

# ARBITRAGE ONLINE LICENSE AND SUBSCRIPTION AGREEMENT

*National Edition*

*Revised 11/13/07*

This Arbitrage Online License and Subscription Agreement (“Agreement”) is made by and between you (“Licensee”) and **DJ Automotive Information Services, Inc. d/b/a Cybercalc.com**, a Texas corporation, with offices located at 8284 Club Meadows Drive, Dallas, Texas 75243 (“Licensor”).

## I. RECITALS

1. Licensor has developed a service called Arbitrage (the “Service”) using proprietary methodology that analyzes pre-owned vehicles for potential leasing opportunities, and then identifies and presents qualified vehicles to subscribers of the Service.

2. Licensee desires to subscribe to the Service in accordance with the terms and conditions as set forth in this Agreement.

## II. AGREEMENT

LICENSEE AGREES THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY LICENSEE. BY CLICKING TO ACCEPT THIS AGREEMENT, LICENSEE AGREES TO BE BOUND BY ITS TERMS.

IN ACCORDANCE WITH PARAGRAPH 12 BELOW, LICENSOR MAY CHANGE, ADD, OR REMOVE ANY PART OF THIS AGREEMENT, OR ANY PART OF THE SERVICE, AT ANY TIME. IF ANY FUTURE CHANGES TO THIS AGREEMENT ARE UNACCEPTABLE TO LICENSEE, LICENSEE SHOULD REFUSE TO ACCEPT ANY UPDATED TERMS PROPOSED BY LICENSOR AND MUST DISCONTINUE USING THE SERVICE.

1. **GRANT OF LICENSE.** Licensor grants Licensee a non-exclusive, personal, non-assignable and non-transferable license to use the Service, upon the terms and conditions of this Agreement. Licensee is licensed to use data made available to Licensee through the Service (“Data”) solely in the regular course of automotive leasing and other research and related work. The license includes the right to download and temporarily store insubstantial portions of Data (“Downloaded Data”) to a storage device under Licensee’s exclusive control solely (i) to display internally such Downloaded Data and (ii) to quote and excerpt from such Downloaded Data by electronic cutting and pasting or other means in the regular course of Licensee’s research and work. Licensee may also create printouts of Data for internal use.

2. **LIMITATIONS OF LICENSE.** (A) Unless otherwise agreed in writing by Licensor, Licensee may access the Service only from a single physical location of Licensee’s sales and leasing operations (the “Site”), which Site shall be designated by Licensee prior to use of this License. Licensee agrees that it will not provide access to the Service at any location other than the Site. (B) Licensee shall not permit its Affiliates to have access to the Service or Data. For purposes of this Agreement, the term “Affiliates” shall be defined as any corporation, partnership, joint venture, joint stock company, limited liability company, trust, estate, association or other entity the existence of which is recognized by any governmental authority (i) that directly, or indirectly through one or

more intermediaries, controls or is controlled by Licensee, or is under common control with Licensee, or (ii) in which Licensee has any direct or indirect ownership interest, whether controlling or not, at any time during the term of this Agreement. (C) This Agreement does not permit Licensee to use the Service on behalf of any third party, or to sublicense or otherwise transfer its license to a third party. (D) Licensee may not copy, download, store, publish, transmit, transfer, sell or otherwise use the Data, or any portion of the Data, in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with Licensor's prior written permission, or (iii) if not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. §107). (E) Downloaded Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in Licensee's work product. (F) Licensee shall not sell, license or distribute Data (including printouts and Downloaded Data) to third parties.

3. OWNERSHIP. Licensee acknowledges and agrees that the Service, including but not limited to computer programs, user manuals, and other supporting material, together with any copies in whole or in part thereof, are and remain the exclusive property of Licensor, subject to the license granted to Licensee hereunder. This Agreement does not convey to Licensor any rights of ownership or other proprietary rights in or to the Service. This Agreement does not grant Licensee any rights concerning patents, copyrights, trade secrets, trade names, trademarks, service marks, or any other intellectual property rights of Licensor. Except for the license granted in this Agreement, all rights, title and interest in Data, in all languages, formats and media throughout the world, including all copyrights, are and remain the exclusive property of Licensor and other contributors of Data.

4. PROTECTION OF LICENSOR'S CONFIDENTIAL INFORMATION. Licensee agrees and acknowledges that the Service contains confidential and proprietary information of Licensor, in that it involves processes and compilations of information which are secret, confidential and not generally known to the public, and which are the product of Licensor's own expenditure of time, effort, money, and creative skill. Licensee further acknowledges that, during the course of this Agreement, it may be exposed to other confidential and proprietary information of Licensor. For purposes of this Agreement, the term "Confidential Information" includes, but is not limited to, Licensor's past, present and future development and business activities, internet services (including, without limitation, the Service), software, software designs, software design elements, software specifications, software configurations, data structures, tools, methodologies, platforms, hardware specifications, hardware configurations, database contents, database designs, database architectures, system architectures, processes, usability information and other details of the conduct of the business of Licensor that are not a matter of public knowledge. Licensee agrees to be bound by the decision of Licensor as to the confidential nature of any particular information.

