

BEACON SOFTWARE COMPANY
APPLICATION SERVICE PROVIDER AGREEMENT

THIS AGREEMENT between Beacon Software, L.L.C., a Louisiana limited liability company, located at 425 N. Claiborne Ave, New Orleans, LA, USA, hereinafter referred to as "PROVIDER" the Entity using this application, hereinafter referred to as "CUSTOMER".

1. Use of Non-Exclusive License

1.1 PROVIDER hereby grants to CUSTOMER a non-exclusive license to use the computer programs and related materials (the "Software") upon the terms and conditions stated herein. "Software" includes source code, know-how or technology embodied therein or relating thereto which may be contained in, revealed by or shown on any documentation, models, descriptions, forms, drawings, schematics, flow-charts, downloaded content, magnetic media or information retrieval devices supplied to the CUSTOMER in connection with this Agreement, and any modifications, improvements, additions, corrections, and amendments thereto. The CUSTOMER may make copies of documentation for its own use only and for absolutely no other purpose.

2. Term

2.1 The Software shall be licensed for a one (1) month period beginning on the date hereof (the "Initial Term"). Unless this Agreement is terminated pursuant to Sections 2.2, 2.3, or 11 herein, this Agreement shall automatically be renewed for additional successive terms of one (1) month (each a "Renewal Term) provided that PROVIDER is then licensing the Software or this Agreement has not been otherwise terminated.

2.2 CUSTOMER may terminate this Agreement by providing written notice of its intention to terminate this Agreement at least fifteen (15) days prior to termination of the then-current Term ("Term" refers to either the Initial Term or any Renewal Term). Absent such notification, this Agreement shall automatically be renewed for an additional Renewal Term as described in Section 2.1. CUSTOMER must provide written notice of termination using the form titled "Change Form," provided by PROVIDER. The Change Form is available at the request of CUSTOMER. Upon such request, PROVIDER will send to CUSTOMER a link that will provide CUSTOMER online access to the Change Form for completion.

2.3 Regardless of CUSTOMER's intent to continue under this Agreement for a subsequent Renewal Term, PROVIDER may, at its discretion, opt out of any further Renewal Terms for any reason or no reason at all upon at least fifteen (15) days' written notice to CUSTOMER prior to the end of the then current Term. Subsequent to such notice, this Agreement shall terminate by its own terms at the end of the then current one (1) month Term. If PROVIDER will not allow a renewal of the Agreement or the Agreement is not renewed or terminated for any other reason, PROVIDER shall assist CUSTOMER in transferring CUSTOMER's data stored on the Host Computers, as defined below, to either another software provider or the CUSTOMER's computing facilities.

2.4 In the event service is terminated for any reason, CUSTOMER shall pay a reinstatement fee of seventy-five dollars (\$75.00) for reinstatement of service.

3. Payment Terms

3.1 The monthly license fee during the term of this Agreement shall be as set forth in the Automated Payment Agreement signed by CUSTOMER and incorporated herein by reference, plus any applicable taxes. The monthly license fee may be adjusted by PROVIDER on thirty (30) days' advance notice to CUSTOMER. The fee is to be paid monthly, in advance, starting in the month immediately following the month in which the first day of training or data entry, and/or retrieval (whichever comes first) occurs.

3.2 Additional fees related to set up and training shall be paid as follows: 100% on signing the purchase order and any travel related expenses shall be invoiced to CUSTOMER within thirty (30) days. The fees are detailed in the Automated Payment Agreement.

4. Proprietary Rights in Software and Confidentiality

4.1 The Software and all material and information related, in any way, which has, or will, come into possession or knowledge of the CUSTOMER in connection with, or related to, this Agreement, (collectively, the "Proprietary Information") excluding information and proprietary data owned by CUSTOMER, remains the sole and exclusive property of PROVIDER. By executing this document, the CUSTOMER agrees:

- i) to hold all Proprietary Information, it has received or to which it has been exposed in the strictest confidence such that only those employees or independent contractors working for the Company (collectively, the "Employees") who, by their jobs are required to utilize the Proprietary Information are permitted to become familiar and utilize it;
- ii) to ensure that each Employee who does use the Proprietary Information is made aware of the terms of this Agreement;
- iii) not to release, disclose, or distribute any of the Proprietary Information to any other party under any circumstance

5. CUSTOMER Risks & Responsibilities

5.1 The CUSTOMER is specifically advised that CUSTOMER will need legally licensed current versions of the Internet Explorer web browser and Microsoft operating software current with all Microsoft critical updates and must have a commercially recognized, legally licensed and updated anti-virus program installed. The failure of CUSTOMER to obtain

