

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CCC INFORMATION SERVICES INC.,

Plaintiff,

v.

TRACTABLE INC.,

Defendant.

Case No. 1:18-cv-07246

Honorable Robert W. Gettleman

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

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A compilation of all unpublished cases is included in Exhibit 2.

Tractable Inc. (“Tractable”) respectfully submits this memorandum of law in support of its Motion to Compel Arbitration and Stay Proceedings. As noted in Tractable’s concurrently filed Motion to Dismiss, Tractable urges the Court not reach the Motion to Dismiss and instead stay this action in favor of pending arbitration proceedings.

PRELIMINARY STATEMENT

This motion seeks the enforcement of a broad and straightforward arbitration agreement. Plaintiff CCC Information Services Inc. (“CCC”) drafted its Automotive Services Independent Appraiser Master License Agreement (the “License”), which includes an extremely broad, binding arbitration agreement. CCC voluntarily entered this arbitration agreement, which requires the arbitration of the claims CCC has asserted in this action.

As the provider of CCC ONE software, CCC agreed to arbitrate any “dispute, claim, case or controversy,” “arising out of or relating to this contract, . . . or arising out of or relating to the relationship between CUSTOMER and CCC or any of the respective agents, partners, contractors or employees thereof.” Critically, CCC further agreed that an arbitrator—not a court—will resolve any disputes about the scope or validity of the arbitration agreement.

Disregarding its own broad and unambiguous arbitration agreement, CCC brought an intellectual property action, pleading that Tractable violated terms of the License, but without attaching or alleging a breach of the License in an effort to plead around the binding arbitration agreement CCC itself drafted. All of CCC’s claims arise out of its relationship with Tractable, and are therefore subject to the arbitration agreement that must be enforced under well-established law. Indeed, as CCC is aware, courts routinely enforce arbitration clauses like the one at issue here. *See, e.g., Unite Here Local 1 v. Hyatt Corp.*, 862 F.3d 588, 596 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 690 (2018) (“courts will compel the arbitration of disputes that the parties have contractually committed to arbitration”); *Kiefer Specialty Flooring, Inc. v. Tarkett, Inc.*, 174 F.3d

907, 910 (7th Cir. 1999) (“We have routinely held that a party may not avoid a contractual arbitration clause merely by ‘casting its complaint in tort.’”) (affirming order compelling arbitration and confirming arbitration award); *Maggard v. CCC Info. Servs. Inc.*, No. 14 C 2368, 2015 WL 1112088, at *2 (N.D. Ill. Mar. 10, 2015); *Corrigan v. Domestic Linen Supply Co.*, No. 12 C 0575, 2012 WL 2977262, at *2-5 (N.D. Ill. July 20, 2012) (Gettleman, J.).

There is no basis to depart from this authority here. The Court should compel arbitration of CCC’s claims, and stay the litigation pending the completion of the pending arbitration.

BACKGROUND

In a typical scenario, when auto damage is reported to an insurance company, “an independent appraiser using CCC ONE is first sent an assignment by an insurance company.” ECF 1 ¶ 15. The appraiser inspects the vehicle, documents the damage, takes photos and ancillary notes to estimate the damage to the vehicle. *Id.* The appraiser populates this information into the CCC software, and CCC ONE generates a workfile, which includes the cost of parts and labor. The appraiser communicates the workfile (or estimate) in CCC’s format to the insurer. *Id.* ¶ 16, 38.

Tractable works with insurers to provide artificial intelligence software to review auto repair appraisals and provide appraisals based on photographs of damage. In August 2017, doing business as JA Appraisal, Tractable sought a license from CCC for its independent appraiser software to communicate vehicle estimates to an insurer using CCC. *Id.* ¶ 23, 24, 38. Tractable’s employee informed CCC that the License Customer, Jason Chen, was not using his real name to enter the License. Xin Decl. ¶¶ 4-8, Ex. A.¹ Tractable’s employee obtained a total of six license seats by March 2018 by entering superseding agreements with CCC, and Tractable paid for all

¹ For more than a year after Tractable obtained a CCC ONE license, CCC did not inquire into Tractable’s identity. CCC began inquiring about Tractable’s identity in late October 2018. ECF 1 ¶ 32. The Declaration of Xing Xin is attached as Exhibit 1, and includes supporting Exhibits A, B, and C (referenced herein as “Ex. A,” “Ex. B,” and “Ex. C”).

seats through November 30, 2018. ECF 1 ¶ 25; Xin Decl. ¶ 8, Ex. C (“License”) ¶ 21. The operative license agreement was signed on March 13, 2018, and is effective as of May 1, 2018. Xin Decl. ¶ 8, License at 1, 7.

The license provides, in pertinent part:

15. Choice of Law/Binding Arbitration/Class Action Waiver. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois to the exclusion of its conflict of laws rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement. **Any dispute, claim, case or controversy, whether in tort, contract, statute or otherwise, arising out of or relating to this contract, including any question regarding its existence, validity, or termination or arising out of or relating to the relationship between CUSTOMER and CCC or any of the respective agents, partners, contractors or employees thereof shall be resolved by binding arbitration.** This Agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. No arbitration will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings. **Any disputes regarding arbitrability, the scope of arbitration or the arbitrator’s jurisdiction will be decided by the arbitrator. The arbitration will be administered by either (a) the American Arbitration Association under its Commercial Arbitration Rules or (b) JAMS Dispute Resolution Experts under its Comprehensive Arbitration Rules.** The arbitration will be conducted by a single arbitrator in English in Chicago, Illinois. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based. This agreement is governed by the Federal Arbitration Act, and any award shall be subject to judicial confirmation in any court having jurisdiction. . . .

License ¶ 15.

Notwithstanding CCC’s own express language in the License requiring any dispute between CCC and “any of the respective agents, partners, contractors or employees of the customer” be brought in arbitration rather than in court, CCC filed the Complaint in this Court on October 30, 2018. ECF 1. Tractable sought an extension of time to respond to the Complaint, but CCC opposed Tractable’s request. Tractable moved for an extension of 30 days, which extension the Court granted. ECF 14, 18. On December 20, 2018, Tractable served on CCC a demand for arbitration under the American Arbitration Association’s (“AAA”) Commercial Rules. Tractable

now respectfully moves the Court to stay the instant action pending a decision of the AAA arbitrator.

ARGUMENT

CCC drafted and offered Tractable a valid, enforceable, and binding arbitration agreement, by which CCC expressly agreed to pursue any claims against Tractable's employee, Tractable, or any other of Tractable's agents, partners, contractors, or employees through arbitration rather than in court, and by which CCC agreed that the arbitrator, not the court, would address the scope and enforceability of the arbitration agreement. The Court should therefore stay the action and order CCC to arbitrate its claims on an individual basis pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16.

I. THE FAA GOVERNS THE ARBITRATION AGREEMENT.

The Federal Arbitration Act embodies a strong federal policy favoring arbitration and ensures that arbitration agreements are rigorously enforced. *See e.g., KPMG LLP v. Cocchi*, 565 U.S. 18, 21 (2011) (per curiam) (reiterating the "emphatic federal policy in favor of arbitral dispute resolution"). The FAA provides that contractual arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. If a valid arbitration agreement goes unheeded by one of the parties, a court with jurisdiction over the offending litigation "shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." *Id.* §§ 3-4. The "**party seeking to avoid arbitration** under an agreement governed by the FAA **bears the burden** of establishing that the agreement in question should not be enforced." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000).

Here, the parties unquestionably entered into arbitration agreements that are governed by the FAA. CCC offered an arbitration agreement, Tractable's employee accepted the agreement,

and Tractable paid consideration through November 30, 2018. Moreover, the License is “a contract evidencing a transaction involving commerce.” See 9 U.S.C. § 2 (FAA extends to a written arbitration “provision in any . . . contract evidencing a transaction involving commerce”).

II. CCC DRAFTED THE LICENSE TO REQUIRE AN ARBITRATOR DECIDE THRESHOLD QUESTIONS OF ARBITRABILITY

Before considering whether CCC’s claims are subject to the parties’ arbitration agreement, the Court must look to the underlying contract to determine whether the parties agreed that the arbitrator would decide that issue. A “court may not deny a party’s request to arbitrate an issue unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” *Kiefer Specialty Flooring, Inc. v. Tarkett, Inc.*, 174 F.3d 907, 909 (7th Cir. 1999).

Here, CCC’s own arbitration agreement expressly provides that “[a]ny disputes regarding arbitrability, the scope of arbitration or the arbitrator’s jurisdiction will be decided by the arbitrator.” License ¶ 15. And the arbitration agreement incorporates the AAA Consumer Arbitration Rules: “The arbitration will be administered by . . . the American Arbitration Association under its Commercial Arbitration Rules.” License ¶ 15. See *Corrigan*, 2012 WL 2977262, at *2 (“when parties agree in a valid arbitration agreement that the AAA’s rules apply, an arbitrator should decide the scope of arbitrability”). Accordingly, the Court should grant Tractable’s Motion to Compel Arbitration and Stay Proceedings without addressing gateway issues, which have been expressly reserved for the arbitrator.

III. EVEN IF THIS COURT WERE TO ASSESS ARBITRABILITY INSTEAD OF THE ARBITRATOR, CCC’S CLAIMS ARE SUBJECT TO BINDING ARBITRATION.

This Court should compel arbitration even if it were to decide (contrary to the express delegation provisions of the arbitration agreement) that it should assess the threshold issue of

arbitrability. Where, unlike here, there is no delegation provision, the threshold questions are (1) whether there is a valid agreement to arbitrate; and (2) whether the agreement covers the dispute. *Rent-A-Ctr., West, Inc. v. Jackson*, 561 U.S. 63, 69 (2010). As “a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24925 (1983).

A. CCC Indisputably Drafted and Entered a Valid Agreement to Arbitrate.

CCC cannot dispute that it drafted and entered an unambiguous agreement to arbitrate. Indeed, CCC offered, and Tractable’s employee accepted, CCC’s offer to license CCC ONE to six users at Tractable. And Tractable paid for the license seats through November 30, 2018. “Offer, acceptance, and consideration form the base of any valid contract.” *Corrigan*, 2012 WL 2977262, at *2. The terms of the License expressly state:

Any dispute, claim, case or controversy, whether in tort, contract, statute or otherwise, arising out of or relating to this contract, including any question regarding its existence, validity, or termination or arising out of or relating to the relationship between CUSTOMER and CCC or any of the respective agents, partners, contractors or employees thereof shall be resolved by binding arbitration.

License ¶ 15.

And even if the terms providing for mandatory binding arbitration were ambiguous—which they are not—any ambiguities should be construed against CCC, the drafter of the agreement. *Linker v. Allstate Ins. Co.*, 342 Ill. App. 3d 764, 779 (2003).

B. All of CCC’s Claims Are Covered by the Arbitration Agreement.

There can be no dispute that CCC’s claims arise out of or relate to the License, and the claims also arise out of or relate to the relationship between Tractable and CCC. For example, CCC alleges:

- “The license at issue in this case is an independent appraiser license.” ECF 1 ¶ 15.

- “The license CCC grants to an independent appraiser is limited, nonexclusive, nontransferable, nonassignable, and revocable.” ECF 1 ¶ 19.
- “Tractable registered for the license under . . . ‘JA Appraisal’ under the customer type ‘independent appraiser.’” ECF 1 ¶ 52.
- “On or about August 23, 2017, ‘JA Appraisal’ obtained an independent appraiser license to use CCC ONE. The license granted one user form ‘JA Appraisal’ the right to use CCC ONE to generate estimates for vehicle repairs.” ECF 1 ¶ 23.
- The License “similarly prohibited ‘JA Appraisal’ from (among other things) copying or making derivative works of the programs, using the programs in any manner not expressly authorized by the agreement, compiling estimate data for the purpose of creating a database, or accessing the programs outside of the United States.” ECF 1 ¶ 25.
- “CCC terminated ‘JA Appraisal’s’ license on October 26, 2018. . . .” ECF 1 ¶ 49.

