



DEALER AGREEMENT
(FRANCHISEE)



DEALERSHIP APPLICATION (FRANCHISEE)

LEGAL NAME:		DBA:		DATE ESTABLISHED:	
PHYSICAL ADDRESS:		MAILING ADDRESS:		YEARS AT ADDRESS:	
MAKE(S) REPRESENTED:		PRIMARY PHONE NO.	FINANCE FAX NO.		BUSINESS OFFICE FAX NO.
DEALER LICENSE No.: (PLEASE ATTACH A COPY)	DEALER BOND No.: (PLEASE ATTACH A COPY)	FED EIN:	STATE EIN:		SALES TAX No.:
PRIMARY DEALERSHIP CONTACT:	TITLE:	TELEPHONE NO.:	E-MAIL ADDRESS:		ROUTEONE NO.:
DEALERTRACK NO.:					

BUSINESS ORGANIZATION:	OWNERSHIP:	NAME	TITLE	%	DEALERSHIP MANAGEMENT:	NAME	TITLE	TELEPHONE NO.
<input type="checkbox"/> SOLE PROPRIETORSHIP								
<input type="checkbox"/> PARTNERSHIP								
<input type="checkbox"/> CORPORATION								
<input type="checkbox"/> OTHER								

FINANCE DEPARTMENT CONTACT(S) :				
NAME	TITLE	TELEPHONE NO.	FAX NO.	E-MAIL ADDRESS

BUSINESS OFFICE CONTACT(S) :				
	NAME	TELEPHONE NO.	FAX NO.	E-MAIL ADDRESS
BUSINESS MANAGER				
CONTRACTS DESK				
TITLE DESK				
PAYABLES DESK				

FINANCE PRODUCTS: (Please include customer brochure(s) and a policy for each product with this application)					
	COMPANY	ADMINISTRATOR	CONTACT NAME	TELEPHONE NO.	WEBSITE
EXTENDED WARRANTY					
SERVICE CONTRACT					
GAP					
CREDIT LIFE AND DISABILITY					

FINANCIAL RELATIONSHIPS:				
	FINANCIAL INSTITUTION/COMPANY	ACCOUNT NO.	CONTACT NAME	TELEPHONE NO.
CHECKING ACCOUNT: GENERAL				
FLOOR PLANNING: NEW				
PRIMARY AUCTION				

DEALERSHIP: _____ BY: _____ DATE: _____

NAME: _____

TITLE: _____



DEALER AGREEMENT
(FRANCHISEE)

DEALER AGREEMENT

THIS DEALER AGREEMENT ("Agreement") is between Axos Bank™ (Bank) and the dealer whose name and address is set forth on the last page of this Agreement ("Dealer") and is effective as of the date set forth under Bank's signature below. Dealer is engaged in the retail sale of motor vehicles ("Vehicles") to buyers ("Buyers"), which term shall include any other obligors under a retail vehicle installment sales contracts and security agreements, and guarantees thereof ("Contracts"). Dealer may, from time to time, offer to sell Contracts to Bank. This Agreement sets forth the terms and conditions under which Bank or its affiliates or subsidiaries will purchase, or have purchased, Contracts from Dealer, and the rights and obligations of Dealer and Bank regarding those Contracts. In consideration of the mutual promises and agreements contained herein, Bank and Dealer agree as follows:

1. **APPLICATION PROCESS.** Bank is willing to review credit applications received from time to time from dealers regarding prospective Buyers who wish to purchase Vehicles from Dealer using financing to be provided by Dealer for the purpose of determining, in its sole discretion, whether Bank will purchase Contracts from Dealer and, if so, on what terms Bank proposes to purchase such Contracts. In the event that an offer ("Offer") is made by Bank, it shall be deemed a preliminary approval to purchase a Contract and is valid for thirty (30) days. Final approval and purchase is subject to the conditions of purchase as set forth in Section 4, and the satisfaction of any additional conditions communicated to Dealer by Bank through a particular Credit Program (as hereinafter defined in Section 2) or otherwise.
2. **CREDIT PROGRAMS.**
 - a. Bank may make different credit programs available to Dealer from time to time ("Credit Program"). The terms associated with each Credit Program shall be detailed in separate program guidelines, or other similarly designated documents. Bank is not required to offer any particular Credit Program, and Bank may discontinue or modify any Credit Program at any time, in its sole discretion. In the event an Offer remains pending upon the termination of or a modification to a particular Credit Program, Bank agrees to purchase the Contract pursuant to the Credit Program prior to termination or modification.
 - b. During the term of this Agreement, Bank may offer a Credit Program that pays to Dealer a dealer participation payment ("Dealer Participation Program") for certain Contracts. Bank reserves the right, but is not obligated, to offer Dealer Participation Programs. The terms of any Dealer Participation Program shall be set forth on the Bank's then current rate sheet or be separately provided to Dealer. Bank shall have the right to discontinue or modify any Dealer Participation Program at any time in its sole discretion.
3. **PURCHASE AND SALE PROCESS.** Dealer is under no obligation to sell and Bank is under no obligation to purchase any Contracts. Bank may purchase Contracts offered by Dealer if acceptable to Bank and if written on documents acceptable to Bank, at Bank's sole discretion. Upon Dealer's acceptance of an Offer, Dealer shall promptly execute and deliver to Bank an assignment of the Contract in a form acceptable to Bank. ("Assignment"). Any such Assignment shall include all rights, title, and interest held by Dealer regarding such Contract, including but not limited to, a security interest or lien on the applicable Vehicle. Bank may reject any Contract not meeting Bank's requirements. Bank will have no obligation to purchase a Contract if, after approval but prior to funding: (i) Buyer dies or becomes incapacitated; (ii) Buyer files for bankruptcy protection; (iii) the Vehicle is lost, stolen or damaged; (iv) Buyer is in a dispute with Dealer; or (v) for any other reason determined by Bank to constitute a change in circumstance that puts repayment of the Contract at risk. Dealer acknowledges and agrees that Bank may amend any Contract in its sole and absolute discretion after purchase thereof.
4. **CONDITIONS OF PURCHASE.** The following conditions must be satisfied for Bank to purchase a Contract ("Purchase Conditions"): (i) receipt by Bank of the original executed Contract, the associated signed Credit Application, and any other documentation provided for in the Credit Program required by Bank for Contract funding and lien perfection, and any other documentation associated with such Contract as required by Bank and communicated to Dealer ("Required Documents"), (ii) satisfaction of any stipulation(s) set forth in the Offer (referred to collectively with the Contract as "Contract") and receipt of proof thereof, if applicable, (iii) the Vehicle shall have been delivered to and accepted without dispute or claim by Buyer; (iv) each of the Contract Representations set forth in Section 8 are true and correct as to such Contract, and (v) Dealer is not in default under this Agreement.
5. **PURCHASE OF CONTRACTS AND RECOURSE.** Bank shall promptly pay Dealer the Purchase Price communicated to Dealer in accordance with the Credit Program, as amended from time to time, after all of the Purchase Conditions in Section 4 have been satisfied. Unless otherwise agreed by Bank and Dealer, the purchase price of each Contract shall be the sum of the amount financed under such Contract, plus the dealer participation payment, if any, less any acquisition fee and any participation payment retention. Dealer and Bank may from time to time agree upon methods and procedures for the payment by Bank of amounts due to Dealer hereunder, reserve accounts, repurchase, charge off and prepayment obligations of Dealer and related matters. Such agreements between Bank and Dealer may be evidenced by Bank's standard operating procedures, program sheets, or otherwise. Dealer agrees that the Credit Program may be amended by Bank in its sole discretion, and Dealer's acceptance of such amendment shall be evidenced by the sale of a Contract to Bank on or after the effective date of such amendment. Unless purchased pursuant to a Credit Program that provides for recourse or otherwise agreed by Bank and Dealer, and except with respect to the representations, warranties, repurchase obligations and other obligations, and agreements of, and indemnification by, Dealer set forth in this Agreement, any purchase of a Contract shall be without recourse to Dealer.