- or properly utilize the appropriate third-party software shall not discharge or otherwise limit CUSTOMER's obligations to PROVIDER under this Agreement.
- 5.2 The CUSTOMER shall be responsible for all originating communications connections from their site(s) to the Internet or any other method of linking to the data center. PROVIDER shall not be responsible for the performance of these communications links. PROVIDER recommends the use of a High-Speed DSL, Cable, Satellite or EvDo line to access the Software under this agreement
- 5.3 The CUSTOMER shall have full responsibility for the input and accuracy of its data entry. Further, from time to time, at no fault of PROVIDER, communications problems do occur that may affect data entry. PROVIDER agrees where feasible and within its control to make best efforts to minimize these problems.
- 6. Restrictions**
- 6.1 The Software shall be used solely in connection with the usual business purposes of the CUSTOMER. In this clause the expression "business purposes" shall in no circumstances include the sale, marketing or exploitation, in any way whatsoever, of any of the Proprietary Information, including but not limited to the Software.
- 6.2 Any use of the Software by any subsidiary of CUSTOMER or any related entity is prohibited unless specifically licensed.
- 7. Warranty. These representations and warranties apply only to the Software**
- 7.1 The CUSTOMER acknowledges that the Software meets its requirements, as best determinable from demonstrations and documentation by PROVIDER, except where modifications have been specified elsewhere in the Appendix to this Agreement. The CUSTOMER assumes full responsibility for management, supervision and control of the use of the Software.
- 7.2 PROVIDER warrants that it has the right, title, and authority to license the Software to CUSTOMER and perform its obligations hereunder and that the Software will perform the functions reflected in any documentation provided to the CUSTOMER by PROVIDER, free from any material defects.
- 7.3 PROVIDER shall promptly either fix or replace, at no charge to the CUSTOMER, any part of the Software not operating in accord with any documentation provided to the CUSTOMER.
- 7.4 PROVIDER DISCLAIMS ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND, IN ADDITION, DISCLAIMS ANY WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE SOFTWARE. If any of the Software, as so supplied or modified, fails to comply with the warranty mentioned in Clause 7.2, above, then PROVIDER, at its sole option, shall:
- i) modify such item of the Software until it complies with the warranty; or
 - ii) replace such item of the Software until it complies
- 7.5 In the event of any breach of warranty contained in Clause 7.2, above, CUSTOMER's sole recourse shall be as set forth in Clauses 7.3 and 7.4.
- 7.6 Neither the Software nor PROVIDER's performance of its obligations hereunder infringes or violates the rights of any third party nor has any party asserted any of the foregoing.
- 7.7 Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties, in no event nor for any reason shall PROVIDER interrupt CUSTOMER's use of the Software or the provision of services hereunder or disable CUSTOMER's access to or use of the Software and CUSTOMER's use of the CUSTOMER's Proprietary Information resident on the Host Computers or CUSTOMER's ability to conduct its business unless (i) authority to do so is granted by CUSTOMER in writing or conferred by a court of competent jurisdiction or (ii) this Agreement is terminated pursuant to Sections 2.2, 2.3, or 11 hereof.
- 8. Software Services**
- 8.1 PROVIDER provides control, maintenance and training of its application software. The software is hosted on PROVIDER's computers (the "Host Computers"). CUSTOMER's access to such Host Computers is available on a seven-day twenty-four hour a day basis except when unavailable due to maintenance which shall only be performed outside of normal working hours. PROVIDER represents, warrants and covenants that (i) all of CUSTOMER's data stored on the Host Computers will be backed up no less frequently than daily, (ii) a backup copy of the then current version of the data will be stored off the site of the Host Computer's no less frequently than once a week and held for a period of not less than seven (7) years, (iii) the Host Computers will be available substantially on a continuous basis during the hours of 7 a.m. and 10 p.m Eastern Standard Time, (iv) PROVIDER will make commercially reasonable efforts to ensure the Host Computers will not corrupt or otherwise damage CUSTOMER's data stored on the Host Computers and (v) PROVIDER will make commercially reasonable efforts to protect the CUSTOMER's data stored on the Host Computers from access by unauthorized users.
- 8.2 PROVIDER provides the following services under this Agreement:

- i) Upgrades and new releases of the Software, including documentation.
- ii) Quick and simple answers to questions, requiring less than 10 minutes of support time by telephone or email at no charge between the hours of 8:00 AM to 5:00 PM Central Standard Time.
- iii) If requested by the CUSTOMER, additional Software support-related services are provided at the following current rates: \$125/hour or \$1000/day for application support, or \$125/hour or \$1000 day for technical services. For on-site help, the CUSTOMER is responsible for reasonable travel expenses.
- iv) Software Services shall not extend to any non-PROVIDER provided software and in no way shall cover any hardware, networks, servers, printers or other devices associated with the CUSTOMER's system environment.
- v) Daily back-ups of the CUSTOMER data and provision for acceptable storage.
- vi) Periodic system and hardware maintenance as needed to maintain the overall system operability.
- vii) Adequate security for the protection of CUSTOMER's information stored on the Host Computers and the Software.

