

Master Services Agreement

This Master Services Agreement ("**Agreement**"), effective as of _____ (the "**Effective Date**"), is by and between Proactive Dealer Solutions, LLC, a Delaware limited liability company with offices located at 12125 Herbert Wayne Ct., Suite 150, Huntersville, NC 28078 ("**PDS**"), and _____ with offices located at _____ ("**Client**"). By their signatures below, PDS and Client acknowledge and agree that each has the authority and capacity to enter into and be bound by this Agreement, that the Agreement is supported by valuable consideration, the receipt of which is also acknowledged, and that each will perform as specified in the Agreement.

1. **The Body of the Agreement:** The Master Services Agreement consists of these terms and any Statement(s) of Work ("**SOW**") executed between the parties hereto, which is/are incorporated herein by reference. In the event of a conflict between an SOW and the terms of this Agreement, the SOW will prevail.
2. **The Term of the Agreement:** The term of this Agreement begins on the Effective Date and continues until the termination of all SOWs executed pursuant to this Agreement.
3. **Termination:** Notwithstanding any provision in this Agreement or an SOW to the contrary, PDS may terminate this Agreement or an SOW immediately upon written notice to Client in the event Client breaches or PDS reasonably believes Client has breached any provision of this Agreement or an SOW. Termination of this Agreement will terminate all SOWs executed pursuant to this Agreement. In the event of termination of this Agreement or an SOW, all fees and expenses incurred by Client prior to termination will become immediately due and payable.
4. **Fee Structure, Travel Expenses, and Visit Cancellation:** The total fee is based upon the particular mix of services specified in the applicable SOW (the "**Services**"). Client agrees to pay the amount specified in each SOW as PDS' compensation for the Services.
 - 4.1. ***Due Date and Interest.*** Payment on each invoice is due ten (10) days after the invoice date. Interest on past due amounts will accrue at the lesser of (i) one and one-half (1.5%) percent per month or (ii) the highest rate permitted by law. Further, during the period in which a past due balance remains pending, PDS may, in its sole discretion and without liability or recourse to client, suspend any or all Services. As specified in an SOW, PDS may require certain fees to be paid in advance and as a condition of the provision of Services. Except as otherwise specified in an SOW or this Agreement, all payment obligations are non-cancelable, and all payments made are non-refundable. Payment may be made by ACH, wire transfer, credit card, or check in accordance with PDS' instructions.
 - 4.2. ***Disputes.*** If Client disputes a fee, Client will notify PDS of the dispute within fourteen (14) days after the date of the invoice containing the disputed fee. The parties will work in good faith to investigate and resolve the dispute. If the parties are unable to resolve the dispute after thirty (30) days, they will submit the dispute to a third party mutually agreed by them for resolution. Payment of the disputed portion of the applicable invoice will be suspended until seven (7) days after the resolution of the dispute.
 - 4.3. ***Taxes.*** All fees are exclusive of taxes and government-imposed fees, and Client is solely responsible for such taxes and government-imposed fees, except for any federal, state, or local income or employment taxes charged to PDS based on the conduct of PDS' business.
 - 4.4. ***Annual Price Adjustment.*** PDS may increase any or all prices and fees for Services up to five (5%) percent per calendar year without Client's approval.

