



## **Dealer Agreement**

This Dealer Agreement, dated as of the date set forth on the signature page, hereof, is entered into by and between Apex Auto Lending, and the undersigned automobile dealer (“Dealer”). The Dealer proposes to submit to Apex Auto Lending for purchase, contracts and/or security agreements evidencing installment sales of goods and/or services to Buyers, including their successors in interest, in connection with the retail credit sales of motor vehicles (together with all related accessories and equipment, the “Vehicle”), and security interests in the goods and services thereof (hereinafter collectively the “Contracts”). The terms conditions, representations and warranties (collectively, the “Provisions”) in this Dealer Agreement, in any separate contract assignment form and in any other related written agreement (e.g. marketing materials, etc.) between Dealer and Apex Auto Lending (collectively, the “Agreement”) apply to all Contracts submitted to Apex Auto Lending. For the purpose of the Agreement, the term “Buyer” refers to any person or other legal entity that purchased a motor vehicle from Dealer, and any co-buyer, co-signer, or guarantor, the singular includes the plural

### **1. Sale and Purchase of Contracts**

- a. Apex Auto Lending may from time to time purchase Contracts from Dealer written or completed on forms, including electronic forms, satisfactory to Apex Auto Lending and otherwise acceptable to Apex Auto Lending. All Contracts will be purchased at purchase prices determined in accordance with Apex Auto Lending practices and this Agreement. Dealer grants Apex Auto Lending a security interest in the Dealer Participation Account (as hereinafter defined), any and all monies therein, accounts, receivables, and rights to payment of money owed by Apex Auto Lending, or any of its affiliates, to Dealer. Any amounts owed by Apex Auto Lending may be applied at Apex Auto Lending discretion to any indebtedness of Dealer to Apex Auto Lending arising under this Agreement or otherwise and shall secure the performance of Dealer’s obligations to Apex Auto Lending arising under this Agreement or otherwise.
- b. To the extent permitted by applicable law, Dealer shall communicate to Apex Auto Lending or its designees all such credit information concerning a Buyer (and any other person named as an obligor in the credit application) as Dealer may have available. Apex Auto Lending will make a decision as to whether Apex Auto Lending would purchase each contract offered to it by Dealer if the documentation received (including credit information) is satisfactory to Apex Auto Lending. If Apex Auto Lending decides that it will purchase a Contract after receipt of such documentation, Dealer shall (i) execute an assignment of the Contract to Apex Auto Lending; (ii) deliver the original executed Contract (as well as any supporting documentation as Apex Auto Lending may require) to Apex Auto Lending; (iii) file and record within thirty (30) days of the date of the sale of the motor vehicle all such documents and take all such action as may be necessary under the Uniform Commercial Code and other applicable law to convey the Contract to Apex Auto Lending (and to record such conveyance of), to perfect a valid and enforceable first priority security interest in favor of Apex Auto Lending on the Vehicle, and to comply with all related provisions of applicable motor vehicle laws; and (iv) if required by applicable law, send to the Buyer a notice that Dealer has assigned the Contract to Apex Auto Lending.
- c. Apex Auto Lending may purchase Contracts, if acceptable, at the purchase price. The purchase price of each Contract purchased by Apex Auto Lending shall be the determined by Apex Auto Lending in accordance with its practices and this Agreement. Such price will be paid to the Dealer upon Apex Auto Lending receipt of satisfactory documentation. Payment of the purchase price by Apex Auto Lending, as described herein, shall be conclusive proof that the Dealer employee executing the assignment section of the Contract or separate assignment agreement on behalf of Dealer was authorized to do so.



## 2. Dealer Compensation

- a. Apex Auto Lending will establish a reserve account for Dealer (the “Dealer Participation Account”). Pursuant to the Participation Plan, agreed to by Dealer and defined below, Apex Auto Lending will credit the Dealer Participation Account with the amount of agreed upon dealer finance income participation (“Dealer Participation”), as set out in each Contract approval notification sent from Apex Auto Lending to Dealer, for each Contract it purchases from Dealer. All amounts credited will be paid by Apex Auto Lending concurrently with the purchase of each Contract, less charge-back, if any, in accordance with the Participation Plan.