10. Data Sharing

10.1 Notwithstanding the confidentiality restrictions in Paragraphs 9.1, and 9.2, CUSTOMER agrees that PROVIDER may furnish certain information to third-parties, as described herein.

10.2 Vehicle History Reporting Information

- i) CUSTOMER agrees that PROVIDER may furnish certain information to third-party vehicle history reporting companies ("VHR Companies") for the use in creating commercially available vehicle history reports. The information that PROVIDER may furnish to VHR Companies includes, but is not limited to: the vehicle identification number, vehicle year, make, and model, license plate number and state of registration, odometer reading, airbag deployment status, area of damage, reason for towing, towing location, and other towing-related information (collectively, the "VHR Information").

10.3 Dispatch Job Information [New term as of August 2017]

- i) PROVIDER understands that CUSTOMER has contracted, or may contract in the future, with third-party road service clubs, motor clubs, or other companies that provide substantially similar roadside assistance services ("Contracting Motor Clubs").
- ii) CUSTOMER agrees that PROVIDER may furnish certain information relating to a dispatch assignment (the "Dispatch Job Information") to Contracting Motor Clubs, both in real-time during the course of a dispatch assignment, or any time at the request of a Contracting Motor Club. The Dispatch Job Information is defined as follows:

- (a) Current Driver/Truck locations on demand
- (b) Current Driver/Truck Status (Available/Unavailable)
- (c) Driver/Truck Type and Service capabilities
Receive Time/Date
- (d) Dispatch Time/Date
- (e) Assign Time/Date
- (f) Driver Confirm Time
- (g) Driver Arrive Time
- (h) Driver Leave Scene Time (Hooked)
- (i) Driver Destination Arrive Time
- (j) Driver Clear Time
- (k) Continuous ETA updates
- (l) Driver, Truck and Truck Type Assigned to Call
- (m) Call Requested By
- (n) Real-time location of the assigned truck, throughout the progress of the MOTOR CLUB call.
- (o) Purchase Order
- (p) Reason
- (q) Service Provider Name

Upon request, PROVIDER shall provide CUSTOMER with a copy of the CUSTOMER data stored on the Host Computers in a mutually acceptable form on a time and materials basis at PROVIDER's then current rates for providing similar services.

9. Confidentiality.

- 9.1 Subject to Section 10 of this Agreement ("Data Sharing"), PROVIDER shall not permit the property of the CUSTOMER including without limitation all of CUSTOMER's data stored on the Host Computers and all other information with respect to the CUSTOMER (the "CUSTOMER Proprietary Information"), to be used for any purpose other than processing under this Agreement. Except as provided in Section 10 of this Agreement ("Data Sharing"), PROVIDER shall hold all CUSTOMER Proprietary Information it has received or to which it has been exposed in the strictest confidence such that only those employees or independent contractors working for PROVIDER who by their jobs are required to utilize the CUSTOMER Proprietary Information are permitted to become familiar and utilize it. Except as provided in Section 10 of this Agreement ("Data Sharing"), PROVIDER shall not disclose any such information unless instructions are received in writing from an officer of the CUSTOMER.
- 9.2 To ensure and protect the confidentiality of the CUSTOMER's business and to prevent unauthorized persons from gaining access to the CUSTOMER's records in the system, PROVIDER shall adhere to security procedures reasonably designed to protect CUSTOMER's Proprietary Information.

- (r) Job Status (Received, Assigned, Cancelled, Finished, Impounded, Holding)
- (s) PTO Status Change Time Stamps
- (t) Driver Photo

10.4 PROVIDER may disclose any CUSTOMER Proprietary or other information or data as required by law. As used in this subsection, "required by law" shall include, but not be limited to, disclosures compelled by lawful subpoena issued by a court of competent jurisdiction, government regulation, court order, or any other lawful process.