And CCC further details certain terms of the License:

- d. The independent appraiser acknowledges and agrees, in part, that it may not:
- i. Copy, translate, port modify, or make derivative works of the programs and/or services;
 - ii. Electronically transmit the programs and/or services from one computer to another over a network, including the Internet;
 - iii. Provide access to or use the programs and/or services in a manner not expressly authorized by the agreement;
 - iv. Derive or attempt to derive the source code, source files, or structure of all or any portion of the programs and/or services by reverse engineering, disassembly, decompilation or any other means; and
 - v. Use the programs and/or services and documentation for the benefit of any entity other than the independent appraiser except to provide claims services.

ECF 1 ¶ 19. Whether by inadvertence or design, CCC’s lengthy description of the License omits any discussion of the mandatory binding arbitration clause.

To the extent that CCC suggests JA Appraisal and Tractable are not the same entity (which

would be contrary to CCC's allegations that JA Appraisal was a "front" for Tractable), Tractable and its employees are also covered under the license as "agents, partners, or employees" of Tractable's employee and JA Appraisal. License ¶ 15. Accordingly, the claims are covered.

C. Tractable Is Fully Entitled to Enforce the Arbitration Agreement.

As discussed above, CCC's claims fall squarely within the arbitration agreement and are therefore subject to arbitration. However, that Tractable's employee entered the contract under the name Jason Chen and referred to the company doing business as "JA Appraisal" in no way precludes Tractable from compelling arbitration here. *See, e.g., Maggard v. CCC Info. Servs.*, 2015 WL 1112088, at *2, 4 (N.D. Ill. Mar. 10, 2015) (noting equitable estoppel "allows a non-signatory to compel arbitration and an agreement containing an arbitration clause covers non-signatories under common-law contract and agency principles").

For example, this Court held in *Hoffman v. Deloitte & Touche LLP* that there "are various methods by which non-signatories may enforce arbitration clauses." 143 F. Supp. 2d 995, 1004 (N.D. Ill. 2001) (Gettleman, J.). The Court explained two circumstances in which a non-signatory to an agreement may invoke the agreement's arbitration clause.

First, under agency principles, a "non-signatory may invoke the agreement when, under agency or related principles, the relationship between the signatory and nonsignatory defendants is sufficiently close that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided." *Hoffman*, 143 F. Supp. 2d at 1004.

Second, equitable estoppel allows a non-signatory to compel arbitration "when each of a signatory's claim against a nonsignatory makes reference to or presumes the existence of the written agreement," or when "the signatory raises allegations of substantially interdependent and

concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.” *Hoffman*, 143 F. Supp. 2d at 1004-1005.

Both circumstances allow Tractable to enforce the arbitration clause here.

1. Agency Allows Tractable to Enforce the Arbitration Agreement.

As CCC itself alleged, “Tractable registered for the license under . . . ‘JA Appraisal’ under the customer type ‘independent appraiser.’” ECF 1 ¶ 52. CCC alleges—and Tractable does not dispute—that Tractable’s employee used the doing business as name “JA Appraisal” when he took the license to the CCC software. CCC also alleges that JA Appraisal was “a front for Tractable.” ECF 1 ¶ 5. CCC further alleges that the phone number and address on the License “was associated with the former Head of U.S. Business and Product Development at Tractable, Xing Xin.” ECF 1 ¶ 34.

CCC’s allegations that an employee of Tractable entered the License, and that JA Appraisal was a “front” for Tractable are sufficient to demonstrate that the relationship among Tractable’s employee, JA Appraisal, and Tractable was “so obviously intertwined that only by allowing the non-signator[y] to invoke arbitration would evisceration of the agreement[] be avoided.” *Hoffman*, 143 F. Supp. 2d at 1005. Moreover, the arbitration agreement would be eviscerated if Tractable were not permitted to invoke it after its employee entered the arbitration agreement for the benefit of Tractable and its employees. And because JA Appraisal is a doing business as name for Tractable, Tractable is permitted to invoke the arbitration agreement because JA Appraisal is not a separate company. The doctrine of agency allows Tractable, the non-signatory, to compel arbitration here.

2. Equitable Estoppel Also Applies to Compel Arbitration Here.

Moreover, and as explained above at part III.B, *supra*, CCC’s entire Complaint is predicated on and repeatedly references the License containing the arbitration agreement.

“Obviously, [CCC’s] claims all make reference to and presume the existence of the written agreement[.]” *Hoffman*, 143 F. Supp. 2d at 1005. And the claims depend upon the purported misrepresentation of the name JA Appraisal by Tractable’s employee. “The claims thus raise allegations of substantially interdependent and concerted misconduct by both the signatory ([Tractable’s employee]) and the non-signator[y, Tractable].” *Id.*

Therefore, CCC is equitably estopped from avoiding arbitration.

CONCLUSION

For the foregoing reasons, Tractable requests the Court enter an order compelling CCC to arbitrate the claims and stay the proceedings until such time as the arbitration currently pending before the AAA has been finally adjudicated.

Dated: December 20, 2018

Respectfully submitted,

By: s/ Jennifer M. Kurcz

Leif R. Sigmond, Jr. (Bar No. 6204980)

Jennifer M. Kurcz (Bar No. 6279893)

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Attorneys for Tractable Inc.

CERTIFICATE OF SERVICE

I, Jennifer M. Kurcz, hereby certify that on this 20th day of December, 2018, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which sent notification of such filing to all filing users.

s/ Jennifer M. Kurcz

Jennifer M. Kurcz

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CCC INFORMATION SERVICES, INC.,

Plaintiff,

v.

TRACTABLE INC.,

Defendant.

Case No. 1:18-cv-07246

**EXHIBITS IN SUPPORT OF
MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT AND EXHIBITS TO THE BELOW DECLARATION
1	Declaration of Xing Xin Exhibit A: Email dated August 23, 2017 from Xin to CCC Exhibit B: Email dated August 23, 2017 from CCC to Xin Exhibit C: License Agreement, entitled “Automotive Services Independent Appraiser Master License Agreement,” executed on March 13, 2018
2	Unpublished Cases

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CCC INFORMATION SERVICES INC.,

Plaintiff,

v.

TRACTABLE INC.,

Defendant.

Case No. 1:18-cv-07246

DECLARATION OF XING XIN

I, Xing Xin, pursuant to 28 U.S.C. §1746, declare under penalty of perjury as follows:

1. I make this declaration based on my personal knowledge of the facts set forth herein. I make this declaration in support of Tractable Inc.'s Motion to Compel Arbitration and Stay Proceedings and in support of Tractable Inc.'s Motion to Dismiss CCC's Complaint.

2. From March 2017 to June 2018, I was the Head of U.S. Business and Product Development at Tractable, Inc. ("Tractable").

3. I began working for Tractable in March 2017.

4. At that time, and for the duration of my tenure at Tractable, Tractable engaged in appraisal-related work under the name JA Appraisal.

5. My legal name is Xing Xin. Jason Chen is the name I used when interacting with CCC Information Services, Inc. ("CCC") and when signing agreements with CCC.

6. On August 23, 2017, when I first placed an order on behalf of JA Appraisal (Tractable) for CCC's software, and before executing any agreement, I informed CCC over the phone that Jason Chen was not my name. I followed up with an email reminding CCC that Jason Chen was not my legal name and I asked CCC for confirmation that it would be "ok to sign as


Jason.” Attached as **Exhibit A** is a true and correct copy of an email dated August 23, 2017 from me to CCC.

7. After I executed a license agreement, CCC replied by email the same day stating that my order had been processed. Attached as **Exhibit B** is a true and correct copy of an email dated August 23, 2017 from CCC to me.

8. On March 13, 2018, on behalf of JA Appraisal (Tractable) and using the name “Jason Chen,” I executed a license agreement entitled AUTOMOTIVE SERVICES INDEPENDENT APPRAISER MASTER LICENSE AGREEMENT with CCC Information Services, Inc. (the “License”). Attached as **Exhibit C** is a true and correct copy the License.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: December 18, 2018
San Francisco, CA

By: 

Xing Xin

Exhibit A

From: Barry McShaw bmcshaw@cccis.com
Subject: RE: IA PLATFORM
Date: August 23, 2017 at 2:53 PM
To: Jason Chen jaappraisalco@gmail.com

BM

1. When we had spoken over the phone, I thought it was a 12 month agreement? The contract language says contract term is 36 months (page 4) **Please refer to page 8 product schedule it's a 12 month term. Please see notes and term on page 8.**

2. As an independent appraiser, we sometimes on the road. Does our package allow us to write from on the road or only in our office? You can write from the road if you install on a laptop. You will need to have internet access to update software and also sync. Please call me and I will explain at 815-280-9441.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: 877.208.6155 ext. 8200
Mobile: 815.280.9441
CCC Technical Support: 800.637.8511
Email: bmcshaw@cccis.com
www.cccis.com



From: Jason Chen [mailto:jaappraisalco@gmail.com]
Sent: Wednesday, August 23, 2017 1:27 PM
To: Barry McShaw <bmcshaw@cccis.com>
Subject: Re: IA PLATFORM

Hi Barry,

A couple of questions:

1. When we had spoken over the phone, I thought it was a 12 month agreement? The contract language says contract term is 36 months (page 4)
2. As an independent appraiser, we sometimes on the road. Does our package allow us to

write from on the road or only in our office?

Also, just a confirmation that ok to sign as Jason (not my legal name).

Thanks!

Jason

On Wed, Aug 23, 2017 at 10:41 AM, Barry McShaw <bmcshaw@cccis.com> wrote:

Check your email.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155](tel:877.208.6155) ext. 8200
Mobile: [815.280.9441](tel:815.280.9441)
CCC Technical Support: [800.637.8511](tel:800.637.8511)
Email: bmcshaw@cccis.com
www.cccis.com



From: Jason Chen [mailto:jaappraisalco@gmail.com]

Sent: Wednesday, August 23, 2017 12:27 PM

To: Barry McShaw <bmcshaw@cccis.com>

Subject: Re: IA PLATFORM

Ok, that works. Shoot me what you need to get started and let's kick off.

On Wed, Aug 23, 2017 at 9:24 AM, Barry McShaw <bmcshaw@cccis.com> wrote:

I can do \$15 discount for 12 months.

Get [Outlook for Android](#)

From: Jason Chen <jaappraisalco@gmail.com>

Sent: Wednesday, August 23, 2017 11:22:09 AM

To: Barry McShaw
Subject: Re: IA PLATFORM

Were you able to see if you are able to offer better rates to start with given we're starting at ground zero?

Here are our billing and shipping address:

4600 Adeline St.
Unit 116
Emeryville, CA 94608

Thanks,

On Wed, Aug 23, 2017 at 9:07 AM, Barry McShaw <bmcsshaw@cccis.com> wrote:

I need your address for billing and shipping of our software. I will send over agreements to you once I get this information.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155](tel:877.208.6155) ext. 8200
Mobile: [815.280.9441](tel:815.280.9441)
CCC Technical Support: [800.637.8511](tel:800.637.8511)
Email: bmcsshaw@cccis.com
www.cccis.com



From: Jason Chen [mailto:jaappraisalco@gmail.com]
Sent: Tuesday, August 22, 2017 4:33 PM
To: Barry McShaw <bmcsshaw@cccis.com>
Subject: Re: IA PLATFORM

Hi Barry,

The best number to reach me is: [973-687-3997](tel:973-687-3997).

Looking forward to connecting!