### **Participation Plan**

**50% / 50% Split.** Under the Participation Plan, as to each Contract purchased by Apex Auto Lending, Dealer receives 50% of the agreed upon participation amount and is forgiven from any obligation to reimburse such participation amount upon payoff or termination (including repossession) of the Contract occurring more than 180 days after the date of the Contract. Dealer shall reimburse Apex Auto Lending for any unearned portion of the paid Dealer Participation should pay off or termination (including repossession) of a Contract occur prior to expiration of such 180-day period.

For certain Contracts sold to Apex Auto Lending, Dealer may be paid a flat fee amount, as determined between the parties and set out in the relevant Contract approval notification sent from Apex Auto Lending to Dealer, rather than Dealer Participation. Flat fee amount will be paid by Apex Auto Lending concurrently with the purchase of each Contract. With respect to any Contract for which a flat fee equal to or greater than \$500 is paid to Dealer, if payoff or termination (including repossession) of such Contract occurs during the first 180 days following the date of the Contract, Dealer shall reimburse Apex Auto Lending for any unearned portion of the paid flat fee amount.

- b. Dealer will also be responsible for Dealer’s proportionate share of any insurance premiums, and on a pro-rata basis charges for GAP insurance or debt cancellation extended warranty, mechanical breakdown of comparable programs whether or not the Agreement has been terminated upon payoff of termination (including repossession) of a Contract prior to its original scheduled termination date.
- c. If at any time the Dealer has not in a timely manner paid its share of the items listed and described in Paragraphs a. or b. of Section 2 above, Apex Auto Lending may, without prior notice of demand, reduce any payment to Dealer required up to an amount equal to such deficiency, or further collect the amounts due by any means, or allowed by this Agreement. Dealer agrees to pay Apex Auto Lending on demand for any such deficiency.

## 3. Payment from Buyer

After purchase of a Contract, Dealer will forward to Apex Auto Lending any payments on a Contract received from the Buyer. In the event such payment is made by check or other instrument payable to Dealer, Dealer will endorse such check or other instrument to Apex Auto Lending. Dealer will not make any payment due on a Contract on behalf of a Buyer, unless authorized and approved in writing by Apex Auto Lending.

## 4. Insurance

Dealer warrants and represents that as of the date the Contract is funded by Apex Auto Lending, the vehicle sold under the Contract is covered by fire, theft, and collision insurance in such amounts as required by Apex Auto Lending and consistent with applicable law. Dealer shall confirm coverage is appropriate and sufficient at the time of Contract submission to Apex Auto Lending. Dealer shall further submit with each Contract written evidence of acceptable insurance (with respect to coverage and insurer) covering each Vehicle sold under Contract to Apex Auto Lending or its agents. If such procedures are not followed or coverage cannot be confirmed, Dealer will be responsible for any loss suffered by Apex Auto Lending that would have been covered by the required insurance. If such procedure is followed and written evidence of



insurance is provided to Apex Auto Lending or its agent, Apex Auto Lending will assume responsibility for Buyer's compliance with all property insurance requirements after the relevant Contract is funded.

#### 5. Lease Return Vehicles

When a vehicle is Returned to Dealer the Dealer has Three Days to buy the vehicle for \$500 below NADA clean trade or consign the Vehicle for the lender. Once Dealer signs to consign the vehicle one of the following outcomes are completed.

- a. Dealer markets the vehicle and has 30 days to re-lease the vehicle and retain the Down payment money as compensation. After 30 days the dealer will pay \$8 per day until the vehicle is released and funded.
- b. Market and Sell the vehicle and Pay NADA clean trade minus \$500, plus \$8 per day till the vehicle is sold.
- c. Apex Auto Lending has the right to retrieve the vehicle at any time and collect the \$8 per day.

