

# ProCredit Express™

## Compliance Package Master Agreement

Sold by: \_\_\_\_\_

Dealership: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Effective Date: \_\_\_\_\_ Dealer ID # \_\_\_\_\_

Contact name: \_\_\_\_\_ Email: \_\_\_\_\_

This legal document is an agreement between Dealer Marketing Services, Inc. ("DMS"), an Illinois corporation located at 5401 Elmore Ave., Suite 200, Davenport, IA 52807 and Dealership named above ("Dealership, "you" or "your"), a \_\_\_\_\_ of the state of \_\_\_\_\_.

**1. Description of Service.** DMS will provide and or process data in ProCredit Express or other DMS provided systems (as applicable) pursuant to Appendix A and any addendum thereto ("Service").

**2. Fees and Payment of Fees.** The Compliance Package monthly basic fee: \$ \_\_\_\_\_. Additional fees are be defined in Appendix A. Payment terms for all fees due under this Agreement will be billed monthly, with payment due Net 10 days after the invoice date. 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. Any fees not paid when due may result in suspension of the Service.

**3. Term and Termination.** The Term of this Agreement is concurrent with Dealership's ProCredit Express or other applicable DMS provided system's license agreement, and will initiate on the first day on which the Service, or a portion of the Service, is first delivered to Customer. This Agreement shall terminate immediately if Dealership's ProCredit Express or other applicable DMS system's license is terminated or expires. In the event that Dealership's or DMS's access to the Do Not Call data processed is terminated for any reason, DMS will be unable to provide the Do Not Call Screening part of the Service after the effective date of such termination, and in such case the remaining components of this Agreement shall continue in full force and effect. In the event Dealership commits a serious breach of this Agreement, or fails to pay any sum of money owed to DMS or assignees of payments due (if any) for any DMS services or products as agreed, and fails to cure such breach within 5 days of receiving notice from DMS of the breach or failure to pay the sum of money, DMS may, at its option, deactivate the Service and/or terminate this agreement, in which case Dealership's continuing obligations under this Agreement shall remain in full force and effect.

**4. Warranties; Indemnification.** DMS warrants that it is properly licensed to provide and process the data defined in Appendix A. **DMS makes no other warranty, express or implied, including but not limited to effectiveness and sufficiency of the Service, the merchantability and fitness of the Service for a particular purpose, nor the compatibility of the Service with Subscriber's intended use of the Service.** The Service is provided on an "As Is" basis, and DMS ability to provide the Services is dependent on many factors beyond DMS's control. Dealership agrees that the inability of ProCredit Express or other applicable DMS provided system to provide the Service, for any reason, shall not be construed or interpreted to be a failure of such systems.

**5. DISCLAIMER OF WARRANTY.** DMS MAKES NO WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE ACCURACY OR ADEQUACY OF THE SERVICE AND EQUIPMENT, THE MERCHANTABILITY AND FITNESS OF THE SERVICE AND EQUIPMENT FOR A PARTICULAR PURPOSE, NOR THE COMPATIBILITY OF THE SERVICE WITH SUBSCRIBER'S INTENDED USE OF THE SERVICE. THE SERVICE AND EQUIPMENT ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. FURTHERMORE, DMS RESERVES THE RIGHT TO MAKE CHANGES TO ANY AND ALL PARTS OF THIS SERVICE AND EQUIPMENT, AT ANY TIME, WITHOUT ANY OBLIGATION TO NOTIFY ANY PERSON OR ENTITY OF SUCH CHANGES. TO BE CERTAIN THAT THE SERVICE COMPLIES WITH FEDERAL, STATE, AND LOCAL LAW, YOU MUST CONSULT WITH AND OBTAIN THE OPINION OF THE ATTORNEY OF YOUR CHOICE AND AT YOUR OWN EXPENSE. YOU ASSUME ALL RISKS OF USING THE SERVICE AND EQUIPMENT, AND THE INFORMATION PROVIDED THEREBY IN YOUR BUSINESS OR OTHERWISE. BY SALE AND DELIVERY OF SERVICE AND EQUIPMENT, DMS IS NOT UNDERTAKING TO OFFER OR PROVIDE LEGAL SERVICES. YOU MUST CONSULT WITH AND OBTAIN THE OPINION OF THE ATTORNEY OF YOUR CHOICE AND AT YOUR OWN EXPENSE. YOU ASSUME ALL RISKS OF USING THE SERVICE AND THE INFORMATION PROVIDED THEREBY IN YOUR BUSINESS OR OTHERWISE. FURTHERMORE, DMS DOES NOT WARRANT THAT SERVICE SHALL BE UNINTERRUPTED OR ERROR FREE OR THAT IT SHALL MEET DEALERSHIP'S REQUIREMENTS. DEALERSHIP IS SOLELY RESPONSIBLE FOR THE ACCURACY AND INTEGRITY OF ITS OWN DATA, REPORTS, DOCUMENTATION AND SECURITY. EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPH 4, NO WARRANTY OR ASSURANCE, EXPRESS, IMPLIED, OR STATUTORY, IS GIVEN BY DMS WITH RESPECT TO THE SERVICE, DMS'S OTHER SERVICES OR ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION (AND DMS SPECIFICALLY DISCLAIMS) ALL WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BECAUSE THE OUTPUT OF THE SERVICE DEPENDS ON THE ACCURACY OF DEALERSHIP'S INPUT AND ACTIONS, DMS IS NOT RESPONSIBLE FOR THE CORRECTNESS, ACCURACY, RELIABILITY, CURRENCY OR OTHERWISE OF THE OUTPUT OF THE SERVICE, AND MAKES NO WARRANTY WITH RESPECT THERETO, DUE TO THE FACT THAT CORRECT USER INPUT IS REQUIRED FOR ALL DATA PROCESSED TO BE ACCURATE. DEALERSHIP ASSUMES ALL RISK OF USING THE OUTPUT OF THE

