



**STANDARD TERMS AND CONDITIONS  
FOR  
DEALER AGREEMENTS**

THESE STANDARD TERMS AND CONDITIONS FOR DEALER AGREEMENTS ARE INCORPORATED BY REFERENCE INTO EACH DEALER AGREEMENT AND CONSTITUTE A PART OF EACH DEALER AGREEMENT. THESE STANDARD TERMS AND CONDITIONS ARE LOCATED AT [HTTPS://WWW.AUTOWEB.COM/DEALERS/TERMS-AND-CONDITIONS](https://www.autoweb.com/dealers/terms-and-conditions) AND MAY BE MODIFIED OR AMENDED BY THE COMPANY AT ANY TIME AND FROM TIME TO TIME IN THE COMPANY'S SOLE DISCRETION. ANY MODIFICATIONS OR AMENDMENTS TO THESE STANDARD TERMS AND CONDITIONS WILL BE EFFECTIVE THIRTY (30) DAYS AFTER POSTING TO THE EXTRANET AT THE ABOVE-INDICATED URL. THE COMPANY WILL PROVIDE DEALERS WITH NOT LESS THAN THIRTY (30) DAYS NOTICE OF THE EFFECTIVE DATE OF ANY SUCH MODIFICATIONS OR AMENDMENTS THAT WOULD CHANGE THE TERMS AND CONDITIONS OF DEALER'S PARTICIPATION IN ANY PROGRAM IN WHICH DEALER PARTICIPATES AT THE TIME A MODIFICATION OR AMENDMENT IS POSTED.

**I. Definitions**

For purposes of this Dealer Agreement, the following terms shall have the meanings set forth below:

“**Advertising Content**” means all text, copy, graphics, and photographs included in an advertisement.

“**Amplify Program**” means the package that may include the following programs: Consumer Requests with Email Marketing and Redirect Traffic, AutoWeb Traffic, and AutoWeb Traffic Reload.

“**AutoStack Program**” means the package that may include the following programs: iControl by AutoWeb Program, Used Vehicle Consumer Request, Voice Transmission Consumer Request Programs, and AutoWeb Traffic.

“**AutoWeb Owned Website**” means one or more websites owned, operated or hosted by Company.

“**AutoWeb Traffic**” means the program offered to Dealers that provides click traffic to a destination site provided by Dealer.

“**Company**” means AutoWeb, Inc., a Delaware corporation, and any successor thereto or assignee of the Company's rights or obligations under this Dealer Agreement.

“**Company's Advertising Guidelines and Requirements**” means Company's guidelines and requirements for the publishing of advertisements under the Local Dealer Advertising Program as announced, published or provided, and as modified or revised from time to time, by Company.

“**Company Advertising Network**” means all Company Websites and Third Party Websites.

“**Company Website**” means any website owned or operated by Company.

“**Confidential Information**” means (i) the existence, terms and conditions of this Agreement; (ii) each party's trade secrets, business plans, strategies, methods and/or practices; (iii) software, technology, computer systems architecture and network configurations; (iv) any and all information which is governed by any now-existing or future non-disclosure agreement between the parties hereto; (v) any other information relating to either party that is not generally known to the public, including information about either party's personnel, products, customers, financial information, marketing and pricing strategies, services or future business plans; and (vi) any and all analyses, compilations, studies, notes or other materials prepared which contain or are based on Confidential Information received from a disclosing party.

“**Consumer**” means an individual Consumer using internet-based automobile research, information or buying services.

“**Consumer Request**” means a request made or submitted by a Consumer pursuant to which a Consumer indicates the Consumer's interest in test driving, purchasing, leasing, or receiving a price quote or other information for a new or used vehicle.

**“Data Extraction for iControl by AutoWeb Program”** means the program offered to Dealers that are enrolled in the iControl by AutoWeb program which allows Company’s third party vendor to pull Dealer’s DMS sales data in order to support the iControl by AutoWeb Program marketing campaigns.