#### **Contract covenants, representations, and warranties**

As to each Contract sold by Dealer to Apex Auto Lending and related application, Dealer represents, warrants, and covenants that, as of the time of such sale and as of the date the Contract is purchased by Apex Auto Lending:

- d. Dealer has fully complied with the requirements of all applicable federal, state, and local laws, rules, and regulations governing consumer or installment credit transactions, such as those covering fair and responsible lending, fair credit reporting, fair trade, unfair, deceptive, and abusive acts and practices, servicemembers' relief, privacy and data security, and the sale of insurance, including but not limited to the Federal Truth in Lending Act/Regulations A, the Federal Equal Credit Opportunity Act/Regulation B, N.Y. Exec. Law § 296-a, the Federal Fair Credit Reporting Act/Regulation V, Section 5 of the Federal Trade Commission Act, Americans with Disabilities Act and the Gramm-Leach-Bliley Act;
- e. The Vehicles sold under the Contract and all other property, goods, and services sold to the Buyer are fully and correctly described in the Contract and any Vehicle sold has no damage or impairment other than those specifically identified in the Contract;
- f. The Vehicle sold under the Contract and all other property, goods, and services described in the Contract and related documents were actually delivered to and accepted by the Buyer and Buyer is in possession thereof;
- g. Dealer is the sole owner of the Contract and has the power and authority to assign the Contract to Apex Auto Lending;
- h. Dealer or its authorized representative has executed the Contract, assignment, and all related documentation and each such document contained no forged or unauthorized signatures;
- i. Dealer has received the down payment from the Buyer specified in the Contract and has not made a loan or cash rebate to the Buyer, or assisted the Buyer in obtaining a loan from any third party, to be used as a part or all of such down payment or any other payment on the Contract, except as may be specifically indicated on the face of the Contract.
- j. Dealer shall disclose all agreed upon payments, including any form of deferred down payment on the Contract and collect any such agreed upon form of deferred payment;
- k. Dealer has good and marketable title to the Vehicle free from all claims, liens, and encumbrances except for those in favor of Apex Auto Lending;
- l. All registered owners of the Vehicle have signed the Contract either as Buyers or as parties agreeing to the security interest in favor of Dealer or its assignees.
- m. Dealer does not know of any fact or circumstance which indicates the uncollectability of the Contracts;
- n. Dealer has confirmed (1) the identity of the Buyer(s) as being the person(s) named in the Contract, (2) that all information provided in the application of the Buyer(s) is accurate; (3) the Buyer(s) has/have been issued a valid and unexpired driver's license by the appropriate United States state



agency of the residence of the Buyer(s), unless otherwise agreed in writing by Apex Auto Lending; and (4) the Buyer(s) was/were of legal age and competent to execute the Contract on the date of execution;

- o. The Contract arose from a bona fide sale in the ordinary course of business to the Buyer(s) on the terms set forth in the Contract of Vehicle and other property, goods and services described in the Contract and related documents;
- p. Dealer has provided to the Buyer(s) a legible, completely filled in copy of the Contract and any purchase order, customer credit statement or other document which Buyer(s) was/were asked to sign in connection with the Contract or any notice or other documents which are required to be provided to Buyer(s) by applicable law or regulation;
- q. Dealer holds all approvals, consents, registrations, and licenses required in connection with the origination of Contracts and in the offering, procuring, or furnishing of any insurance, GAP, warranties, or other products related to the Contract;
- r. Dealer has complied with all applicable federal and state statutes, rules, and regulations regarding the sale, offering, procuring, or furnishing of any ancillary products including, but not limited to credit, life, accident, or health insurance, GAP insurance, warranties, or debt cancellation products, and will ensure that the price of such products (1) will be the fair market retail value of such goods and services, (2) will not be overstated or inflated in any way, and (3) (except for GAP insurance or credit insurance) represents the price for such goods and services by Dealer in cash sales of such goods and services;
- s. All documentation covering other agreements related to the Contract including, but not limited to credit, life, accident or health, GAP insurance, warranties, or debt cancellation documentation has been disclosed and delivered to the borrower consistent with applicable law.
- t. Dealer has taken all action necessary to effectuate transactions related to and contemplated by the Contract, including, but not limited to, submission of documentation and payments to any third-party service provider necessary to effectuate credit, life, accident or health insurance, GAP insurance, warranties, debt cancellation products and other coverage included in the Contract;
- u. Dealer shall advertise products and services, without regard to race, ethnicity, color, marital status, national origin, religion, sex, age (other than confirming that the applicant is of legal age to have capacity to contract), family status, disability, sexual orientation, gender identification, military or veteran status, the applicant's receipt of income derived from any public assistance program, or the applicant's exercise in good faith of any right under the consumer protection laws (each of "prohibited basis") in a manner that promotes the availability of credit to all customers;
- v. Dealer shall (1) make products available to qualified applicant, (2) offer consistent and fair quality of assistance in the sales and application process, (3) accept, process, and evaluate application with regard to any prohibited basis, and (4) shall not discourage consumers or potential applicant from applying for vehicle financing;
- w. The Contract and any guaranty thereof are genuine, legally valid and enforceable and all terms were (1) reached without regard to any prohibited basis, and (2) documented in a manner and form acceptable to Apex Auto Lending;
- x. None of the Vehicles described in the Contract (1) will be subject to a certificate of title reflecting a status of salvage, reconditioned, prior rental or fleet, lemon-law buyback, manufacturer's buyback, warning-not actual mileage, flood damage, not manufactured for origination distribution in the United states, or similar condition noted on the certificate of title, or (2) will have sustained significant damage which materially impairs the value of such Vehicle unless such damage has been disclosed to Apex Auto Lending at time of submission of the application and acknowledged by the Buyer(s) in writing with a copy of such noticed to be provided to Apex Auto Lending;
- y. The transaction evidenced by the Contract is not a "straw purchase", i.e. the Vehicle is being purchased for the use and benefit of the Buyer(s) identified on the applicable Contract, and payment will be remitted primarily by the Buyer(s) for the benefit of the Buyer(s);



