

# Bindr Terms and Conditions

## End-User License Agreement (EULA)

### Software license terms and conditions

BY CLICKING THE “I ACCEPT” BOX / “AGREE” BUTTON OR INSTALLING THE LICENSED SOFTWARE FROM BINDR THE INDIVIDUAL, EDUCATIONAL OR NON-PROFIT INSTITUTION, GOVERNMENTAL AGENCY OR OTHER ENTITY (“CUSTOMER”) IS AGREEING TO BE BOUND BY THIS SOFTWARE LICENSE AGREEMENT (“AGREEMENT”).

IF CUSTOMER DOES NOT AGREE TO THIS AGREEMENT, DO NOT INSTALL THE LICENSED SOFTWARE AND CUSTOMER CANNOT USE THE LICENSED SOFTWARE.

THE “EFFECTIVE DATE” FOR THIS AGREEMENT IS THE DAY CUSTOMER CLICKS THE “I ACCEPT” BOX / “AGREE” BUTTON.

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### 1. DEFINITIONS.

“**Affiliates**” or “**Affiliate** ” means an entity, institution or organization that controls, is controlled by, or under common control with another entity, institution or organization, with at least majority ownership.

“**Authorization Code**” means, collectively, the specific code and authorization key for each copy of the Licensed Software issued by Bindr to Customer.

“**Authorized User**” means an employee, contractor, registered student, research assistant, or agent of Customer authorized by Customer to use the Licensed Software.

“**Authorized Reseller**” means an authorized distributor, authorized reseller, or dealer of the Licensed Software.

“**Concurrent Authorized Users**” means Authorized Users who use the software at the same time in accordance with the terms of this Agreement.

“**Confidential Information**” has the meaning set forth in Section 7 of this Agreement.

“**Customer Enhancements**” means enhancements to Bindr Special Files in which the copyright is owned by Customer and which are derivative works of the Bindr Enhancements.

“**Documentation**” means the user’s manuals and supporting documentation, which may be in printed or electronic form, provided with the Licensed Software under this Agreement. “**License Fee**” means the applicable fee for which Customer licenses the Licensed Software.

“**License Period**” means a perpetual term unless (a) terminated as provided below or (b) a specific fixed term is otherwise set forth in the License and Authorization Key document.

“**Licensed Software**” means the specific software licensed by Customer under the terms of this Agreement (as specified in the License and Authorization Key document issued to Customer), including any Updates and Upgrades thereto.

“**Serial Number**” means a set of unique characters associated with a specific copy of the Licensed Software issued by Bindr to Customer (based on the specific configuration and release of the Licensed Software and the license type, license term, number of Concurrent Authorized Users, network, and/or operating system designated by Customer during the ordering process).

“**Bindr Enhancements**” means Bindr Special Files or enhancements to Bindr Special Files in which the copyright is owned by Bindr or distributed by Bindr from time to time. Bindr Enhancements are not defined as Software.

“**Bindr Special Files**” are files with file extensions. These files may be modified and distributed by the Customer pursuant to the terms and conditions of this license.

“**Third-Party Software**” means certain software supplied by third parties that Bindr provides access to as part of the Licensed Software.

“**Update**” means a revision to the Licensed Software or patch that improves the functionality of the Licensed Software, and may contain new features or enhancements, which is not an Upgrade.

“**Upgrade**” means a subsequent version of the Licensed Software that Bindr designates as a new release and makes generally commercially available.

## 2. LICENSE AND RESTRICTIONS; ACCESS AND USE; BINDER SOFTWARE.

Bindr hereby grants Customer a non-exclusive, non-transferable, limited license to access and use the Software as part of the Services provided hereunder. Except as expressly permitted in this Section 3(a), Customer may not use, reproduce, transfer, share, sublicense or transmit the Services or the Software in any form or by any means without the prior written consent of Bindr, and, without limiting the foregoing, Customer is expressly prohibited from reselling, loaning or otherwise sharing the Services or the Software or divulging any related confidential information, including, but not limited to, passwords or instructional manuals. Customer further agrees not to, and shall not permit or authorize a third party to, modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine source code from the Software or any related software, or any applicable third party software applications.

