

# MarketThief™ Services Master Agreement

Dealership: \_\_\_\_\_ Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
Street City State Zip Code  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Dealership 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 Avenue, Suite 200, Davenport, Iowa 52807 and the dealership named above ("Dealership").

## General Terms and Conditions

### Section 1. Definitions and Description of MarketThief Service.

**1.1 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 "Purchase Order" means the document which shall be used to specify each order placed for Market Thief Leads.
- b. The term "Direct Mail List" means the consumer names and address derived from various databases ("Databases") to which a letter stating an offer of credit is sent based on the market area and consumer criteria selected on the Purchase Order for consumers who have had an Equifax or Trans Union credit report, as selected in Section 1.2.1, pulled at an automobile dealership the previous business day as selected in Section 1.2.1.
- c. The term "Consumer to Call List" means the consumer names, City and State which are included in the Direct Mail List for which a telephone number is available and not unlisted or not on the Federal Do Not Call Registry.
- d. The term "Lead" shall mean a consumer who is on the Direct Mail List.
- e. The term "Information" means any consumer information provided to Dealership under this Agreement.
- f. The term "Letter" means a letter sent to consumers on the Direct Mail List by DMS which states an offer of credit to the consumer by a national lender.

**1.2 Description of MarketThief Service.** Dealership shall place an order via the Market Thief Purchase Order. DMS shall obtain the Direct Mail List and Consumer to Call List based on the Purchase Order specifications and DMS will mail the Letter to Leads on the day following the day on which the Lead appears on the Direct Mail List. DMS shall deliver the Information for consumers on the Consumer to Call List to Dealership via a ProMax Unlimited full version or CRM version thereof. DMS shall provide the ProLink® toll free credit hotline service and a secure website service to process the consumer response to the Letters.

**1.2.1 Select of Credit Reporting Agency.** Dealership desires to receive Leads based on Equifax \_\_\_\_\_; Experian \_\_\_\_\_; and/or Trans Union \_\_\_\_\_ credit reports.

**1.2.2 Software License.** DMS grants Dealership a non-transferable, non-exclusive license for the term of this Agreement to access and use ProMax Unlimited CRM version via internet facilities for use in Dealership's business if Dealership does not currently have a license for ProMax Unlimited or a ProMax Unlimited CRM.

### Section 2. Fees, Taxes and Payment of Fees.

**2.1 Fees.** Dealership agrees to pay the sum of \$ \_\_\_\_\_ per Lead (plus applicable taxes).

**2.2 Sales and Use Taxes.** DMS will make a reasonable attempt to be familiar with the taxes due on MarketThief transactions in each state, county, city, town, or any other taxing authority, and will charge customer what they understand to be the applicable taxes and submit them to the proper authorities. If an amount for any tax is not specifically stated on this Agreement or on a Purchase Order no tax has been charged to Dealership, however in the event any taxes shall be due on MarketThief services provided to Dealership then Dealership agrees to submit such taxes to DMS or, at DMS's option, to the appropriate taxing authorities. In the event DMS should be required to pay any taxes for a MarketThief transaction provided by this Agreement Subscriber agrees to reimburse DMS for the entire amount of the taxes paid by DMS within 10 days of invoice from DMS, such invoice will be accompanied by the applicable proof of tax due and/or paid by DMS.

**2.3 Payment of Fees.** All fees specified on the Market Thief Purchase Order are due at the time the Purchase Order is signed. Payment shall be made to: Payment shall be made to Dealer Marketing Services, Inc.