In order to protect Licensor's Confidential Information, Licensee agrees as follows: (A) Licensee agrees to restrict access to the Service only to employees, agents and representatives who require access to the Service in the course of their employment with Licensee. (B) Licensee agrees not to disclose Confidential Information, and further agrees to take all reasonable precautions and security steps necessary to prevent Licensee's employees, agents, and representatives from disclosing Confidential Information, to any person other than employees, agents and representatives who require access to the Service in the course of their employment with Licensee. (C) Licensee agrees to notify Licensor promptly and in writing of the circumstances surrounding any disclosure of Confidential Information to any person other than those authorized by this Agreement. The provisions of this paragraph 4 shall survive the expiration and/or termination of this Agreement and shall remain in full force and effect.

5. **USE AND PROTECTION OF INTELLECTUAL PROPERTY OF OTHERS.** Licensee understands and acknowledges that its use of the Service involves access to data and/or databases owned by third parties ("Third Party Information"), including but not limited to: (1) National Auto Research Division, Hearst Business Media Corporation, and (2) Aiken & Associates, LLC d/b/a Automotive Lease Guide. In order to protect intellectual property rights which exist with respect to Third Party Information, Licensee agrees as follows: (A) Licensee agrees to use all reasonable efforts to safeguard the patents, copyrights, trade secrets, trade names, trademarks, service marks, and any other intellectual property rights in and to Third Party Information. (B) Licensee, and its employees, agents, and representatives accessing Third Party Information, shall not, and shall not allow others to directly or indirectly (i) disassemble, decompile, reverse engineer or otherwise modify or alter, enhance, customize the Third Party Information (i.e. either by addition, deletion, augmentation, change or otherwise); (ii) copy or reproduce in any form or medium all or any part of the Third Party Information; (iii) create any derivative work from, or adaptation of the Third Party Information; (iv) assign, transfer, market, lease, license, sell, or otherwise publish, communicate, distribute or display to third parties or utilize in any form or medium all or any part of the Third Party Information; (v) create any vehicle valuation guides, directories or services, based in whole or part on the data from the Third Party Information; (vi) download the Third Party Information to PCs or any other computer or electronic device, or store the Third Party Information in a retrieval system; (vii) establish a network for use of the Third Party Information, or provide database services to any third party, or (viii) transmit, in any form, or by any means, electronic, mechanical, photocopying, recording, or otherwise, in whole or in part, the Third Party Information. The provisions of this paragraph 5 shall survive the expiration and/or termination of this Agreement and shall remain in full force and effect.

6. **DISCLAIMER OF WARRANTIES.** THE SERVICE IS PROVIDED "AS IS," AND LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, (1) THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, (2) WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, AND (3) WARRANTIES ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY A COURSE OF DEALING. WITHOUT LIMITING THE FOREGOING, LICENSOR DOES NOT WARRANT OR REPRESENT THAT THE SERVICE WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT LICENSOR'S SERVERS AND SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. LICENSOR FURTHER DISCLAIMS ALL EXPRESS, STATUTORY AND IMPLIED WARRANTIES APPLICABLE TO PRODUCTS AND ACCESSORIES WHICH ARE NOT MANUFACTURED BY LICENSOR. THE ONLY WARRANTIES APPLICABLE TO PRODUCTS AND ACCESSORIES WHICH ARE NOT MANUFACTURED BY LICENSOR SHALL BE THE WARRANTIES, IF ANY, OF THE MANUFACTURERS OF SUCH PRODUCTS AND ACCESSORIES.

7. **LIMITATION OF LIABILITY.** IN NO EVENT WHATSOEVER WILL LICENSOR BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THE SERVICE OR THIS AGREEMENT UNDER ANY TORT, CONTRACT, PRODUCTS LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (INCLUDING NEGLIGENCE), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL LICENSOR BE LIABLE FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER BROUGHT AGAINST LICENSEE BY ANY THIRD PARTY. IN NO EVENT WHATSOEVER WILL LICENSOR BE LIABLE UPON ANY CLAIM OR CAUSE OF ACTION WHATSOEVER (INCLUDING NEGLIGENCE) FOR AN AMOUNT WHICH EXCEEDS THE LICENSE FEES PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT.