5. **Change Orders:** An SOW may only be modified by a Change Order executed between the parties which will become effective and a part of this Agreement as of the date last executed by the parties. Client acknowledges that it must request a Change Order at least thirty (30) days in advance of when it desires the Change Order to be effective and PDS is under no obligation to grant a Change Order.
6. **Client Cooperation:** Client will cooperate with PDS in structuring and operating the dealership(s) in the manner recommended by PDS. Client agrees that it will follow the recommendations of PDS and will make every effort to implement those recommendations in the manner specified by PDS. Client's failure or refusal to do so may result in termination of this Agreement and/or an SOW by PDS, in PDS' sole discretion. Notwithstanding the foregoing, at all times Client bears sole responsibility for Client's compliance with all Applicable Laws (as defined below).
7. **PDS Services:** PDS strives to provide effective services to its clients. As a part of its commitment to excellence, PDS continually evaluates the manner in which it provides services to its clients. From time to time, PDS may choose to alter the manner in which it provides such services or to implement a new method of providing the same or replacement services. In the event PDS does so, PDS will inform Client of any such changes. Nothing in this Agreement prevents PDS from making such changes and such changes do not constitute a breach of this Agreement.
8. **Client Data:** In the course of working with Client, PDS will receive a variety of data produced by Client ("**Data**") and uses that Data to evaluate the dealership's performance and provide the Services. Such Data includes, but is not limited to, dealership information and/or analysis generated pursuant to or in the course of implementing BDC Tracker (Activity and Performance Metrics), BDC Evaluation (Call and Internet Evaluations), BDC TN (BDC Training/Certification), and Personal Information (as defined below) of Client's potential, actual, and former customers and staff.
 - 8.1. *Permission to Use Data.* During the term of this Agreement, PDS may collect, access, use, disclose, and otherwise process Client's Data in connection with its provision, development, and enhancement of the Services.
 - 8.2. *Permission to Share with Manufacturers.* Without limiting the generality of Section 8.1 PDS may share Client's Data with the manufacturer and/or the manufacturer's designees for the purpose of assisting the manufacturer and/or the manufacturer's designees in effectively evaluating dealership performance.
 - 8.3. *Anonymized Use.* During the Term of this Agreement and in perpetuity thereafter, PDS may process Client's Data, without compensation to Client, in an anonymized or aggregated form for the limited purpose of performing research and development for PDS' products and services, existing and newly conceived. By way of example and not limitation, PDS may use anonymized or aggregated Client Data to train machine learning algorithms and artificial intelligence software, identify and remedy software errors, provide software updates, and develop new products and services.
 - 8.4. *Connection with Client Systems.* Client will fully cooperate with PDS to give PDS access to and integration with Client's network and systems, and the network and systems of Client's vendors, as reasonably requested by PDS to facilitate PDS's collection and processing of Client's Data and provision of the Services.
 - 8.5. *Termination of the Agreement.* Upon termination of the Agreement for any reason, PDS will return to Client or destroy with written certification, at PDS' option, all Client Data stored by

PDS. Notwithstanding the foregoing, PDS will not be required to return or destroy Client Data (i) that has been anonymized or aggregated such that it is not reasonably possible to identify the Data as Client's Data, (ii) PDS determines is reasonably necessary for PDS to retain to comply with its legal and contractual obligations or to defend itself in the event of a lawsuit or regulatory action, or (iii) that is retained in a backup or archive system until such time as the applicable Client Data is restored to an active system.

9. **Services Maintenance:** PDS may make all or part of the Services temporarily unavailable for the purpose of maintaining, repairing, or implementing changes to the Services. PDS will use commercially reasonable efforts to inform Client at least three (3) business days in advance of any planned Services unavailability. Without limiting the generality of the foregoing, PDS may perform emergency maintenance to the Services without notice.
10. **Support Materials:** In connection with and as part of the Services, PDS may provide Client with documents, manuals, instructions, books, checklists, guides, templates, and other materials (the "**Materials**").
 - 10.1. ***Copyright of Materials.*** The Materials are copyrighted by PDS and PDS reserves all rights in the Materials. No part of the Materials may be reproduced, stored, transmitted, or disseminated in any form or by any means without prior written permission from PDS. Client will not remove or modify any copyright or other proprietary notices placed on the Materials by PDS.
 - 10.2. ***Compliance with Applicable Laws.*** Client acknowledges that the Materials are provided for Client's convenience only and do not modify Client's sole responsibility for compliance with Applicable Laws (as defined below).
11. **Intellectual Property:** Client acknowledges that all right, title, and ownership in the BDC Central Software, CallerCX/Brooke.ai digital voice assistant, other PDS intellectual property, and all works of authorship, including but not limited to software code, Materials, or reports created by PDS independent of Client (collectively, "**Intellectual Property**"), including, without limitation, all copyright, patent, and trademark rights are and will remain the exclusive and confidential property of PDS.
 - 11.1. ***Limited License.*** During the term of this Agreement, PDS grants to Client a limited, non-exclusive, non-transferable, non-sublicensable, and, at PDS' option, terminable license to use the Intellectual Property indicated on the applicable SOW solely for Client's internal business purposes. Client may not sell or otherwise provide, directly or indirectly, the Intellectual Property to any third party. In no event will Client use the Intellectual Property for purposes other than as intended by PDS and in the operation of Client's business. Client will not use the Intellectual Property to cause or facilitate Client's conversion to another vendor providing services similar to the Services prior to or following the expiration of this Agreement. Client will not copy, in whole or in part, the Intellectual Property, in any form or format. Client will not make any alteration, change, or modification to the Intellectual Property, except as permitted by PDS in writing. Client will not recompile, decompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from, the Intellectual Property. For avoidance of doubt, and not limitation, all Intellectual Property provided to or to which access is granted to Client in connection with the Services, including all derivative works thereof, is licensed solely as provided in this Agreement and Client does not obtain any right, title, or interest in the Intellectual Property.
 - 11.2. ***Protection from Access.*** Client will not, without the express written consent of PDS, offer, provide, share, allow, or in any way facilitate third-party access to the Services or

