

Auto Auction Insider™ Program Agreement

Subscriber: _____		
Address: _____		
Phone: _____	Fax: _____	Email: _____
State for Data: _____	Subscriber contact : _____	Sold By: _____

This agreement ("Agreement") is made on the ____ Day of _____, 20 ____ ("Effective Date") between Dealer Marketing Services, Inc ("DMS"), with its principal office located at 5401 Elmore Ave., Suite 200, Davenport, IA 52807 and the Subscriber named above ("Subscriber").

The Parties enter into this Agreement for the purposes of DMS providing Subscriber with the Auto Auction Insider Program ("Program").

1. Description of Program. The Program provides a weekly updated list of all vehicles defined by make, model and style for all major auto manufacturers for the past 8 model years. The list is based on the spread between the average auction price for Subscriber's region and what the average lender in Subscriber's region will advance.

2. Selection of used vehicle book values. Black Book used vehicle values will be used for all accounts in all states. The second book value will be determined by a, b or c below.

a. Subscribers in the states of Colorado, Montana, New Mexico and Wyoming must select from the following used vehicle guides by initialing their selection:

- i. Kelley Blue Book X _____
- ii. NADA X _____

b. Kelley Blue Book will be used in the states of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon and Washington.

c. NADA used vehicle values will be used in all other states and the District of Columbia.

3. Fees and Payment of Fees.

3.1 Fees.

- a. Initial One-Time Set-up Fee - \$195.00* due on signing.
- b. Monthly Program Fee - \$295.00* due on signing

* Plus applicable taxes.

3.2 Payment of Fees and Charges. The Initial One-Time Set-up Fee and the first Monthly Program Fee are due on signing. Payment for Monthly Program Fees is due Net 10 days from invoice date. In the event Subscriber fails to make any payments due under this Agreement when due, DMS may, at its sole discretion, terminate this Agreement, without prejudicing its right to pursue any other remedy for non-payment permitted by law, including, but not limited to legal action to collect unpaid amounts. If any part of any payment due is late, Subscriber agrees to pay a late charge in the amount of 1.5% per month of the payment amount which is late, or if less, the maximum amount allowed by law.

4. Term and Termination. This Agreement shall remain in force until cancelled by either party with a 30-day written notice to the other party. If Subscriber is in default of any terms of this Agreement and fails to cure such default within 10 days after receiving written notice of such default from DMS, DMS may immediately terminate this Agreement and the Program. Notwithstanding the forgoing, DMS may suspend the Program immediately and without notice if DMS has reasonable belief that Subscriber has failed to comply with Subscriber's requirements as defined herein and such failure to comply may result in a violation of Federal and/or State laws, and the suspension will remain in effect until such time DMS believes Subscriber will comply with Subscriber's requirements to the extent the possibility of violation of Federal and/or States laws no longer exists. Section 6, 8, 9, 10.4, 10.5, 10.6 and 10.7 shall survive the termination of this Agreement.

5. Subscriber Requirements. Subscriber is responsible for separately obtaining an ISP account with an Internet connection for communicating to DMS's server. Log in requires Subscriber's Email address. Subscriber's Internet browser must have Javascript and cookies enabled.

6. Limited Warranty and Remedy. DMS warrants it is authorized to use Kelley Blue Book, NADA and Black Book data to perform the Program. DMS makes no warranty, expressed or implied, including but not limited to the adequacy, the merchantability and fitness for a particular purpose, nor the compatibility of the Program provided hereunder with Subscriber's intended use of the same, except that DMS will perform its obligations pursuant to this agreement. DMS does not warrant or guarantee that Subscriber that a specific number of vehicle sales transactions or specific profit per vehicle sale, if any, will be realized by Subscriber as a result of the Program. The Program is provided on an "As Is, As Available" basis. Furthermore, DMS reserves the right to make changes to any and all