Best,

Jason

On Tue, Aug 22, 2017 at 12:34 PM, Barry McShaw <bmcshaw@cccis.com> wrote:

Can you please give me your best contact number.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155](tel:877.208.6155) ext. 8200

Mobile: [815.280.9441](tel:815.280.9441)

CCC Technical Support: [800.637.8511](tel:800.637.8511)

Email: bmcshaw@cccis.com

www.cccis.com



Exhibit B

From: Barry McShaw bmcshaw@cccis.com
Subject: RE: IA PLATFORM
Date: August 23, 2017 at 3:50 PM
To: Jason Chen jaappraisalco@gmail.com

BM

Order processed. I sent email for you to call Technical support in the morning for installation.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: 877.208.6155 ext. 8200
Mobile: 815.280.9441
CCC Technical Support: 800.637.8511
Email: bmcshaw@cccis.com
www.cccis.com



From: Jason Chen [<mailto:jaappraisalco@gmail.com>]
Sent: Wednesday, August 23, 2017 2:21 PM
To: Barry McShaw <bmcshaw@cccis.com>
Subject: Re: IA PLATFORM

Thanks for the clarification. Contract signed. Looking forward to getting it going!

On Wed, Aug 23, 2017 at 11:53 AM, Barry McShaw <bmcshaw@cccis.com> wrote:

1. When we had spoken over the phone, I thought it was a 12 month agreement? The contract language says contract term is 36 months (page 4) **Please refer to page 8 product schedule it's a 12 month term. Please see notes and term on page 8.**
2. As an independent appraiser, we sometimes on the road. Does our package allow us to write from on the road or only in our office? You can write from the road if you install on a laptop. You will need to have internet access to update software and also sync. Please call me and I will explain at [815-280-9441](tel:815-280-9441).

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155 ext. 8200](tel:877.208.6155)
Mobile: [815.280.9441](tel:815.280.9441)
CCC Technical Support: [800.637.8511](tel:800.637.8511)
Email: bmcshaw@cccis.com
www.cccis.com



From: Jason Chen [mailto:jaappraisalco@gmail.com]
Sent: Wednesday, August 23, 2017 1:27 PM

To: Barry McShaw <bmcshaw@cccis.com>
Subject: Re: IA PLATFORM

Hi Barry,

A couple of questions:

1. When we had spoken over the phone, I thought it was a 12 month agreement? The contract language says contract term is 36 months (page 4)
2. As an independent appraiser, we sometimes on the road. Does our package allow us to write from on the road or only in our office?

Also, just a confirmation that ok to sign as Jason (not my legal name).

Thanks!

Jason

On Wed, Aug 23, 2017 at 10:41 AM, Barry McShaw <bmcshaw@cccis.com> wrote:
Check your email.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group

8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155 ext. 8200](tel:877.208.6155)

Mobile: [815.280.9441](tel:815.280.9441)

CCC Technical Support: [800.637.8511](tel:800.637.8511)

Email: bmcshaw@cccis.com

www.cccis.com



From: Jason Chen [mailto:jaappraisalco@gmail.com]

Sent: Wednesday, August 23, 2017 12:27 PM

To: Barry McShaw <bmcshaw@cccis.com>

Subject: Re: IA PLATFORM

Ok, that works. Shoot me what you need to get started and let's kick off.

On Wed, Aug 23, 2017 at 9:24 AM, Barry McShaw <bmcshaw@cccis.com> wrote:

I can do \$15 discount for 12 months.

Get [Outlook for Android](#)

From: Jason Chen <jaappraisalco@gmail.com>

Sent: Wednesday, August 23, 2017 11:22:09 AM

To: Barry McShaw

Subject: Re: IA PLATFORM

Were you able to see if you are able to offer better rates to start with given we're starting at ground zero?

Here are our billing and shipping address:

4600 Adeline St.
Unit 116
Emeryville, CA 94608

Thanks,

On Wed, Aug 23, 2017 at 9:07 AM, Barry McShaw <bmcshaw@cccis.com> wrote:

I need your address for billing and shipping of our software. I will send over agreements to you once I get this information.

Barry McShaw, Inside Sales Representative
CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155](tel:877.208.6155) ext. 8200

Mobile: [815.280.9441](tel:815.280.9441)

CCC Technical Support: [800.637.8511](tel:800.637.8511)

Email: bmcshaw@cccis.com

www.cccis.com



From: Jason Chen [mailto:jaappraisalco@gmail.com]
Sent: Tuesday, August 22, 2017 4:33 PM
To: Barry McShaw <bmcshaw@cccis.com>
Subject: Re: IA PLATFORM

Hi Barry,

The best number to reach me is: [973-687-3997](tel:973-687-3997).

Looking forward to connecting!

Best,

Jason

On Tue, Aug 22, 2017 at 12:34 PM, Barry McShaw <bmcshaw@cccis.com> wrote:

Can you please give me your best contact number.

Barry McShaw, Inside Sales Representative
CCC Information Services Automotive Services Group

CCC Information Services, Automotive Services Group
8600 West Bryn Mawr Avenue, Suite 900S
Chicago, IL 60631

Office: [877.208.6155](tel:877.208.6155) ext. 8200

Mobile: [815.280.9441](tel:815.280.9441)

CCC Technical Support: [800.637.8511](tel:800.637.8511)

Email: bmcs Shaw@cccis.com

www.cccis.com



Exhibit C

AUTOMOTIVE SERVICES INDEPENDENT APPRAISER MASTER LICENSE AGREEMENT

This Automotive Services Master License Agreement ("Agreement") is made as of 5/1/2018, (the "Effective Date") by and between CCC Information Services Inc., with principal offices at 222 Merchandise Mart Plaza, Suite 900, Chicago, Illinois 60654-1005 ("CCC"), its successors and assigns, and the customer that is identified on the Product Schedule ("CUSTOMER").

1. Definitions. For the purposes of this Agreement, the definitions set forth in this Section shall apply to the respective capitalized terms:

1.1 "CCC Portal" means the portal through which the Services are accessed.

1.2 "Collision Estimating Database" means the electronic database containing the "Motor Crash Estimating Guides Collision Estimating Database" published by Motor Information Systems, a unit of Hearst Business Publishing, Inc. ("Hearst").

1.3 "Data" means data that is supplied by CUSTOMER to be incorporated or used with the Programs and/or Services.

1.4 "Documentation" means those instructions and help manuals pertaining to the Programs and/or Services furnished and/or made accessible by CCC, as may be updated and revised from time-to-time by CCC.

1.5 "Enhancement(s)" means computer program modifications, updates or additions, other than Maintenance Modifications that may be integrated with the Programs and/or Services that are generally made available to CCC customers without charge; provided, however, that Enhancements do not include new Program and/or Services features which will be made available to CUSTOMER at CCC's then current published prices.

1.6 "Error(s)" means a defect in a Program and/or Service that prevents it from functioning in substantial conformity with the Documentation.

1.7 "Maintenance Modification(s)" means computer software changes to be integrated with the Programs and/or Services to correct any Errors therein, but that do not alter the functionality of the Programs and/or Services or add new functions thereto.

1.8 "Product Schedule(s)" means one (1) or more product schedules that are attached hereto and by reference incorporated herein.

1.9 "Program(s)" means a software application licensed to CUSTOMER under this Agreement, as reflected on a Product Schedule).

1.10 "Proprietary or Confidential Information" means, with respect to a party hereto, all information or material which is either (a) marked "Confidential," "Restricted" or "Proprietary Information" or other similar marking, or (b) known by the parties to be considered confidential and proprietary. Proprietary or Confidential Information includes, but is not limited to, the Programs, Services, the Collision Estimating Database and any trade secrets related thereto. In addition, each of the terms and conditions of this Agreement, including pricing, shall constitute Proprietary or Confidential Information. Neither party shall have any obligation with respect to Proprietary or Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; or (iii) is independently developed by the receiving party without reference to information derived from the other party; and (iv) subject to disclosure under court order or other lawful process.

1.11 "Required Platform" means the CCC minimum hardware and software requirements identified by CCC which are necessary to operate the Programs and/or Services (including all model conversions, elements and accessories).

1.12 "Services" means those software applications residing on servers owned or operated by or for the benefit of CCC to which CUSTOMER is given access under this Agreement, as reflected on a Product Schedule.

2. License Grant; Scope of Access and Use; Collision Estimating Database Sublicense.

2.1 License. Subject to the terms and conditions of this Agreement, during the term hereof, CCC hereby grants to CUSTOMER and CUSTOMER accepts a limited, nonexclusive, nontransferable, nonassignable, revocable, term license to use the Programs and/or Services and Documentation solely to provide third party claims services to CUSTOMER's clients, including, insurance companies, repair facilities and leasing companies, (individually, a "Client" and collectively, the "Clients") for the evaluation, processing and settling of auto physical damage claims in connection with insurance policies issued and/or serviced by Clients for vehicles located in the United States (the "Claims Services") and for no other purpose whatsoever (the "License") This License is limited to the Programs and/or Services in the Product Schedule(s) only and does not apply to other products and documentation sold or licensed by CCC.

2.2 Users. In the case of Programs, only one (1) person at a time at one (1) location may access a Program unless such Program is licensed for additional users as set forth on a Product Schedule. In the case of certain Services, a confidential password and login credential will be given to each user authorized by CUSTOMER, which may not be transferred to any other individual or entity. CUSTOMER is solely responsible for assuring the appropriateness of each user and the level of access each user should be afforded.

If at any time CCC believes a password or login credential has been compromised, CCC can change any or all passwords and/or login credentials.

2.3 Collision Estimating Database Sublicense. To the extent incorporated in a Program, CCC hereby grants, and CUSTOMER hereby accepts, on the terms and conditions contained herein, a nonexclusive, nontransferable sublicense to use or access the Collision Estimating Database (collectively, to the extent the Collision Estimating Database is incorporated into a Program, such combination shall be deemed to be a "Program"). CCC represents and warrants that it is authorized and empowered under license agreements with Hearst to grant the rights to use or access the Collision Estimating Database described herein. The Collision Estimating Database is intended to be used in conjunction with the CCC ONE Appraisal Platform ("CCC ONE") licensed hereunder, or any successor product, as an alternative electronic information source of data, inclusive or exclusive of diagrams, contained in Hearst's published printed periodicals. CUSTOMER agrees that its Collision Estimating Database sublicense shall be expressly subject and subordinate to the terms of CCC's license agreements with Hearst. Any modification hereto which affects the rights or obligations of Hearst, specifically, Hearst's right of ownership in the Collision Estimating Database, Hearst's right to restrict the use, copying, modification, distribution and transfer of its Collision Estimating Database and the term of the agreement between CCC and Hearst, shall require the written consent of Hearst, and Hearst shall not be deemed to have waived any term or provision hereof or consented to any breach of this Agreement, unless such waiver or consent shall be in writing and signed by Hearst. WITH RESPECT TO THE COLLISION ESTIMATING DATABASE, EACH UPDATING MEDIA WILL AUTOMATICALLY ERASE THE PRIOR PERIOD'S COLLISION ESTIMATING DATABASE BY VERIFYING THE USER AND SERIAL NUMBER OF EACH CCC ONE UNIT. IF THE USER AND SERIAL NUMBER ARE NOT CURRENT OR ARE INVALID, THE CCC ONE UNIT MAY RENDER BOTH THE CURRENT COLLISION ESTIMATING DATABASE AND THE COLLISION ESTIMATING DATABASE WITHIN CCC ONE INOPERATIVE. ALSO, SUPERSEDED DATA SHOULD NOT BE USED ON ANY OTHER COMPUTER AS IT MAY CAUSE DAMAGE TO SOFTWARE AND HARDWARE.

2.4 Further Limitations. As further limitations to the limited licenses granted hereunder, CUSTOMER acknowledges and agrees that it may not do any of the following:

- a) Copy, translate, port, modify, or make derivative works of the Programs and/or Services or Documentation;
- b) Electronically transmit the Programs from one computer to another or over a network, including the Internet;
- c) Rent, sell, assign, lease, sublicense or otherwise transfer or provide access to the Programs and/or Services and Documentation or use them in any manner not expressly authorized by this Agreement ;
- d) Derive or attempt to derive the source code, source files, or structure of all or any portion of the Programs and/or Services (or any applications or code used to provide the Services) by reverse engineering, disassembly, decompilation or any other means;
- e) Provide a front-end or otherwise access the Programs and/or Services through equipment, locations, software or applications not authorized hereunder;
- f) Compile estimate data for the purpose of creating a database
- g) Access or use the Programs or Services outside of the United States and its protectorates
- h) Use the Programs and/or Services and Documentation for the benefit of any entity other than CUSTOMER except to provide the Claims Services; or
- i) Obligate CCC in any way or make any representations or warranties regarding the Programs and/or Services to Clients.