(a) Customer acknowledges and agrees that (i) in order to access the Software and generally to transact business using the Services, there are certain capabilities required of its computing and telecommunication equipment (both hardware and software), (ii) Customer is obligated to procure for its use, at its own expense, equipment with the ability to access the Software, and (iii) Bindr shall not be responsible or liable if for any reason Customer’s telecommunications and computing equipment is incompatible with or otherwise insufficient for Customer to utilize the Software or all or any of the Services. In addition, Bindr has in the Pricing Proposal required (and/ or hereafter may require) Customer to identify specific personnel who are authorized to access the applicable Software, and Customer shall limit access to the Software to only such authorized personnel.

3. **COMPLIANCE.** Customer acknowledges and agrees that, as between Customer and Bindr, Customer is solely responsible for compliance with all federal, state or other applicable laws governing the use of the Services and the Software, including but not limited to laws applicable to direct marketing and privacy.
4. **INTELLECTUAL PROPERTY RIGHTS.** Customer acknowledges that the Software and, as between the parties, all other related software and technology used to provide the Services are the trade secrets of Bindr, and it is the intent of the parties that Bindr shall own the Software, as well as all patents, copyrights, trademarks, trade secrets and other intellectual property rights associated with or appurtenant to the Software and/or the Services. Accordingly, the parties acknowledge and agree that title to the Software, and all related software code, technical know-how and intellectual property rights therein, are and shall remain the exclusive property of Bindr. Customer shall not take any action to jeopardize, limit or interfere in any manner with, and shall not otherwise take any or commit any omission that would be adverse to, Bindr's ownership of and rights with respect to the Software and/or Services. If Customer, its affiliates, employees, agents or any third parties obtain any rights of ownership in or use of the Software, through operation of applicable law or otherwise, Customer shall and hereby does transfer, grant, convey, assign and relinquish exclusively to Bindr any and all right, title and interest it has or may acquire in the Software under patent, copyright, trade secret, trademark or other law relating to intellectual property in perpetuity or for the longest period otherwise permitted by law.
5. **CONFIDENTIALITY.**
  - (a) Each party agrees to use good faith efforts and at least the same care that it uses to protect its own confidential information of like importance, but in no event less than reasonable care, to prevent unauthorized dissemination or disclosure of the other party's (a) confidential information both during and after the Term of this Agreement. In addition, each party shall use the other party's confidential information solely as necessary for the performance or enforcement of this Agreement. Confidential information of a party will include, but is not necessarily limited to, (i) non-public financial information concerning such party; (ii) information concerning such party's product lines, both current and planned (including in the case of Bindr, and without limitation, all information related to the Software and the Services), research, development, and pricing and marketing plans, unless and until publicly announced; and (iii) any information designated by such party as confidential in writing at or prior to disclosure.
  - (b) Except as required by law, Bindr will not disclose to any non-affiliated party any non-public individually identifiable Customer data received from Customer without Customer's prior approval. Bindr shall maintain at all times during the Term appropriate and reasonable safeguards to protect such individually identifiable Customer data using measures no less rigorous than those used to protect Bindr's own Customers' individually identifiable data. Notwithstanding anything herein to the contrary, as between the parties, Customer shall be solely responsible for compliance with all applicable laws, rules and regulations related to the unauthorized access or use of any individually identifiable data of Customer, even if any such data is accessed or used via the Software, unless such unauthorized access or use is caused by or the result of the gross negligence or willful misconduct of Bindr.
  - (c) The restrictions in Section 6(a) above shall not apply to information which: (i) has become publicly known without breach of this Agreement or any other confidentiality obligation by the receiving party; (ii) has been given to the receiving party by a third party with a legal right to so disclose; (iii) was known to the receiving party at the time of disclosure by the disclosing party as evidenced by the receiving party's written records; (iv) was independently developed by the receiving party without reference to or use of the other party's confidential information; (v) is necessary to establish the rights of either party under this Agreement; or (vi) must be disclosed by the receiving party to comply with any requirement of law or order of a court or administrative body (provided that the receiving party will endeavor to notify the disclosing party of the issuance of such order and reasonably cooperate, at the disclosing party's expense, in its efforts to convince the court or administrative body to restrict disclosure).

