

# NCOA / BK Online Phone Numbers / Reverse Phone Append / DNC Package

Customer: _____	Date: _____
Address: _____	
Street	City
State	Zip Code
Phone: _____	Fax: _____
Email: _____	
Effective Date: _____	Licensor Application ID # _____
Dealership Contact: _____	Sales Rep: _____

THIS AGREEMENT IS MADE on the Effective Date between Dealer Marketing Services, Inc. ("Licensor"), with its principal place of business at 5401 Elmore Ave., suite 200, Davenport, IA 52807 and the ProMax Online Customer ("Customer") named above. Customer agrees to purchase and Licensor agrees to provide the services defined in paragraph 1 ("Service) pursuant to the terms and conditions of this Agreement.

**1. Service definition.** When Customer enters certain limited consumer information into a Licensor provided software application additional consumer information will be provided as described below:

a) **Reverse phone append.** Enter consumer's telephone number and receive consumer's first and last name, full address.

b) **National Change of Address (NCOA) monthly screen.** The address of every consumer and customer in Customer's database shall be updated via a screen of the NCOA data base one time per month during the Term of this Agreement.

c) **BK Online Phone Numbers.** Phone numbers provided for bankruptcy leads that are imported into dealership's promax site.

d) **Do Not Call.** Do Not Call screening can help protect the dealership from unauthorized calling to consumers on the national Do Not Call Registry. The Software will access National Do Not Call Registry ("DNC") data for the telephone area codes for which Dealership has obtained from the DNC ("Dealership's DNC List") and screen the Software's database using the DNC data: (a) when a new consumer is entered into the software their DNC status can be checked immediately by clicking on the "DNC Access button; (b) during an initial DNC screen of all consumers in a dealership's Software's database which will be performed within 24 hours of a dealership's Compliance Solution activation, and; (c) every night the Dealership's consumer database will be screened for all consumers who have not had a record entered into the Software of their initiated contact with the dealership after 90 days. If the screened name is on the DNC the software will then block access to the telephone number and display a blocked telephone number as "0123456789" if the consumer's home or cell phone number(s) are in Dealership's DNC List. The Software then allows the dealership to restrict the employees who will have the ability to "unblock" the telephone number and will record the time, date and name of the person who "unblocked" the number. The FTC provides a business with the DNC data for 5 area codes at no charge. Data for additional area codes are available from the FTC for a fee in the amount of \$62.00 per area code per year. Dealer Marketing Services, Inc. will complete your registration for area codes with the FTC.

**2. Fees and Payment of Fees.** Customer agrees to pay the following fees:

a. Monthly Package Fee - \$195.00 X \_\_\_\_\_ Initial monthly fee due upon signing

b. 12 -month Package Pre-pay option - \$1,950.00 X \_\_\_\_\_ Due upon signing of Agreement, (2 months free.)

**3. Term and Termination.** The Agreement shall remain in full force and affect until terminated by either party for any reason with a 30-day written notice to the other party. In the event Customer selects the 12-month Package Pre-pay option the Initial term of this agreement shall be 12 months from the first day on which the Service was provided to Customer, and shall renew automatically for additional 12-month terms unless either party notifies the other party in writing of intent not to renew within 30 days of the expiration of the then current term. In the event Customer fails to pay any sum of money owed to Licensor for any services or products as agreed, and fails to cure such breach or pay Licensor the sum of money owed within 5 days of receiving notice from Licensor of the breach or failure to pay the sum of money, Licensor may, at its option, immediately terminate this agreement.

**4. Warranties; Indemnification.** Licensor warrants that it is properly licensed to provide the Service to Customer. The Service is provided on an "As Is" basis, and Licensor's ability to provide the Service is dependent on many factors beyond Licensor's control. Customer agrees that the inability of Licensor to provide the Service, for any reason, shall not be construed or interpreted to be a failure of any Licensor provided software application. **Licensor makes no warranty, express or implied, including but not limited to effectiveness and sufficiency of the Service, the merchantability and fitness of the Data Integration Service for a particular purpose, nor the compatibility of the Service with Subscriber's intended use of the service.**

**5. Limitation of Liability.** In no event shall either party be liable to the other party or to third parties for incidental or consequential damages, including without limitation, lost profits, or indirect or special damages arising out of the performance of this Agreement, even if the party not claiming the damages was aware of the possibility of such damages.

**6. Miscellaneous.**

a) This Agreement is the complete and exclusive statement of the understanding between the parties, with respect to the subject matter, superseding all prior agreements, representations, statements and proposals, oral or written. Any amendments or modifications to this Agreement shall be in writing, signed by both parties.

b) Notices and payments of fees required shall be delivered by: courier service (Fed Ex, UPS, etc.) or; registered or certified mail, return receipt requested. If sent by certified or registered mail, Federal Express, Airborne Express or UPS such notices, data and payments shall be deemed delivered when delivered by the respective carrier.

c) No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

d) **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 to any disputes or claims arising out of Customers infringement of Licensor's copyrights or other intellectual property rights in ProMax Online. The prevailing party in any civil litigation or arbitration action shall be entitled to reimbursement from the other party for costs, filing fees, reasonable attorney fees, witness fees, expert fees, court costs, arbitration panel fees, and related travel expenses as they may apply.

e) Licensor will not be liable for any delay or failure of performance resulting from causes beyond its reasonable control and without its fault or negligence.

f) Both parties agree that for convenience, a facsimile copy of this Agreement shall be regarded the same as an original.

IN WITNESS WHEREOF, the parties hereto have read and agree to the terms of this Agreement, agree to be bound hereby and have executed this Agreement by their duly authorized signatures as of the Effective Date written above.

**Customer**  
By \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

**Dealer Marketing Services, Inc.**  
By \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_