

License Agreement

nccdirect.com/end-user-license-agreement

END USER LICENSE AGREEMENT

The customer submitting the NCC Subscription Form through this website (“Customer”) agrees that Customer’s use of any products or services (the “Service” or “Services”) offered by NCC, Inc. (“NCC”) through the Subscription Form will be subject to these standard terms and conditions (this “Agreement”).

1. Agreement and Services. This Agreement governs Customer’s use of all Services ordered from NCC by Customer from time to time. These Services will be identified on invoices (each, an “Invoice”) issued to Customer. Subject to Customer’s payment of any applicable Fees (as defined below), NCC will provide to Customer the Services identified in each Invoice. As further specified in the applicable Invoice, the services may include but are not limited to access to online products and services (including any hardware or equipment provided by NCC) that NCC may make available to its customers from time to time via this website or any other digital platform (collectively, the “NCC Site”).

2. Access to NCC Online Services.

1. Grant of Rights. Subject to Customer's compliance with the terms of this Agreement, including, without limitation, the restrictions set forth in Section 2.2 below, NCC grants to Customer and its Authorized Users a non-exclusive, non-transferable, limited license, during the Term of this Agreement, to access and use the Services on and through the NCC Site, solely for the purpose of enhancing, managing, distributing, and displaying data and photos relating to motor vehicles Customer has in inventory or may acquire (collectively, "Inventory Data") via the Internet. Customer shall be responsible for compliance with, and any breach of, this Agreement by Customer's Authorized Users. For purposes of this Agreement, "Authorized Users" means (a) Customer's employees, officers, directors and/or contractors who access any Services on behalf of Customer, and (b) if Customer obtains website development and/or hosting services from NCC, the end users of Customer's website(s).
2. Restrictions on Use. Customer acknowledges and agrees that the Services are licensed for use at a single dealer location/rooftop, and Customer shall not use the Services for more than one dealer location or rooftop unless Customer enters into a separate agreement with NCC. Notwithstanding anything to the contrary in this Agreement, Customer may not (i) provide, disclose, make available or allow access to, or permit use of any Service by any third party; (ii) modify, adapt, translate, or create derivative works based upon, the underlying software code of any Service; (iii) reverse engineer, decompile, disassemble, copy or otherwise attempt to discover the source code of any Service except to the extent Customer may be expressly permitted to do so under applicable law; or (iv) use any Service to provide services to a third party.

3. Data Rights.

1. **Inventory Data.** Customer acknowledges that certain Services will require NCC, its licensors (as defined in Section 9.1, below) and/or its service providers to receive, store and manage Customer's Inventory Data. If Customer requests any such Service, Customer agrees that NCC, its licensors and/or such service providers may receive output from Customer's dealer management system for purposes of acquiring Inventory Data for use for their respective business purposes, which may include, without limitation, performing VIN decoding/enhancement, distributing Inventory Data, and preparing and distributing statistical analyses based on the Inventory Data. Customer alone is responsible for ensuring the accuracy and integrity of the Inventory Data. Customer must notify NCC immediately of any problems with the Services or any errors in the Inventory Data.
2. **Performance/Transaction Data.** Customer may use the Services to manage leads, transactions, and other customer interactions in connection with the operation of its motor vehicle dealerships and to assess and enhance the performance of its marketing efforts (collectively, this data is referred to as the "Performance/Transaction Data") and acknowledges that certain Services will require NCC, its licensors (as defined in Section 9.1, below) and/or its service providers to receive, store and manage Customer's Performance/Transaction Data. If Customer requests any such Service, Customer agrees that NCC, its licensors and/or such service providers may receive output from and/or send input into Customer's dealer management system for performing such Service. Customer hereby grants to NCC a non-exclusive, royalty-free, revocable right and license (i) to use, copy, perform, display and modify the Performance/Transaction Data in any manner or medium, now known or hereafter developed, for NCC's business purposes, and (ii) to prepare statistical analyses based on such Performance/Transaction Data ("Statistical Data"), which NCC may use to improve their services. NCC may be required by law, rule or regulation to make the following disclosure: **NOTICE TO NORTH CAROLINA DEALERS: THIS END USER LICENSE AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA.**