6. **CHANGE IN STATE OF AFFAIRS.** Notwithstanding any other provision in this Agreement, Bank may elect not to purchase a Contract (*e.g.*, not fund), if it determines in good faith that: (i) there has been a material adverse change in the condition of the Vehicle securing the Contract, (ii) there has been a material adverse change in the financial condition of any Buyer, (iii) there are facts or circumstances that would constitute a basis for demanding repurchase of a Contract under Section 10, or (iv) Dealer has become insolvent or the subject of a voluntary or involuntary Chapter 7 Finance Bankruptcy petition filing. The foregoing right to refuse to purchase a Contract applies to every stage of the transaction between Dealer and Bank, including, but not limited to, after Dealer has received the Offer and/or Bank has received the Required Documents.
7. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEALER.** As of the date of this Agreement, each date Dealer forwards a Credit Application to Bank, and each date Bank purchases a Contract from Dealer, Dealer represents, warrants and covenants the following:
 - a. **Organization.** Dealer is a corporation, limited liability company or limited partnership, duly organized, validly existing, qualified and authorized to transact business in, and is in good standing under the laws of the jurisdiction of its organization and each jurisdiction in which it performs or will perform its obligations under this Agreement.
 - b. **Capacity, Authority, Validity.** Dealer has the power, authority and legal right to execute, deliver, and perform this Agreement and its obligations. The execution, delivery and performance of this Agreement by Dealer has been duly authorized by all necessary action, and this Agreement is enforceable against Dealer in accordance with its terms, except to the extent such enforceability may be limited by Finance Bankruptcy, insolvency, reorganization, and other laws relating to or affecting creditors' rights generally and by general equity principles.
 - c. **Licenses.** Dealer is, and throughout the term of this Agreement will remain, duly authorized and properly licensed under all applicable laws to transact business as presently conducted, and to perform the transactions contemplated under this Agreement, and shall maintain its properties, equipment, and facilities in good order and repair.
 - d. **Compliance with Law.** All business practices, acts and operations of Dealer are in compliance with all applicable federal, state and local laws, regulations and ordinances.
 - e. **Accounting.** At all times throughout the term of this Agreement, Dealer shall maintain a standard and modern system of accounting according to generally accepted accounting principles (GAAP) and furnish Bank such information relating to such accounting system as Bank may request from time to time.
 - f. **Dealer Insurance.** Dealer has in place and shall maintain at all times under the terms of this agreement, insurance coverage on terms commensurate with the level of risk involved in Dealer's operations and the activities conducted by dealer, and shall provide certificates evidencing such insurance from time to time upon Bank's request.
8. **REPRESENTATIONS AND WARRANTIES OF DEALER WITH REGARD TO EACH CONTRACT.** As of the date of this Agreement and as of each and every date any Dealer forwards a Credit Application or offers a Contract for purchase to Bank, and as of each and every date Bank receives a Credit Application to review or purchases a Contract hereunder, Dealer hereby represents and warrants to Bank the following regarding the Contract being purchased:
 - a. **Furnished Information.** Dealer has furnished Bank all credit information received by Dealer relative to the Credit Application and Contract and such information is, to the best of Dealer's knowledge, true, complete and accurate. All statements, documents and information furnished to Bank by Buyer, Dealer and all other persons are, to the best of Dealer's knowledge, accurate, complete and true.
 - b. **Buyer.** Each applicant Buyer, co-buyer, co-signer or guarantor, if any (referred to collectively with Buyer as "Buyer") on a Credit Application has expressed a definitive interest in purchasing a vehicle on credit from Dealer or has otherwise provided Dealer with written authorization to obtain a consumer report. Buyer has full legal capacity to enter into the Contract, and Buyer is a bona fide good faith purchaser in the ordinary course of Dealer's business.
 - c. **Buyer's Identity.** Dealer has verified the identity of Buyer. At a minimum, Dealer has reviewed a valid and unexpired driver's license or other government-issued identification with a photograph. The procedures to verify identity are commercially reasonable and in compliance with applicable law. If there is a "fraud alert" or "active duty alert" on a Buyer's consumer report, Dealer will comply with all FCRA (as hereinafter defined in Section 8(o)) requirements with respect to such alert, including performing additional due diligence to confirm the identity of Buyer. Dealer further agrees to perform any other due diligence as reasonably requested by Bank. The provisions of this Section 8(c) shall apply to all Credit Applications submitted to Bank.
 - d. **Contract.** The Contract is genuine, legally valid and fully enforceable in accordance with its terms and not subject to any offsets, counterclaims, rescission rights or defenses. Dealer has no knowledge of any fact that would impair the Contract's validity or enforceability. The Contract was completely filled-in when signed by each Buyer, and each Buyer received a completed copy of the Contract. The signature of Buyer on the Contract and all other documents is genuine. Dealer has no knowledge of any event which indicates or suggests the prospective uncollectability of the Contract. The Contract fully and accurately sets forth the terms of the transaction between Dealer and Buyer, and accurately identifies all products and services sold and financed. Dealer has not made any oral or written promise, affirmation, warranty or representation to Buyer not contained in the Contract. Buyer is the person who will primarily drive the Vehicle (*i.e.*, Buyer is not a "straw purchaser"). All products and services financed in the Contract have been delivered to Buyer and Dealer has paid for such products and services, along with any related labor and