**“Data Extraction for Programs”** means the program(s) offered to Dealers that are enrolled in Programs which allows Company’s third party vendor to pull Dealer’s DMS sales data in order to support the Programs in which Dealer participates, including such Programs’ marketing campaigns.

**“Dealer”** means a retail dealer of vehicles and related automotive products and services that is a party to a Dealer Agreement.

**“Dealer Agreement”** means collectively the Dealer Agreement Cover Page, together with Dealer Agreement Schedule, any Program Riders and these Standard Terms and Conditions, all of which are incorporated therein by reference.

**“Dealer Agreement Cover Page”** means the cover page to a Dealer Agreement executed by a Dealer.

**“Dealer Agreement Schedule”** means the Dealer Agreement Schedule applicable to a Dealer Agreement that contains the Programs selected for participation by Dealer, services levels for Dealer’s participation in such selected Programs and Dealer information, such Dealer Agreement Schedule may be amended or modified from time to time in accordance with the terms of these Standard Terms and Conditions.

**“Dealer Extranet”** means the extranet maintained for Dealers with respect to Dealers participation in Company Dealer Programs and located at <https://www.autoweb.com/dealers/>.

**“Dealer Select Consumer Request Program”** means the Consumer Request Program offered to Dealers that allows the Dealer(s) participating in the program to choose the origination source of the Consumer Requests desired by the Dealer(s).

**“Delivery Notice”** means notice by courier, messenger or overnight service.

**“Duplicate Consumer Request”** means any Consumer Request that is a (i) Duplicate Electronic Transmission Consumer Request; or (ii) Duplicate Voice Transmission Consumer Request.

**“Duplicate Electronic Transmission Consumer Request”** means any Electronic Transmission Consumer Request delivered to Dealer by Company within the 30-day period immediately following the date of an earlier Valid Electronic Transmission Consumer Request delivered to Dealer by Company (i) from the same Consumer who submitted the earlier Valid Electronic Transmission Consumer Request, as identified by the same last name and same phone number or email address; and (ii) for the same vehicle make, model and year included in the earlier Valid Electronic Transmission Consumer Request.

**“Duplicate Voice Transmission Consumer Request”** means any Voice Transmission Consumer Request delivered to Dealer under the by Company within the 30-day period immediately following the date of an earlier Valid Voice Transmission Consumer Request containing the same Consumer telephone number delivered to Dealer by Company.

**“Electronic Transmission”** means a communication (i) delivered by facsimile, telecommunication or electronic mail when directed to the facsimile number of record or electronic mail address of record, respectively, which the intended recipient has provided to the other party for sending notices pursuant to the Dealer Agreement and (ii) that creates a record of delivery and receipt that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

**“Electronic Transmission Consumer Request”** means a Consumer Request transmitted or delivered to a Dealer via an Electronic Transmission.

**“Electronic Transmission Consumer Request Required Data”** means the following data in an Electronic Transmission Consumer Request: (i) the Consumer’s first name, last name, city, state, zip code, and at least one contact method (email address or telephone number); and (ii) vehicle make, model, and year.

**“iControl by AutoWeb Program”** means the Consumer Requests Program offered to Dealers that allows Dealers participating in the program to configure their requested Consumer Requests by multiple territories, lead sources (i.e., “Research,” “Quote,” “Buying,” “Enthusiast,” and “Portal” website sources) and vehicle makes and models.

**“Intellectual Property Rights”** means patent, copyright, trademark, service mark, trade secrets or other intellectual property rights.

**“Invalid Consumer Request”** means any Consumer Request that is not a Valid Consumer Request.

**“Monthly Targets”** means a Dealer’s monthly target volumes for Consumer Requests under the Company’s Per Consumer Request priced new and used vehicle Consumer Requests programs, as such monthly targets are established by Dealer and Company pursuant to the Dealer Agreement Schedule.