- z. Dealer shall be liable for any First Payment Default. "First Payment Default" means a Buyer's or Buyers' failure to pay to Apex Auto Lending the first payment due, pursuant to the Contract after its purchase by Apex Auto Lending, within forty-five (45) days of its due date. Dealer shall not remit any payment on behalf of the Buyer(s) to cure a First Payment Default unless approved in writing by Apex Auto Lending. In case of a First Payment Default, Dealer shall be required to repurchase such Contract from Apex Auto Lending. The repurchase price shall be the amount Apex Auto Lending originally paid to purchase such contract plus any actual costs incurred by Apex Auto Lending. If Dealer fails to pay such amount within ten (10) days of demand by Apex Auto Lending, then in addition to all other remedies available to Apex Auto Lending, such repurchase price shall accrue interest at the applicable Contract rate from the date of the Contract, and Apex Auto Lending shall have the right, without having thus elected its remedy, to set off against other amount(s) then or later due to Dealer such repurchase price and accrued interest;
- aa. Dealer shall secure a perfected first priority lien interest and title on the Vehicle in favor of Apex Auto Lending within one hundred twenty (120) days of the date of the sale of the Vehicle to Buyer;

Dealer represents, warrants, and covenants, as applicable, that:

- a. Dealer is in good standing in its state of incorporation or formation, is appropriately licensed and franchised as required by applicable law and, if it uses an alternate business name, is in compliance with all applicable laws pertaining to such use;
- b. Dealer represents and warrants that this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with its terms;
  - . (1) Dealer's entry into the Agreement, delivery of the Agreement, and performance under the Agreement, do not violate any provisions of Dealer's organizational documents or other agreements or legal requirements by which Dealer is bound; (2) Dealer has taken all necessary legal, corporate, or other action to authorize the execution, delivery, and performance of the Agreement; (3) the individual executing the Agreement on behalf of the Dealer has legal power, right, and authority to bind the Dealer to the terms of the Agreement; and (4) Dealer is not in violation of any statute, ordinance, law, rule, or regulation of any federal, state, county, or municipality applicable to it or the organization of this business;
- bb. Dealer has received from Apex Auto Lending a copy of Apex Auto Lending Fair and Responsible Lending Policy Statement for Automobile Dealers which addresses Apex Auto Lending commitment to fair, non-predatory, and non-discriminatory lending, and to compliance with all applicable federal, state, and local laws prohibiting discriminatory, unfair, deceptive, and abusive lending practices. Dealer agrees to comply with the provisions of such policy statement during the term of this Agreement, and to procure the compliance of its employees and agents. Dealer agrees and understands that while Apex Auto Lending or any of its parent, subsidiary, or affiliate entities have the right to monitor and verify Dealer's compliance with applicable fair lending laws and regulations, Dealer shall be held responsible for Dealer's compliance. If Apex Auto Lending identifies any significant fair lending concerns associated with Dealer, including those arising from any Contract or related application, Apex Auto Lending may take any actions it deems appropriate to address such concerns, including, without limitation, any action permitted under this Agreement.
- cc. Dealer will (i) forward to Apex Auto Lending any complaint it receives from a Apex Auto Lending customer concerning or alleging discrimination or unfair, deceptive or abusive acts or practices within twenty (20) calendar days of receipt; and (ii) notify Apex Auto Lending of the existence of any regulatory agency action, litigation, or material complaint concerning or alleging discrimination or unfair, deceptive, or abusive acts or practices by Dealer;
- dd. Dealer and Apex Auto Lending agree that, to the extent permitted by applicable law, all of the rights and interest of Dealer in any and all Accounts, including the right to claim sales tax refunds, reductions or credits are irrevocably assigned, transferred and relinquished to Apex Auto Lending.