materials (as applicable). Without limiting the generality of the foregoing, Dealer expressly warrants with regard to the Contract that the decision to enter into the Contract and to establish each of the terms thereof were made by Dealer without regard to (i) Buyer's race, color, religion, national origin, marital status, age (provided Buyer is of legal age and has the capacity to enter into a binding legal contract), sex, disability, familial status or receipt of public assistance, (ii) whether Buyer has exercised in good faith any right under the Consumer Credit Protection Act, or (iii) any other factor forbidden by the federal Equal Credit Opportunity Act, the federal Americans with Disabilities Act, or applicable state law.

- e. **Vehicle Cash Price.** The "cash price" of the Vehicle as shown on the Contract is the "cash price" as defined by applicable state and federal law and was not increased because the Vehicle is being sold on credit, the Contract was to be sold at a discount (an amount which is less than the Amount Financed stated in the Contract), to a member of a protected class under the ECOA (as hereinafter defined in Section 8(o)) or comparable state law, or sold to a member of the U.S. armed services. The "cash price" represents the fair retail market value of such Vehicle charged by Dealer for substantially similar vehicles in cash transactions.
- f. **Down Payment.** The down payment with respect to the Contract was paid in full by Buyer, in cash, in the form of a check drawn on a Bank account, certified funds, immediately available funds, or in trade equity prior to Bank's purchase of the Contract and/or in trade equity. No part of the down payment was loaned by Dealer or any other person or entity and no part was otherwise provided directly or indirectly by, or is the result of any other assistance of, Dealer, and Dealer properly handled or disposed of any down payment or trade-in or the proceeds thereof as agreed with Buyer and no part was paid or rebated to Buyer. It is expressly acknowledged, understood, and agreed by Dealer and Bank that a credit card, check drawn on a credit card account, or any other credit transaction is not a valid form of down payment. If Dealer fails to collect the down payment in full in accordance with this Agreement prior to Bank's purchase of the Contract, the Contract shall be subject to immediate Repurchase as defined below at any time during the life of the Contract upon verification by Bank of Dealers' failure to collect the down payment in full. The Assignment of a Contract hereunder shall not be deemed to have been completed until such time as Buyer's financial institution account has been finally debited for any amounts provided to Dealer by Buyer as down payment in connection with such Contract. If Dealer accepts a check as down payment for a Contract and the check is returned for insufficient funds upon presentment for payment to the entity of which the check is drawn, the Contract shall be subject to immediate repurchase as defined herein. Dealer shall immediately notify Bank in writing if any down payment check for a Contract is returned for insufficient funds upon its presentment to the entity on which the check is drawn. Dealer hereby agrees not to repossess or accept redelivery of any Vehicle subject to a Contract purchased by Bank pursuant to this Agreement, in each case without Bank's prior written consent. To the extent Dealer receives cash payments in excess of \$10,000.00, Dealer shall file an IRS Form 8300 within fifteen (15) days after receipt thereof.
- g. **Credits.** Any credit or rebate provided to Buyer (e.g., trade-in, Dealer rebate or manufacturer rebate) has been fully disclosed to Bank, is separately itemized in the Contract, and has not been included in the cash-portion of the down payment.
- h. **Vehicle.** The Vehicle was delivered to and accepted by Buyer at Dealer's licensed place of business. The Vehicle and all options thereon are accurately described in the Contract. The certificate of title to the Vehicle is not branded (e.g., salvage, flood-damaged, rebuilt, etc.), the odometer of the Vehicle was not rolled back (at any time), the Vehicle does not have flood damage, the Vehicle is not a grey market vehicle, the Vehicle does not have frame damage, the Vehicle is in good operating condition and repair, free of all mechanical defects, and there is no other condition that would otherwise adversely affect the value of the Vehicle. Possession of the Vehicle was not obtained by Buyer's and/or Dealer's use of a fraudulent scheme, trick or device not otherwise covered elsewhere by these warranties.
- i. **Good Title and Assignment of Security Interest.** Dealer has good and marketable title to the Vehicle, and such Vehicle is free from all liens or encumbrances, except those which will be in favor of Bank or its designee. Dealer has the right to make an assignment of the Contract.
- j. **Title, Security Interest and Lien.** Dealer has applied for a certificate of title for the Vehicle showing Bank as the legal owner or the holder of a security interest therein, and Buyer as the registered owner thereof, and has submitted all documents necessary to obtain and perfect a valid and enforceable first priority security interest of Bank in the Vehicle, within the time periods required by applicable law, and as necessary to prevent the avoidance of the security interest in a Finance Bankruptcy or other insolvency-type proceeding, or otherwise adversely affect the certificate of title and/or Bank's security interest. Dealer agrees to take such additional actions as Bank may request to evidence Bank's interest in a Contract, its proceeds, and the related Vehicle.
- k. **Taxes and Fees.** Dealer will promptly forward, pay and/or cause to be paid to the proper authorities all federal, state and local fees and taxes due in connection with the sale, financing, titling and/or registration of the Vehicle.
- l. **Insurance.** At the time of Buyer's execution of the Contract, the Vehicle is insured by fire, theft and comprehensive and collision insurance with a deductible not greater than \$500 fully protecting Bank's interest in the Vehicle and naming Bank as loss payee and an additional named insured. Dealer has verified the foregoing with Buyer's insurance agent or provider, and submitted satisfactory evidence thereof to Bank.
- m. **Ancillary Products.** All "add on" or ancillary products, including, but not limited to, mechanical breakdown protection, service contracts, GAP, credit insurance, alarm systems ("Ancillary Products"), financed in the Contract comply with applicable law, all required disclosures were complete, accurate and properly made, and all documents