3. Provisions. Each party will comply with all applicable legal obligations relating to privacy, security, integrity, and confidentiality of data collected from Customer, except for aggregated data that does not enable identification of Customer's individual retail customers and any other extracted data ("Customer Information"), which obligations may include the Gramm-Leach-Bliley Act and its implementing regulations ("GLBA"), the Personal Information Protection and Electronic Documents Act of Canada ("PIPEDA"), the laws of any state of the United States, and the laws of any province of Canada. Each party will, at a minimum, implement and maintain appropriate administrative, technical, and physical safeguards reasonably designed to: (a) ensure against any anticipated threats or hazards to the security or integrity of the Customer Information; and (b) protect against unauthorized access to or use of the Customer Information that could result in substantial harm or inconvenience to the Customer or the individual who is the subject of Customer Information. Each party may disclose Customer Information, when required, pursuant to any federal or state law or regulation or rules or regulations of any governmental agency. These provisions shall apply during the term and after the termination of this Agreement.

4. Term; Termination.

1. Term. The term of this Agreement will commence as of the date on which Customer assents to this Agreement by clicking the "I Agree" button on the NCC Site and will remain in effect unless and until terminated as set forth below ("Term").
2. Termination for Cause. NCC may terminate this Agreement and/or cancel any Service(s) ordered under an Invoice at any time in the event of a material breach by Customer that remains uncured for a period of five (5) days following Customer's receipt of written notice of such breach from NCC. Customer may terminate this Agreement at any time in the event of a material breach of the terms of this Agreement by NCC that remains uncured for a period of thirty (30) days following NCC's receipt of written notice of such breach from Customer.
3. Termination for Convenience. Without limiting Section 4.2, above, either party may terminate this Agreement and/or cancel any Service(s) at any time, with or without cause, upon thirty (30) days' prior written notice to the other party. For avoidance of doubt, the cancellation of any Service will not terminate this Agreement nor cancel any other Service unless expressly stated in the applicable notice of termination or cancellation.
4. Effects of Termination. Upon expiration or termination of this Agreement or any Order Schedule, (i) Customer's right to use the Services will immediately terminate, and (ii) all unpaid Fees outstanding from Customer will become immediately due and payable. Sections 2.2, 3, 4.4, 6, 7, 8, 9, 10, 11, 12 and 14 will survive any termination of this Agreement.

5. Fees; Payment.

1. **Fees.** Customer will pay NCC the fees specified in each Invoice (“Fees”). Payments are due monthly in advance. If Fees are to be paid for by credit card, NCC may charge the credit card as of the first business day of the first month after Customer requests the corresponding Services, and on the first business day of each subsequent month thereafter, unless Customer cancels the applicable Service in accordance with Section 4.3, above. If Customer is to be invoiced for payment, Customer will be invoiced for all Services monthly, in advance. All amounts paid by Customer pursuant to this Agreement are non-refundable. Late payments may bear interest at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by law, if lower. If Customer fails to make payment when due, Customer will be responsible for all reasonable expenses (including attorneys’ fees) incurred by NCC in collecting such amounts. Customer will be responsible for and will pay all federal, state and local taxes that are imposed on the Fees paid or Services provided hereunder. If Customer cancels any Service that was priced by NCC as part of a bundle of Services, but does not cancel all of such Services, NCC may adjust the Fees for the remaining Services. By accessing and/or using any Service after such adjustment, Customer agrees to pay the adjusted Fees for such Service.
2. **Overage Charges.** In addition to regular monthly service Fees, Customer may be subject to overcharge charges in connection with usage of Customer’s KnowMe account, text messaging, or cellular data plans in connection with Customer’s use of the Services under this Agreement. If Customer purchases one of these Services, the monthly usage limits will be set by the product package in effect at the time of purchase. If Customer exceeds the set limit of the product package, Customer will automatically be enrolled in the next highest product package for the month in which the overage occurs. All fees associated with the next highest product package will be applied as overage fees for that particular month and Customer will be obligated to pay such amount. Overage charges will be applied on a month-to-month basis and will not automatically enroll Customer in any level of product package beyond the month in which the overage charges were incurred. By purchasing any product package with a set limit of monthly usage, Customer consents to being temporarily enrolled in the next highest product package in order to pay for any overage charges that occur for any given month.