2.5 Intellectual Property Protection. The Programs, Services and Documentation contain material that is protected by United States copyright law and trade secret law, and by international treaty provisions. All rights not expressly granted to CUSTOMER under this Agreement are expressly reserved by CCC. CUSTOMER may not remove or modify any proprietary notice of CCC from any copy of the Programs, Services or Documentation.

2.6 Ownership. All copyrights, patents, patent rights, trade secrets, trademarks, service marks, trade names, moral rights and other intellectual property and proprietary rights in the Programs, Services, content on the CCC Portal and Documentation are and shall remain the sole and exclusive property of CCC and its licensors. Without limiting the foregoing, CUSTOMER acknowledges CCC's (or CCC's licensors') exclusive ownership of any modification, translation or adaptation of the Programs, Services and Documentation and any other improvement or development based thereon, which is suggested, developed, supplied, installed or paid for by or on behalf of CUSTOMER. CUSTOMER agrees that it will not claim or assert title to the Programs, Services or Documentation or attempt to transfer any title to any third parties. CUSTOMER acknowledges that the Collision Estimating Database is confidential and proprietary material owned and copyrighted by Hearst and certain materials within the Collision Estimating Database are owned by other CCC licensors. CUSTOMER agrees that Hearst and other CCC's licensors shall retain exclusive ownership of such Collision Estimating Database, including, without limitation, all literary property rights, copyrights, trademarks, trade secrets, trade names or service marks, including

goodwill, and that Hearst, CCC's other licensors and/or CCC may enforce such rights directly against CUSTOMER in the event the pertinent terms of this Agreement are violated.

2.7 Program Discontinuance. CCC RESERVES THE RIGHT TO DISCONTINUE PROVIDING ANY PROGRAM AND/OR SERVICE UPON SIXTY (60) DAYS PRIOR WRITTEN NOTICE TO CUSTOMER; PROVIDED, HOWEVER, CCC WILL REPLACE ANY SUCH PROGRAM AND/OR SERVICE WITH A PROGRAM OR SERVICE SIMILAR TO THE PROGRAM AND/OR SERVICE BEING REPLACED, AT NO ADDITIONAL CHARGE TO CUSTOMER, FOR THE REMAINDER OF THE TERM OF THIS AGREEMENT.

3. Devices. CUSTOMER shall obtain at its own expense computer and telecommunications assets sufficient to satisfy the Required Platform. CUSTOMER shall make all necessary modifications to its computer and telecommunications assets to ensure that the Programs and/or Services function properly. Operation of and maintenance of the computer and telecommunications assets is the sole responsibility of CUSTOMER.

4. Fees; Payment. The fees under this Agreement are set forth on the Product Schedule(s), unless otherwise set forth in an amendment to this Agreement. **CCC may increase any fees after the initial term specified herein or on the Product Schedule(s) and on an annual basis thereafter.** Fees are exclusive of all shipping costs and applicable sales, use, excise or similar taxes assessed now or hereafter imposed. CUSTOMER agrees that its obligation to make all payments due shall be absolute and unconditional and not subject to any abatement, reduction, refund, set-off, defense or counterclaim whatsoever. Certain Programs and Services will be billed in advance and certain Programs and Services will be billed in arrears, as set forth on the Product Schedule(s). Unless specified otherwise in the Product Schedule(s), all fees are due thirty (30) days after the invoice date. Any past due amounts will be assessed a late fee accruing at the lesser of 1.5% per month or the maximum rate allowable by law.

5. Confidentiality of Information; Protection and Security.

5.1 Nondisclosure; Non-use. The parties agree, both during the term of this Agreement and after the expiration or termination of this Agreement to hold each other's Proprietary or Confidential Information in confidence. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party agrees to take all reasonable steps so that Proprietary or Confidential Information of either party is not disclosed or distributed by its employees, agents or consultants in violation of the provisions of this Agreement.

5.2 Equitable Relief. Each party acknowledges that any use or disclosure of the other party's Proprietary or Confidential Information, other than as specifically provided for in this Agreement and other written agreements between CCC and CUSTOMER, may result in irreparable injury and damage to the non-using or nondisclosing party. Accordingly, each party hereby agrees that, in the event of use or disclosure by the other party, other than as specifically provided for in this Agreement and in other written agreements between the parties, the non-using or nondisclosing party may be entitled to equitable relief as granted by any appropriate judicial body.

6. Expenses. It is expressly understood and agreed that CCC is under no obligation to reimburse CUSTOMER for any expenses or costs incurred by CUSTOMER in the performance of its responsibilities under this Agreement. Any costs or expenses incurred by CUSTOMER shall be at CUSTOMER's sole risk and upon its independent business judgment that such costs and expenses are appropriate.

7. Training, Maintenance and Support. CCC shall provide CUSTOMER's employees with its standard implementation and training regarding the operation of the Programs and/or Services. Such training shall be conducted at mutually agreeable times and at mutually agreeable locations. In addition, CCC shall provide CUSTOMER telephone support for the Programs and/or Services. CCC's telephone support is available Monday through Friday 6:00 a.m. to 7:30 p.m. Central time and Saturday 7:00 a.m. to 2:30 p.m. Central time (except CCC holidays). CCC's telephone support hours are subject to change at any time without notice. CCC shall provide CUSTOMER with any Maintenance Modifications and Enhancements for the Programs and/or Services. CCC shall not be responsible for ensuring proper production and storage of daily backup diskettes for any data. CUSTOMER is responsible for (a) preparing and maintaining the location of the Computer Equipment in accordance with the specifications provided by CCC; (b) providing adequate personnel to assist CCC in carrying out its duties under this Agreement; and (c) installing any Enhancements or Maintenance Modifications to the Programs and/or Services. In the event CUSTOMER requests support and the problem for which CCC was called to correct is determined to have been caused by equipment or software not provided by CCC under this Agreement, CCC may bill CUSTOMER at CCC's then current time and material rates for all time and costs incurred in responding to the support request.

8. Data. CUSTOMER represents and warrants that it has the right to provide the Data to CCC. CUSTOMER hereby grants CCC full right and authority to use data supplied by CUSTOMER: (a) to be incorporated or used with the Programs and/or Services under this Agreement; (b) for the purpose of creating and providing reports and analysis to the CUSTOMER; (c) for any internal industry, market, and trend analysis, product improvement, and research and development by, or on behalf of, CCC and its affiliates; and (d) in de-identified form, within CCC's and its affiliates' products and services. Such use of this data may continue after the expiration or termination of this Agreement. CUSTOMER is not entitled to recreate estimates for vehicles not related to the original estimate without the advance, written consent of CCC.

9. Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 2.3 OF THIS AGREEMENT, THE PROGRAMS, SERVICES AND DOCUMENTATION ARE PROVIDED BY CCC "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. CCC EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE/NONINFRINGEMENT. CCC DOES NOT WARRANT THAT THE PROGRAMS, SERVICES AND DOCUMENTATION WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS, SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CCC DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE PROGRAMS, SERVICES OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CCC OR CCC'S AGENTS SHALL CREATE A WARRANTY.

10. Limitation of Liability. IN NO EVENT SHALL CCC, HEARST OR OTHER LICENSORS OF CCC BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT, OR FOR ANY CLAIM BY ANY THIRD PARTY (INCLUDING FOR INTELLECTUAL PROPERTY INFRINGEMENT), EVEN IF CCC, HEARST OR OTHER LICENSOR OF CCC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF CCC AND HEARST AND OTHER LICENSORS TO CUSTOMER FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO CCC DURING THE PRECEDING TWELVE MONTHS FOR THE PROGRAMS AND/OR SERVICES GIVING RISE TO SUCH LIABILITY.

11. Indemnification.

11.1 CCC Intellectual Property Indemnification. CCC agrees to defend CUSTOMER and CUSTOMER's officers, employees and authorized successors in interest from and against any third party action, proceeding or other such claim (each a "Third Party Claim") to the extent based on, and indemnify and hold harmless such persons and entities from any liability, loss, damage, cost or expense, including, without limitation, reasonable attorneys' fees awarded to a third party ("Losses") that are finally awarded in connection with any Third Party Claim to the extent caused by, the infringement or misappropriation of any United States copyright, trade secret, patent, trademark or service mark of a third party by CUSTOMER's use of the Programs and/or Services in a manner permitted hereunder (collectively, "Infringement Claim(s)"). CUSTOMER agrees that if its use of the Programs and/or Services or any part thereof becomes, or in CCC's opinion may become, the subject of an Infringement Claim(s), CCC will either procure the right for CUSTOMER to continue to use the Programs and/or Services, or part thereof, or replace or modify the Programs and/or Services, or part thereof, with another non-infringing item of comparable quality and performance capabilities. If neither of such alternatives is commercially reasonable, the infringing items shall be returned to CCC and CCC's sole liability to CUSTOMER shall be to refund the amounts pre-paid by CUSTOMER, if any. Notwithstanding the foregoing, CCC assumes no liability or indemnity obligation for Infringement Claim(s) arising from: (a) use of the Programs and/or Services in combination with non-CCC approved third party products, including hardware and software; (b) modifications or maintenance of the Programs and/or Services by a party other than CCC; (c) misuse of the Programs and/or Services; and (d) failure of CUSTOMER to implement any Maintenance Modifications or Enhancements to the Programs and/or Services, if the Infringement Claim(s) would have been avoided by the use of the Maintenance Modifications or Enhancements.

11.2 CUSTOMER Indemnification. CUSTOMER shall indemnify and hold harmless CCC, its parent, subsidiaries and affiliates and their respective directors, officers, employees, and agents (the "Indemnitees") from and against any and all claims, actions, demands, damages, costs, liabilities, losses and expenses, including reasonable attorney's fees (the "Claims"), and to defend the Indemnitees against any Claims relating to or arising out of CUSTOMER's use of and access to CCC's Products or Services or the provision of the Claims Services to Clients. CCC will provide CUSTOMER with prompt notice of any Claim for which it seeks indemnification, provided that the failure to do so will not excuse CUSTOMER of its indemnification obligations except to the extent prejudiced by such failure or delay. CUSTOMER will defend any such Claim and have the sole right to control the defense of such Claim. CCC will provide reasonable cooperation to CUSTOMER in defending any Claim. CCC may, at its sole expense, obtain counsel of its own choosing to monitor any Claim.

12. Term and Termination.

12.1 Term. This Agreement will commence on the Effective Date and continue in force for thirty-six (36) months from the initial billing (or as otherwise specified in the Product Schedule(s)), unless earlier terminated as provided herein.

12.2 AUTOMATIC RENEWAL. The Agreement will be automatically renewed for successive terms of equivalent duration unless either party, in its discretion, notifies the other party in writing to the contrary within at least NINETY (90) days prior to the expiration of the current term. The initial thirty-six (36) month term and all subsequent renewal terms, if any, shall be referred to herein as the "Term."

12.3 Termination. This Agreement shall terminate:

(a) In the event CUSTOMER is in default of this Agreement. An event of default shall occur if CUSTOMER fails to pay any fees or other payments required hereunder when due or perform or observe any other term or condition contained in this Agreement. Upon the occurrence of any event of default and at any time thereafter, CCC may, in its sole discretion, do any one or more of the following: (i) terminate access to the Programs and/or Services until CUSTOMER pays all outstanding fees, interest and/or other payments due hereunder; (ii) upon notice to CUSTOMER, terminate this Agreement; (iii) declare immediately due and payable, and require

CUSTOMER to pay, all amounts that are past due, currently due and to become due during the balance of the then current term of the Agreement; (iv) by written notice to CUSTOMER, demand that CUSTOMER (and CUSTOMER agrees that it shall) pay to CCC (as liquidated damages for loss of a bargain and not as a penalty) on the date specified in such notice an amount (plus interest thereon at the rate of 12% per annum from said date to the date of actual payment) equal to all unpaid fees then due and to become due and payable for the balance of the then current term of the Agreement; or (v) proceed by arbitration to enforce the terms of this Agreement or to recover damages for the breach hereof. In addition, CUSTOMER shall be liable for all legal fees and other costs and expenses resulting from CUSTOMER's defaults and exercise of CCC's remedies. No remedy shall be exclusive, and all remedies shall be cumulative and in addition to any other remedy referred to above or otherwise available to CCC at law or in equity. To the extent permitted by applicable law, CUSTOMER hereby waives any rights, now or hereafter, conferred by statute or otherwise which may limit or modify any of CCC's rights or remedies under this Section; or

(b) Upon notice by either party, immediately, if (i) a receiver is appointed for the other party or its property; (ii) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes a general assignment for the benefit of its creditors; or (iii) any proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy or similar law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof.