Dealer and Apex Auto Lending agree that, to the extent permitted by applicable law, Apex Auto Lending is the party entitled to claim any potential sales tax refunds or deductions as a result of bad debt losses charged off by Apex Auto Lending on any and all Accounts which have been assigned from Dealer to Apex Auto Lending. Dealer represents, warrants, and agrees that it has not and will not claim a deduction or refund with respect to any Accounts and, to the extent permitted by applicable law, hereby relinquishes to Apex Auto Lending all right to the Accounts and all right to claim such deduction or refunds. Dealer and Apex Auto Lending hereby make an irrevocable election pursuant to the applicable state tax code that designates and entitles Apex Auto Lending (not Dealer) to claim the deduction or refund with respect to any Accounts found worthless and charged off for income tax purposes. Dealer and Apex Auto Lending agreed to furnish any and all documentation required by the applicable state, necessary to support the claim for refund filed by Apex Auto Lending, if any. For purposes of this subsection, "Accounts" means any and all accounts and contracts, whether currently existing or created in the future, created between Dealer and its retail customer with respect to the purchase of tangible personal property which is subject to state sales tax, which accounts are, have been, or will be assigned directly from Dealer to Apex Auto Lending.

6. Dealer Liability

- a. If any Dealer representation, covenant, or warranty made in the Agreement or in connection with a Contract is breached, misleading, incomplete, or untrue, if Dealer has failed to perform any obligation it has under the Agreement or the Contract, or if Dealer breaches any provision of the Agreement, or if the Buyer(s) asserts a claim for rescission with respect to a Contract, Dealer will promptly pay Apex Auto Lending
  - (i) The unpaid balance, including earned and unpaid finance charges, as determined by Apex Auto Lending, of the Contract affected by such a breach, misrepresentation, failure to perform or claim for rescission;
  - (ii) Dealer's portion of any finance charges previously paid to Dealer as finance income participation, flat fees, insurance premiums, and/or charges for extended warranty, mechanical breakdown or comparable programs;
  - (iii) All damages, losses, and expenses incurred by Apex Auto Lending as a result of such breach, misrepresentation, failure to perform or claim for rescission; and
  - (iv) All out of pocket expenses paid or incurred by Apex Auto Lending in connection with the collection of any amount due under the Contract, including reasonable attorney's fees and court costs incurred.

Apex Auto Lending has no duty or obligation to repossess, recover, or otherwise secure the Vehicle and return to Dealer as a condition for Dealer to repurchase any Contract due to a breach of this Agreement or any other agreement by Dealer.

- b. Dealer shall indemnify, defend, and hold Apex Auto Lending, its parent, affiliates, and subsidiaries, and their respective officers, directors, members, agents, attorneys, and employees, harmless from any complaint, claim, defense to payment, suit, loss, damage, liability or expense, including without limitation, court costs, and reasonable attorney's fees, directly or indirectly incurred by Apex Auto Lending, arising out of or in connection with Dealer's failure to perform or observe any covenants, representations, warranties, or other provisions contained in this Agreement. Dealer agrees that Apex Auto Lending may proceed against Dealer for any and all amounts due to Apex Auto Lending from Dealer under the Agreement, or any Contract or otherwise without taking any action whatsoever against Buyer(s) or any other party and without proceeding against or applying any security which Apex Auto Lending may have or hold.