6. Representations and Warranties.

1. Customer Warranties. Customer represents and warrants that (i) it is a legal entity duly organized, validly existing and in good standing; (ii) it has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (iii) it has all rights necessary to provide the Customer Data and any other materials (including any trademarks, service marks, logos, photographs, images, graphics, audio, video, or other creative materials (collectively, “Customer Materials”)) provided or made available by Customer, and that such Customer Data and Customer Materials do not and will not infringe any rights of any third party, including, but not limited to, any contractual rights, copyright, trademark or trade secret rights or any right of privacy or publicity, (iv) Customer’s use of the Services will comply with all applicable laws, rules and regulations, including, without limitation, any privacy laws; and (v) to the extent Customer purchases website hosting services from NCC, Customer will provide NCC with a written privacy statement to post on such website that complies with applicable law and that contains any terms that NCC may, from time to time, provide to Customer for inclusion in such privacy statement.
2. Disclaimer. NCC AND/OR ITS LICENSORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE SERVICES ARE PROVIDED “AS IS” AND “WITH ALL FAULTS” AND NCC MAKES NO WARRANTY THAT THE SERVICES (I) WILL BE UNINTERRUPTED OR ERROR-FREE OR WILL OPERATE IN CONNECTION WITH ANY PARTICULAR SOFTWARE, OR THAT ANY ERRORS WILL BE CORRECTED; (II) WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS; (III) WILL PRODUCE ACCURATE OR RELIABLE RESULTS; OR (IV) WILL BE FREE OF VIRUSES OR OTHER HARMFUL OR MALICIOUS CODE.

7. Indemnification. Customer will indemnify, defend and hold harmless NCC, its successors and assigns, and all of their respective officers, directors, employees and agents from and against any and all claims, losses, demands, causes of action, debts or liabilities, including reasonable attorneys' fees, arising out of a third-party claim resulting from (i) any breach or alleged breach of Customer's obligations, representations or warranties under this Agreement, (ii) Customer's use of the Services, or (iii) any claim that any Customer trademarks, service marks, trade names, logos or other content or materials furnished by Customer for use in connection with the Services, including, without limitation, any Customer Data and any Customer Materials (including, if Customer obtains any website development and hosting services from NCC, any content or advertising posted on such website by Customer's end users), but excluding any content provided by NCC which: (a) misappropriates any third party's confidential information, (b) violates any applicable law, rule or regulation, (c) libels any person or entity, or (d) otherwise violates or infringes the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right, or any right of privacy or publicity.
8. Limitation of Liability. IN NO EVENT WILL NCC, ITS SUBSIDIARIES, OR LICENSORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, OR LOSS OF DATA, ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY CAUSE OF ACTION, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NCC'S AND ITS LICENSORS' TOTAL LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING THROUGH CUSTOMER FOR ANY CLAIM ARISING OUT OF NCC'S PERFORMANCE UNDER THIS AGREEMENT OR ITS PROVISION OF THE SERVICES HEREUNDER WILL NOT EXCEED, IN THE AGGREGATE, THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO NCC WITH RESPECT TO THE SERVICE(S) OUT OF WHICH THE CLAIM ARISES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9. Proprietary Rights.

1. **Rights in NCC Online Services.**The Services constitute the intellectual property of and are owned by NCC and/or its licensors, and NCC and/or its licensors retain all rights, including all patent, copyright, trademark, trade secret, and other intellectual property or proprietary rights in and to the Services. The structure, organization and code of the Services are valuable trade secrets and Confidential Information of NCC and/or its licensors. Any user name or password provided to or created by Customer for use in connection with the Services are Confidential Information of NCC and/or its licensors and may not be shared with any third party without the prior written authorization of NCC and/or its licensors. Except as expressly stated herein, this Agreement does not grant Customer any intellectual property rights in any Services and all rights not expressly granted are expressly reserved by NCC and/or its licensors. Customer may not remove or authorize or permit its Authorized Users to remove or obscure any proprietary rights legends from the Services.
2. **Trademarks.**NCC and/or its licensors own and retain all rights in any trademarks, service marks, trade names and logos, and all related products and service names, marks, and slogans used by NCC in connection with the Services. Any other trademarks, service marks, trade names or logos contained within any Services are owned by their respective owners.