12.4 Post-Termination. From and after termination, (a) all licenses granted herein shall terminate automatically and CUSTOMER shall have no further right to use the Programs, Services, CCC Proprietary or Confidential Information or Documentation and (b) CUSTOMER shall destroy or return to CCC all copies of the Programs, CCC Proprietary or Confidential Information and Documentation, and certify in writing that all known copies, including backup copies, have been destroyed.

13. Compliance with Law. CUSTOMER shall comply with all applicable laws and regulations of governmental bodies or agencies in its performance under this Agreement.

14. Assignment.

14.1 Assignment by CUSTOMER. CUSTOMER represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party, and further agrees that it may not assign its rights or obligations under this Agreement without the prior written consent of CCC. CUSTOMER acknowledges that any attempt to assign this Agreement without such consent from CCC will be void.

14.2 Assignment by CCC. CCC may assign its rights to payments from CUSTOMER, and/or any contracted third party of CUSTOMER, to any third party. CCC may assign this Agreement to any entity acquiring or merging with CCC, or to whom CCC transfers all or substantially all of its assets, or to any entity that CCC executes a contract with that provides for such an assignment.

15. Choice of Law/Binding Arbitration/Class Action Waiver. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois to the exclusion of its conflict of laws rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement. Any dispute, claim, case or controversy, whether in tort, contract, statute or otherwise, arising out of or relating to this contract, including any question regarding its existence, validity, or termination or arising out of or relating to the relationship between CUSTOMER and CCC or any of the respective agents, partners, contractors or employees thereof shall be resolved by binding arbitration. **This Agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. No arbitration will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.** Any disputes regarding arbitrability, the scope of arbitration or the arbitrator's jurisdiction will be decided by the arbitrator. The arbitration will be administered by either (a) the American Arbitration Association under its Commercial Arbitration Rules or (b) JAMS Dispute Resolution Experts under its Comprehensive Arbitration Rules. The arbitration will be conducted by a single arbitrator in English in Chicago, Illinois. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based. This agreement is governed by the Federal Arbitration Act, and any award shall be subject to judicial confirmation in any court having jurisdiction. If any part of this paragraph is deemed illegal, unenforceable or invalid, then that portion will be severed and it shall not operate to invalidate any other portion of this paragraph

BY AGREEING TO THIS ARBITRATION PROVISION, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING ANY RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL AS WELL AS ANY RIGHT TO PARTICIPATE IN A CLASS ACTION OR IN CLASS ACTION PROCEEDINGS.

16. Survival. Sections 2.3 (except the first three sentences), 2.4, 2.5, 2.6, 4, 5, 6, 8, 9, 10, 11, 12.3, 12.4, 13 – 22, 24 (the last four sentences), 25 (the last six sentences), 26.3, 26.5 (the third and last sentences), 26.6, 27 (the second sentence) and 28 (the last three sentences) of this Agreement shall survive termination of this Agreement.

17. No Waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

18. Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including, without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions.

19. **Severability.** If any provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions hereof shall not be affected thereby.

20. **Agreement Drafted by Both Parties.** This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by both parties such that any ambiguities in this Agreement shall not be construed against either party.

21. **Entire Agreement/No Third Party Beneficiaries.** Each of the parties hereto acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants, and all other communications between the parties relating thereto. Only a writing that refers to this Agreement and is signed by both parties, or an electronic click-through agreement provided by CCC to CUSTOMER that CUSTOMER accepts, may amend this Agreement. CCC may amend the terms of this Agreement by posting a notice in the CCC ONE platform or by notifying CUSTOMER by email. Unless provided otherwise, the amended Agreement will be effective immediately, and CUSTOMER's continued use of the Programs and/or Services after agreeing to the amended Agreement will confirm CUSTOMER's acceptance of the changes. This Agreement is for the sole benefit of the parties hereto and except as set forth in Section 2.6 of this Agreement nothing herein, express or implied, shall give or be construed to give any rights hereunder to any third party.

22. **Counterparts/Facsimile.** This Agreement and Product Schedule(s) may be signed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument and may be executed by a signature page delivered by facsimile, in which case CUSTOMER shall promptly thereafter deliver its originally executed signature page to CCC. However, the failure to deliver original signature pages shall not affect the binding nature of CUSTOMER's signature. Facsimile, PDF and electronic signatures shall be deemed originals. CUSTOMER waives any objections to the admissibility of such facsimile PDF or electronic signatures in any court of law or equity.

23. **Notices.** All notices shall be in writing and delivered by hand or sent by express or overnight mail, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be notified as follows: **If to CCC:** General Manager, Automotive Market CCC Information Services Inc., 222 Merchandise Mart, Suite 900, Chicago, IL 60654, with a copy to the attention of the Legal Department at the same address; **If to CUSTOMER:** the contact name and address set forth in the Product Schedule(s). All notices shall be deemed given when received by the intended recipient. Either party may change its contact and/or address specified in this Section by providing notice to the other party in accordance with this Section.

24. **EMS Extract** If made available by CCC, CUSTOMER may use and disclose information extracted from an estimate which has been prepared by CUSTOMER ("EMS") by using the EMS extract feature of CCC ONE Estimating solely for the following purposes: (a) to transmit EMS from CCC ONE Estimating for internal use within a management system that CUSTOMER has licensed from a third party; (b) to transmit EMS to a third party as expressly permitted in writing in advance by the contracting entity for whom the estimate was created, including, but not limited to, the insurance company for whom the estimate was prepared or by the consumer for whose vehicle the estimate was created. In the event that CUSTOMER is transmitting the EMS pursuant to paragraph (b) above, CUSTOMER agrees to keep all written agreements from insurance companies and consumers authorizing the use and disclosure of EMS and the identity of all third parties to whom EMS is disclosed to by CUSTOMER. During the term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement, CCC shall have the right to cause an audit and/or inspection to be made of such records in order to verify CUSTOMER's compliance with this Section. CUSTOMER hereby represents and warrants that CUSTOMER will not share EMS without obtaining the requisite authorizations and hereby agrees to indemnify and hold CCC harmless against all liability to third parties and expenses (including reasonable attorneys' fees and costs) arising from the extraction, use or disclosure of all or any part of EMS. CCC may, at its option, conduct and control the defense and all related settlement negotiations in any such third party action as described herein, and CUSTOMER promises to fully cooperate with such defense at its own expense. The parties agree that Sections 2.7 and 23 do not apply to this Section. CCC RESERVES THE RIGHT TO DISCONTINUE PROVIDING EMS FOR ANY REASON AND AT ANY TIME, WITHOUT NOTICE.

25. **CCC Secure Share Network** ("Secure Share") If made available by CCC, via Secure Share, CUSTOMER will be able to configure CCC ONE Estimating to enable CUSTOMER to share certain data extracted from estimates that have been prepared by CUSTOMER ("BMS") with a third party via that third party's successfully registered Secure Share software application. CUSTOMER agrees that it will only enable transmission of BMS to third parties as expressly permitted in writing in advance by the contracting entity for whom the estimate was created, including, but not limited to, the insurance company for whom the estimate was prepared, or the consumer for whose vehicle the estimate was created. CUSTOMER agrees to retain all written agreements from the third party authorizing the transmission of BMS. During the term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement, CCC shall have the right to cause an audit and/or inspection to be made of such records in order to verify CUSTOMER's compliance with this Section. CUSTOMER hereby represents and warrants that CUSTOMER will not share BMS without obtaining the requisite authorizations and agrees to indemnify and hold CCC harmless against all liability to third parties and expenses (including reasonable attorneys' fees and costs) arising from the extraction, use or disclosure of all or any part of BMS. CCC may, at its option, conduct and control the defense and all related settlement negotiations in any such third party action, and CUSTOMER promises to fully cooperate with such defense at its own expense. Sections 2.7 and 24 do not apply to this Section. CCC reserves the right determine or change, at its sole discretion, the data elements and the format in which BMS is provided. CCC RESERVES THE RIGHT TO DISCONTINUE PROVIDING SECURE SHARE TO CUSTOMER AND/OR TO ANY THIRD PARTY APPLICATION FOR ANY REASON AND AT ANY TIME

26. CCC ONE Appraisal Platform (Applicable if CCC ONE is licensed as specified in a Product Schedule)

26.1 Scope of Access and Use. Access to and use of CCC ONE is granted solely to the number of CUSTOMER's employees falling within the range from one (1) to the number specified on the Product Schedule(s) (individually, the "CCC ONE Authorized User" and collectively, the "CCC ONE Authorized Users"). **Each CCC ONE Authorized User may access and use CCC ONE (a) solely at the CUSTOMER repair facility location where the CCC ONE Authorized User is located (the "Site"); (b) only for CUSTOMER's internal business in order to evaluate, process and settle claims and damage and repair estimates for that Site and (c) for repair management if expressly authorized in a Product Schedule. Notwithstanding the foregoing, each CCC ONE Authorized User may access and use CCC ONE remotely ("Off-Site"), but may not write estimates and supplements Off-Site.** In the event that CUSTOMER desires to write estimates and supplements Off-Site, CUSTOMER must enter into a separate license agreement with CCC for Mobile Estimating.

26.2 Collision Estimating Database. The Collision Estimating Database included with CCC ONE (and any Enhancements or Maintenance Modifications thereto) may only be installed by CUSTOMER on one (1) computer located at either CUSTOMER's headquarters or at one (1) location identified in the Product Schedule(s) (the "Computer"). The CCC ONE Authorized Users shall access the Collision Estimating Database from the Computer, but may not download the Collision Estimating Database on to their computers.

26.3 Risks of Use. CUSTOMER acknowledges and agrees that it is solely responsible for all risks associated with the access and use of CCC ONE. Without limiting the foregoing, CUSTOMER is solely responsible for adequate protection of software and hardware used in connection with CCC ONE, and CCC will not be liable for any loss or damage to CCC ONE, other software or hardware that CUSTOMER may suffer in connection with installing or using CCC ONE.

26.4 Confidential Credential and Passwords. A confidential invitation key (the "Credential") will be given to CUSTOMER. CUSTOMER shall use the Credential solely to set up the initial CCC ONE Authorized User (the "Initial User"). The Initial User shall set up any other CCC ONE Authorized Users and give each CCC ONE Authorized User temporary passwords (the "Temporary Password"), which may not be transferred to any other individual or entity. CUSTOMER shall ensure that each CCC ONE Authorized User replaces the Temporary Password with his/her own password immediately upon receipt of the Temporary Password. CUSTOMER is solely responsible for (a) assuring the appropriateness of each CCC ONE Authorized User; (b) the level of access each CCC ONE Authorized User should be afforded and (c) immediately deactivating any CCC ONE Authorized User that is no longer employed by CUSTOMER. CUSTOMER shall immediately notify CCC of any confidentiality or security breach, including but not limited to any time CUSTOMER believes a Credential, Temporary Password or password has been compromised. If at any time CCC believes a Credential, Temporary Password or password has been compromised, CCC can change any or all Credentials, Temporary Passwords or passwords. CUSTOMER is responsible for maintaining the secrecy of its CCC ONE Authorized User names, passwords, Credential and any account information and shall instruct each CCC ONE Authorized User not to disclose or transfer the foregoing to any individual or entity.