required to be delivered have been delivered. If an Ancillary Product is a debt cancellation, debt suspension or insurance type product (e.g., GAP, credit insurance), Dealer has notified Buyer in writing that Dealer does not require Buyer to purchase such product to obtain credit. If an Ancillary Product is of a type that can be offered in cash sales (e.g., service contract, alarm system), Dealer has offered it for sale in comparable cash transactions at a price equal to that disclosed in the Contract. For all Ancillary Products, the price it is sold for represents the fair retail market value of such product and was not overstated or inflated in any way. Dealer will pay in full any Ancillary Product charges, fees or premiums to the companies that are providing them to ensure that such products will be in full force and effect for Buyer. Dealer has disclosed each Ancillary Product to Buyer and made clear to Buyer that the purchase of each Ancillary Product is optional.

- n. **Misstatements.** Dealer has made no representations, warranties, claims or other statements regarding the finance charge, including regarding obtaining the lowest or best interest rate available for Buyer, or with respect to any other matter relating to the Contract or the related transaction. Dealer shall notify Bank if it becomes aware that any information that Dealer provided to the Company with regard to an Application, Contract, or Buyer is not true.
- o. **Disclosures, Forms and Procedures.** All disclosures required by law were provided to Buyer in connection with the Contract (i.e., the sale and financing of the products and services) and were complete, accurate and properly made by Dealer. Except for any forms, procedures, or documents provided by Bank (or any forms, procedures, or documents that Bank requires Dealer to utilize), all forms, procedures, and other documents created and/or used by Dealer in connection with the transactions contemplated hereunder comply with all applicable federal, state and local laws and regulations, including, usury laws, any state motor vehicle installment sales act, the Truth in Lending Act and Regulation Z, the Equal Credit Opportunity Act ("ECOA") and Regulation B, the Fair Credit Reporting Act ("FCRA"), Title V of the Gramm-Leach Bliley Act ("GLBA"), 12 U.S.C. § 5531 (which prohibits unfair, deceptive, or abusive acts or practices and is commonly known as "UDAAP"), the Federal Trade Commission Act (commonly known as "UDAP"), and all implementing regulations and rules, including the Federal Trade Commission's Trade Practice Rules and of the Consumer Financial Protection Bureau, together with all other federal, state and local laws, regulations and rules applicable to the transactions contemplated hereunder.
- p. **Notices to Buyer Required by Law.** Dealer provided to all prospective Buyers for whom a Credit Application was submitted to Bank and to Buyers for whom Bank has purchased a Contract, any and all notices required by applicable law, including, but not limited to, adverse action notices and Risk Based Pricing notices that may be required under the ECOA and Regulation B, and the FCRA and the Risk-Based Pricing Rule. Dealer notified each prospective Buyer for whom a Credit Application is submitted to Bank that their Credit Application is being submitted to Bank, together with Bank's current address.
- q. **Contract Location.** The entire transaction occurred at Dealer's place of business, and the Contract was generated from a direct sale by Dealer and not from a third party.
- r. **Future Payments and Information Received by Dealer:** After purchase of a Contract by Bank, Dealer shall not accept any payments on the Contract and will direct Buyer to Bank. If for some reason, Dealer receives payment on the Contract or written communication with respect to a Contract, Dealer will hold it in trust for the benefit of Bank, and will promptly forward it to Bank in the form received, properly endorsed to Bank where appropriate.

Each of the above Contract Representations is material to Bank's purchase of a Contract. The Contract Representations are not waived if Bank buys a Contract knowing that a Contract Representation has been/is breached. The Contract Representations and all other provisions of this Section 8 shall survive the execution, delivery, expiration or termination of this Agreement.