8. **TERM OF AGREEMENT.** This Agreement shall become effective upon approval by Licensors and shall continue for a period of 18 months (the "Initial Term") from the date of such approval. At the end of the Initial Term, this Agreement shall automatically renew for a period of time equivalent to the length of the Initial Term (the "Renewal Term"), unless either party gives written notice of its intention not to renew at least thirty (30) days before the end of the Initial Term. Thereafter, at the end of any Renewal Term, this agreement shall automatically renew for a period of time equivalent to the length of the Initial Term, unless either party gives written notice of its intention not to renew at least thirty (30) days before the end of the Renewal Term. Licensors reserves the right to increase the subscription fee or any other fee charged to Licensee by providing written or online notice to Licensee not less than thirty (30) days before the effective date of such increase.

9. **BILLING AND PAYMENT.** Licensee agrees to pay to Licensors the fees set forth on the attached Schedule A, Fee Schedule. Payment for each calendar month shall be due on or before the 1<sup>st</sup> day of such month. If full payment is not made by Licensee by the 1<sup>st</sup> day of the month, Licensee may be charged up to the maximum legal interest on any unpaid balance, and Licensors may suspend or terminate Licensee's access to the Service. The fees and charges payable to Licensors under this Agreement shall not be subject to set-offs.

10. **TERMINATION OF AGREEMENT BY LICENSOR.** Licensors may terminate this Agreement at any time, with or without cause, by providing written notice to Licensee.

11. **ENTIRE AGREEMENT.** This Agreement, including all attachments hereto, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements, representations, statements and proposals, whether oral or written.

12. **AMENDMENT OF AGREEMENT BY LICENSOR.** Except as otherwise provided in this Agreement, Licensors may amend the terms and conditions of this Agreement by giving Licensee written or online notice not less than thirty (30) days before the effective date of such amendment. Any other modifications or amendments to this Agreement shall be in writing and signed by both parties.

13. **NOTICES.** Notices hereunder shall be delivered by nationally recognized overnight courier, or by certified mail, return receipt requested, to the addresses set forth below. All notices shall be deemed given upon receipt by the other party.

14. **INDEPENDENT CONTRACTORS.** Licensors and Licensee agree that, in all matters relating to this Agreement, they are acting as independent contractors. Licensors and Licensee further agree that they will not represent to any third party (1) that they are an agent or representative of the other party, or (2) that they have any authority to assume or create any obligation, express or implied, on behalf of the other party.

15. **NO ASSIGNMENT.** Licensee may not assign any of its rights, duties, and/or privileges under this Agreement, by operation of law or otherwise, without the prior written consent of Licensors, and any purported assignment in violation hereof shall be null and void.

16. **NON-WAIVER.** No term or provision of this Agreement shall be deemed waived, and no breach of this Agreement shall be deemed excused, unless such waiver or excuse is in writing and signed by the party against whom such waiver or excuse is claimed.

17. SEVERABILITY. A determination that any provision of this Agreement is invalid, illegal or unenforceable shall not affect the enforceability of any other provision. In the event that any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of this Agreement shall be in full force and effect.

18. AUTHORITY AND ABILITY TO ACCEPT AGREEMENT. The person accepting this Agreement on behalf of Licensee warrants that he/she is authorized to enter into this Agreement on Licensee's behalf, and affirms that he/she is at least eighteen (18) years of age, and is fully able and competent to enter into the terms and conditions set forth in this Agreement, and to abide by and comply with this Agreement.

19. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

20. ARBITRATION. Licensor and Licensee agree that their sole recourse for resolving any dispute between them, arising under the terms of this Agreement and/or the products, services or compensation contemplated by this Agreement shall be to arbitrate such dispute. Such arbitration shall be pursuant to the arbitration laws of the State of Texas and the rules, then obtaining, of the American Arbitration Association. Venue of such arbitration shall be in Dallas County, Texas.

21. INJUNCTIVE RELIEF. Unauthorized use of the Service or any information contained therein will diminish the value thereof to Licensor. Therefore, if Licensee breaches any obligations set forth hereunder, Licensor shall be entitled to equitable relief in a court of law to protect its interests therein, including but not limited to injunctive relief, as well as any other remedies available to Licensor in equity or law, notwithstanding the arbitration provisions in paragraph 20 above.

## Schedule A, Fee Schedule

### Fees

#### **PRICE PLAN**

Term of Subscription: <u>18 months</u>	Monthly fee for Term of Subscription*:
Effective Date: <u>Date of Online Registration</u>	<u>\$599.00 first user</u>
Renewal Date: <u>18 Months Thereafter</u>	
Setup Fee: <u>\$1,999.00</u>	<u>\$225.00 per additional user</u>

Additional Fees that will apply after initial installation and training period\*:

Re-authentication fee (user handles install)	\$ 25.00 for authentication only
Re-install Fee (including new computer or printer)	\$250.00 per station
Training new user	\$250.00 for half day

Sales tax will be added to the above prices if applicable.