Intellectual Property, including any related credentials, passwords, logins, or other access protocols.

11.3. *Feedback.* Client grants to PDS a worldwide, perpetual, irrevocable, sublicensable, transferable, fully-paid, and royalty-free license to use, disclose, reproduce, license, or otherwise exploit, including for commercial gain, all ideas, suggestions, recommendations, or feedback (collectively, “**Feedback**”) provided by Client or any of its employees or contractors to PDS. Client waives all rights to compensation, notice, or acknowledgement related to the Feedback. Client will provide all reasonable assistance requested by PDS to confirm, protect, and defend PDS’ interest in and to Feedback, including, without limitation, executing affidavits, oaths, attestations, and other documents.

11.4. *Termination.* Upon termination of this Agreement or the applicable SOW for any reason, Client’s limited license to use the Intellectual Property will immediately terminate, Client will immediately cease all use of the Intellectual Property, and client will return to PDS, facilitate PDS’ retrieval of, or destroy with written certification, at PDS’ option, all Intellectual Property in Client’s possession or control.

12. Trademarks: PDS may utilize Client’s trademarks, service marks, trade names, fictitious names, and logos (“**Marks**”) as reasonably necessary in connection with the performance of the Services. Client may not utilize PDS’ Marks except with PDS’ prior written consent. Each party agrees and acknowledges that the other party is the owner of their own Marks and each party’s use of the relevant Marks will be for the sole benefit of the other party. Neither party will attempt to register any of the Marks of the other party or make any claim of ownership regarding the Marks of the other party.

13. Tracking Services & Phone Lines: As specified in an SOW, PDS may assign tracking numbers to Client and provide call evaluation services on those lines.

13.1 *Right to Numbers.* Client may request transfer of tracking numbers to a phone carrier other than the PDS phone carrier, except where Client has accepted use of a tracking number noted as non-transferable in the SOW. Client must be in full compliance with this Agreement and the applicable SOW in order to request the transfer any number. PDS will make commercially reasonable efforts to accommodate Client’s request to transfer the number to another phone carrier at Client’s cost. Client acknowledges and agrees such transfers must be approved by PDS’s phone carrier and that such approval is beyond the control of PDS.

13.2 *Client Responsibilities.* Client shall be solely responsible for all phone carrier fees, charges, taxes, and/or any other expenses charged by phone carriers, or any other third party that may result from the phone services provided by PDS pursuant to this Agreement. Client shall promptly pay all such charges. Client acknowledges and agrees phone services may be disrupted due to circumstances beyond the control of PDS and under no circumstances will PDS be liable for any damages of any nature relating to disruptions in phone service.

13.3 *Transcription Errors & Omissions.* Client acknowledges and agrees that due to the many variables inherent in the conversion of an audio recording to a text transcription, there may be errors and omissions in text transcriptions provided by PDS. PDS does not represent, guarantee, or warranty that such transcriptions will be error free.

14. Representations and Warranties: Each party represents and warrants to the other party that (i) it has the authority and capacity to execute and deliver this Agreement and perform its obligations hereunder; (ii) this Agreement constitutes a legal, valid, and binding obligation of the party; (iii)

it has all necessary rights or approvals, for which it is responsible, to provide or receive the Services, as applicable.