9. **WARRANTIES AND COVENANTS OF BANK.** As of the date of this Agreement, and as of each and every date any Dealer forwards a Credit Application or offers a Contract for purchase to Bank, and as of each and every date Bank receives a Credit Application to review or purchases a Contract hereunder, Bank hereby represents and warrants to the applicable Dealer the following:

- a. **Organization.** Bank is a duly organized, validly existing, and qualified and authorized to transact business in, and in good standing under the laws of the jurisdiction of its organization and each jurisdiction in which it performs or will perform its obligations under this Agreement.
- b. **Capacity, Authority, Validity.** Bank has the power, authority and legal right to execute, deliver, and perform this Agreement and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Bank has been duly authorized by all necessary action, and this Agreement is enforceable against Bank in accordance with its terms, except only to the extent such enforceability may be limited by Finance Bankruptcy, insolvency, reorganization, and other laws relating to or affecting creditors' rights generally and by general equity principles.
- c. **Licenses.** Bank is, and throughout the term of this Agreement will remain, duly authorized and properly licensed under all applicable laws to transact business as presently conducted and to perform the transactions contemplated under this Agreement.
- d. **Forms and Procedures.** In the event that Bank provides Dealer with any forms, procedures or other documents (or requires that Dealer utilize specific forms, procedures or other documents), of any kind whatsoever, such forms, procedures or other documents shall comply with all requirements of the Truth in Lending Act and Regulation Z, the

Equal Credit Opportunity Act and Regulation B, the Fair Credit Reporting Act, Title V of the GLBA and Regulation P, the Consumer Financial Protection Bureau and Federal Trade Commission rules and regulations, and all other federal, state and local laws, regulations and rules applicable to the transactions contemplated hereunder. Further, all rates provided by Bank shall comply with all applicable laws, including, but not limited to, maximum finance charge and usury laws.

- e. **Adverse Action Notices.** Bank agrees that upon declining to purchase a Contract with respect to a Credit Application submitted by Dealer on behalf of an applicant (or the occurrence of another adverse action as defined under the Equal Credit Opportunity Act and Regulation B, or the FCRA), Bank shall provide that applicant its own written notice of adverse action, which notice shall comply with all applicable federal, state and local laws, regulations and rules, including but not limited to, the Equal Credit Opportunity Act and Regulation B, and the FCRA.
10. **CONTRACT REPURCHASE.** In the event any Contract Representation is inaccurate, untrue or otherwise breached, Dealer shall repurchase the Contract ("Repurchase"). Dealer's Repurchase obligation applies whether or not Buyer has defaulted. The Repurchase shall be without recourse, and paid in cash upon demand. Bank shall assign the Contract to Dealer "AS IS," without any warranties or representations, expressed or implied. The Repurchase price shall be the balance owed by Buyer to Bank, including repossession costs, attorney's fees and any other sums owed to Bank by Buyer and/or Dealer with respect to such Contract ("Repurchase Price"). Bank shall not be obligated to first repossess the Vehicle or otherwise exhaust its recourse against Buyer. Dealer's obligation to repurchase a Contract and the Repurchase Price will not be affected by Bank or Dealer's inability to obtain possession of the Vehicle or the physical condition of the Vehicle. Additionally, Dealer's repurchase obligations shall not be affected by the inability to obtain possession of the Vehicle or the physical condition of the Vehicle. The provisions of this Section 10 shall survive the execution, delivery, expiration or termination of this Agreement.
11. **RESPONSIBILITY FOR UNDERLYING SALE.** Dealer shall have the sole responsibility for the underlying sale transaction and for the nature, quality, and performance of the Vehicle, and Ancillary Products. Dealer will make a good faith effort to resolve any disputes with Buyers concerning the underlying sale transaction.
12. **REFUNDS, REBATES, AND REIMBURSEMENTS.**
- a. **Ancillary Product Refunds to Buyer.** If a Contract is prepaid in full, an Ancillary Product is cancelled, or Dealer accepts the return of an Ancillary Product, Dealer shall work with Bank to ensure that any refund, rebate, credit and/or unearned premium due Buyer ("Refund") is credited to Buyer's contract or returned to Buyer, in compliance with applicable law. If Dealer receives a Refund or notice of potential Refund, Dealer shall immediately notify Bank of such. The provisions of this Section 12 shall survive the execution, delivery, expiration or termination of this Agreement.
 - b. **Participation Payment Reimbursement to Bank.** Should a Contract be prepaid by Buyer or should Bank repossess the Vehicle covered by a Contract or otherwise charge the Contract off of its books within one hundred twenty (120) days of the date of the Contract, Dealer shall reimburse Bank the full dealer participation payment previously paid to Dealer with respect to the Contract, which may be accomplished by a chargeback to the Contract reserve. Dealer agrees that Bank shall have absolute discretion in determining whether and when to repossess a vehicle financed under a delinquent Contract or to charge a Contract off of its books.
13. **BUYER VOLUNTARY SURRENDERS.** In the event a Buyer attempts to return or surrender a Vehicle to Dealer, which is the subject of a Contract purchased by Bank (e.g., a voluntary repossession), Dealer shall immediately notify Bank and take all reasonable steps necessary to secure and deliver possession of the Vehicle to Bank as soon as practicable.
14. **PRIVACY AND DATA SECURITY.** Bank and Dealer agree that, to the extent required by federal law, to maintain the confidentiality of, and appropriately safeguard, Dealer's "customer information" as that term is defined in the GLBA and the Federal Trade Commission's implementing regulations, with respect to any Contracts we buy. The GLBA, 15 U.S.C. §§ 6801 *et seq.*, the Consumer Financial Protection Bureau Regulation P, 12 CFR Part 1016, the Federal Trade Commission's Privacy Regulations, 16 CFR Part 313, the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR Part 314 (collectively, "Federal Law"), and applicable state privacy law and regulations ("State Law") require that "financial institutions" (persons covered by Section 4(k) of the Bank Holding Company Act and applicable regulations) comply with the confidentiality provisions of those laws with respect to the nonpublic personal information of consumers and customers. Nonpublic personal information ("NPI") is personally identifiable financial information of buyers, lessees and guarantors and prospective buyers, lessees and guarantors (collectively, for purposes of this Section 14, "Customers").
- From time to time: (1) Dealer may assist Customers by obtaining at the request of Customers information or services furnished by Bank; (2) Bank may assist Customers by obtaining at the request of Customers information or services furnished by Dealer; (3) Where permitted by law, Bank may market its financial products and services to its Customers with the assistance of Dealer by Dealer performing services for Bank or functions on behalf of Bank; (4) Dealer may market its financial products and services to its customers with the assistance of Bank by Bank performing services for Dealer or functions on behalf of Dealer; and (5) Where permitted by law, Dealer and Bank may jointly market their financial products and services to Customers. The foregoing activities are referred to in this Section 14 as "Business Purposes."