**Section 3. Dealership Responsibility.** a) Dealership shall only use the Direct Mail List on a one-time use only basis in connection with Dealership's marketing program providing a pre-screened firm offer of credit to persons identified on the Direct Mail List; b) Dealership shall deliver such offer to all persons identified on a Direct Mail List on behalf of the Lender making a pre-approved offer; c) Dealership shall not segment the Direct Mail List by finite credit score ranges; d) Dealership shall not sublet, resell or republish the Direct Mail List in any manner whatsoever; e) Dealership shall not use the Direct Mail List to create a substitute database to the Databases; e) Dealership shall not convert or use the Direct Mail List to produce statistical reports, except for count reports produced in relation to the use of the Direct Mail List for marketing purposes as authorized herein; f) a Direct Mail List shall may be copied by Dealership, with such copies subject to the terms of this Agreement; g) Dealership shall not use the Direct Mail List in any application involving individual look-ups of people; h) Dealership shall take adequate measures to ensure its use of the Information complies with all 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). i) Dealership agrees to indemnify, defend and hold harmless DMS and Third Party Data Providers from any claim or cause of action against DMS and Third Party Data Providers arising out of or relating to any use by Dealership of the Information, including, without limitation, use by individuals or entities which have not been authorized by this Agreement to have access to and/or use the Information. j) If Trans Union is selected in Section 1.2.1 Dealership is required to complete prescribed Granite Bay Acceptance, Inc. documents and comply with Attachment A for TransUnion and or Experian ;k) if Equifax Dealership must comply with Attachment B for Equifax; l) **Dealership must not make a reference or a statement to the Lead that it has knowledge that the Lead had their credit report pulled recently at another dealership, whether the communication is performed by the Dealership or a third party, in order to comply with the FTC requirements.**

**Section 4. Title.** Any materials developed by DMS for the MarketThief Service, including but not limited to the letters sent to consumers pursuant to this Agreement, are the property of DMS, Name Seeker, Inc. and its third party licensors, or other third parties which developed such materials. Such materials are protected by the copyright laws of the United States of America and may not be copied, duplicated or reproduced in any manner without the express written consent of DMS.

**Section 5. Term and Termination.** This Agreement will continue in full force and affect until terminated by either party without cause with a 30 day written notice to the other party. 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. All notices provided hereunder shall be delivered in accordance with Section 8.4. In the event any DMS third party providers of any component of the MarketThief Service terminate their agreement with DMS, DMS reserves the right to terminate this Agreement immediately and without notice.

**Section 6. 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 Information provided hereunder. 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.

**Section 7. LIMITED WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY.** DMS WARRANTS THAT IT IS AUTHORIZED TO FULFILL ITS OBLIGATIONS UNDER THIS AGREEMENT AND DMS SHALL PROVIDE THE SERVICES IN ACCORDANCE WITH THE TERMS AND CONDITIONS SPECIFIED IN THIS AGREEMENT. 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 MARKETTHIEF SERVICE, EXCEPT THAT DMS WILL PERFORM ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT. DMS DOES NOT WARRANT OR GUARANTEE THAT A SPECIFIC NUMBER OF VEHICLE SALES TRANSACTIONS, IF ANY, WILL BE REALIZED BY DEALERSHIP AS A RESULT OF THE MARKETTHIEF SERVICE PROVIDED HEREUNDER. THE MARKETTHIEF SERVICE IS PROVIDED ON AN “AS IS, AS AVAILABLE” BASIS. FURTHERMORE, DMS RESERVES THE RIGHT TO MAKE CHANGES TO ANY AND ALL ASPECTS OF THE MARKETTHIEF SERVICE PROVIDED HEREUNDER, AT ANY TIME, WITHOUT ANY OBLIGATION TO NOTIFY ANY PERSON OR ENTITY OF SUCH CHANGES. TO BE CERTAIN THAT THE MARKETTHIEF SERVICE COMPLIES 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 MARKETTHIEF SERVICE WHICH CONFLICTS 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 MARKETTHIEF SERVICE 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 Terms**

**8.1 Force Majeure.** Neither party shall be in default if the failure to perform any obligation (except for payment of money) 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 Headings.** The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand, or limit the terms of this Agreement. All cross-references in this Agreement, unless expressly directed to another agreement or document, shall refer to the provisions of this Agreement and shall not be deemed to be references to any other agreements or documents.

**8.7 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. . 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.

**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, Purchase Orders 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: \_\_\_\_\_

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

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

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

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

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