**“Payment Pro”** means the third party product offered to Dealer whereby Dealer, with a Consumer’s consent, determines on a preliminary basis whether the Consumer may meet Dealer’s criteria for considering the Consumer for vehicle financing.

**“Payment Pro X”** means the new and updated third party product offered to Dealer whereby Dealer, with a Consumer’s consent, determines on a preliminary basis whether the Consumer may meet Dealer’s criteria for considering the Consumer for vehicle financing.

**“Programs”** means the various Dealer marketing services and programs offered by the Company, directly or indirectly through its affiliated entities or third party vendors, pursuant to Dealer Agreements.

**“Program Systems”** means the portions or interfaces of the Company’s proprietary software or other system applications related to the Programs and necessary for a Dealer’s use of Programs.

**“SR Page”** means Dealer’s Make/Model Inventory Search Results page hosted and maintained on Dealer’s website by Dealer.

**“Standard Terms and Conditions”** means these Standard Terms and Conditions, as they may be amended or modified from time to time in accordance with the terms hereof.

**“Third Party Websites”** means any non-Company Website with which the Company has arrangements for the placement of Advertising Content on such third party websites.

**“Voice Transmission Consumer Request”** means a Consumer Request made by a Consumer to a Dealer via a voice communication pursuant to the Pay-Per-Call Program.

**“Valid Consumer Request”** means any Consumer Request that is a (i) Valid Electronic Transmission Consumer Request; or (ii) Valid Voice Transmission Consumer Request.

**“Valid Electronic Transmission Consumer Request”** means any Electronic Transmission Consumer Request that (i) contains all Electronic Transmission Consumer Request Required Data; and (ii) is not a Duplicate Electronic Transmission Consumer Request.

**“Valid Voice Transmission Consumer Request”** means any Voice Transmission Consumer Request that (i) has a duration of at least thirty (30) seconds; and (ii) is not a Duplicate Voice Transmission Consumer Request.

**“WebLeads+ Website Leads Program”** means the program offered to Dealers that provides for the placement of “coupons” on a Dealer’s website.

## **II. Programs.**

### **2.1 General Program Provisions.**

(a) **Applicable Provisions.** The provisions of this Article II are applicable to the extent a Dealer has elected to participate in a particular Program pursuant to the Dealer Agreement.

(b) **Compliance with Laws and Program Rules.**

(i) **Compliance with Laws and Privacy Policies.** Each of the parties shall comply in all material respects with all laws, rules, regulations and orders applicable to such party’s performance obligations under this Dealer Agreement. Without limiting the generality of the foregoing, (i) each of the parties shall comply with their applicable privacy policies and all applicable laws, rules, regulations and orders governing the collection, confidentiality, use, and safeguarding of non-public individually identifiable personal information of Consumers included in Consumer Requests; (ii) Dealer shall comply with the Company’s privacy policy in Dealer’s use and disclosure of information provided by Consumers that may be included in Consumer

Requests to the extent Dealer's privacy policy is less protective of such information than is provided in Company's privacy policy; (iii) Dealer shall comply with all laws, rules, regulations and orders governing advertising and vehicle pricing; (iv) Dealer shall comply with all laws, rules, regulations and orders regarding telemarketing, the obtaining of consents from Consumers prior to contacting Consumers by telephone (land, wireless or cellular) or by text messaging communications, email spam and do-not-call lists, and shall honor requests by Consumers to opt-out from receiving email, telephone (land, wireless or cellular), text messaging and other forms of communications or requests to not be contacted by telephone or text messaging by Consumers who do not provide required prior consents to be contacted by telephone or text messaging or who later revoke such consents; and (v) Dealer shall comply with all laws, rules, regulations and orders regarding the recording, monitoring and storage of telephone and other voice communications. In the event a Consumer notifies Dealer that the Consumer is revoking the Consumer's consent to be contacted by telephone (land, wireless or cellular) or text messaging, Dealer shall notify Company promptly after being notified of such consent revocation.