6. DISCLAIMER; LIMITATION OF LIABILITY.

(a) BINDR PROVIDES THE SERVICES AND SOFTWARE “AS IS” AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, ORAL, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES OR THE SOFTWARE, AND BINDR HEREBY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY WITH RESPECT TO THE SERVICES OR THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF QUALITY, COMPLETENESS, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

(a) (b) BINDR SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR (i) INJURY TO ANY PERSON OR PROPERTY WHATSOEVER RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES OR SOFTWARE OR (ii) ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR OTHER DAMAGES OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THE SERVICES OR SOFTWARE OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BINDR SHALL NOT UNDER ANY CIRCUMSTANCES BE RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE

(INCLUDING, BUT NOT LIMITED TO, THOSE INCURRED AS A RESULT OF LOSS OF USE OF THE SERVICES OR SOFTWARE), LOSS OR DISCLOSURE OF DATA (HOWEVER CAUSED), BUSINESS INTERRUPTION, COST OF RECOVERING SOFTWARE OR DATA, COST OF SUBSTITUTE SOFTWARE OR DATA, OR OTHER SIMILAR COSTS. FURTHER, IN NO EVENT SHALL BINDR'S TOTAL LIABILITY FOR A CLAIM OF ANY KIND, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, EXCEED THE TOTAL AMOUNT PAID TO BINDR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

7. INDEMNIFICATION.

(a) Customer assumes sole responsibility for all use of the Services and the Software and agrees to indemnify, defend and hold harmless BINDR and its affiliates, and its and their respective officers, directors, employees, agents and representatives, from and against any and all claims, causes of action, suits, proceedings and demands asserted or alleged by third parties (“Claims”), and from and against any damages, costs, expenses and liabilities of any kind whatsoever, including (without limitation) legal expenses and reasonable attorneys’ fees, incurred in connection with such Claims, arising out of or in any way related to (i) Dealership’s use of the Services or the Software, including without limitation the use or inability to use the same, or any errors or omissions in the same, (ii) any breach by Customer of this Agreement, or (iii) Customer’s violation of or failure to comply with any applicable law.

(b) If a preliminary or final judgment shall be obtained against Customer’s use of the Services or the Software by reason of a Claim that the Services or the Software infringe or misappropriate the intellectual property rights of a third party or if the Services or the Software are likely to become the subject of such a Claim, Bindr shall at its option and expense either (i) procure for Customer the right to continue to use the Services or Software as provided in this Agreement, or (ii) replace or modify the Software with a version of Software that is non-infringing, but performing substantially similar functions. In the event that neither of the foregoing options is commercially reasonable in Bindr’s sole judgment, Bindr shall cease providing the Services and/or the Software to Customer and refund to Customer any license fees pre-paid by Customer with respect to the remainder of the Term. THE RIGHTS AND OBLIGATIONS IN THIS SECTION 8(b) ARE BINDR’S

SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES,

(a) WITH RESPECT TO ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION OF THE SERVICES OR THE SOFTWARE.

8. TERM AND TERMINATION.

(a) This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Section 9, shall continue for the Term set forth in the Pricing Proposal.

(b) Either party may terminate this Agreement immediately for any breach of this Agreement by the other party that is not cured within thirty (30) days after receipt of written notice of the breach from the non-breaching party; provided however, such cure period shall not apply (i) if Dealership is in breach of Section 3(a) (License and Restrictions) of this Agreement, or (ii) if either party is in breach of Section 6 (Confidentiality), and in either such case the non-breaching party may terminate this Agreement immediately upon such breach; and further provided, however, that the cure period for the breach by Customer of an obligation to pay fees when due shall be ten (10) days. In addition, Bindr may terminate this Agreement at any time without cause upon thirty (30) days' written notice to Customer.

(c) This Agreement shall be immediately terminated upon the dissolution or bankruptcy of Customer, the filing of a bankruptcy petition by or against Customer or a general arrangement or assignment by Customer for the benefit of creditors.

(d) Following expiration or termination of this Agreement for any reason, all rights and licenses granted herein shall terminate and Customer shall immediately cease use of and certify to Bindr that it has destroyed all copies of the Software. Bindr will archive the as-builts and remove them from online access. Notwithstanding the foregoing, termination or expiration of this Agreement shall not limit either party from pursuing any remedies available to it at the time of or in connection with such termination, nor shall such termination release Customer from any obligation to pay all fees that have accrued under this Agreement up to the date of termination. The parties' rights and obligations under Sections 4, 5, 6, 7, 8, 9(d), 11 and 12 shall survive any termination or expiration of this Agreement.