15. **Non-Solicitation**: During the term of this Agreement and for a period of two (2) years thereafter, Client will not hire, engage, solicit, cause to be solicited, or encourage others to solicit for employment or as an independent contractor any employee or independent contractor of PDS. The parties agree that damages incurred by PDS from Client's violation of this section will be difficult to determine and significant due to the training investment in the employee/independent contractor, loss of business to PDS, and risk of trade secret exposure. Therefore, in the event Client violates this section, Client will pay to PDS as liquidated damages, and not as a penalty, an amount equal to double (2x) the compensation (including, without limitation, salary, bonus, and commission) paid by PDS to the relevant employee or independent contractor in the one-year period prior to Client's violation.
16. **Non-Interference**: During the term of this Agreement and for a period of two (2) years thereafter, Client will not, directly or indirectly, encourage or influence a customer or potential customer of PDS to cease or limit doing business with PDS.
17. **Non-Competition**: During the term of this Agreement and for a period of two (2) years thereafter, Client will not, directly or indirectly, engage in or support the development, marketing, or sale of any product or service that competes or is intended to compete with any product or service sold, offered, or otherwise provided by PDS or intended to be sold, offered, or otherwise provided by PDS in the future in the United States of America or Canada.
18. **Disclaimer**: EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, PDS MAKES NO WARRANTIES DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED BY PDS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, PERFORMANCE, QUALITY, SECURITY, RELIABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ANY WARRANTIES AGAINST INTERFERENCE WITH CLIENT'S ENJOYMENT OF THE SERVICES. ALL SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS.
19. **Compliance with Laws**: Client shall perform its obligations under this Agreement and conduct its business in accordance with all applicable federal, state/provincial, and local laws, rules, and regulations, including, without limitation, the Telephone Consumer Protection Act and its implementing regulations and governmental interpretations (collectively, "**TCPA**"), the Federal Trade Commission's Telemarketing Sales Rule ("**TSR**"), the California Consumer Privacy Act ("**CCPA**"), Illinois Biometric Information Privacy Act ("**BIPA**"), Canada's Personal Information Protection and Electronic Documents Act ("**PIPEDA**"), Canada's Anti-Spam Law ("**CASL**"), and other federal, state/provincial, and local laws and regulations governing telemarketing and consumer privacy (collectively, "**Applicable Laws**"). Client shall provide all notices and obtain all consents from third parties such as customers and staff, necessary for Client to utilize the Services in compliance with Applicable Laws. Client acknowledges that the Services may include recording and analyzing the content of telephone conversations and Client will provide all necessary call recording disclosures and obtain any necessary consents under Applicable Laws for PDS to record and analyze such calls. PDS will use commercially reasonable efforts to maintain each call recording for at least seven (7) days after the date of the call after which time PDS may destroy the call recording at any time in its sole discretion. Call recordings will be maintained in an encrypted format.
20. **Personal Information**: In connection with the Services, Client may provide to PDS or PDS may obtain on Client's behalf information that identifies, relates to, describes, is reasonable capable of

being associated with, or could reasonably be linked, directly or indirectly, with a particular person or household (“**Personal Information**”). PDS will not (a) sell Personal Information; (b) retain, use, or disclose Personal Information for any purpose other than for the specific purpose of performing the Services, including retaining, using, or disclosing the Personal Information for a commercial purpose other than providing the Services; or (c) retain, use, or disclose Personal Information outside the direct business relationship between PDS and Client. Notwithstanding the foregoing, PDS may retain, use, or disclose Personal Information for business purposes in connection with providing the Services such as complying with legal obligations, performing analytics and research and development to improve the Services, implementing security and anti-fraud programs, and managing day-to-day business operations. In the event PDS receives a request from a consumer to exercise any right a person may have under Applicable Law related to Personal Information (a “**Data Subject Request**”), PDS will inform the person of PDS’ relationship with Client and instruct the person to make their Data Subject Request directly to Client. PDS will provide reasonable assistance to Client in Client’s response to Data Subject Requests. PDS and/or its authorized sub-processors will process Personal Information and other Client Data in the United States of America, Colombia, India, and the Philippines. Client is prohibited from using the Services in connection with “non-public personal information” as defined under the Gramm-Leach-Bliley Act.