(ii) **Compliance with Program Rules.** Dealer will comply with all Program rules, procedures, specifications, requirements and guidelines including hardware and software specifications and requirements, as may be published by Company from time to time.

(c) **Program Reports.** Dealer understands that Company will receive or generate reports regarding Dealer's participation in or performance under Programs for evaluation, tracking and compliance purposes.

(d) **Dealer Performance and Customer Service Standards.**

(i) **No Charges to Consumers.** The Program services are free of charge to Consumers. Dealer and its employee/agents are expressly prohibited from representing to any Consumer, in any manner, orally or in writing, the existence of any charge or fee to be paid by reason of the Consumer's use of the Program services.

(ii) **Dealer Contact with Consumers.** With respect to Electronic Transmission Consumer Requests, Dealer shall contact one hundred percent (100%) of the Consumers for whom Electronic Transmission Consumer Requests are delivered to Dealer within one (1) business day of Dealer's receipt of an Electronic Transmission Consumer Request. Dealer shall at the same time, but in no event more than two (2) business days following receipt of any Consumer Request, disclose all of the following to the Consumer:

- The name and contact phone number of the person responsible for managing Consumer contacts at the Dealer.
- The availability of the vehicle that is the subject of the Consumer Request, including any requested options.
- The confirmed price that Dealer will sell or lease the vehicle to the Consumer, including the website advertised price, if any, all additional options requested, pre-delivery inspection fees, destination fees and/or advertising costs or charges not otherwise included in the vehicle price.
- All relevant financing terms and conditions which may apply to the purchase or lease transaction.
- All other terms, costs and conditions required by applicable law to be disclosed to prospective purchasers.

(iii) **Accuracy of Information.** Dealer will ensure that all information provided by Dealer to Consumers under the Programs, including the price and other information required to be delivered by applicable law, rule, regulation or order or by this Dealer Agreement shall be truthful and be binding on Dealer for a period of not less than (i) seven (7) days after its transmittal, provided the identified vehicle still remains available for sale, or (ii) the period required by applicable law, rule, regulation or order, whichever is longer. If Dealer relied on a manufacturer-sponsored program when quoting the pricing, terms, incentives or availability of vehicles, the time period in which the Dealer information must be truthful shall coincide with (i) the termination date of the manufacturer's program; or (ii) seven (7) days, whichever is less, but in no event less than the period required by applicable law, rule, regulation or order. In the case of a service-related request, Dealer shall respond truthfully with all information reasonably requested by the Consumer.

(e) **Technical Support.** Company will use reasonable efforts to provide limited technical support to Dealer regarding use of the Programs during the Company's regular business hours as published from time to time. Company reserves the right in its sole discretion, to revise support standards to comply with applicable laws, rules, regulations or orders or to address changes in the business climate. As some services require substantial time and effort to complete, Company reserves the right, in its sole discretion, to institute separate charges or fees for technical support services. Except when Dealer is otherwise informed of a separate charge or fee by Company's technical support staff before technical support services are provided, technical support services are included in Dealer's Program fees.

(f) **Limited License to Access Program Systems.** During the Term, Company hereby grants Dealer a non-exclusive, revocable, non-transferable license to access and use the Program Systems applicable to the Programs selected by Dealer in accordance with and as intended by the Dealer Agreement. As an express condition of this license to access and use such Program Systems, Dealer is prohibited from selling, re-licensing, loaning or otherwise sharing the Programs, the Program Systems, or the data resulting from use of the Programs and Program Systems or divulging any related confidential information including,

but not limited to, passwords or instructional manuals. Company will furnish Dealer with the specifications and other requirements and/or restrictions related to the access and use of the applicable Program and Program System. Dealer shall not, and shall not permit any third party to, modify, reverse-engineer, decompile, disassemble, reverse compile, create derivative works of or attempt to derive the source code of the Program Systems.