9. INJUNCTIVE RELIEF. Each party acknowledges that the Software is unique property, and that the unauthorized use or disclosure thereof shall cause Bindr irreparable harm that could not be adequately compensated by monetary damages. Accordingly, in addition to any other remedies available to it at law or in equity, Bindr will be entitled to injunctive relief to enforce the terms of this Agreement, including to prevent any actual or threatened unauthorized use or disclosure of confidential information of Bindr or the Software.

10. GOVERNING LAW; DISPUTE RESOLUTION.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Any disputes under this Agreement may be brought in, and the parties hereby consent to the jurisdiction of, any state or federal court that is located in Delaware. The parties further consent that such service of process may be made by certified or registered mail, return receipt requested, addressed to the parties as set forth herein.

(a)

(b) In any action or other proceeding by which Bindr either seeks to enforce its rights under the Agreement or seeks a declaration of any rights or obligations under the Agreement, Bindr will be entitled to reasonable attorney's fees and reasonable costs and expenses incurred to resolve such dispute and to enforce any final judgment. In addition, if Customer or Customer's account is referred to an

attorney or collection agency for collection, Customer will pay for all collection fees, costs and expenses incurred by Bindr, including attorneys' fees and fees of collection agencies.

## 11. GENERAL.

(a) Press Releases. Bindr may issue press releases and other marketing and promotional material describing the relationship created by this Agreement upon Customer's approval, not to be unreasonably withheld or delayed, and Bindr may use specific information previously approved for public release by Customer without any further approval.

(b) Notices. All notices and other communications to each party must be in writing and sent to the party at the address specified in the Pricing Proposal. If to Bindr, 22726 Martha Street, Woodland Hills, CA 91367, Attention: Contracts Administration. Unless otherwise agreed, notice shall be deemed given (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail, or (iv) upon verification of receipt via facsimile.

(c) Force Majeure. Neither party shall be liable or deemed to be in default for any delays or failure in performance of its obligations under this Agreement (other than its obligation to pay any monies owed hereunder) resulting directly or indirectly from any cause or circumstances beyond its reasonable control, including but not limited to acts of God, war or warlike conditions, terrorism, riot, embargoes, acts of civil or military authority, fire, flood, accidents, strikes or labor shortages, sabotage, Internet failure, transportation facilities shortages, fuel or materials or for failures of equipment, Internet, telecommunications facilities or third party software programs. (d) Severability; Waiver. If any term or condition hereof is found by a court or administrative agency to be invalid or unenforceable, the remaining terms and conditions hereof shall remain in full force and effect and shall be enforceable to the maximum extent permitted by law. The failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time. A party's remedies set forth herein are not exclusive and are in addition to any and all other remedies available at law or in equity, none of which shall be deemed as waived by virtue of a party's exercise of any other remedy.

(e) Entire Agreement. This Agreement, the Pricing Proposal and related exhibits, attachments and addenda represent the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements and understandings. There are no representations, warranties, promises, covenants or undertakings, except as described herein.

Except where otherwise provided herein, this

(a) Agreement may not be amended or otherwise modified except by a writing signed by both parties hereto.

(f) Assignment. Customer may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity, without the express prior written consent of Bindr.

(g) Aggregate Reports. Notwithstanding anything to the contrary contained in this Agreement, Dealership hereby agrees that (i) Bindr may, and expressly grants Bindr the right to, track, analyze, and/or create reports related to aggregate activity in connection with Customer's use of the Software and share such information with its affiliated companies, and (ii) TABS and such affiliated companies may utilize such information to, among other things, create, market, and sell products and services. Customer represents and warrants that it has the right to grant Bindr and such companies the foregoing rights.

(h) Independent Contractors. The relationship of the parties hereunder is that of independent contractors. Neither of the parties will have, and will not represent that it has, any power to bind the other or to create any obligation on behalf of the other. Nothing stated in this Agreement shall be construed as constituting or

as creating the relationships of employer/employee, fiduciary, principal/ agent, partnership, joint venture or representative of the other.

(i) Third Party Beneficiaries. This Agreement is not intended to benefit any third party and the parties do not intend to create any third party beneficiary rights under this Agreement.