21. **Protection of Systems:** Client shall not introduce, or permit to be introduced, into PDS’ computer systems, databases, or software, any virus, malware, ransomware, or any other contaminants (including, but not limited to, codes, commands, instructions, devices, techniques, bugs, web bugs, or design flaws) that may be used to access, alter, delete, threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, inhibit, or shut down PDS’ computer systems, databases, software, or other PDS information or property. Further, Client will use reasonable security procedures to protect the confidentiality of user IDs, passwords, and other access credentials used by Client in connection with the Services or to access any of PDS’ systems, databases, or software. Client will provide prompt notice to PDS of (i) changes to persons authorized to access the Services or any of PDS’ systems, databases, or software on Client’s behalf, (ii) actual or suspected compromised user IDs, passwords, or other access credentials, or (iii) actual or suspected breaches of Client’s information security protocols that relate to the Services or access to PDS’ systems, databases, or software. Client acknowledges and agrees that it will be solely responsible for any and all activity occurring under a user ID assigned to Client, regardless of whether such activity is authorized by Client, and will provide all reasonable assistance requested by PDS, at Client’s cost, to investigate, mitigate, and/or remedy unauthorized activity or actual or suspected information security breaches.
22. **Limitation on Liability:** IN NO EVENT WILL PDS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PDS WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF PDS TO CLIENT FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY CLIENT TO PDS FOR THE PDS SERVICES GIVING RISE TO THE CLAIM IN THE ONE (1) MONTH IMMEDIATELY PRECEDING THE FACTS GIVING RISE TO THE CLAIM. THE PARTIES UNDERSTAND AND AGREE THAT THIS PROVISION AND THE ALLOCATION OF RISK IS A MATERIAL PURPOSE OF THIS

AGREEMENT UPON WHICH THE PARTIES HAVE RELIED IN ENTERING THIS AGREEMENT. Notwithstanding the foregoing, the liability of PDS to Client or any third party for all claims related to the unauthorized or illegal disclosure, use, or loss of Personal Information as a result of PDS' gross negligence or willful misconduct will be limited to the amount collectable under PDS' cyber liability insurance policy not to exceed one million dollars (\$1,000,000).

23. Indemnification and Process:

23.1. *Indemnification.* Each party will defend, indemnify, and hold the other party and its affiliates, subsidiaries, successors, assignees, owners, directors, officers, employees, contractors, representatives, and agents harmless from and against any and all claims, governmental investigations, demands, actions, and proceedings, real or threatened, and all losses, judgments, awards, settlements, damages, fines, injuries, penalties, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising out of or related to (i) the Indemnifying Party's breach of this Agreement or an SOW; (ii) the Indemnifying Party's gross negligence or willful misconduct; or (iii) the Indemnifying Party's violation or alleged violation of any Applicable Laws. For avoidance of doubt and not limitation, any act or failure to act by an employee, contractor, agent, or representative of a party will be imputed to such party as if such party had taken such action or failed to act itself.

23.2. *Procedures.* The party seeking indemnification (the "**Indemnified Party**") will give prompt written notice to the party from whom indemnification is sought (the "**Indemnifying Party**") of any claim for which indemnification is sought under this Agreement. Failure to give such notice will not relieve the Indemnifying Party of its obligation to provide indemnification except to the extent that such failure materially adversely affects the ability of the Indemnifying Party to defend the applicable claim. The Indemnifying Party may elect to assume the defense and control of any such claim at its own cost and expense and the Indemnified Party will have the right to be represented by its own counsel at its own cost in such matters. The Indemnifying Party will use counsel reasonably acceptable to the Indemnified Party. Neither the Indemnifying Party, nor the Indemnified Party, will settle or dispose of any such matter in any manner that would adversely affect the rights or interests of the other Party, including the payment of money, without the prior written consent of the other Party, which will not be unreasonably withheld, conditioned, or delayed. Each Party will reasonably cooperate with the other Party and its counsel in the course of defense of any claim, such cooperation including, without limitation, providing documents, information, and/or witnesses.