10. Confidentiality.

1. Definition of Confidential Information. For purposes of this Agreement, “Confidential Information” means the terms and conditions of this Agreement, and all non-public information about NCC’s business or activities that is marked or designated by NCC as “confidential” or “proprietary” at the time of disclosure or that reasonably would be understood to be confidential given the circumstances of disclosure. Without limiting the generality of the foregoing, Confidential Information will include, without limitation, all NCC business (including pricing), financial, technical and other similar information.
2. Use of Confidential Information. Customer agrees that during the Agreement Term and for three (3) years thereafter: (i) it will not disclose to any third party any Confidential Information disclosed to it by NCC except as expressly permitted in this Agreement; (ii) it will not use any Confidential Information disclosed to it by NCC except as necessary to perform its obligations under this Agreement; and (iii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information of NCC in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Notwithstanding the foregoing, Customer may disclose Confidential Information (a) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law, provided that such party uses reasonable efforts to request confidential treatment or a protective order before such disclosure; and (b) on a “need-to-know” basis to its legal counsel, accountants, employees and agents who are obligated to maintain the confidentiality of such information. Customer agrees that it shall remain liable for the compliance by such persons with the terms of this Agreement. Upon termination or expiration of this Agreement, or at the request of NCC, Customer shall (at its option) return the Confidential Information to NCC, or destroy it and, upon NCC’s request, certify that it has taken such action.
11. Notices. Except as otherwise provided herein, any notice provided pursuant to this Agreement will be in writing, and will be sent by U.S. mail, postage prepaid, certified mail return receipt requested or by overnight courier addressed (if to Customer) to the address set forth on the Subscription Form or (if to NCC) to NCC, Inc., Attn: Sr. Vice President, 7373 Peak Drive, Las Vegas, NV 89128 or to such other address as may be provided by notice by the applicable party in accordance with this Section.
12. Governing Law/Venue. This Agreement and performance hereunder will be governed by the laws of the State of Nevada, without regard to its conflicts of laws rules. The parties hereby agree that the sole jurisdiction and venue for any litigation arising from or relating to this Agreement will be an appropriate federal or state court located in Clark County, Nevada.

13. **Assignment.**Customer may not resell, assign or transfer any of its rights hereunder, and any attempt to resell, assign or transfer such rights is void. NCC may subcontract to any third party all or any part of the Services being provided by NCC to Customer pursuant to this Agreement.
14. **Changes to Agreement.**NCC reserves the right to modify the terms of this Agreement from time to time and will post any such changes on the NCC Site. NCC will provide notice to Customer of any such modification, which notice may appear on the NCC Site or be delivered via the Services. Customer agrees that Customer's use of any Services after notice of such modifications to this Agreement will constitute Customer's assent to any such modifications.
15. **Miscellaneous.**Any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party. Nothing in this Agreement shall be construed to constitute or appoint either party as the agent or representative of the other party for any purpose whatsoever or to grant to either party any right or authority to assume or create any obligation or responsibility, express or implied, for or on behalf of or in the name of the other or to bind the other in any way or manner whatsoever. This Agreement constitutes the complete and exclusive agreement between the parties relating to the subject matter hereof. It supersedes all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this subject matter, including, without limitation, the terms of any purchase order submitted by Customer to NCC to procure Services hereunder. The waiver or failure of either party to exercise any right provided for herein will not be deemed a waiver of any further right hereunder. Except as otherwise set forth in Section 14, this Agreement may not be modified or altered except by written instrument duly executed by an authorized officer of each party, and any such other modification shall be null and void and of no legal effect. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement will remain in full force and effect . This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. By signing, you are providing your dealer management system ("DMS") provider with your written consent to permit us to access data on your DMS system. Such access is in order for us to provide the services contracted for hereunder, and we will not use your data for any other purposes. **NOTICE TO NORTH CAROLINA DEALERS: THIS END USER LICENSE AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA.** Attention customers purchasing other products from NCC, Inc. Please note additional Terms and Conditions on the NCC, Inc., website. In the event of any conflict between the terms of this Agreement and the Master Service Agreement, the terms of this Agreement will control for the products and services ordered.