- i. Bank and Dealer each receive NPI for Business Purposes, and agree to treat NPI as confidential and use NPI only for the Business Purposes for which it is disclosed. Neither Bank nor Dealer nor their affiliates shall, except as provided in this Agreement and as permitted by law, disclose NPI to any unaffiliated third party. Bank and Dealer each may, as permitted by law, disclose NPI to their affiliates.
- ii. Bank and Dealer each may disclose NPI to unaffiliated third parties for Business Purposes, so long as under the agreement between Bank or Dealer and the unaffiliated third party, the unaffiliated third party may only use NPI for the Business Purpose for which it is disclosed and no other, and there is a confidentiality agreement in place with the unaffiliated third party.
- iii. Bank and Dealer each shall inform their employees, representatives, and agents of the contents and requirements of this Section 14, and as required by federal and/or state law, shall establish, implement and maintain a comprehensive written information security program that contains administrative, technical and physical safeguards appropriate to the size and complexity of each of their businesses, the nature and scope of their activities, and the sensitivity of NPI sufficient to ensure the security, confidentiality and integrity of NPI.

Dealer agrees to immediately notify Bank in the event that it reasonably suspects that Personal Information disclosed to it by Bank has been or may have been subject to unauthorized access, use or disclosure (internal or external) and could result in harm or inconvenience to affected Buyers.

The provisions of this Section 14 shall survive the execution, delivery, expiration or termination of this Agreement. Bank and Dealer acknowledge that breach of this Section 14 by either would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party shall be entitled to seek injunctive relief, without proof of actual damages, to enforce the provisions of this Section 14. No failure or delay by either party in enforcing any right, power, or privilege created hereunder shall operate as an implied waiver thereof, nor shall any single or partial enforcement thereof preclude any other or further enforcement thereof or the enforcement of any other right, power, or privilege.

15. **COMPLIANCE WITH BANK'S FAIR CREDIT PROGRAM.** Without limiting Dealer's sole responsibility to fully comply with all applicable federal, state and local fair lending laws, rules and regulations ("Fair Credit Laws"), as described in Section 8(o) of this Agreement, Dealer agrees, at all times, to abide by Bank's fair credit policy ("Fair Credit Policy"). The Fair Credit Policy will be described in Bank's Fair Lending Manual, as amended, which shall be made available to Dealer. Dealer shall: (i) certify, on no less than an annual basis, Dealer's commitment to complying with all fair lending laws and the Fair Credit Policy; (ii) allow Bank to train Dealer's employees with regard to the Fair Lending Program; (iii) make the most current version of the Fair Lending Manual and/or other fair lending training materials available to Dealer's employees; (iv) adopt Dealer's own policies and procedures to monitor and ensure that Dealer's employees are complying with Fair Lending Laws and the Fair Credit Policy; (v) allow Bank to monitor Dealer's compliance with the Fair Credit Policy by cooperating with routine audits of Dealer's Contracts and operations; and (vi) report, on not less than an annual basis, and upon request, to Bank, any complaints, claims, or litigation involved alleged or actual fair lending issues, allegations or violations. Dealer's failure to adhere to the Fair Credit Policy shall result in appropriate corrective action which may include, in Bank's discretion, additional training regarding Fair Lending Laws, restricting Dealer's involvement in a particular Credit Program, refusal to purchase Contracts from Dealer, termination of this Agreement or requiring Repurchase of the related Contract.
16. **POWER OF ATTORNEY.** Dealer hereby appoints Bank and its authorized officers and attorneys-in-fact, as its true and lawful agent and attorney-in-fact, with full power and authority to do any and all things necessary or appropriate in Dealer's name to carry out the intent of this Agreement, including, but not limited to, signing and endorsing the name of Dealer to any Assignment of a Contract and endorsing Dealer's name on payment checks applicable to Contracts purchased by Bank.
The foregoing power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that Bank will be relying upon this power to act as contemplated by this Agreement. This power of attorney shall extend to Dealer's successors and assigns. Dealer shall execute and deliver to Bank, within 15 days of receipt of Bank's request, such further designation, powers of attorney and/or other instruments as Bank deems necessary to effectuate this power of attorney.
17. **SALES TAX CREDIT FOR "BAD DEBT".** Dealer acknowledges that the laws of certain states permit a credit or refund for sales tax financed by installment sale contracts that go into default. Dealer agrees that all of its right, title and interest in any funds related to Contracts purchased by Bank hereunder are hereby assigned, transferred and relinquished to Bank. Specifically, unless prohibited by law, Dealer agrees that it has not and will not claim a credit or refund with respect to any such Contracts, and it relinquishes to Bank all right to claim such credit or refund. Dealer agrees that any such credit or refund mistakenly received by Dealer shall be remitted to Bank to be applied to Buyer's obligations under the applicable Contract. Dealer agrees to furnish any and all documentation or information that Bank may reasonably request to support any claim for such refund or credit.
18. **CHANGES TO DEALER.** Dealer shall notify Bank of any material or significant change in Dealer's ownership, organization or business, including the death of a principal, whether a shareholder, general partner, or owner, a dissolution, merger, consolidation, reorganization, or a conversion to another form of legal entity or type of business, or a

change of location of its place of business. Such notice shall be provided 30 days before such change or, if unknown to Dealer before the change, then within 30 days after Dealer has knowledge of such change.