11. Termination for Breach or non-Payment.

11.1 In the event of any material breach of the terms or conditions of this Agreement (including CUSTOMER's failure to pay the required fees), PROVIDER shall provide written notice to CUSTOMER specifying the nature of the breach with reasonable specificity and notifying CUSTOMER that if CUSTOMER does not cure the material breach within fifteen (15) days after notice, this Agreement and CUSTOMER's license to use the software will immediately terminate regardless of how much time is remaining in the then current one (1) month Term. If CUSTOMER does not cure the material breach within fifteen (15) days after notice of breach, this Agreement and CUSTOMER's license to use the software will be immediately terminated. Upon termination of the license as set forth herein, the CUSTOMER shall be responsible to pay PROVIDER the entire unpaid fee pertaining to the duration of the then current one (1) month Term (as defined in Clause 2). Such payment shall be due immediately. Notwithstanding that CUSTOMER is in breach of this Agreement, PROVIDER shall withhold from CUSTOMER a copy of the CUSTOMER Proprietary Information held on the Host Computers.

11.2 CUSTOMER may terminate this Agreement (i) upon thirty (30) days' prior written notice to PROVIDER in the event of any material breach by PROVIDER in any term or condition contained in this Agreement, which breach is not cured within such period; or (ii) by written notice to PROVIDER if CUSTOMER is unable to access its information on the Host Computers for more than five (5) business days during any thirty (30) business day period other than as a result of problems with the internet. The written notice shall specify with reasonable detail the nature of such breach.

11.3 Neither party shall be liable for any failure or delay in performing its obligation under this Agreement due to causes beyond its control (each, a "Force Majeure"). In the event of such failure or delay, the date of delivery or performance hereunder shall be extended for a period not to exceed the time lost by reason of the failure or delay, provided that the party affected by such delay is using commercially reasonable efforts to mitigate or eliminate the cause of such delay or its effects, and if events in the nature of the Force Majeure event were foreseeable, used commercially reasonable efforts prior to its occurrence to anticipate and avoid its occurrence or effect. Each party shall notify the other in writing, promptly of any failure or delay in, and the effect on, its performance.

12. Indemnity.

12.1 CUSTOMER shall indemnify and hold harmless PROVIDER and its directors, officers, employees, agents, and members, and each of them harmless against all actions, proceedings, losses, costs, damages, expenses, claims and demands, including but not limited to any and all attorneys' fees and costs, which PROVIDER and/or CUSTOMER may sustain by reason of, or arising in any way whatsoever in connection with any failure by CUSTOMER to observe or perform any provision of this Agreement.

12.2 PROVIDER shall indemnify, defend and hold harmless CUSTOMER and its directors, officers, employees, agents, and members, and each of them harmless against all actions, proceedings, losses, costs, damages, expenses, claims and demands, including but not limited to any and all attorneys' fees and costs, which CUSTOMER and/or PROVIDER may sustain by reason of, or arising in any way whatsoever in connection with any failure by PROVIDER to observe or perform any provision of this Agreement.

12.3 PROVIDER shall indemnify, defend and hold harmless the CUSTOMER, its directors, officers, employees, agents, and members, and each of them, from any and all actions, proceedings, losses, costs, damages, expenses, claims and demands, including but not limited to any and all attorneys' fees and cost, resulting from or arising out of CUSTOMER's performance under this Agreement relating to claims that the Software violates patent, trademark or copyright laws, provided that: (a) CUSTOMER notifies PROVIDER in writing within 30 days of the claim or if later, PROVIDER is not materially prejudiced by such delay; (b) PROVIDER has sole control of the defense and all related settlement negotiations; and (c) CUSTOMER provides PROVIDER with assistance, information, and authority, at PROVIDER's expense, necessary to perform PROVIDER's obligations under this paragraph; further provided that with respect to any settlement agreement (1) CUSTOMER shall have no obligation either to pay money or admit wrong doing and (2) such settlement will not curtail the functionality of the Software or its use by CUSTOMER.

13. Notices.

13.1 Any notice to be given hereunder shall be in writing transmitted either by e-mail, facsimile, or any nationally recognized mail courier at the address, facsimile number, and/or e-mail address provided in the most recent of the Automated Payment Agreement signed by CUSTOMER, or the most recent Billing Update Form signed by CUSTOMER. The Billing Update Form is available at the request of CUSTOMER. Upon such request, PROVIDER will send to CUSTOMER a link that will provide CUSTOMER online access to the Billing Update Form for completion. For the purposes of this Agreement, a signature may either be a physical handwritten signature or an electronic signature entered by CUSTOMER via the internet. A follow-up copy of all notices shall be sent certified mail, return receipt requested—unless originally transmitted via this method—to the parties at the following addresses:

Notice given to CUSTOMER shall be delivered to:

The Address provided in the most recent of the Automated Payment Agreement signed by CUSTOMER, or the most recent Billing Update Form signed by CUSTOMER

Attention: [Provided by CUSTOMER]

Notice given to PROVIDER shall be delivered to:

Beacon Software Company
10091 Brecksville Road
Suite F
Brecksville, Ohio 44141
Attention: Todd Althouse

It is CUSTOMER's responsibility to provide PROVIDER with CUSTOMER's current address, facsimile number, and e-mail address, by completing and signing the Automated Payment Agreement or, if subsequently changed, a Billing Update Form.