24. Confidentiality:

24.1. *Definition.* "**Confidential Information**" means: (a) the terms and conditions of this Agreement (but not its existence or parties), and (b) each party's business or technical information, including but not limited to any information relating to costs, pricing, finances, planning information, marketing plans and strategies, business opportunities, personnel, development or know-how that is designated by the party making the disclosure (the "**Disclosing Party**") as "confidential" or "proprietary" or that the party receiving such information (the "**Receiving Party**") knows or should reasonably know is confidential or proprietary. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing

Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

24.2. Obligations. A Receiving Party shall not disclose any Confidential Information of the Disclosing Party for any purpose, except with the Disclosing Party's prior written permission or as required by Applicable Law. Except with the Disclosing Party's prior written permission, or as required by Applicable Law, a Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose other than: (a) in the case of Client as the Receiving Party, as reasonably necessary to use the Services, and (b) in the case of PDS as the Receiving Party, as reasonably necessary to provide the Services. Each Receiving Party agrees to protect the Confidential Information of the Disclosing Party in the same manner that it protects its own confidential information of like kind (but in no event using less than a reasonable standard of care). Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Law or legal process, provided that the Receiving Party shall first have given at least five (5) business days' prior written notice to the Disclosing Party (to the extent legally permitted) and reasonably cooperated with Disclosing Party, at the Disclosing Party's cost, should it choose to obtain a protective order or other legal redress. On the expiration or termination of the Agreement, subject to Section 8.5, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed.

25. **Default:** Without limiting any other provision of this Agreement or an SOW, the occurrence of any of the following shall constitute an event of default and breach of this Agreement by Client: (i) Client fails to make any payment when due that is not cured within five days after such payment is due; (ii) Client experiences a material adverse change in financial status as determined by PDS, in its sole discretion; (iii) Client becomes subject to a voluntary or involuntary liquidation, dissolution, receivership, bankruptcy, insolvency, assignment for the benefit of creditors, or any other similar proceedings; (iv) Client in any way interferes with or restricts the ability of PDS to provide the Services to Client or any other person; or (v) Client fails or refuses to implement the recommendations of PDS in the manner directed by PDS.

26. **Complaint Processing:** Client will provide written notice to PDS of any consumer or regulatory complaints relating to the Services under this Agreement received, directly or indirectly (*e.g.*, via the Better Business Bureau, an Attorney General, or party to litigation), by Client within three (3) business days after receipt thereof. Client will reasonably cooperate with PDS in the investigation of such complaints.

27. **Miscellaneous:**

27.1. MOTOR End User Terms. If Client utilizes the Brooke.ai software with optional upsell package, PDS allows Client access to information PDS has licensed from MOTOR Information Systems (the "**MOTOR Information**") and by accessing such information, Client agrees to comply with the following terms and conditions:

27.1.1. License Grant. MOTOR hereby grants to Client a nontransferable, non-exclusive, limited license to access and use the MOTOR Information contained within the Brooke.ai software on a vehicle-by-vehicle look-up basis.

27.1.2. *Restrictions on Use of MOTOR Information.* Client agrees that Client shall not, and shall not permit any third party, to directly or indirectly (i) alter or copy in any form or medium all or any part of the MOTOR Information (except for data located on an individual, vehicle by vehicle, lookup basis), nor make any MOTOR Information part of any electronic retrieval system; (ii) create any derivative work from, or adaptation of, the MOTOR Information; (iii) lease, license, sell, or otherwise publish, communicate, distribute or display to any third party in any form or medium all or any part of the MOTOR Information; (iv) create any publications, in electronic, printed or other format, based in whole or in part on data from the MOTOR Information, alone or in combination with any other data; (v) download the MOTOR Information (other than the data obtained on a vehicle-by-vehicle look-up basis) or transmit the MOTOR Information electronically by any means; (vi) remove any product identification, copyright, trademark or other notice from the MOTOR Information or documentation; or (vii) reverse engineer, reverse assemble, or reverse compile the MOTOR Information.

27.1.3. *Ownership/Confidentiality.* Client agrees that the MOTOR Information is the confidential information of MOTOR, and that MOTOR owns or is the subscriber of all rights in the MOTOR Information, including without limitation all copyright and other proprietary rights. Client agrees to keep confidential and use Client's best efforts to prevent and protect the MOTOR Information from unauthorized disclosure or use.

27.1.4. *Copyright Notice.* Regarding the Motor Information, ©2022 MOTOR Information Systems, a division of Hearst Business Publishing, Inc. All rights reserved.

