

AI-DEALER: A BUSINESS OF CHARACTER

INTRODUCTION

Ai-Dealer is pledged to being a “**Business of Character**” as issued by the Character Council of Greater Cincinnati and Northern Kentucky (www.charactercincinnati.org).



Before jumping directly into the lawyerly language of our Software and Services Agreement, we invite you to get to know us by exploring the 49 Values of the Character Council to which Ai-Dealer is pledged.

Alertness	Attentiveness	Availability	Benevolence
Boldness	Cautiousness	Compassion	Contentment
Creativity	Decisiveness	Deference	Dependability
Determination	Diligence	Discernment	Discretion
Endurance	Enthusiasm	Faith	Flexibility
Forgiveness	Generosity	Gentleness	Gratefulness
Honor	Hospitality	Humility	Initiative
Joyfulness	Justice	Loyalty	Meekness
Obedience	Orderliness	Patience	Persuasiveness
Punctuality	Resourcefulness	Responsibility	Security
Self-Control	Sensitivity	Sincerity	Thoroughness
Thriftness	Tolerance	Truthfulness	Virtue
Wisdom			

Ai-Dealer shares the Character Council Values because it believes in the difference Character can make in relationships and business. It is a deeply personal belief system and not a means to preach or judge others.

As it relates to any Agreement, experience has taught us that clear communication, reasonable accommodation and a common understanding of expectations form the basis of any successful relationship. You should never expect less from us and if we do business together, we will expect the same from you.

With our word as our bond, the Agreement below forms the understanding of what that bond means to our entire organization. We are not always going to tell you that you are correct, but we will always listen and conduct ourselves in accordance with our values. If you ever experience anything to the contrary, please do not hesitate to contact me directly at character@Ai-Dealer.com. My name is Brian Hoecht and I am the President and CEO of Ai-Dealer and it is that important to me.

At Ai-Dealer we firmly believe that we can only be successful TOGETHER – now and always.

SOFTWARE LICENSE AND SERVICES AGREEMENT

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SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this "Agreement") is made as of the date shown on the Signature Pages of this Agreement between **Ai-Dealer LLC**, an Ohio limited liability company ("Company"), and the dealer or dealer group ("Dealer") specified in the Signature Pages and accompanying Exhibit to this Agreement.

Company and Dealer, intending to be legally bound, hereby agree as follows:

1. Recitals.

Company is the author and owner of the Licensed Software that under terms of this Agreement will be provided by the Company to the Dealer for use in its Dealership business.

Dealer owns and operates a Dealership, is an officer of said Dealership and has authority to contract for the Licensed Software as defined by this Agreement.

During the term of this Agreement and subject to its terms and conditions, the Company agrees to grant certain rights to Dealer to use the Licensed Software as more specifically set forth below.

2. Definitions.

When used in this Agreement, the capitalized terms set forth below shall have the following meanings.

- a) "Dealership" means the physical and electronic (cyber) premises owned and operated and/or licensed, rented or leased by Dealer at the location(s) specified in this Agreement or in the case of electronic (cyber) premises, as represented on the Internet as the electronic (cyber) premises in support of the physical premises so specified.
- b) "Documentation" means an instruction manual and training materials (whether in printed, electronic or online format), provided by Company to Dealer to enable Dealer to properly use and maintain the Licensed Software.
- c) "Initial Date of Live Use" is the date when consumer access to License Software is enabled or the first date such consumer activity occurs.
- d) "Licensed Software" means Company's proprietary computer programs providing the means, methods and processes for the display of vehicle data, consumer account creation, and for consumers to prepare and submit to Dealer an offer to purchase, finance or lease vehicles and other retail products sold by Dealer.

The Licensed Software is the subject of this Agreement and shall include all machine readable code and associated Documentation including methods and means, patents pursued or obtained, derivative works, modifications, enhancements and copies whether in whole or in part.

Display of Dealer's intangible properties (logos, mottos and trade names) within the context of the Licensed Software do not create an ownership interest or other right by Company in dealer's intangible properties.