SERVICE. IN THE EVENT ANY OF DMS'S OWNERS, OFFICERS, EMPLOYEES OR REPRESENTATIVES HAVE MADE ORAL OR WRITTEN STATEMENTS ABOUT THE SERVICE PROVIDED HEREUNDER WHICH CONFLICT WITH ANY OF THE TERMS OF THIS AGREEMENT OR ANY PUBLISHED LITERATURE AND BULLETINS, OR ANY ADVERTISING MATERIALS AND PUBLICATIONS, SUCH STATEMENTS SHALL NOT BE DEEMED WARRANTIES, SHALL NOT BE RELIED UPON BY DEALERSHIP AND SHALL NOT BE DEEMED PART OF THIS AGREEMENT.

**6. Limitation of Liability.** IN NO EVENT SHALL DMS BE LIABLE TO DEALERSHIP, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE) FOR LOST PROFITS OR REVENUES, LOSS OR INTERRUPTION OF USE, LOST OR DAMAGED DATA, REPORTS, DOCUMENTATION OR SECURITY, OR SIMILAR ECONOMIC LOSS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR FOR ANY CLAIM MADE AGAINST DEALERSHIP BY ANY OTHER PARTY, EVEN IF DMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM. IN NO EVENT SHALL DMS'S LIABILITY UNDER ANY CLAIM MADE BY DEALERSHIP EXCEED THE TOTAL AMOUNT OF FEES THERETOFORE PAID BY DEALERSHIP TO DMS RELATING TO THE AFFECTED SOFTWARE OR SERVICES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY DEALERSHIP MORE THAN ONE (1) YEAR AFTER THE FIRST TO OCCUR OF (I) THE TERMINATION OR EXPIRATION OF THIS AGREEMENT OR (II) THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION.

**7. Taxes.** Customer shall pay all federal, state, and local taxes, however designated, levied, or based upon the Service and components thereof, Customer's license of the Licensed Programs, Customer'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. Customer shall hold harmless DMS from all claims and liabilities arising in connection with Customer's failure to pay such taxes.

**8. 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 overnight carrier, or registered or certified mail, return receipt requested. If sent by certified or registered mail or overnight carrier 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 Dealership's infringement of DMS's copyrights or other intellectual property rights in the Service. 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.
- e) DMS 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 and any addendums, appendixes, schedules and attachments hereto, agree to be bound hereby and have executed this Agreement by their duly authorized signatures as of the Effective Date written above.

**Dealership**

**ProCredit Express,  
A division of Dealer Marketing Services, Inc.**

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

# Appendix A To ProCredit Express® Compliance Package Master Agreement

Compliance officer(s): \_\_\_\_\_ (Require at least one name and email)

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

### Credit Bureau Report Accounts with ProCredit-DMS:

Trans Union       Equifax       Experian

**(At least one account is required for Red Flag Rules)**

This Appendix is a supplement to the ProCredit Express Compliance Package Master Agreement and serves to define the Services provided and Fees charged hereunder. This Appendix is in force as of the Effective Date of the ProCredit Express Compliance Package Master Agreement.

## Services and Fees

**1. Red Flag Rules.** When a credit bureau report is pulled using the Software the consumer's Red Flag "Score" will be accessed. If the Red Flag "Score" indicates dealership action is required pursuant to Red Flag Rule regulations a message will pop-up in the software informing you further investigation regarding the consumer's identity is required, and you can initiate access to the Red Flag Exam which consists of "out of wallet" The Software will instantly and automatically screen all of your consumers against the OFAC list when you initially enter each consumer's name in the Software. If there is no possible match for the consumer's name (No Hit) on the OFAC list a note stating this search result will be permanently entered in the customer notes. If there is a possible match for the consumer's name on the OFAC list (Hit) a pop up will appear on Software screen advising the Dealership of the required action.