(g) **Company Changes to Programs.** The Company reserves the right to change, alter, modify, add or delete Programs at any time and from time to time, including changes to, deletions, additions, or consolidations of Company or third party websites or brands applicable to Programs. Any of the foregoing may be implemented by the Company by notice to Dealer, which notice will be provided to Dealer not less than thirty (30) days prior to the effective date of any of the foregoing.

(h) **Dealer Requests for Changes in Program Participation, Program Services Levels or Dealer Information.** A Dealer may request amendments or modifications to the Dealer Agreement Schedule to add or delete Programs in which the Dealer participates, change service levels for Dealer's participation in such selected Programs (e.g., to adjust Monthly Targets, increase monthly fees, and, in the case of Dealers that have elected to participate in the Dealer Select Consumer Request Program, to modify the Dealer's selection for origination sourcing for Consumer Requests delivered to Dealer (and the corresponding pricing changes), request temporary suspensions of Consumer Requests deliveries, rescind cancellation notices, or adjust Market Areas), add or delete Dealer franchises to the Agreement (provided that such franchises are owned and operated by the same legal entity as the Dealer), or to change Dealer information. Any such Dealer request must be made by notice to the Company by Dealer. No Dealer request shall be effective until accepted by Company and Company has delivered to Dealer a confirming Electronic Transmission or other notice stating Company's acceptance of such Dealer request. Dealers requesting changes in Programs or services must send such notifications in accordance with the notice provisions of these Standard Terms and Conditions and should not include any notifications or other correspondence with payment remittances.

## 2.2 **Consumer Requests Programs**

(a) **Consumer Requests.** The Company reserves the right to administer and manage in its sole discretion all matters relating to the sourcing and acquisition of Consumer Requests; display or non-display of Dealer or Dealer's vehicle inventory to Consumers in response to a Consumer inquiry; and delivery of Consumer Requests to Dealer. Consumer Requests may originate from any Company-approved source, including the Company's owned or operated websites or from third party websites as the Company may determine. If Dealer or Dealer's vehicle inventory is displayed to a Consumer in response to a Consumer inquiry, the Company may display Dealer or Dealer's vehicle inventory to the Consumer together with other dealers or dealer inventories and in any format or order determined by the Company. Consumer Requests shall be delivered to Dealer using the Company's format and delivery mechanism in effect at the time of delivery and applicable to the type of Consumer Request. Company is only responsible for validation and scrubbing of Electronic Transmission Consumer Requests in accordance with the Company's standard validation and scrubbing criteria (i) to determine if all Electronic Transmission Consumer Request Required Data fields are completed; and (ii) scrubbing for fake entries or entries that contain profanity, provided that Company does not warrant that Electronic Transmission Consumer Requests will be free of fake entries or profanity. Dealer is responsible for all other validation and scrubbing of Consumer Requests, including (i) determination of validity of information included in Electronic Consumer Request Required Data fields; and (ii) determination of Duplicate Consumer Requests.

(b) **Acceptance or Rejection of Consumer Requests.** Dealer is obligated to accept and pay the applicable fee for all Valid Consumer Requests. Dealer shall not sell or deliver any Consumer Request or the information contained therein to any third party. All Invalid Consumer Requests shall be rejected by Dealer by (i) email notice to Company's Regional Account Manger applicable to the Dealer's region or (ii) logging into the Dealer Extranet, in each case prior to the third day of each month. Such email notice or login must identify all Consumer Requests received during such month that Dealer claims are Invalid Consumer Requests. In the event of a dispute regarding the actual delivery of any Consumer Requests, the Company's records shall be deemed conclusive. Unless the Dealer has obtained the Consumer's affirmative authorization to otherwise use or distribute the data and Consumer information contained in a Valid Consumer Request, (i) the data and Consumer information included in Valid Consumer Requests will initially only be used by the Dealer for the purpose of contacting the Consumer identified in the Consumer Request regarding the information requested by the Consumer in the Consumer Request and thereafter only to inform the Consumer of other valuable products and services offered by the Dealer, unless and until the Consumer requests that Dealer cease such use of the data and information; and (ii) neither the Valid Consumer Request nor the data or information contained therein shall be forwarded or delivered by Dealer to any third party. Neither Invalid Consumer Requests nor the data or information contained therein shall be forwarded or delivered by Dealer to any third party, nor shall Invalid Consumer Requests or the data or information contained therein be used by Dealer for any purpose. Company, at its discretion, will be permitted to ensure compliance with this provision by auditing Dealer's records and systems relating to sales and deliveries of Consumer Requests conducted during the Dealer's normal business hours.