7. Exercise of Remedies

The exercise of any right or remedy available to Apex Auto Lending under this Agreement and/or any Contract shall not operate as a waiver of any other right or remedy. The failure of Apex Auto Lending to exercise any right or remedy or a delay by Apex Auto Lending in exercising any right or remedy shall not



operate as a waiver of such right or remedy or any other right or remedy. All of Apex Auto Lending rights and remedies shall be cumulative and may be exercised singularly or concurrently.

#### 8. Successors and Assigns

This Agreement shall be binding upon and will inure to the benefit of the parties to this Agreement and their respective successors and assignees provided, however that this Agreement and all rights and obligations under this Agreement may not be assigned or transferred by the Dealer without Apex Auto Lending prior written consent, and any purported assignment without such consent will be void and without effect. Any obligation of Apex Auto Lending or any obligation to be performed by Apex Auto Lending under this Agreement may, at the sole option of Apex Auto Lending, be delegated to and performed by an agent of Apex Auto Lending, which agent will have such power and authority as Apex Auto Lending delegates to it.

#### 9. Agency

Neither this Agreement nor any action pursuant hereto shall make the Dealer the agent, representative, or employee of Apex Auto Lending for any purpose. Dealer is not granted any express or implied right to bind Apex Auto Lending in any manner whatsoever. Wherever in this Agreement reference is made to an agent of Apex Auto Lending, such reference is intended to mean any third party that Apex Auto Lending may from time to time appoint to fulfill any of its obligations under this Agreement.

#### 10. Waivers

Dealer waives all demands and notices of default, non-payment, or non-performance, and any release or impairment of collateral securing the obligations of the Buyer(s) under any Contract assigned hereunder. Apex Auto Lending may, without notice to Dealer, discharge, release, extend, vary, modify, by operation of law or otherwise, any obligation of the Buyer(s) or any other obligor or any rights against the Buyer(s) or any other obligor without affecting or altering the obligations or duties of Dealer under this Agreement. No waiver by Apex Auto Lending of any default, breach, or misrepresentation under this Agreement shall be effective unless in writing nor shall it operate as a waive for any other different or subsequent default, breach, or misrepresentation.

#### 11. Cooperation

Dealer will cooperate and assist Apex Auto Lending in enforcing its rights in, to, and under the terms of this Agreement and the Contracts assigned hereunder.

#### 12. Severability

Any portion or provision of this Agreement which is deemed invalid, illegal, or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such validity, illegality, or unenforceability without affecting in any way the remaining portions or provisions hereof in such jurisdiction, or, to the extent permitted by law, rendering that or any other provision of this Agreement invalid, illegal, or unenforceable in any other jurisdiction.

#### 13. Attorney's Fees and Costs

In any litigation or other proceeding related to or arising from the Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs incurred.

#### 14. Notice

Except as otherwise provided in the Agreement, all notices and other communications hereunder will be in writing and will be deemed duly given if and when personally delivered or, in any event, forty-eight (48) hours after mailing by registered or certified mail, return receipt requested, postage prepaid, to the address shown below. Either party may change the address to which such notices communications will be sent by giving written notice of such new address to the other party in the manner provided in this paragraph. If either party provides its fax number or email address, it consents to receiving notices and other communications via such manner.

#### 15. Inspection of Books and Records

Dealer shall maintain complete and accurate records concerning the following:

- a. Credit applications forwarded to Apex Auto Lending for consideration;



- b. Any Contract sold to Apex Auto Lending, as well as the interest in the Vehicles sold thereby; and
- c. All other transactions affecting the sale and finance of the Vehicle.

Apex Auto Lending shall have the right to review and inspect Dealer's records relating to the credit applications, Contracts, associated Vehicles, and all matters and transactions relating to the sale and finance of the associated Vehicles, upon reasonable notice to Dealer during normal business hours. Upon request by Apex Auto Lending, Dealer shall promptly furnish to Apex Auto Lending, copies or extracts of any of Dealer's books, records, or accounts concerning such credit applications, Contracts, related documents, and vehicles sold thereby at Dealer's expense.