27.2. *Entire Agreement.* This Agreement, together with the exhibits attached hereto, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

27.3. *Notices.* All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by each respective party from time to time upon seven (7) days' prior written notice). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), email (with confirmation of receipt), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party; and (ii) if the party giving the Notice has complied with the requirements of this Section.

27.4. *Amendment and Modification; Waiver.* Except as otherwise specified herein, no amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27.5. Severability. If any provision of this Agreement is found to be void, invalid, or unenforceable, the remainder of this Agreement shall not be affected and the parties hereby agree that such void, invalid, or unenforceable provision should be replaced with a new provision that achieves substantially the same practical or economic effect and which is valid and enforceable.

27.6. Survivability. Provisions of this Agreement which by their nature would survive termination hereof, including, without limitation, Sections 4, 8, 10-12, and 14-27, will be deemed to survive.

27.7. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The venue for all disputes arising in connection with this Agreement will be the state or federal courts of Mecklenburg County, North Carolina, and the Parties consent to the jurisdiction thereof. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

27.8. Attorneys' Fees. In any action to enforce this Agreement, PDS shall be entitled to recover from Client, in addition to all other sums to which it is entitled or any other relief at law or in equity, PDS' reasonable attorneys' fees and costs.

27.9. Assignment. Client may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of PDS. Any purported assignment, transfer, or delegation in violation of this Section is null and void. PDS may assign or transfer any of its rights or delegate any of its obligations hereunder at any time without notice to Client. This Agreement shall be binding upon, and shall inure to the benefit of, PDS; Client; and their respective successors, heirs, and assigns.

27.10. Force Majeure. Except for a party's payment obligations, if any, a party will be excused from failures or delays in delivery or performance hereunder if such failure or delay is attributable to causes beyond the party's reasonable control and such failure or delay could not have been prevented or circumvented by the non-performing party through the use of alternate sources, workaround plans, or other reasonable precautions. In the event of any such delay, the time of delivery or performance and time of payment will be extended for a period of time equal to the time lost by reason of such delay (unless otherwise specified in writing between the parties) provided that such party continues to use its best efforts to recommence performance as soon as possible and to whatever extent possible without delay. The non-performing party will immediately notify the party to whom performance is due and describe at a reasonable level of detail the circumstances causing such failure or delay.

27.11. Independent Contractors. In making and performing under this Agreement, the Parties are acting and will act as independent contractors and not that of master and servant or partnership. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer, or partner of any other party for any purpose. No party will have any authority to act for or to bind another Party in any respect, nor will any Party hold itself out as having such authority. Client acknowledges and agrees that it will not act in a manner that expresses or implies a relationship other than that of an independent contractor.

- 27.12. *Export Regulation.* Client shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Client Data outside the US. In particular, Client may not export or re-export the Services into any U.S.-embargoed countries or to any person on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. Client represents and warrants that it is not located in any such country or appears on any such list.
- 27.13. *Equitable Relief.* Client acknowledges that any breach or threatened breach of this Agreement involving an unauthorized use of Confidential Information or the Intellectual Property of PDS will result in irreparable harm to PDS for which damages would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, PDS will be entitled to seek injunctive or other equitable relief, as appropriate, and Client hereby waives the right, if any, to require PDS to post a bond. If PDS seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by Client involving an unauthorized use of Confidential Information or the Intellectual Property of PDS, Client agrees that it will not allege in any such proceeding that PDS' remedy at law is adequate. If PDS seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will PDS be deemed to have made an election of remedies.
- 27.14. *Interpretation.* This Agreement is the result of careful negotiations between sophisticated parties and thus any principle of construction or rule of law that provides that an agreement will be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement will not apply to the terms and conditions of this Agreement.
- 27.15. *Headings and Units.* The section headings in this Agreement are for reference and convenience only and do not explain, modify, interpret, or expand the provisions of this Agreement. All dollar values in this Agreement are expressed in United States Dollars.
- 27.16. *Counterparts.* This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

[Signature Page to Follow]



[Signature Page to Master Services Agreement]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Tiffany Peeler
VP of Sales
Proactive Dealer Solutions, LLC

Client Signature Date

Name

Title/Client Name