26.5 Work Files. "Work Files" as the term is used herein, include electronic copies of documents, such as estimates, reports, images, and supplements. Provided CCC uses commercially reasonable efforts to protect Work Files from being damaged or misappropriated, CCC shall have no liability for lost or damaged Work Files. Work Files will be stored by CCC for a minimum of six (6) months from the date of the last Work File activity, except as otherwise set forth in this Section, and may thereafter be purged from CCC's system. Upon request from CUSTOMER within thirty (30) days after the date of termination or expiration of this Agreement, CCC shall provide access to CCC ONE for a period not to exceed 30 days at no charge for the sole purpose of permitting CUSTOMER to print any available Work Files, Work File related documents and/or reports, and CUSTOMER agrees it shall not access CCC ONE after the date of termination or expiration of this Agreement for any other purpose whatsoever. Accessing CCC ONE for any other purpose shall be grounds for immediate termination of CUSTOMER's access. CCC shall not be liable to CUSTOMER for CUSTOMER's failure to request access to the Work Files as set forth herein.

25.6 Audit. During the term of this Agreement and for one (1) year thereafter, CUSTOMER will maintain all appropriate books and records, including, but not limited to, documents related to the delivery and use of CCC ONE (the "Records") and CCC shall have a right to conduct an audit of such Records to determine CUSTOMER's compliance with the terms set forth in Section 26 of this Agreement. Such audit may be conducted by CCC and/or a third party designated by CCC. CUSTOMER will provide CCC with access to its Records and any additional information reasonably requested by CCC. Prompt adjustment and payment will be made by CUSTOMER to compensate CCC for any errors or omissions identified by the audit.

27. Motorcycle Data.(Applicable if CUSTOMER is licensing CCC ONE Appraisal Essentials or CCC ONE Appraisal Perform with motorcycle estimating from CCC as specified in a Product Schedule) MOTORCYCLE DATA IS PROVIDED BY THIRD PARTY MOTORCYCLE VENDORS AND THEIR AFFILIATES (COLLECTIVELY, THE "MOTORCYCLE VENDORS"). IN NO EVENT SHALL THE MOTORCYCLE VENDORS BE LIABLE TO CUSTOMER FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR ANALOGOUS DAMAGES OR FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA OR THE LIKE; EVEN IF THE MOTORCYCLE VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY OR ALL OF THE FOREGOING TYPES OF DAMAGES. CUSTOMER ACKNOWLEDGES THAT THE PROVISION OF MOTORCYCLE DATA IS DEPENDENT ON AGREEMENTS WITH THE MOTORCYCLE VENDORS. IN THE EVENT THAT SUCH AN AGREEMENT TERMINATES OR EXPIRES, (A) MOTORCYCLE DATA SHALL NOT INCLUDE THE MOTORCYCLE VENDOR THAT IS A PARTY TO SUCH AGREEMENT AS OF THE TERMINATION DATE THEREOF; AND/OR (B) CCC MAY

TERMINATE THE MOTORCYCLE DATA LICENSE UPON FIFTEEN (15) DAYS PRIOR WRITTEN NOTICE, WITHOUT LIABILITY TO CUSTOMER.

28. Field Certification Program (Applicable if CUSTOMER is participating in CCC's Field Certification Program). From time to time, CUSTOMER may participate in CCC's Field Certification Program solely to determine the usability of pre-release versions of CCC ONE (the "Pre-Release Versions"). CUSTOMER understands and agrees that (a) the Pre-Release Versions may contain bugs, defects and errors and CCC is not obligated to correct any such bugs, defects or errors; (b) CCC is not obligated to generally release the Pre-Release Versions in their present form or any similar product; (c) CCC owns any information, suggestions and feedback CUSTOMER provides concerning the Pre-Release Versions and any modifications made to the Pre-Release Versions and may use any such information and feedback CUSTOMER provides in any manner and for any purpose; and (d) CUSTOMER will not disclose the test results, feedback and other information associated with the Pre-Release Version to any third person without CCC's prior written consent, except to CUSTOMER's employees who must be provided the Pre-Release Versions in order to participate in the Field Certification Program. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER UNDERSTANDS AND AGREES THAT CCC PROVIDES THE PRE-RELEASE VERSIONS ON AN "AS IS" BASIS WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NONINFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PRE-RELEASE VERSIONS AND DOCUMENTATION IS CUSTOMER'S. IN NO EVENT WILL CCC BE LIABLE TO CUSTOMER FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, COMPENSATORY, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PRE-RELEASE VERSIONS, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, PROFITS OR DATA, DELAY, DATA BEING RENDERED INACCURATE, FILE CORRUPTION OR LOSS, SOFTWARE OR HARDWARE DAMAGE, LOSSES SUSTAINED BY CUSTOMER OR THIRD PARTIES, OR A FAILURE OF THE PRE-RELEASE VERSIONS TO OPERATE WITH ANY OTHER SOFTWARE, EVEN IF CCC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN WITNESS WHEREOF, the CUSTOMER has caused this Agreement to be duly executed by its authorized representatives as set forth below:

JASON CHEN	 083A27B4F2E0411...		Business Manager	3/13/2018
Printed Name	CUSTOMER Signature		Title	Date
	CCC information Services Inc.		Title	Date



One.
True.
Partner.

CCC Information Services Inc.
222 Merchandise Mart Plaza,
Suite 900
Chicago, Illinois 60654

Product Schedule to Automotive Services Master License Agreement

Quote Number: Q-87346
Order Type: ASG
Product Upgrade New
Term

Company Name JA APPRAISAL

Sales Representative

Barry McShaw

Monthly Pricing

Account Name	No. of Users	Term	Billing	Products (Program)	One-Time Fees	Subscription Amount
JA APPRAISAL	6	12	Monthly	CCC ONE Appraisal Platform Gateway Package Estimating Aftermarket Documents Communications Recall Tire RPS		\$859.00
Total						\$859.00

Notes: 12 month discount for user upgrade
new price effective May 1st, 2018

For those Programs billed in advance, the first two months' fees, implementation fees and shipping charges will be added to the initial invoice. Applicable taxes will be added to all invoices. This Schedule is subject to approval by an authorized officer of CCC. This Schedule is in effect for the term specified herein. If Customer is licensing Pathways Mobile Estimating ("PME") Customer agrees not to use PME at any address where repair work is performed by the Customer, other than the address where the host unit referenced above is located.

DocuSigned by:

JASON CHEN

083A27B4F2E0411...

JASON CHEN		Business Manager	3/13/2018
Printed Name	CUSTOMER Signature	Title	Date
	CCC information Services Inc.	Title	Date



One.
True.
Partner.

CCC Information Services Inc.
222 Merchandise Mart Plaza,
Suite 900
Chicago, Illinois 60654

Customer Schedule to Automotive Services Master License Agreement

Quote Number: Q-87346
Order Type: ASG
Product Upgrade New
Term

Quote To:		Bill To:		Ship To:	
Customer:	JA APPRAISAL	Customer:	JA APPRAISAL	Customer:	JA APPRAISAL
Doing Business As:	JA APPRAISAL	Doing Business As:	JA APPRAISAL	Doing Business As:	JA APPRAISAL
Primary Contact:	JASON CHEN	Primary Contact:	JASON CHEN	Primary Contact:	JASON CHEN
Phone Number:	(973) 687-3997	Phone Number:	(973) 687-3997	Phone Number:	(973) 687-3997
Email:	jaappraisalco@gmail.com	Email:	jaappraisalco@gmail.com	Email:	jaappraisalco@gmail.com
Address:	4600 Adeline St. Unit 116	Address:	4600 Adeline St. Unit 116	Address:	4600 Adeline St. Unit 116
City:	EMERYVILLE	City:	EMERYVILLE	City:	EMERYVILLE
State:	CA	State:	CA	State:	CA
Zip:	94608	Zip:	94608	Zip:	94608
Country:	US	Country:	US	Country:	US
Federal ID No:		Federal ID No:		Federal ID No:	
		Location ID:	184265		

Enrolled in EFT/ACH Information:

If "Yes" is selected, Customer acknowledges that Customer has signed the Electronic Funds Transfer Authorization Agreement and agrees to its terms.

The Undersigned authorizes all parties referenced herein to release credit and financial information requested by CCC in order to process Customer's order.

DocuSigned by:

JASON CHEN

083A27B4F2E0411...

JASON CHEN			Business Manager	3/13/2018
Printed Name	CUSTOMER Signature		Title	Date
	CCC information Services Inc.		Title	Date

EXHIBIT 2



KeyCite Yellow Flag - Negative Treatment

Declined to Follow by [Price v. NCR Corp.](#), N.D.Ill., December 10, 2012

2012 WL 2977262

Only the Westlaw citation is currently available.

United States District Court,

N.D. Illinois,

Eastern Division.

James A. CORRIGAN, Jr., and Tim J. Barry,
both individually and on behalf of all others
similarly situated, and Gary Alsobrooks, Plaintiffs,

v.

DOMESTIC LINEN SUPPLY CO., INC., Defendant.

No. 12 C 0575.

|

July 20, 2012.

Attorneys and Law Firms

Bryan J. O'Connor, Sr., [Eileen Marie O'Connor](#), Bryan John O'Connor, Jr., O'Connor Law Group, LLC, [James A. Corrigan](#), Nevoral & Corrigan, Ltd, Chicago, IL, for Plaintiffs.

MEMORANDUM OPINION AND ORDER

[ROBERT W. GETTLEMAN](#), District Judge.

*1 Plaintiffs James A. Corrigan Jr. and Tim J. Barry, individually and on behalf of similarly situated employees, brought a collective and putative class action complaint against defendant Domestic Linen Supply Co, alleging violations of the Fair Labor Standards Act “FLSA”,



[29 U.S.C. § 201 et seq.](#) (Count I), and violations of the Illinois Wage Payment and Collection Act “IWPCA”, [820 ILCS 115/1 et seq.](#), the Michigan Wage and Fringe Benefits Act “MWFBA”, [M.C.L. § 408.471 et seq.](#), and other state laws (Count II). Additionally, Plaintiff Gary Alsobrooks has filed an individual action against defendant, alleging breach of contract and fraud (Counts III & IV).¹ Defendant has moved to dismiss or in the alternative compel arbitration on all counts. Plaintiffs Corrigan and Barry oppose the motion. Alsobrooks has agreed to arbitrate his claims. For the reasons stated below, defendant's motion is granted.

FACTS

Defendant is a corporation, headquartered in Michigan, but also doing business in Illinois. Defendant is in the business of supplying uniforms, linens, and other materials to businesses.

Plaintiff Barry was hired as a Service Manager, sometime on or before November 20, 2003, and signed an agreement titled *Employment/Trade Secrets Agreement* (The Barry Agreement). The Barry Agreement governs use of company information, the employment relationship, and paycheck adjustments, and provides:

“[A]ny controversy or claim arising out of or relating to this agreement or breach thereof (including any and all relief sought arising out of the termination of employment) shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association”

Plaintiff Corrigan was hired as a Route Salesman/Driver, sometime on or before June 18, 2009, and signed a similar agreement titled *Employment/Trade Secrets Agreement* (The Corrigan Agreement). The arbitration clause in the Corrigan Agreement reads in pertinent part:

“[A]ny controversy or claim arising out of or relating to this agreement or breach thereof (including any and all relief sought out of the employment relationship or the termination of employment) shall be settled by arbitration in accordance with the commercial or employment rules of the American Arbitration Association (as the nature of the claim dictates)”

Plaintiffs allege that during “the last three years” they were required to work in excess of 40 hours per week, but

were paid a salary based on a 40-hour workweek, and not compensated for hours worked in excess of 40 hours in violation of FLSA, IWPCA, and MWFBA.