3. Grant of License.

- a) Dealer's own use only. Company hereby grants to Dealer a nontransferable, non-assignable, nonexclusive license during the term of this Agreement to use the Licensed Software. Dealer may not assign or otherwise transfer this license and/or the Licensed Software without the prior written approval of Company, which shall not unreasonably be withheld.
- b) Hosting. Company shall provide the Licensed Software to Dealer on a hosted basis using the Company's hardware and infrastructure. Dealer does not own nor have any ownership interest in the Company's hardware, software nor infrastructure.
- c) Integration. Company shall co-ordinate, execute, maintain and support integration services with Dealer third party technology providers on a best effort and commercially reasonable basis. Costs of integration are in addition to the other fees listed in this Agreement and shall be mutually agreed in writing prior to integration being implemented. Integration and consumer interoperability with Dealer's website is at no charge to Dealer. Integration with Dealer's DMS is not required or presently available and will be developed as resources permit. Extraction of Dealer DMS vehicle data is a covered service and included in the terms of this contract.
- d) Dealer maintains and is responsible for system. Responsibility for deal computational accuracy, conformance with all federal and state legislation related to operating a dealership, truth-in-advertising, arranging credit, leasing, financing, selling vehicles and other products sold in conjunction with the vehicles, accuracy of data tables, system setup parameters and deal calculation methodologies is solely Dealer's responsibility.
- e) Company owns software. The Licensed Software (including the Documentation), and any and all copies thereof, whether in whole or in part, whether made by Company or anyone else, and all rights, powers and privileges which arise out of this Agreement are and shall remain at all times the sole and exclusive property of Company and are protected under copyright, trade secret and/or patent laws.
- f) Dealer owns data. Consumer information stored and processed through Licensed Software shall remain at all times the **sole and exclusive property of Dealer**. Company has responsibility to maintain commercially reasonable and appropriate safeguards over all sensitive, personally identifiable consumer information and will provide written documentation to that effect of its methods and policies to assist Dealer with Dealer's obligations for general safeguards and required operating practices in conformance with prevailing legislation.

As it relates to any consumer information provided to or from any third parties by Company, Dealer remains solely responsible for said third parties' handling and use of such information. Company is solely responsible for its secure handling of such information in accordance with Dealer's authorized use(s) with said third parties and its own.

Dealer alone owns any website urls purchased or used in conjunction with Licensed Software and administrative control is to be turned over by Company in a timely manner upon request.

Company has the right under this Agreement to survey consumers on Dealer's behalf so as to improve its Licensed Software consumer experience and effectiveness (including inquiring as to reasons for idle or abandoned shopping carts and Dealer self-authorized goodwill adjustments).

4. **Term and Termination.**

- a) *Term.* **This Agreement may be terminated by either party at any time upon written notice.** The term of this Agreement shall begin on the Initial Date of Live Use and remain in effect until terminated.
- b) *Termination obligations.* Upon the termination of this Agreement, each party shall:
- i) fully perform all obligations which have accrued hereunder prior to the date of termination
 - ii) continue to perform and honor all obligations which expressly or impliedly survive any termination of this Agreement.
 - iii) Company shall suspend Dealership's consumer access to Licensed Software.

5. **Fees and Payment Terms.**

- a) *Monthly data processing charges as license fee.* Dealer shall pay to Company the Monthly License Fee in the amount specified on the Signature Pages of this Agreement. As a matter of goodwill, Company grants Dealer the self-authorized adjustment right to cancel Company's Monthly License Fees for any prepared + submitted consumer offers upon which dealership is subsequently unable to complete legal sale and delivery of vehicle or upon consumer subsequent cancellation of associated products or services. Upon request, Company has the right to review Dealer's supporting documentation to verify the self-authorized goodwill adjustments, which shall be provided within 14 calendar days or the goodwill adjustment cancelled. Dealer substitution of an alternate vehicle after submission of consumer's offer is not an authorized goodwill adjustment.
- b) *Account suspension.* Monthly license fees are due immediately upon invoicing. Should the Monthly License Fees not be received by the end of the calendar month following being due, Company shall suspend Dealer's, but not consumers', access to the Licensed Software until the outstanding Monthly License Fee is paid.
- c) *Rate changes.* For the first 12 calendar months of this Agreement, Company shall not change its Monthly License Fee rates (as specified on the Signature Pages).