19. **DMV OR FLOORPLANNER ACTIONS.** Dealer shall notify Bank of any claim, action, proceeding or other charge against Dealer by any governmental agency including, without limitation, any department of motor vehicles (or analogous state agency) within three business days of Dealer's knowledge thereof. Dealer shall also notify Bank of any claim, action, proceeding or other charge against Dealer by its floor planner or any other similar creditor within three business days of Dealer's knowledge thereof.
20. **SETOFF.** Dealer agrees that Bank has the ongoing right to deduct from any funds, deposit, account, obligation or other amounts due Dealer by Bank, whether under this Agreement or any other agreement, any and all amount(s) Dealer owes Bank or its affiliates.
21. **INDEMNITY.** Dealer agrees to indemnify, defend and hold Bank, and its respective shareholders, directors, officers, employees, representatives, agents, servants, successors and assigns, harmless from and against any and all claims, losses, damages, injuries, liabilities, costs, expenses, actions, suits and proceedings, including, but not limited to, court costs and attorney's fees, arising out of or relating to (i) Dealer's breach of this Agreement, (ii) Dealer's maintenance, use or disclosure of Buyer's information (including Personal Information), (iii) Dealer's evaluation of Buyer for financing, (iv) Dealer's pricing of the Vehicle or pricing of the credit as relates to Buyer, (v) Dealer's denial of financing, or other adverse action, relating to a Buyer, or (vi) any actions or failure to act of Dealer in connection with the Credit Applications and Contracts sold by it under this Agreement. The provisions of this Section 21 shall survive the execution, delivery, expiration or termination of this Agreement.
22. **BOOKS AND RECORDS.** Dealer shall maintain complete and accurate records concerning the following (i) Credit Applications forwarded to Bank for consideration, (ii) any Contract sold to Bank, (iii) any Vehicle that is the subject of a Contract sold to Bank, and (iv) any Ancillary Product that is the subject of a Contract sold to Bank ("Dealer Records"). Bank has the right to review and inspect Dealer Records upon reasonable notice to Dealer (which shall in no event be less than 5 business days), during normal business hours. Dealer shall reasonably cooperate with Bank during such review and inspection.
23. **FURTHER ASSURANCES.** Dealer agrees to perform all acts and execute all supplementary instruments or documents that may be necessary to carry out the provisions of this Agreement.
24. **DEFAULT.** Each of the following shall constitute an event of default by Dealer under this Agreement (i) any representation, warranty or covenant contained in this Agreement, with the exception of the Contract Representations, proves untrue or misleading in any material respect, (ii) Dealer fails to pay Bank any indebtedness when due or fails to perform any other obligation hereunder, after written notice and a 30 day opportunity to cure, (iii) Dealer ceases to do business as a growing concern, (iv) Dealer fails to complete a Repurchase; (v) Dealer becomes insolvent or makes any assignment for the benefit of creditors, or any Finance Bankruptcy, reorganization, arrangement, receivership, insolvency or other state or federal proceeding for the relief of debtor is commenced by or against it and is not dismissed within 30 days of such filing.

Should Dealer be in default under this Agreement, Bank may pursue any and all remedies available to it under applicable law, including, without limitation, ceasing payments to Dealer for any Contract purchases or amounts otherwise due Dealer until Bank is paid in full, declaring all indebtedness of Dealer hereunder immediately due and payable, and exercising any remedies of a secured party under the Uniform Commercial Code.
25. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law provisions.
26. **SEVERABILITY.** Should any provision of the Agreement, or any phrase, sentence, clause or paragraph be determined to be unenforceable, such enforceability shall not affect any other term or condition of this Agreement; rather, this Agreement shall be construed as if such invalid, illegal, or unenforceable term or condition had never been contained in the Agreement.
27. **EFFECTIVE DATE AND TERMINATION.** This Agreement shall become effective as of the date set forth under Bank's signature below and shall be binding on Dealer and Bank and any respective successors and assigns as to all Contracts Dealer sells to Bank whether before or after the effective date until terminated by receipt of written notice by either party from the other. Bank or Dealer may terminate this Agreement at any time upon 30 days prior written notice to the other party. Such termination shall in no way affect or relieve either party from any obligation or liability incurred prior to the effective date of termination.
28. **CONSENT TO JURISDICTION, VENUE, AND ARBITRATION.** Except to the extent either Bank or Dealer actually seeks injunctive relief, and then only to the most limited extent required, the parties shall submit any and all disputes, controversies, or claims for final and binding arbitration in accordance with the applicable rules of the American Arbitration Association as then in effect. Any such arbitration shall be heard and determined by a single arbitrator. Bank and Dealer agree that any such arbitration will be kept confidential and that the existence of the proceeding and any

element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration panel, except as may lawfully be required in judicial proceedings relating to the arbitration, by regulatory authorities or applicable law. All arbitration proceedings shall be conducted in San Diego, California. Any award pursuant to any arbitration proceeding hereunder may be enforced in any court having jurisdiction over the parties. The arbitrator(s) in any proceeding hereunder shall have authority to award costs to the prevailing party. To the extent that an action in court is permitted hereunder, such action shall only be commenced before a state or federal court located in San Diego County, California. In the event that a party seeks injunctive relief it shall file its action in the United States District Court for the Southern District of California, or if jurisdiction is not proper, in the Superior Court for San Diego County, California, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such injunctive proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of such proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby in any other court.