#### 16. Fair Credit Reporting Act

Dealer shall inform each applicant that his/her credit application will be sent to Apex Auto Lending for review and will make Apex Auto Lending information available upon request. Dealer shall also advise each applicant whose credit application is to be sent to Apex Auto Lending that the applicant may be considered withdrawn if the applicant does not inquire with Apex Auto Lending about its status within thirty (30) days of the date of the application.

#### 17. Safeguarding Rule

Apex Auto Lending may from time to time provide Dealer with Non-public Personal Information ("NPI") about Consumers and Customers, as those terms are defined in the Federal Trade Commission Rule governing Privacy of Consumer Financial Information (16 C.F.R. Section 313.3, which is incorporated herein by reference) related to performing services or function in connection with this Agreement. Dealer shall regard and preserve as confidential all NPI belonging to Apex Auto Lending and pertaining to Apex Auto Lending Consumers and/or Customers, which Dealer obtains access to in the course of performing under this Agreement. Dealer further agrees that it will not use such information for its own benefit or purpose, nor disclose such information to third parties, without the prior written consent of Apex Auto Lending.

Dealer's violation of this section will be considered a material breach of this Agreement and entitles Apex Auto Lending to terminate this Agreement without penalty. Upon termination of this Agreement, Dealer shall immediately deliver possession of all such NPI and all copies thereof to Apex Auto Lending. Dealer's obligation under this section shall survive termination of this Agreement.

Dealer agrees to maintain a commercially acceptable written information security plan to protect NPI about Consumers and/or Customers in compliance with the Standard for Safeguarding Customer Information issued pursuant to Section 501(b) of the Gramm-Leach-Bliley Act (the "Safeguarding Rule"). Dealer will protect NPI from Apex Auto Lending no less rigorously than it protects its own NPI.

The objectives of the standards are to (i) ensure the security and confidentiality of customer information; (ii) protect against any anticipated threats or hazards to the security or integrity of such information; and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any Consumer and or Customer.

Dealer must comply with the Safeguarding Rule by maintaining appropriate information security safeguards for consumer information. By submitting credit applications to Apex Auto Lending, Dealer represents that Dealer presently maintains and will continue to maintain and periodically test the efficacy of appropriate administrative, technical and physical information security safeguards for customer information.

#### 18. Governing Law and Venue

This Agreement shall be governed and enforced in accordance with the laws of the state of California without regard to any otherwise applicable conflict of laws and principles thereof. Any action relating to this Agreement, or arising out of this Agreement, shall be initiated in the state of federal courts in Orange County, California. Dealer agrees to submit to the exclusive jurisdiction of the Superior Courts in Orange County, California or in the United States District Court of the Central District of California Southern Division in Orange County, California in connection with any such action and the parties hereto agree venue will be proper in such courts. The parties hereto agree not to assert the doctrine of *forum non conveniens* in any action in such state or federal court.

#### 19. Amendment





This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matters of this Agreement and no alteration, amendment, or modification of any of the terms and provisions hereof will be valid unless made in writing signed by all parties hereto.

20. Construction

Dealer and Apex Auto Lending acknowledge and agree that no rule of construction to the effect that any ambiguities are to be resolved against the drawing party shall be employed in the interpretation of this Agreement, including any Exhibits, Addenda, or Schedules attached hereto. Whenever required by the context of the Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa.

21. Termination

Apex Auto Lending or Dealer may terminate this Agreement upon written notice to the other party, such termination to be effective on the date set out in such notice. The termination of this Agreement shall not release Apex Auto Lending or Dealer from any obligations incurred with regard to any Contracts purchased prior to the effective date of such notice, and all such obligations will remain in full force and effect until satisfied in accordance with the terms and conditions of this Agreement.

22. Counterparts

For the convenience of Dealer and Apex Auto Lending, copies of this Agreement may be executed in counterparts and may be exchanged by facsimile or electronic mail. Dealer and Apex Auto Lending intend that counterpart copies signed and exchanged as provided in the preceding sentence shall be fully binding as an original handwritten executed copy hereof and all such copies together shall constitute one instrument.

23. Paragraph Headings

The paragraph headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement.

24. Supersede

This Agreement shall supersede all prior oral or written agreements between Dealer and Apex Auto Lending related to the subject matter of this Agreement.