provider's provision of the Hosting Services but which Provider can demonstrate by documentary evidence was: (A) obtained by Provider independently from the Platform or otherwise through Provider's provision of the Hosting Services, and (B) at all times maintained separately from and not in any way combined, commingled, compared, benchmarked, or in any way associated with any Personal Information obtained by Provider through the Platform or otherwise through Provider's provision of the Hosting Services; or (ii) anonymous statistics that may include or are derived from certain Personal Information or Usage Data but are aggregated with information and data from sufficient other sources so that no individual, entity, product, or service is identifiable therefrom.
- (d) If a Receiving Party becomes compelled by applicable Law to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall: (i) promptly notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 7.1; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Receiving Party waives compliance or, after providing such notice and assistance as required herein, remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

8. Customer Obligations.

8.1 Platform Content. As between the parties, Customer has sole control over and responsibility for its Platform Content. Customer shall not knowingly include, or allow to be included, in its Platform Content, any materials that Customer knows to:

- (a) infringe or otherwise violate any Intellectual Property Right of any third party;
- (b) be libelous or otherwise defamatory or invade any right of publicity, personality, or privacy of any third party; or
- (c) contain any Harmful Code.

9. Fees, Expenses, and Payment.

9.1 Fees. In consideration of Provider's provision of the Services and other undertakings hereunder, Customer shall pay Provider fees ("**Fees**") as follows:

- (a) **[TBD between the Parties]**

9.2 Payment.

- (a) Customer shall pay all Fees to Provider at least sixty (60) days prior to the start of the Operational Period.
- (b) In the event payments are not received by Provider after becoming due, Provider may suspend performance of all Services until payment has been made in full.

9.3 Taxes. All fees set forth herein are exclusive of applicable taxes.

9.4 Customizations. If Customer requires any customization of the Platform to display its Platform Content and if such customizations are particular to the Customer then Provider and Customer shall agree upon a framework contribution from Customer to cover (or partially cover) the cost thereof, and such customizations shall not proceed without approval by the Parties of the costs and apportionment thereof.

10. Intellectual Property Rights.

10.1 Hosting Environment. As between Customer and Provider, Provider is, and will remain, the sole and exclusive owner of all right, title, and interest in and to the Hosting Environment, including all Intellectual Property Rights therein. Provider hereby grants to Customer a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license throughout the world during the Term and use via such access the Hosting Environment in connection with the Hosting Services. Customer may grant sublicenses in all or any of the foregoing to Customer Service Providers solely to enable such Customer Service Providers to perform services to Customer in connection with the Platform or the Hosting Services.

10.2 Customer Materials. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to the Customer Materials, including all Intellectual Property Rights relating thereto. Subject to the terms and conditions of this Agreement, Customer hereby grants Provider a limited, royalty-free, fully paid, non-exclusive, non-transferable, and non-sublicensable licence with respect to the Customer Materials solely to:

- (a) Make available to End Users via the internet such portions of the Platform and Platform Content as such End Users are entitled to access in accordance with applicable Terms of Use;
- (b) Store, archive, and make accessible to Customer and each End User, in accordance with Customer's access controls, such End User's Personal Information; and
- (c) Otherwise comply with Provider's obligations under this Agreement, including Provider's obligations hereunder with respect to data privacy, retention, security, back-up, archiving, and disaster recovery.

Subject solely to the foregoing licence, Customer reserves all rights relating to the Customer Materials.

## 11. Term and Termination.

11.1 Term. The term of this Agreement commences as of the Effective Date and, unless earlier terminated pursuant to any of the Agreement's express provisions, continues in effect until the end of the Operational Period (the "**Term**").

### 11.2 Termination.

- (a) Either Party may terminate this Agreement at any time without cause by providing at least sixty (60) days' prior written notice to the other party.
- (b) Either party may terminate this Agreement, effective upon written notice to the other party, if the other party materially breaches this Agreement, and:
  - (i) such breach is incapable of cure; or
  - (ii) such breach is capable of cure but remains uncured fifteen (15) days after the non-breaching party gives the breaching party written notice thereof.
- (c) Either party may terminate this Agreement by written notice to the other party if the other party:
  - (i) becomes insolvent or admits inability to pay its debts generally as they become due;

- (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law that is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing;
- (iii) is dissolved or liquidated or takes any corporate action for such purpose;
- (iv) makes a general assignment for the benefit of creditors; or
- (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement:

- (a) All licences granted to Provider in the Customer Materials will immediately terminate.
- (b) Provider shall promptly: (i) deliver to Customer copies of all Customer Materials and all documents and tangible materials (and any copies) in Provider's possession containing, reflecting, incorporating, or based on Customer's Confidential Information; (ii) permanently erase all Customer Materials and any other Customer Confidential Information from its computer systems; and (iii) certify in writing to Customer that it has complied with the foregoing.
- (c) Customer will be relieved of any obligation to pay Fees to Provider if termination occurs more than sixty (60) days before the start of the Operational Period.

11.4 Surviving Terms. The rights, obligations and conditions set forth in this Section 11.4, Section 1 (Definitions), Section 7 (Confidentiality), Section 10 (Intellectual Property Rights), Section 11.3 (Effect of Expiration or Termination), Section 12 (Representations and Warranties), Section 13 (Indemnification), Section 14 (Limitations of Liability), Section 15 (Force Majeure), and Section 16 (Miscellaneous), and any right, obligation, or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, will survive any such termination or expiration hereof.