6. General Provisions.

- a) Limited liability. **IN NO EVENT SHALL COMPANY BE RESPONSIBLE FOR ANY SPECIAL, CONSEQUENTIAL, ACTUAL OR OTHER DAMAGES, REGARDLESS OF TYPE NOR ANY LOST PROFIT OR OTHER DAMAGES RESULTING FROM USE OF THE LICENSED SOFTWARE.**
- b) State/Provincial sales taxes. As with all Internet and Computer Software services, payment of any and all applicable sales and use taxes under this Agreement is the sole responsibility and legal obligation of Dealer. Most provinces/states have now extended the definition of use tax to include non-custom computer code. However, under the letter of the law, Company need only charge and remit such taxes where Company:
- i) Has a representative, agent or salesperson in the state for the purpose of selling or taking orders, or
 - ii) Provides or grants licensing rights to use within the state, or
 - iii) Maintains a business location within the state, or
 - iv) Performs services or installation or repairs.

So as to not create a potential liability for either Dealer or Company, Company will charge, collect and remit sales and use taxes for all License Fees under this Agreement. Unless required by Dealer's local jurisdiction, Onsite Services remain exempt from sales and use taxes.

- c) Governing jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without application of Ohio conflicts of laws principles. Any suit involving any dispute or matter arising under this Agreement may only be brought in the courts of the State of Ohio. All parties hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.
- d) Scope. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, successors, assignees, and beneficiaries in interest. This Agreement may not be assigned by either party, except that Company shall have the right to assign this Agreement to any entity controlled by the Company, or an assignee of the Company that acquires the Company or its assets.
- e) Changes. No waiver or modification of this Agreement or the terms contained herein shall be valid unless in writing and duly executed by the party to be charged therewith. The waiver by any party hereto of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by such party.
- f) Entire Agreement. This Agreement, including Exhibit A and the Signature Pages hereto, contains the entire agreement of the parties with respect to the subject matter hereof. There are no other contracts, agreements or understandings, whether oral or written, existing between them except as contained or referred to in this Agreement.
- g) Severability. In case any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or other unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions have never been contained herein.

[Next page is Signature Page]

SOFTWARE LICENSE AND SERVICES AGREEMENT
SIGNATURE PAGE 1 of 1

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on _____, **2009** and caused the following schedule of rates and fees to come in to effect under the terms as specified in the Agreement.

Data processing charges as **Monthly License Fee Amounts** in accordance with Section 5a) of this Agreement of:

- a) _____ **Hundred** _____ **Dollars** (\$ _____) per month, payable in advance for the DMS extraction and processing of Dealer's vehicle inventory. First month's payment is due at signing of contract.
- b) _____ **Hundred** _____ **Dollars** (\$ _____) per month, payable in advance for the listed (see next page) Dealer Direct websites. First month's payment is due at signing of contract.
- c) **Ten Dollars** (\$ **10.00**) for each consumer account activated in the Licensed Software.
- d) **Two Hundred Fifty Dollars** (\$ **250.00**) for each consumer vehicle purchase, finance or lease offer processed through the Licensed Software, submitted by consumer to dealer and per Section 5a), subsequently delivered by Dealer.

Company

Dealer

Ai-Dealer LLC

Legal Name of Dealership

By: _____
Authorized Signature

By: _____
Authorized Signature

Brian E. Hoecht, CEO and President
Name and Title

Name and Title

710 Harman Ave
Address

Address

Dayton, OH, 45419
City, State and Zip

City, State and Zip

Dealer Initial

Company Initial

**SOFTWARE LICENSE AND SERVICES AGREEMENT
EXHIBIT A**

**APPROVED DEALERSHIP CONTACT INFO
<One Page Per Physical Location>**

Franchise(s): _____
Address: _____
Phone: _____
Fax: _____
Website: _____

Dealer Direct Websites Desired?

Umbrella site? (Y / N) Circle

If multiple brands, sub-umbrella site desired? (Y / N) Circle

Model line sites desired, list below:

List all personnel wanting or needing ongoing system and contract notification(s).

<u>Position</u>	<u>Name</u>	<u>Phone (ext)</u>	<u>Email</u>
Dealer	_____	_____	_____
GM	_____	_____	_____
GSM	_____	_____	_____
New Car Mngr	_____	_____	_____
Used Car Mngr	_____	_____	_____
F&I Mngr	_____	_____	_____
eCommerce Dir	_____	_____	_____
Marketing Mngr	_____	_____	_____
Internet Mngr	_____	_____	_____
IT Director	_____	_____	_____
CFO	_____	_____	_____
Controller	_____	_____	_____
Accounts Pay	_____	_____	_____

Dealer Initial

Company Initial