Init. _____

aspects of the Program, at any time, without any obligation to notify any person or entity of such changes. In the event any DMS owners, officers, employees or representatives have made any oral or written representations regarding the Program which conflict with this Agreement or any published literature or advertising materials, such statements shall not be deemed warranties, shall not be relied upon by Subscriber and shall not be deemed part of this Agreement. THIS SECTION CONTAINS DMS'S ONLY WARRANTY CONCERNING THE PROGRAM, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, ARISING BY CONTRACT OR BY LAW, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, WHICH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED. DMS will not be liable for any indirect, special, incidental, or consequential damages, including, but not limited to lost profits or exemplary damages, whether due to negligence or other form of tort or contractual liability, even if we have been advised of the possibility of such damages. DMS's total liability relating to this Agreement for breach of contract, negligence, or any other claim shall in no event exceed the fees DMS receives hereunder.

9. Taxes. Subscriber shall pay all federal, state, and local taxes, however designated, levied, or based upon the Program, Subscriber's license of the Licensed Programs, Subscriber's use of the Licensed Programs, this Agreement, or the fees payable under this Agreement, exclusive of taxes based on net income derived by DMS, even if such fees and taxes are levied during the Term of this Agreement. Subscriber shall hold harmless DMS from all claims and liabilities arising in connection with Subscriber's failure to pay such taxes.

10. General

10.1 Force Majeure. Neither party shall be in default if the failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including, but not limited to, power outages, failures or interruptions of communications facilities or equipment of third parties, acts of God, civil commotion, strikes, labor disputes, natural disasters, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, and governmental demands or requirements.

10.2 Multiple Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

10.3 Facsimile copies. The parties agree that if a duly authorized representative of one party signs this Agreement and transmits such Agreement to the other party via facsimile transmission, and a duly authorized representative of the other party then signs such transmission, this Agreement shall have been validly executed by both parties and such fully signed document, and the facsimile of such document bearing all signatures transmitted to the party that originally signed such document shall be deemed as original documents, and shall be acceptable as evidence in a court of law.

10.4 Notices. All notices under this Agreement shall be in writing and shall be delivered: a) personally; b) by overnight courier; or c) by United States Mail, registered or certified, return receipt requested, postage prepaid. Notices shall be deemed received on the date of personal delivery, the date of action receipt as indicated on the delivery notice or return receipt or the date the receipt is refused; whichever is earlier. Notices shall be sent to the parties at the addresses set forth herein, or at such other addresses as the parties may provide in writing from time to time.

10.5 Non-waiver. No failure or delay of either party to exercise any rights or remedies under this Agreement or any Subscriber Order shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be construed as a waiver thereof with respect to any other circumstances.

10.6 Governing Law, Dispute Resolution, Attorney's Fees and Enforcement Costs. This Agreement and all dealings between the parties hereto shall be determined by and are governed by the laws of the State of Illinois. The parties agree that any dispute or claim relating to or arising out of the parties' relationship or this Agreement, including the breach hereof, shall be fully and finally resolved by binding arbitration in accordance with the rules of, and conducted by the American Arbitration Association, in Rock Island County, Illinois and that judgment upon the award rendered may be entered by any court having jurisdiction thereof; provided, however, that this arbitration provision shall not apply; a) to collection actions for payment of fees which shall be subject to the laws of the State of Illinois in the jurisdiction of Rock Island County, Illinois, and: b) to any disputes or claims arising out of Subscribers infringement of DMS's copyrights or other intellectual property rights in ProMax Online. In the event of any dispute of this Agreement the prevailing party shall be entitled to recover all its expenses related to such dispute including reasonable attorneys' fees and court costs.

10.7 Severability. If any portion of this Agreement is determined to be legally invalid or unenforceable, such portion will be severed from this Agreement and the remainder of this Agreement will continue to be fully enforceable and valid.

The parties acknowledge, by their authorized signatures below, that they have read the terms and conditions of this Agreement and any Schedules, Appendixes and Addendums attached hereto, and agree to be bound thereby. The parties agree that this Agreement and attachments thereto represents the entire agreement between the parties and may not be modified except in a writing signed by authorized representatives of both parties.

Subscriber

Dealer Marketing Services, Inc.

By: _____ Date: _____

By: _____ Date: _____

Name: _____ Title: _____

Name: _____ Title: _____