- **Red Flag Score and Exam** – Each month the Dealership will receive "Unlimited" Red Flag Scores with the additional Red Flag Exam, when necessary, included with the Compliance Package Monthly Fee.

**2. OFAC Screening.** The Software will instantly and automatically screen all of your consumers against the OFAC list when you initially enter each consumer's name in the Software, regardless of whether you pull a credit report. If there is no possible match for the consumer's name (No Hit) on the OFAC list a note stating this search result will be permanently entered in the customer notes. If there is a possible match for the consumer's name on the OFAC list (Hit) a pop up will appear on the Software screen advising the Dealership of the required action.

### **3. Adverse Action Letter.**

The dealership has the ability to print Adverse Action letters at the dealership to send to consumers. As an option, for a nominal fee the dealership can elect to have DMS print and mail Adverse Action letters by first class mail every week helping the dealership automate the Compliance Solution, in which case the consumer file contains a record that the Adverse Action letter was sent by DMS.

- **Adverse Action notices mailed by DMS –**

DMS will print and mail the appropriate Adverse Action notice to consumers pursuant to their Adverse Action status in ProCredit Express or other applicable DMS provided systems within the 30-day deadline prescribed by the ECOA and the FCRA.

Dealership will be billed monthly for Adverse Action Notices mailed by DMS. The Notices will be printed in black and white on 8.5" x 11" paper with Dealership's Name, address and phone number. **\$.79 per letter**

Yes, sign me up for the Adverse Action notices to be mailed by DMS.    **X** \_\_\_\_\_

**4. Privacy Notice.** The dealership has the ability to print a Privacy Notice for delivery to the consumer at the appropriate time. This notice can be changed as federal and state laws change regarding the content of the Privacy Notice.

**5. Risk Based Pricing Notice.** The dealership has the ability to print a Risk-Based Pricing Notice for delivery to the consumer at the appropriate time.

**• Risk Based Pricing Notices mailed by DMS-**

DMS will mail the Risk Based Pricing Exception Notice(s) and a cover letter from Subscriber as determined by Subscriber's selection in Item 2 to Qualifying Consumers. The cover letter is shown in Schedule A. The term "Qualifying Consumers" for purposes of this Agreement shall mean consumers for whom Subscriber pulled a credit report from one or more credit reporting agency ("CRA" or "CRAs" for plural), and to whom Subscriber did not deliver a Risk Based Pricing Notice Exception as indicated in ProCredit Express or other Dealer Marketing Services' systems ("System") within 12 hours after the credit report was pulled. The mailing shall be postmarked within three (3) business days after the credit report was pulled.

Dealership will be billed monthly for Risk Based Pricing Notices mailed by DMS. The Notices will be printed in black and white on 8.5" x 11" paper with Dealership's Name, address and phone number. **\$.99 per letter**

**Yes, sign me up for the Risk Based Pricing to be mailed by DMS. X** \_\_\_\_\_

- **Exception Notice Mailing Selection.** The selection made will apply to all consumers (select one from a, b, c or d below).
  - \_\_\_\_\_ a. Using the report from one Credit Reporting Agency if multiple reports are pulled on a consumer.  
Number 1, 2 and 3 in order of priority:  
\_\_\_\_\_ Trans Union \_\_\_\_\_ Experian \_\_\_\_\_ Equifax
  - \_\_\_\_\_ b. Use the credit report with the highest credit score
  - \_\_\_\_\_ c. Use the credit report with the lowest credit score
  - \_\_\_\_\_ d. Send the Exception Notice for all Credit Reporting Agency's from which credit reports were pulled.
- Subscriber agrees to pay the sum of \$0.99 for each consumer to whom an Exception Notice mailing was fulfilled by PCE.
- Must have the SCHEDULE A - RISK BASED PRICING AUTOMATED COMPLIANCE OPTION completed.

**6. Compliance Reports.** The dealership will have access to a Compliance Review for each consumer entered into the ProCredit Software. Red Flag incident reports will also be maintained for review and for use in the Red Flags annual report.

**7. Scanner - Yes, I would like to purchase the scanner. X** \_\_\_\_\_  
Dealer Signature

Description	Unit Price	# of Units	Amount
Scanshell 800 Scanner with IDScan Pro drivers license scanning software. Includes 12 months Limited Manufacture Warranty from Card Scanning Solutions, ("CCS") LLC, 1350 E. Flamingo Road, #823, Las Vegas, NV 89119 Serial number(s):	\$695.00	_____	\$ _____
	Shipping (per item: \$16-overnight, \$8-2-3 day)		\$ _____
	Sales Tax _____%		\$ _____
	Total Amount		\$ _____

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 \_\_\_\_\_

**ProCredit Express**  
**A division of Dealer Marketing Services, Inc.**

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_