



ROLLICK, INC

OUTDOOR RECREATION VEHICLE DEALER TERMS AND CONDITIONS REV: February 11, 2019

These Terms and Conditions are incorporated by reference into all Order Forms entered into between Rollick, Inc. (Rollick) and the participating dealer (Dealer). These Terms and Conditions and the Order Form executed by the parties constitute a binding agreement between Dealer and Rollick and are referred to collectively as (the Agreement). Rollick operates digital marketing services on behalf of members of third party organizations and its participating dealers. Rollick provides services to the Outdoor Recreational Industry through a proprietary technology platform (the Rollick Management Console or System).

It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be written and signed in English only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.

1. YOUR DUTIES

- 1.1. Dealer agrees to participate in each Affinity and OEM program (Programs) that partners with Rollick and will abide by the program terms for each Program. Dealer may provide additional Program discounts on accessories, parts, service, or apparel.
- 1.2. Dealer agrees to appoint one or more designated Program Manager(s) to respond to all inquiries received through the System within one hour from the time received and to explain the Programs and/or schedule an appointment for all Programs.
- 1.3. Dealer agrees to assist customers who come through the System or participate in the Programs with vehicle selection, test drives, and sales processes.
- 1.4. Dealer agrees to complete a training session prior to activation for all personnel who will interact with the Programs and customers who come through the System.
- 1.5. Dealer agrees to maintain a website service provider with the ability to receive information from the System through a CRM in XML/ADF format.
- 1.6. Dealer will provide a guaranteed Program price on at least 90% of new & used inventory on the Rollick Management Console.
- 1.7. Dealer agrees to provide Rollick an electronic feed containing its inventory available for sale in such format and fields, and with such frequency as Rollick may reasonably request.

2. FEES AND PAYMENT FOR PURCHASED SERVICES

- 2.1. **Fees.** Dealer will pay all fees specified in the Order Form. Except as otherwise specified in this Agreement, payment obligations are non-cancelable and fees paid are non-refundable.
- 2.2. **Partner Market Fund.** Rollick agrees to fund a partner marketing fund. Such marketing fund will be used to reduce the price paid by Dealers for introductions from validated members that are sourced from Rollick/Affinity partners' marketing that are provided to a Dealer. (Rollick/Partner Introductions). The partner marketing fund is funded in part by fees that Affinity partners have agreed to pay Rollick for member validation submissions, including submissions sourced from Dealer's website. The Net Introduction Fee on the Order Form reflects the price Dealer will pay per Rollick/Partner Introduction after taking into account subsidies provided by the partner marketing fund.
Invoicing and Payment. Dealer will provide Rollick with valid and updated credit card information, or with an alternative document reasonably acceptable to Rollick. Dealer authorizes Rollick to charge such credit card monthly in advance for all Rollick products and services listed in the Order Form (Services).
- 2.3. **Suspension of Service and Acceleration.** If any amount owing by Dealer under this or any other agreement for Rollick services is 30 or more days overdue, Rollick may, without limiting its other rights and remedies, accelerate Dealer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend the Services until such amounts are paid in full.

2.4. **Taxes.** The fees do not include any taxes, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes. Dealer is responsible for paying all taxes associated with its purchases hereunder. If Rollick has the legal obligation to pay or collect taxes for which Dealer is responsible under this Section 2.4, Rollick, will invoice Dealer and Dealer will pay that amount unless a valid tax exemption certificate authorized by the appropriate taxing authority is provided.

3. PROPRIETARY RIGHTS AND LICENCES

- 3.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Rollick and our licensors and content providers reserve all rights, title and interest in and to the Services and the content made available through the Services (Content), including all related intellectual property rights. No rights are granted hereunder other than as expressly set forth herein. Dealer has the right to access and use applicable Content subject to the terms of this Agreement.
- 3.2. **Use of Logos.** Dealer grants Rollick a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free, worldwide license to use its logos, trademarks and service marks (Marks) solely in connection with the Agreement, provided that Rollick will not modify the Marks (resizing acceptable) without Dealer's prior written consent.
- 3.3. **License to Use Feedback.** Dealer hereby grants to Rollick a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the services any suggestion, enhancement request, recommendation, correction or other feedback provided by Dealer or its users.
- 3.4. **License to Implement the System on Your Website.** Dealer hereby gives Rollick the right to implement the System on its website, including, but not limited to installing code in order to allow the System to change content when a user accesses the Dealer website.
- 3.5. Dealer shall not decompile, disassemble, or reverse engineer the System, the Services or any elements thereof, or otherwise derive source or object code from the System or Services or any elements thereof.

4. CONFIDENTIALITY

- 4.1. **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party (Discloser) to the other party (Receiver), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.; Rollick Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to Receiver prior to its disclosure by Discloser without breach of any obligation owed to Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by Receiver.
- 4.2. Receiver will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of Discloser for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by Discloser in writing, limit access to Confidential Information of the Discloser to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with Receiver containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement to any third party other than its affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's or accountant's compliance with this section. Notwithstanding the foregoing, Rollick may disclose the terms of this Agreement to a subcontractor to the extent necessary to perform its obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

4.3. Receiver may disclose Confidential Information of Discloser to the extent compelled by law to do so, provided Receiver gives Discloser prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Discloser's cost, if Discloser wishes to contest the disclosure. If Receiver is compelled by law to disclose Discloser's Confidential Information as part of a civil proceeding to which Discloser is a party, and Discloser is not contesting the disclosure, Discloser will reimburse Receiver for its reasonable cost of compiling and providing secure access to that Confidential Information. The parties acknowledge and agree that if Receiver breaches this Section 4, then Discloser will suffer irreparable injury. The parties agree that such irreparable injury suffered by Discloser as a result of Receiver's breach cannot be compensated by money alone, and agree that a court order enjoining Receiver from continuing to breach this Section 4 is proper and warranted.

5. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

5.1. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates

5.2. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

6. **MUTUAL INDEMNIFICATION** Rollick will defend Dealer against any claim, demand, suit or proceeding made or brought against Dealer by a third party alleging that any Service infringes or misappropriates such third party's intellectual property rights (Dealer Claims), and Dealer will defend Rollick against any claim, demand, suit or proceeding made or brought against Rollick by a third party (i) alleging (that any of Dealer's content or data misappropriates such third party's intellectual property rights, or (ii) arising from Dealer's use of the Services or Content in violation of the Agreement, the terms of use, or applicable law (Rollick Claims and together with Dealer Claims, collectively Claims). Such defending party will indemnify the other party from any damages, attorney fees and costs finally awarded against the other party as a result of, or for amounts paid by the other party under a settlement approved by the defending party in writing of, a Claim, provided that the other party (a) promptly give the defending party written notice of the Claim, (b) gives the defending party sole control of the defense and settlement of the Claim (except that the defending party may not settle any Claim unless it unconditionally releases the other Party of all liability), and (c) gives the defending party all reasonable assistance, at the defending party's expense. If Rollick receives information about an infringement or misappropriation claim related to a Service, Rollick may in its discretion and at no cost to Dealer (i) modify the Service so that it is no longer claimed to infringe or misappropriate, (ii) obtain a license for continued use of that Service in accordance with this Agreement, or (iii) terminate the subscriptions for that Service and refund any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Dealer Claim arises from Content or use of the Services in violation of this Agreement, the Documentation or applicable Order Forms. This Section 7 states the defending party's sole liability to, and the other party's exclusive remedy against, the defending party for any type of claim described in this Section 7.

7. LIMITATION OF LIABILITY

7.1. **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT THE PAYMENT OBLIGATIONS UNDER "FEES" IN SECTION 2 ABOVE AND THE INDEMNIFICATION OBLIGATIONS IN SECTION 7 ABOVE.

7.2. Exclusion of Consequential and Related Damages. OTHER THAN THE INDEMNIFICATION OBLIGATIONS IN SECTION 7, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8. TERM AND TERMINATION

- 8.1. **Term of Agreement.** This Agreement commences on the date Dealer accept it and continues until all subscriptions hereunder have expired or have been terminated.
- 8.2. **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term.
- 8.3. **Termination.** At any time and for any reason either party may terminate this Agreement (a) upon five days prior written notice to the other party, or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 8.4. **Refund or Payment upon Termination.** If this Agreement is terminated by Dealer, Rollick will refund Dealer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event will termination relieve Dealer of their obligation to pay any fees payable to Rollick for the period prior to the effective date of termination.

9. **GENERAL PROVISIONS.** This Agreement shall be governed by the laws of the State of Texas, without regard to principles of conflict of laws. This Agreement is the entire agreement of the parties and supersedes any prior agreements between them, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto. Each party agrees that if any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and such provision shall otherwise be severed from this Agreement and the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby. Neither this Agreement nor any right hereunder or interest herein may be assigned or transferred by Dealer without the express written consent of Rollick. Any notice shall be addressed to the party being notified at the address set forth in this Agreement or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered or transmitted via facsimile or reliable and recognized international carrier service with tracking capability (such as FedEx). The parties agree that any term or condition stated in a purchase order or in any other order documentation (excluding Order Forms) is void. Sections 2, 3.3, 4, 5, 6, 7 and 9 will survive any termination or expiration of this Agreement.

10. **RESTRICTIONS ON USE OF INFORMATION AND DATA.** Each party represents, warrants, and covenants that it has implemented adequate administrative, procedural, technical, and physical safeguards designed to (i) provide for the security and confidentiality of non-public personal information provided, collected, and/or received in connection with the Agreement (NPI), (ii) protect against any anticipated threats or hazards to the security or integrity of NPI, and (iii) protect against unauthorized access to or use of NPI which could result in substantial harm to a Customer. In addition, each party will notify Customers of security breaches as required by applicable law. You will only use the NPI provided to you through the Service solely to carry out your obligations under the Agreement. You represent and warrant that You are knowledgeable of, and familiar with, all applicable federal, state, and local laws, rules, regulations, codes, directives, and industry standards relating to privacy applicable to Your business (Privacy Laws) and will implement a privacy policy which will comply with all Privacy Laws, fully and accurately disclose the data collection, use and disclosure practices in connection with Your use of the Service, and be clearly and conspicuously available to all users. Dealer will, at all times, comply with its obligations described in its privacy policy. Rollick will have no responsibility for Dealer's compliance with Privacy Laws. Dealer will ensure that your customers have been informed of the information that will be collected from them, how it will be used, and that certain of such information will be provided to Rollick.