DISCUSSION

Defendant has moved to compel arbitration, arguing that each plaintiff entered into an employment agreement containing valid arbitration clauses. Courts review a motion to compel arbitration under a summary judgment standard in accordance with [Federal Rule of Civil Procedure 56\(c\)](#). [Tickanen v. Harris & Harris, Ltd.](#), 461 F.Supp.2d 863, 866 (E.D.Wis.2006). Movants are required to “provide sufficient evidence in support of their claims such that a reasonable jury could return a verdict for them under applicable law.” [WFC Commodities Corp., v. Linco Futures Group, Inc.](#), 1998 WL 834374, *2 (N.D.Ill.1998). The court may consider exhibits and affidavits regarding the arbitration agreement in question. [Reineke v. Circuit City Stores, Inc.](#), 2004 WL 442639, *1 (N.D.Ill.2004).

*2 Agreements containing arbitration clauses are no different than other agreements and must be upheld “save upon such grounds as exist in law or in equity for the revocation of any contract.” 9 U.S.C. § 3. The Federal Arbitration Act (FAA) was passed to ensure that valid agreements to arbitrate would be enforced by courts.

[Dean Witter Reynolds, Inc. v. Byrd](#), 470 U.S. 213, 218, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985). Upon finding a valid arbitration agreement, courts generally compel arbitration. *Id.* In accordance with the FAA courts are required to stay proceedings until arbitration is held “if the court determines there is an agreement in writing to submit to arbitration and the proceeding filed with the court is subject to arbitration under this agreement.”

[Tickanen](#), 461 F.Supp.2d at 866. “The court’s only role when presented with a question of arbitrability is to determine, (1) whether a valid arbitration agreement exists and (2) whether the scope of the parties dispute falls within the agreement.” [Tickanen](#), 461 F.Supp.2d at 866 (quoting [Chiron Corp. v. Ortho Diagnostic Sys., Inc.](#), 207 F.3d 1126, 1130 (9th Cir.2000)).

It is the job of the courts to interpret agreements and determine the validity of the contract in question. *See*

[Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.](#), — U.S. —, 130 S.Ct. 1758, 1774–75, 176 L.Ed.2d 605 (2010). Offer, acceptance, and consideration form the base of any

valid contract. *See e.g.* [Steinberg v. Chicago Medical School](#), 69 Ill.2d 320, 329, 13 Ill.Dec. 699, 371 N.E.2d 634 (Ill.1977). In the instant case, there is no dispute that both plaintiffs willingly entered into their respective agreements in return for employment by defendant. Therefore, offer, acceptance, and consideration all exist and, absent something to establish otherwise, the contracts are valid.



Further, when parties agree in a valid arbitration agreement that the AAA’s rules apply, an arbitrator should decide the scope of arbitrability. [Bayer CropScience, Inc. v. Limagrain Genetics Corp., Inc.](#), 2004 WL 2931284, *4 (N.D.Ill.2004) (“The inclusion of the phrase ‘the arbitration shall be conducted ... in accordance with the prevailing commercial arbitration rules of the American Arbitration Association’ in the arbitration provision of the Agreement is clear and unmistakable evidence that the issue of arbitrability is to be submitted to the arbitrator.”); *see also* [Yellow Cab Affiliation, Inc. v. N.H. Ins. Co.](#), 2011 WL 307617, *4 (N.D.Ill.2011) (affirming that when parties mention the commercial rules of the AAA, arbitrability is a decision for the arbitrator). This is consistent with Rule 7 of the Commercial Rules of the AAA, which in pertinent part states:





“R–7: The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement.” American Arbitration Association, Inc., *Commercial Arbitration Rules and Mediation Proceedings: Including Procedures for Large, Complex Commercial Disputes*, 2010.


*3 In the instant case, the arbitration provisions each specifically provide that the disputes “shall be settled by arbitration in accordance with the commercial of the American Arbitration Association.” Therefore, whether plaintiff’s claims fall within the scope of the arbitration provisions is to be decided by an arbitrator.


Recognizing this, plaintiffs present two reasons why the contracts should not be enforced. Neither is valid. First, plaintiffs argue that the Agreements are contracts of adhesion and any ambiguities must be construed against the defendant. Even if plaintiffs are correct that the contracts are adhesions, courts routinely uphold

contracts of adhesion, absent other considerations.

 *Koveleskie v. SBC Capital Markets, Inc.*, 167 F.3d 361 (7th Cir.1999); see also  *Northwestern Nat'l Ins. Co. v. Donovan*, 916 F.2d 372, 377 (7th Cir.1990); *Quist v. Empire Funding Corp.*, 1999 WL 982953 (N.D.Ill.1999). Disparities in bargaining power and take-it-or-leave-it provisions are not enough to invalidate an agreement.


 *Koveleskie*, 167 F.3d at 361. Generally, there must be a “degree of fraud or wrongdoing in order to have an agreement invalidated.” *Id.*; see also  *Kinkel v. Cingular Wireless, LLC*, 357 Ill.App.3d 556, 563, 293 Ill.Dec. 502, 828 N.E.2d 812 (Ill.App.Ct.2005). Courts have also found contracts of adhesion void when the terms are “hidden in a maze of fine print.”  *Kinkel*, 357 Ill.App.3d. at 563, 293 Ill.Dec. 502, 828 N.E.2d 812 (quoting  *Frank's Maintenance & Engineering Inc. v. C.A. Roberts Co.*, 86 Ill.App.3d 980, 990, 42 Ill.Dec. 25, 408 N.E.2d 403 (Ill.App.Ct.1980)).


In the instant case, plaintiffs have not alleged fraud or wrongdoing, and the terms in the Agreements were clear and unambiguous. They were of the same font and typeface as the rest of the agreement. The only wrong plaintiffs have alleged is that the Agreements are form contracts, prepared entirely by defendant and offered on a take-it-or-leave-it basis. This is not enough to invalidate the Agreements.  *Oblix, Inc. v. Winiecki*, 374 F.3d 488, 491 (7th Cir.2004) (“‘take-it-or-leave-it basis’ arguments fare no better. Standard-form agreements are a fact of life”). Further, because there are no allegations of fraud, wrongdoing, or hidden terms there is no other reason to deem the Agreements invalid.

Next, plaintiffs argue that defendant should be equitably estopped from compelling arbitration because defendant did not compel arbitration in a similar case in California.² While there are many ways equitable estoppel may be invoked, the party invoking estoppel must generally have relied on a promise, representation, or conduct by the other party to their detriment.  *Smith v. City of Chicago Heights*, 951 F.2d 834, 840–41 (7th Cir.1992) (“[C]ourts should look for a showing of the plaintiff's actual and reasonable reliance on the defendant's conduct or representations.”) (internal quotation marks omitted);

 *Parks v. Kownacki*, 193 Ill.2d 164, 180, 249 Ill.Dec. 897,

737 N.E.2d 287 (Ill.2000). More specifically, the general test for invoking equitable estoppel is “whether in all the circumstances of the case conscience and [the] duty of honest dealing should deny one the right to repudiate the consequences of his representations or conduct.” *Ceres Illinois, Inc. v. Illinois Scrap Processing*, 114 Ill.2d 133, 148, 102 Ill.Dec. 379, 500 N.E.2d 1 (1986).

*4 In the instant case plaintiffs fail to allege any promise, representation or conduct directed towards them, or any detrimental reliance such that allowing defendant to compel arbitration would violate conscience or the duty of honest dealing. Plaintiffs cite  *Nationwide Mutual Ins. Co. v. Filos*, 285 Ill.App.3d 528, 220 Ill.Dec. 678, 673 N.E.2d 1099, (Ill.App.Ct.1996), as support for their contention that defendant should be estopped from compelling arbitration. Plaintiffs contend this court should read *Nationwide* to establish that defendant cannot compel arbitration because defendant has “fostered the impression that the contractual condition will not be used as a legal defense.” *Nationwide* is entirely distinguishable from the instant case, involving an insurance company that assumed defense of a suit on behalf of an insured party and then denied coverage at a later date. The case created primary insurance liability as an exception to the general rule that estoppel cannot create insurance coverage where none was present. A conflict of interest exists for an insurer that must defend a party and at the same time raise policy defenses to deny coverage to that party. In the instant case, defendant has represented only that they chose to settle instead of compel arbitration in an unrelated case. Further, the policy considerations are not present. The two cases arose at separate times and were independent from one another. The conflict of interest the *Nationwide* court relied on is not applicable to the instant case.

Additionally, plaintiffs ignore that *Nationwide* states, “in addition, the insured must establish the elements of estoppel: that he was misled by an act or statement of *Nationwide*, he reasonably relied on the conduct or representation, and he was prejudiced thereby.”  *Nationwide Mut. Ins. Co.*, 285 Ill.App.3d. at 536, 220 Ill.Dec. 678, 673 N.E.2d 1099. Plaintiffs have not alleged how defendant misled them or how they relied on defendant's conduct or representation to their detriment. Plaintiffs fail to establish or even articulate any of the elements stated by the case they cite as support for their

position. Thus, defendant is not equitably estopped from compelling arbitration.

The court now turns to the question of whether class arbitration may be compelled. Defendant argues that when an arbitration clause is silent as to class arbitration, individual arbitration must be compelled.

It is for courts, not arbitrators, to decide whether class claims are able to proceed. *Goodale v. George S. May Intern. Co.*, 2011 WL 1337349, *2 (N.D.Ill.2011) (“The Plaintiffs insist that the agreement's silence mandates that the Court allow the arbitrator to determine the arbitrability of the class claims. Supreme Court precedent, however, squarely forecloses the possibility that the class claims are arbitrable.”). It is the job of the courts to interpret what parties to a contract have agreed upon, and this includes whether the parties agreed to class arbitration. See *Stolt–Nielsen S.A.*, 130 S. Ct at 1773. Thus, it is appropriate for the court to determine whether the parties have agreed to class arbitration.

*5 A main goal of the FAA “is to ensure private agreements to arbitrate are enforced according to their terms.” *Stolt–Nielsen S. A.*, 130 S.Ct. at 1773 (internal quotation marks omitted) (quoting *Volt Information Sciences Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989)). Parties are “generally free to structure their arbitration agreements as they see fit.” *Id.* at 1774 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995)). It is the job of courts to interpret the language of these agreements mindful of the intention of the parties. *Id.* at 1774–75 (“It falls to the courts and the arbitrators to give effect to these contractual limitations, and when doing so, courts and arbitrators must not lose sight of the purpose of the exercise: to give effect to the intent of the parties.”). Courts should avoid compelling something unless there is a contractual basis for it. *Id.* at 1775. Thus, a court may not compel parties to arbitrate as part of a class when an arbitration agreement is silent regarding class arbitration. *Id.* at 1776.

In the instant case, both parties agree that the arbitration clause is silent as to class arbitration, but Plaintiffs argue that defendant reads *Stolt–Nielsen* too broadly. Plaintiffs are wrong. The *Stolt–Nielsen* court explicitly held, “a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so.” *Stolt–Nielsen S. A.*, 130 S.Ct. at 1775. In the instant case, there is no such basis for concluding that the parties agreed to class arbitration.

Finally, defendant incorrectly argues that the court should dismiss plaintiffs' suit. A district court should retain jurisdiction when a suit is referred to a separate forum for resolution of an issue. *Tice v. American Airlines*, 288 F.3d 313, 318 (7th Cir.2002). Courts should await the outcome of arbitration before dismissing a suit to save the parties the burden of additional litigation in the event that the arbitrator does not resolve all of the issues of the parties. *Id.* Additionally, the power to compel arbitration comes from Section 3 of the FAA, which directs courts to stay proceedings that have been referred to arbitration until arbitration has been completed. 9 U.S.C. § 3; see also *Continental Cas. Co. v. American Nat. Ins. Co.*, 417 F.3d 727, 732 (7th Cir.2005). Thus, when a court compels arbitration the court should stay the proceeding. Because, however the plaintiffs are required to arbitrate individually, they cannot represent the class as required by Fed.R.Civ.P. 23(a). Accordingly, the court dismisses the class claims without prejudice.