The parties may, from time to time, change their address but are required to give written notice no less than twenty (20) days before such new address becomes effective under this Agreement. For the purposes of giving notice of a change of address as described above, CUSTOMER must provide such notice by completing and signing a Billing Update Form. The Billing Update Form is available at the request of CUSTOMER. Upon such request, PROVIDER will send to CUSTOMER a link that will provide CUSTOMER online access to the Billing Update Form for completion.

All notice shall have been deemed given when it has been personally delivered by a mail carrier, when a facsimile confirmation sheet reflecting the successful transmission of the notice has been obtained, upon the sending of an e-mail, or the next business day when such notice has been sent prepaid by nationally recognized overnight courier.

14. Assignment

14.1 This agreement is binding upon PROVIDER and the CUSTOMER and each of their respective successors and/or assignees. Neither party may assign this Agreement, except with prior written approval of the other party, which shall not be unreasonably withheld.

15. Governing Law.

15.1 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Louisiana without regard to conflicts of laws provisions.

16. Consent to Jurisdiction and Venue.

16.1 The parties agree that any dispute, controversy, or claim arising out of or in connection to this Agreement, or the breach, termination, or validity thereof, shall be settled by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect from time to time.

16.2 The arbitration shall be heard and determined by one (1) arbitrator, who shall be jointly appointed by the parties. If the parties are unable to agree on an arbitrator, the arbitrator shall be appointed by the American Arbitration Association or some other proper authority agreed by the parties.

16.3 The place of arbitration shall be in New Orleans, Louisiana and the award shall be deemed an award of a federal or state court in Louisiana.

16.4 The parties agree that the award of the arbitrator will be the sole and exclusive remedy between them regarding any and all disputes arising in connection with this Agreement and shall not be appealable. The award of the arbitrator may, however, be enforced by application to any proper court with jurisdiction over the parties.

16.5 The arbitrator shall determine all disputes arising in connection with this Agreement in accordance with the laws of the State of Louisiana.

16.6 All notices to be given in connection with the arbitration shall be in writing. All notices shall be sent via registered mail, return receipt requested, to the addresses set forth herein.

17. Headings.

17.1 The headings are for the convenience of the parties and are not intended to substitute, modify, delete or amend the text of the Agreement in any way.

18. Changes to this Agreement

18.1 CUSTOMER agrees that, to the extent permitted by applicable law, PROVIDER may change at any time any of the terms of this Agreement ("Change") including, but not limited to, Data Sharing.

18.2 PROVIDER shall notify CUSTOMER of any Change (the "Change Notification"). The Change Notification will tell CUSTOMER of any right(s) CUSTOMER may have, and any steps CUSTOMER must take to reject the Changes. In no event will CUSTOMER be required to reject the Changes contained in the Change Notification fewer than five (5) business days after PROVIDER transmitted the Change Notice via facsimile or e-mail, or fewer than five (5) business days after PROVIDER mailed the changed notice—whichever is applicable.

18.3 If CUSTOMER properly notifies PROVIDER that CUSTOMER rejects the Changes, the Agreement will be terminated upon receipt by PROVIDER. CUSTOMER will be obligated to pay any and all outstanding balances under the terms of the Agreement.

19. Entirety of Agreement.

19.1 This Agreement embodies the entire understanding of the parties and supersedes all previous statements, negotiations or agreements related to the subject matter hereof.

19.2 The terms of this Agreement can be modified only in a writing executed by both PROVIDER and CUSTOMER or in a manner consistent with Paragraph 18 of the Agreement.

19.3 **By affirmatively accepting this agreement by selecting "Accept," you are representing that you have authority to enter into this agreement on behalf CUSTOMER.**

Beacon Software, LLC.
425 North Claiborne Avenue
New Orleans, Louisiana 70112
P: 1.440.237.6653
F: 1.440.435.2802
support@beaconsoftco.com
www.beaconsoftco.com