(c) **Monthly Targets and Estimates for Consumer Requests.** Company will use commercially reasonable efforts to provide Dealer Consumer Requests but is not required to deliver any minimum number of Consumer Requests to Dealer. Company and Dealer may agree to establish Monthly Targets or may agree not to establish Monthly Targets and have unlimited

monthly deliveries of Consumer Requests. Dealer may also request suspensions of delivery of Consumer Requests for specified periods. If a Monthly Target is requested by Dealer and agreed to by Company, Company shall use its commercially reasonable efforts to (i) limit the number of Consumer Requests delivered to Dealer to no more than the Target Overage Allowance above the agreed upon monthly targets or (ii) suspend deliveries of Consumer Requests for the specified periods as soon as the request is processed and implemented by the Company, but in no event more than thirty (30) days after the Company has accepted the Monthly Target or delivery suspension, or upon such later effective date as the Company and Dealer may agree. Monthly estimates are solely for convenience, represent estimates of the number of Consumer Requests that selected market areas may generate, and are **NOT** guaranteed minimums and **DO NOT** limit the number of Consumer Requests that may, or may not, be delivered to Dealer. If a Monthly Target is in effect for Dealer, the Company will use commercially reasonable efforts to generate and/or obtain, but not exceed by more than the Target Overage Allowance the target number of Consumer Requests selected by Dealer on a monthly basis as set forth in the Dealer Agreement Schedule. Consumer Requests delivered under all Consumer Requests Programs in which a Dealer participates are aggregated for purposes of determining Monthly Targets, and the Company will determine the quantity and mix of Consumer Requests delivered to Dealer under the Programs in which a Dealer participates. The parties agree that the Monthly Targets are not minimum guarantees. Company, its sole discretion, may change the number, structure, price, method and/or basis of Monthly Targets at any time during the Term. Any such changes by Company will be sent by Delivery Notice and shall be effective upon thirty (30) days' notice to Dealer and shall not require an affirmative response or any further action by Dealer. For purposes of this Section 2.2(c), the "**Target Overage Allowance**" equals twenty percent (20%).

(d) **Electronic Transmission Consumer Requests Programs.** The Company offers programs providing for the submission of Consumer Requests to Dealers by Electronic Transmission for new vehicles ("**New Vehicle Consumer Requests Program**") or used vehicles ("**Used Vehicle Consumer Requests Program**").

(i) **New Vehicle Consumer Requests Programs.** A Dealer participating in the New Vehicle Consumer Requests Program is assigned a market area set forth in the Dealer Agreement Schedule ("**New Vehicle Consumer Requests Program Market Area**"). A New Vehicle Consumer Requests Program Market Area is assigned for each new vehicle franchise that Dealer has enrolled in the New Vehicle Consumer Requests Program. All New Vehicle Consumer Requests Program Market Areas are nonexclusive. Company retains sole and complete authority to define or adjust a Dealer's New Vehicle Consumer Requests Program Market Area based on market conditions, Dealer performance, and such other factors as Company, in its sole discretion, deems relevant. Company will provide Dealer with not less than thirty (30) days prior notice of any change to Dealer's New Vehicle Consumer Requests Program Market Area, except in the case of changes to Dealer's New Vehicle Consumer Requests Program Market Area that may result from factors beyond the control of Company, such as, but not limited to, changes to zip codes by the U.S. Postal Service, for which the Company shall not be liable and shall have no prior notice obligation.