29. **ATTORNEY'S FEES AND COSTS.** In the event an action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs, including, but not limited to, attorneys' fees and court costs.
30. **MODIFICATION AND ASSIGNMENT.** This contract cannot be modified, altered, amended or changed except by written instrument signed by both parties. Dealer may not assign this Agreement without the prior written consent of Bank. Notwithstanding the foregoing, Bank may assign this Agreement upon written notice to Dealer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
31. **WAIVER AND REMEDIES.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. No failure or delay by a party to insist upon the strict performance of any term or condition under this Agreement or to exercise any right or remedy available under this Agreement at law or in equity, and no course of dealing between the parties, shall imply or otherwise constitute a waiver of such right or remedy, and no single or partial exercise of any right or remedy by any party will preclude any other or further exercise thereof. All rights and remedies provided in this Agreement are cumulative and not alternative; and are in addition to all other available remedies at law or in equity.
32. **ENTIRE AGREEMENT.** This Agreement (including any addenda, schedules, or exhibits referenced herein or attached hereto) constitutes the entire agreement between the parties relating to the subject matter hereof.
33. **MISCELLANEOUS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. A facsimile copy of a signature shall be treated as an original. Headings at the beginning of each paragraph are for convenience only and are not intended to otherwise influence or affect the interpretations of any provision of this Agreement.
34. **NOTICES.** All notices required or permitted to be given must be in writing to the addresses provided above in the first paragraph of this Agreement (unless changed as described in this Section 34), and will be effective: upon receipt if by personal delivery or facsimile; the next business day if by overnight delivery service; or 5 business days, if by U.S. mail, postage prepaid and properly addressed.
35. **INDEPENDENT CONTRACTOR.** The relationship between Dealer and Bank is that of an arm's length seller and purchaser of consumer installment sale contracts, or independent contractor, and shall not be construed as a joint venture, partnership or principal-agent relationship or contractual servicer of consumer installment sale contracts, and there is no intention to create any partnership, joint venture, principal-agency or servicer relationship. This Agreement shall not be construed as authority for either party to act for the other in any agency or any other capacity or to make commitments of any kind for the account of or on behalf of the other, except as expressly set forth in this Agreement, or otherwise agreed to by the parties in writing
36. **COMMUNICATIONS WITH DEALER.** Dealer authorizes Bank to send faxes to Dealer at any facsimile numbers provided to Bank by Dealer. Dealer also authorizes Bank to send electronic communications via Dealertrack, RouteOne, or similar dealer management software and communication portals, as applicable.
37. **REGULATORY EXAMINATION.** Dealer hereby acknowledges that Bank is a regulated entity, and may, from time to time, be subject to regulatory examination. Dealer hereby agrees to any such examination which may be required by any regulatory authority with audit and examination over Bank, to the fullest extent of such regulatory authority. Dealer hereby agrees to provide Bank with any information which may be required by any regulatory authority in connection with their audit or review of Bank and shall reasonably cooperate with such regulatory authority in connection with any such audit or review.
38. **SUBCONTRACTORS.** Dealer shall not subcontract any of its obligations or responsibilities under this Agreement without Bank's prior written consent.

39. **BUYER CONCERNS AND COMPLAINTS.** Dealer and Bank shall work together to develop generally permissible responses for addressing Buyer concerns and complaints, and a mutually agreeable process for dealing with Buyers that are not satisfied with such responses. Dealer shall respond to Buyer concerns and complaints in accordance with the established process and shall forward any written concerns or complaints to Bank within a reasonable time after receipt thereof.
40. **WAIVER OF JURY TRIAL.** THE PARTIES HERETO RECOGNIZE AND AGREE THAT ANY CLAIM, DISPUTE OR OTHER CONTROVERSY BETWEEN THE PARTIES UNDER THIS AGREEMENT, ANY SCHEDULE OR ADDENDA HERETO, OR ARISING OUT OF THE RELATIONSHIP CREATED BY THIS AGREEMENT OR ANY SCHEDULE OR ADDENDA HERETO, WOULD INVOLVE DIFFICULT AND COMPLEX ISSUES THAT WOULD BE MORE APPROPRIATE TO TRY BEFORE A JUDGE WITHOUT A JURY. THE PARTIES DESIRE TO MINIMIZE THE DELAYS, TIME AND EXPENSES THAT ARE INHERENT IN JURY TRIALS AND TO EXPEDITE THE RESOLUTION OF ANY SUCH CLAIMS, DISPUTES AND CONTROVERSIES. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT, OR ANY TRANSACTIONS CONTEMPLATED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY SCHEDULE OR ADDENDA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY RELATED DOCUMENT. This provision is a material inducement for the parties entering into the subject transaction.
41. **INDEPENDENT COUNSEL AND INTERPRETATION.** Dealer and Bank acknowledge and agree that they have been or have had the opportunity to be represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement. Accordingly, it is agreed that any legal rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, Bank and Dealer have executed this Agreement with proper authority effective as of the date set forth herein.

DEALER:

BANK:

Address:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____





AUTHORIZATION AGREEMENT: ELECTRONIC PAYMENT

Dealership Name: _____
Street Address: _____
City, State, Zip: _____
Contact Name: _____
Telephone No.: _____
Email Address: _____

The undersigned hereby authorizes Axos Bank™ (“Bank”) to credit and, if necessary, debit through the Automated Clearing House Network the following demand deposit account:

Account Holder: _____
Bank Name: _____
Branch: _____
Street Address: _____
City, State, Zip: _____
Contact Name: _____
Telephone No.: _____
ABA Routing Number: _____
Bank Account Number: _____

Please attach a voided check or bank confirmation of routing and account information.

This authority will remain in effect until written notice of termination is received by Bank.
Bank may cancel this authorization at any time by providing dealership with written notice.

Dealership: _____
By: _____
(Authorized Signature)
Name: _____
Title: _____
Date: _____

Internal Use Only	Date Entered:	Dealer Number:	Approved:
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