## 12. Representations and Warranties.

12.1 Mutual Representations and Warranties. Each party represents, warrants, and covenants to the other party that:

- (a) It is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation or organization;

- (b) It has the full right, power, and authority to enter into, to grant the rights and licences granted under, and to perform its obligations under this Agreement;
- (c) The execution of this Agreement by its representative, whose signature is set forth at the end hereof, has been duly authorized by all necessary organizational action of such party; and
- (d) When executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

12.2 Additional Provider Warranties. Provider further represents, warrants, and covenants to Customer as of the date of this Agreement and throughout the Term that:

- (a) Provider will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement;
- (b) The Hosting Environment is and will remain free of Harmful Code; and
- (c) In performing its obligations under this Agreement, Provider will comply with all applicable Laws.

12.3 Mutual Warranties. Provider represents, warrants, and covenants to Customer with respect to the Hosting Environment and Hosting Services, and Customer represents, warrants, and covenants to Provider with respect to the Platform, Platform content, Platform products and services and all Customer Materials, that they: (i) will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any third party in Canada; and (ii) will comply with all applicable Laws.

12.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT.

### 13. Indemnification.

13.1 Provider Indemnification. Provider shall indemnify, defend, and hold harmless Customer and Customer's officers, directors, employees, agents, successors, and assigns (each, a "**Customer Indemnitee**") from and against all Losses arising out of or resulting from any claim, suit, action, or proceeding (each, an "**Action**") related to or arising out of:

- (a) Provider's material breach of any representation, warranty, covenant, condition, or obligation of Provider under this Agreement.

- (b) Any action or failure to take a required action by Provider or any third-party service provider acting on behalf of Provider in connection with performing Services under this Agreement.

13.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless Provider and Provider's officers, directors, employees, agents, successors, and assigns (each, a "**Provider Indemnitee**") from and against all Losses arising out of or resulting from any Action asserting:

- (a) Customer's material breach of any of its representations, warranties, covenants, conditions, or obligations under this Agreement; or
- (b) Any action or failure to take a required action by Customer in connection with this Agreement.

13.3 Indemnification Procedure. The party seeking indemnification (the "**Indemnified Party**") shall promptly notify the other party (the "**Indemnifying Party**") in writing of any Action for which it believes it is entitled to be indemnified under this Agreement. The Indemnifying Party shall immediately take control of the defence and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnified Party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnified Party shall cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the Indemnified Party without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party's failure to perform any obligations under this Section 13.3 will not relieve the Indemnifying Party of its obligations under this Section 13 except to the extent that the Indemnifying Party can demonstrate that it has been prejudiced as a result of such failure. The Indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

#### 14. Limitations of Liability.

14.1 EXCLUSION OF INDIRECT DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES.

14.2 CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3,] IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TWO TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO PROVIDER PURSUANT TO THIS AGREEMENT.

14.3 Exceptions. The exclusions and limitations in Section 14.1 and Section 14.2 do not apply to a party's obligations under Section 13 (Indemnification); a party's breach of its obligations under Section 7 (Confidentiality); or a party's gross negligence or wilful

misconduct or breach; or to the extent damages or liabilities are covered by a party's insurance.

15. Force Majeure.

15.1 Except as set forth in this Agreement, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, if and to the extent such failure or delay is caused by acts beyond the affected party's control including, without limitation, any of the following (each, a "**Force Majeure Event**"):

- (a) acts of God;
- (b) flood, fire, or explosion;
- (c) epidemics, pandemics, including the 2019 novel coronavirus disease (COVID-19) pandemic only in respect of any heightened or new restrictions bearing on the Party's performance of its obligations hereunder and arising after execution of this Agreement;
- (d) war, terrorism, invasion, riot, or other civil unrest;
- (e) embargoes or blockades in effect on or after the date of this Agreement;
- (f) national or regional emergency;

in each case, *provided that* (x) such event is outside the reasonable control of the affected party; (y) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (z) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

Either party may terminate this Agreement immediately by written notice to the other if a new Force Majeure Event arises after the Effective Date hereof.

16. Miscellaneous.

16.1 Further Assurances. Each party shall, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

16.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement, other than routine communications having no legal effect, (each, a "Notice", and with the correlative meaning "Notify") shall be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Provider: Canadian International Auto Show Ltd.  
50 Leek Crescent, Suite 2B  
Richmond Hill, ON  
L4B 4J3  
Email: jacsonc@autoshow.ca  
Attention: Mr. Jason Campbell, General Manager

If to Customer: [CUSTOMER ADDRESS]  
Facsimile: [FAX NUMBER]  
[Email: [NOTICES CONTACT'S EMAIL ADDRESS]]  
Attention: [NAME AND TITLE OF OFFICER TO RECEIVE NOTICES]

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the 3<sup>rd</sup> day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

16.4 Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, and Exhibits refer to the Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

16.5 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.



16.6 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.

16.7 Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

16.8 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

16.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and assigns and nothing herein, express or implied, is intended to or does confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

16.10 Amendments and Modifications. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

16.11 Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16.12 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16.13 Governing Law. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario.

16.14 Choice of Forum. Any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all statements of work, exhibits, schedules, attachments, and appendices attached to this Agreement, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario, and each Party irrevocably submits to the

exclusive jurisdiction of such courts in any such suit, action, litigation, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, litigation, or other proceeding brought in any such court. Each Party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

16.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

[CUSTOMER NAME]

By \_\_\_\_\_  
Name:  
Title:

Canadian International Auto Show Ltd.

By \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**  
**PLATFORM; HOSTING SERVICES**

Provider shall maintain an online environment to which Customer's Platform Conduct may be integrated for display and interactive use as part of the online version of the 2021 Canadian International Auto Show before and during the Operational Period.