CONCLUSION

For the foregoing reasons, plaintiffs' class claims are dismissed without prejudice and defendant's motion to stay and compel arbitration is granted. This action is stayed until further order. The parties are directed to report to the court by filing a written report on or before October 23, 2012, and appearing for a status hearing October 30, 2012, at 9:00 a.m.

All Citations

Not Reported in F.Supp.2d, 2012 WL 2977262

Footnotes

- 1 It appears that Alsobrooks has been improperly joined as a plaintiff. [Fed.R.Civ.P. 20](#) allows persons to join as plaintiffs only if they assert a right to relief arising out of the same transaction, occurrence or series of transactions or occurrences, and any question of law or fact common to all will arise in the action. Because Alsobrooks' claims against defendant are wholly unrelated to Corrigan's and Barry's claims, he has been improperly joined, and should be severed. Because, however, he has agreed to arbitration, there is no need to sever his case at this time.
- 2 For some inexplicable reason, defendant devotes several pages of its reply brief to a discussion of judicial estoppel, a doctrine not mentioned by plaintiffs.

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2015 WL 1112088

Only the Westlaw citation is currently available.

United States District Court,
N.D. Illinois, Eastern Division.

David Maggard, June Maggard, and Bonita
Hess on their own behalf and on behalf
of all other similarly situated, Plaintiffs,
v.

CCC Information Services Inc. d/b/a CCC
Valuesource and CCC Valuescope, Defendant.

14 C 2368

|
Signed March 10, 2015

Attorneys and Law Firms

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MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

*1 This matter comes before the Court on the motion of Defendant CCC Information Services Inc.'s ("CCC") to compel the appraisal of the vehicle of Plaintiffs David and June Maggard (collectively the "Maggards") and stay the action. For the following reasons, the motion to compel the appraisal and stay the action is granted.

BACKGROUND

The Maggards held an automobile insurance policy (the "Policy") issued by The Hartford ("The Hartford"), an insurance company. In July 2013, the Maggards, both residents of West Virginia, were involved in a car accident that resulted in The Hartford finding that their vehicle was a "total loss." The Maggards submitted a claim for their vehicle to The Hartford and CCC provided a valuation report for the vehicle. The Maggards accepted payment from The Hartford for their vehicle in July of 2013.

The Policy contains a section entitled "Part D—Coverage For Damage To Your Auto." It states:

A. The Appraisal Provision is replaced by the following:

APPRAISAL

1. If we and you do not agree on the amount of loss, either may demand, in writing, an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other party of the selected appraiser within twenty days of such demand. The two appraisers will select an umpire. If the appraisers cannot agree upon an umpire within fifteen days, either party may request the selection of an umpire [sic] made by a judge of a court having jurisdiction. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to in writing by any two will be binding.

Each party will:

- a. Pay its chosen appraiser; and
 - b. Bear the expenses of the appraisal and umpire equally.
2. We do not waive any of our rights under this policy by agreeing to an appraisal.

On April 2, 2014, the Maggards, individually and on behalf of a putative class of similarly situated plaintiffs, filed suit against CCC, alleging that the appraisal process CCC utilizes purposefully manipulates the value of a vehicle to come in below the actual fair market value of the car. This underassessment of the fair market value of a vehicle allows insurance companies that are responsible for the payment of claims to pay substantial less than is due to their customers. The Maggards allege that they were insured with The Hartford and, stemming from that relationship, they had their vehicle valued by CCC. The Maggards claim that they no longer possess the vehicle. On July 8, 2014, The Hartford made a written request to the Maggards, asking that they participate in the appraisal process.

On April 2, 2014, the Maggards filed a six-count complaint, on behalf of themselves and a putative class, alleging that CCC: (1) violated the Illinois Consumer

Fraud and Deceptive Practices Act (“ICFA”); (2) engaged in negligent misrepresentation; (3) engaged in fraudulent misrepresentation and/or fraudulent concealment; (4) was in breach of contract; (5) breached the duty of good faith and fair dealings; and (6) became unjustly enriched.

DISCUSSION

*2 The applicable section of the Federal Arbitration Act (“FAA”) specifically provides that a court with jurisdiction “may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The FAA further provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.



9 U.S.C. § 3 (“Section 3”). Section 3 of the FAA provides that proceedings must be stayed, and arbitration be compelled, if an issue is arbitrable by the agreement of the parties. 9 U.S.C. §§ 3–4. We will use “appraisal” and “arbitration” interchangeably. See *CenTrust Bank, N.A. v. Montpelier U.S. Ins. Co.*, 12 C 9233, 2013 WL 1855838, at *2 (N.D.Ill. May 1, 2013) (“Illinois courts have held that ‘an appraisal clause is analogous to an arbitration clause and is enforceable in a court of law in the same manner as an arbitration clause.’”).


A party seeking to compel arbitration “need only show: (1) an agreement to arbitrate, (2) a dispute within the scope of the arbitration agreement, and (3) a refusal by

the opposing party to proceed to arbitration.” *Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 466 F.3d 577, 580 (7th Cir.2006). The question of whether or not the parties agreed to arbitrate an issue requires “federal courts apply state-law principles of contract formation.” *Gore v. Alltel Communications, LLC*, 666 F.3d 1027, 1032 (7th Cir.2012). “Once it is clear, however, that the parties have a contract that provides for arbitration of some issues between them, any doubt concerning the scope of the arbitration clause is resolved in favor of arbitration as a matter of federal law.” *Id.* The Maggards do not contest that the first and third elements of this test are met, and the Court finds that they have been sufficiently established.

See *Zurich*, 466 F.3d at 580 (to compel arbitration, the movant must demonstrate that the dispute is within the scope of the arbitration clause and that the other party refused to arbitrate) (citation omitted). The issue is the scope of the appraisal clause and whether the theory of equitable estoppel permits a non-signatory to the Policy, like CCC, to enforce it.

The Maggards entered into the Policy with The Hartford. CCC was not involved whatsoever as a signatory. However, the mere fact of a party not being a signatory to an agreement does not defeat the right to compel arbitration. *Wachovia Bank, N.A. Ass'n v. Schmidt*, 445 F.3d 762, 769 (4th Cir.2006); see also *Hoffman v. Deloitte & Touche, LLP*, 143 F.Supp.2d 995, 1004 (N.D.Ill.2001). There are five doctrines through which a non-signatory can be bound by arbitration agreements entered into by others, including estoppel. *Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 417 F.3d 682, 687 (7th Cir.2005). Equitable estoppel allows a non-signatory to compel arbitration and an agreement containing an arbitration clause covers non-signatories under common-law contract and agency principles. *Hoffman*, 143 F.Supp.2d at 1004. Estoppel may apply when the signatory “[m]ust rely on the terms of the written agreement in asserting its claim against a non-signatory. Thus, when each of a signatory's claims against a nonsignatory ‘makes reference to’ or ‘presumes the existence of the written agreement, the signatory's claims arise out of and relate directly to the written agreement and arbitration is appropriate.” *Id.* at 1004–1005 (citations omitted).

*3 The parties quarrel over which state's law applies to the equitable estoppel analysis. CCC argues that West Virginia law applies and insists that state law should govern the issue of equitable estoppel and the ability of the third parties to compel appraisal “*unless* application of state-law rules would stand as an obstacle to the accomplishment of the FAA's objectives.”  *In re Apple iPhone Antitrust Litig.*, 874 F.Supp.2d 889, 896 n. 14 (N.D.Cal.2012) (emphasis in original). CCC also highlights the repeated references to West Virginia law in the Policy itself. The Maggards request that the Court use decisions from Illinois courts, which the Maggards find have “rejected the expanded equitable estoppel doctrine from federal courts that allows a non-signatory to compel arbitration of claims that rely upon a contract containing the arbitration clause.” See  *Ervin v. Nokia, Inc.*, 349 Ill.App.3d 508, 516 (2004) (“We decline “to follow federal decisions that adopt this expanded interpretation of equitable estoppel.”).

For choice of law issues involving insurance contracts, “the Court considers the contacts that are most significant to [the contract], including the location of the subject matter, the place of delivery of the contract, the domicile of the insured or of the insurer, the place of the last act to give rise to a valid contract, the place of performance, or other place bearing a rational relationship to the general contract.”  *Perma-Pipe v. Liberty Surplus*, 2014 WL 1600570, at *3 (N.D.Ill. Apr. 21, 2014). The Maggards do not provide a choice-of-law analysis for why Illinois law applies, but CCC does and it vehemently argues¹ that West Virginia law prevails.

In the instant matter, the Maggards are domiciled in West Virginia, they allegedly executed the Policy with The Hartford in West Virginia, and the location of the vehicle is unknown. The presence of CCC, which is incorporated in Illinois, is not enough to establish that Illinois has the most significant contacts. Based on the facts provided, the Court concludes that West Virginia law applies as to the issue of equitable estoppel. However, the Court must still determine if the appraisal clause should be enforced in this particular lawsuit.


CCC contends that the language in the insurance policy requires the Maggards to submit to an appraisal because it is clear that the valuation of the Maggards' vehicle falls squarely within the appraisal clause in the Policy.

Also, CCC submits that individual issues may be subject to appraisal even if the entire case or dispute is not arbitrable. In its reply, the Court holds CCC true to its word that: (i) it is “simply requesting that the Maggards be compelled to participate in the appraisal process to which they previously agreed so that the actual cash value of their vehicle can be determined; (ii) CCC has not asked this Court to dismiss the complaint due to the presence of an appraisal clause; and (iii) CCC has not asked that the appraisers be allowed to decide class certification or interpret the contract between CCC and The Hartford.

The Maggards respond, stating that CCC has not shown any reasonable reliance to satisfy the theory of equitable estoppel. The Maggards argue that this is much more than a simple disagreement over the actual value of the vehicle, especially because a putative class is involved. Thus, they aver that these issues cannot be resolved through the appraisal process.

In West Virginia:

equitable estoppel allows a nonsignatory to compel arbitration [] when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory[.]

Blevins v. Flagstar, 2013 WL 3365252, at *14 (N.D.W.Va. July 3, 2013). There are two circumstances when equitable estoppel allows a nonsignatory to compel arbitration: (1) “when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory” and (2) “when the signatory raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.”  *Brantley v. Republic Mortg. Ins. Co.*, 424 F.3d 392, 395–96 (4th Cir.2005) (internal quotations and citation omitted).

*4 When reviewing the Maggards' claims, it is evident that the existence of their claims depends on the Policy. CCC is correct that the reliance on the Policy is reflected in the more than a dozen times that the Maggards reference the Policy in their complaint. For instance, their claim

for breach of the duty of good faith and fair dealings in the performance of CCC's appraisal services flows directly out of the Policy because without the Policy, CCC would have never provided an alleged undervaluation of the Maggards' vehicle to The Hartford. Additionally, their breach of contract claim is predicated on the theory that The Hartford's contract with CCC is paid for "through insurance premiums" outlined in the Policy. If it was not for the existence of the Policy, the negligent and fraudulent misrepresentations and the violation of the ICFA would not exist. The manner in which CCC allegedly "falsely misrepresented material facts" to the Maggards, as stated in their complaint, was through the implementation of the Policy itself. These claims directly rely upon the Maggards' relationship with The Hartford and the subsequent agency relationship that The Hartford shared with CCC when they entered a contract to provide valuation reports for The Hartford's insured. Therefore, the Court finds that the Maggards' claims against the non-signatory, CCC, directly hinge on the Policy.

Indeed, the Maggards' complaint presents much more than a disagreement between them and the Hartford concerning actual cash value of their vehicle, however each of the Maggards' causes of action stems from the Policy itself. The Court finds that the second element necessary to compel the appraisal, a dispute within the scope of the appraisal clause, is satisfied. We conclude that the issues raised in the complaint are subject to the appraisal clause based on the intertwined nature of the Maggards' claims against CCC with the Policy.

CONCLUSION

For the aforementioned reasons, the Court grants the motion to compel the appraisal and stay the action.

All Citations

Not Reported in F.Supp.3d, 2015 WL 1112088

Footnotes

- 1 Both parties' incessant footnotes throughout the briefs are not appreciated by the Court.