

# ProLead™ Program Agreement

Dealership: _____		Date: _____			
Address: _____		Street	City	State	Zip Code
Phone: _____	Fax: _____	Email: _____			
Dealership Contact: _____		ProMax ID # _____		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 dealership named above ("Dealership").

The Parties enter into this Agreement for the purposes of DMS providing Dealership with leads as defined herein.

## General Terms and Conditions

**Section 1. Definitions:** As used in this Agreement, and in addition to terms defined elsewhere in this Agreement, the following words have the following meanings, whether used in the singular or plural:

- a. The term "Lead" means a consumer who has applied for automotive credit, is 18 years of age or older, has gross monthly income of \$2,000 or more. Information regarding the Lead includes: name, address, telephone number, social security number, monthly income, E mail address when available, time at address, employer name and time on job. The Lead will be pre-screened by the InstantScreen™ service pursuant to a separate Instant Screen Agreement. The Lead will be auto-submitted into the Credit Pipeline™ based on Dealership's tier selection on a separate Credit Pipeline agreement

## Section 2. Designated Market Area and monthly volume selection.

- a. **Designated Market Area.** Dealership selects the following market area(s) by selecting a **Central Zip Code** to use: **x** \_\_\_\_\_
- b. **Radius (circular circumference in miles)** from the center of selected Central Zip Code: **x** \_\_\_\_\_.
- c. **Maximum Number of Leads per day:** **x** \_\_\_\_\_ The number of Leads indicated shall be the maximum number of Leads which will be delivered to Dealership during a single day. Dealership understands that DMS may not deliver the Maximum Number of Leads during a single day due to factors beyond the control of DMS
- d. **Please Check one of the following options (for Lead Delivery):**
  - a. \_\_\_\_\_ **ProMax Unlimited™ or other DMS software application delivery only**
  - b. \_\_\_\_\_ **ProMax Unlimited™ other DMS software application delivery & Email Delivery (please include Email address(s))**

## Section 3. Order Quantity, Fees and Payment of Fees.

**3.1 Order.** Dealership orders \_\_\_\_\_ Leads. Upon completion of the delivery by DMS and the receipt by Dealership of the number of Leads ordered in this section, the Order specified in this Section 3.1 shall automatically renew for the identical number of leads until such time Dealership provides DMS a 30-day prior written notice of its intent to terminate this agreement.

**3.2 Fees.** Dealership shall pay the sum of \$\_\_\_\_\_ for \_\_\_\_\_ Leads (\$ \_\_\_\_\_ per Lead).

**3.3 Payment of Fees.** All payments are due Net 10 days following Invoice Date. In the event Dealership 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, Dealership 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. In the event that payment due to DMS is collected at law or through an attorney-at-law, or under advice therefrom, or through a collection agency, Dealership agrees to pay all costs of collection, including, without limitation, all court costs, all arbitration costs and reasonable attorney's fees incurred by DMS. DMS may suspend the Service immediately, and without notice to Dealership if any payment due hereunder is late.

**Section 4. Rejection of Lead.** Dealership may reject a Lead if the Lead meets one or more of the following conditions: a) It is a Lead which Dealership has received from another internet lead source within 3 business days from Dealership's receipt of the Lead for which the name and Ss# are identical; b) fictitious name; c) fictitious SS#; d) minimum gross income of \$2,000 could not be verified.

**Section 5. Term and Termination.** This Agreement shall terminate automatically when the Order specified in Section 3.1 is fulfilled to Dealership. Notwithstanding the foregoing, if Dealership 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.

**Section 6. Can-Spam Act, Customer Information Safeguards and Indemnity.** Dealership and DMS agrees to implement and maintain physical, electronic and procedural safeguards as may be reasonably necessary to guard non-public personal information ("Customer Information") on all Leads. DMS agrees to hold any "Customer Information" to which it has access in strict confidence and shall access "Customer Information" for the explicit business purpose of fulfilling its obligations pursuant to this Agreement. DMS and Dealership agree to

indemnify and hold harmless the other party from any claims made against the other party for violations of any federal, state and local law, statute or rule regarding customer information confidentiality and safeguards (including but not limited to the Graham Leach Bliley Act and the fair Credit Reporting Act) by the violating party resulting from this Agreement. Transactional Emails to consumers are exempted from the Can-Spam Act. The Leads may have opted out of receiving Non-Transactional Emails (Emails not pertaining to their credit application information Dealership received under this Agreement). The sending of any Non-Transactional Email by Dealership may violate the Can Spam Act.

**Section 7. Limited Warranty and Remedy.** DMS warrants that it will not sell, or otherwise provide specific Lead information to any retail automobile dealership other than Dealership. 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 services provided hereunder with Dealership’s intended use of the same, except that DMS will perform its obligations pursuant to this agreement. DMS does not warrant or represent that a Lead will meet a particular InstantScreen tier. DMS does not warrant or guarantee that Dealership that a specific number of vehicle sales transactions, if any, will be realized by Dealership as a result of the services provided hereunder. The services provided hereunder are provided on an “As Is, As Available” basis. Furthermore, DMS reserves the right to make changes to any and all aspects of the services provided hereunder, at any time, without any obligation to notify any person or entity of such changes. To be certain that the services provided hereunder comply with federal, state, and local law, Dealership must consult with and obtain the opinion of the attorney of its choice and at its own expense. In the event any DMS owners, officers, employees or representatives have made any oral or written representations regarding the services provided hereunder 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 Dealership and shall not be deemed part of this Agreement. THIS SECTION CONTAINS DMS’S ONLY WARRANTY CONCERNING THE SERVICES PROVIDED HEREUNDER, 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.

**Section 8. General**

**8.1 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.

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

**8.3 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.

**8.4 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.

**8.5 Non-waiver.** No failure or delay of either party to exercise any rights or remedies under this Agreement or any Customer 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.

**8.6 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 to any disputes or claims arising out of Dealerships infringement of Licensor's copyrights or other intellectual property rights in ProMax Online. In the event any dispute relating to or arising from the parties relationship or this Agreement fall under the jurisdiction of a federal Court, such court shall be the Federal Court having jurisdiction over Rock Island, Illinois. In the event Licensor expends any sums of money to enforce any of its rights under this Agreement, Dealership shall be responsible for and pay any and all sums expended by Licensor including but not limited to attorney's fees, costs and expenses of arbitration, litigation or otherwise.

**8.8 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.**

Dealership

Dealer Marketing Services, Inc.

By: x \_\_\_\_\_

By: \_\_\_\_\_

Name & title: x \_\_\_\_\_

Name & title: \_\_\_\_\_

Date: x \_\_\_\_\_

Date: \_\_\_\_\_