(ii) **Used Vehicle Consumer Requests Program**

(1) **General.** A Dealer participating in the Company's Used Vehicle Consumer Requests Program will display Dealer's complying used vehicle postings in used vehicle listings in response to applicable Consumer queries or data.

(2) **Used Vehicle Pricing and Other Information.** Dealer may provide prices and vehicle information for display with used vehicle postings. Dealer has sole discretion in setting used vehicle prices, provided, however, that Dealer agrees to price vehicles competitively for the Used Vehicle Consumer Requests Program Market Area in which Dealer is located and to honor those prices as required by applicable law, rules and regulations. Dealer assumes all responsibility for educating Dealer staff and sales personnel as to the amount and duration of the advertised prices. Dealer, and not Company, shall be solely responsible for the quality and accuracy of such information.

(3) **Used Vehicle Posting and Display**

(A) **General.** Delivery for posting of information, data and images relating to Dealer's used vehicles in response to a Used Vehicle Consumer Request must be made by Dealer in accordance with Company's requirements, specifications, policies, procedures and applicable Used Vehicle Consumer Requests Program rules in effect at the time of posting. Dealer may post an unlimited number of used vehicles. Dealer must legally own each used vehicle posted. Posting of consignment vehicles is prohibited. All information posted for a used vehicle must be accurate and based on actual facts known to the Dealer. Used vehicles may be posted with or without digital images in accordance with the provisions governing use of digital images set forth below. Placement of images of new vehicles is strictly prohibited under the Used Vehicle Consumer Requests Program. All used vehicles must meet state emissions and safety standards and have clear title prior to being offered for sale or lease. It is Dealer's responsibility to disclose any mechanical or cosmetic damage or defects in the used vehicle known to Dealer or any employee of Dealer at the time of posting until sold, including but not limited to prior rental history, demo history, accident history,

frame damage, salvaged vehicles history, stolen-recovered history, flood damage, any material cosmetic or safety and non-safety related mechanical damage, defect or irregularity and any other information or disclosures required by applicable laws, rules, regulations or orders. It is Dealer's responsibility to disclose the existence of a warranty or lack of a warranty as required by applicable laws, rules, regulations or orders. Dealer is responsible for withdrawing the used vehicle advertisement as required by applicable laws, rules and regulations, but in no event later than forty-eight (48) hours following sale of the used vehicle. Dealer's used vehicles displayed to Consumers in response to a used vehicle Consumer Request will be displayed on a non-exclusive basis with other offerors of used vehicles meeting the used vehicle Consumer Request criteria in accordance with Company's standard display policy.

(B) **Digital Images.** Digital images are not required for used vehicles submitted under the Used Vehicle Consumer Requests Program but are highly recommended for all listings. Dealer shall provide a digital image of the make and type compatible with Company's computerized image-uploading characteristics. Dealer shall produce such images in accordance with Company's specifications and guidelines for digital images. All used vehicle images provided by Dealer shall: (i) contain the used vehicle as the sole subject matter of the image, and shall not contain any people, images of people, graphics, photos, artwork, overlays, signs, numbers, banners, balloons or any form of visual advertisement, or any other image that would have the effect of distracting from the used vehicle; (ii) be side or angular photographs; and (iii) be true and correct images of the used vehicle, without retouching, modification, manipulation, or enhancement of any kind. Company reserves the right to eliminate, without prior notice to Dealer, any used vehicle image from the Used Vehicle Consumer Requests Program that in Company's sole and exclusive discretion does not meet the above criteria.

(iii) **Consumer Requests with Email Marketing.** If Dealer has elected to participate in Consumer Requests with Email Marketing in the Amplify Program, following the submission of a New Vehicle Consumer Request originating from an AutoWeb Owned Website to Dealer, Company will send such Consumer a welcome email ("**Welcome Email**") that includes a summary of Consumer Requests submitted by such Consumer. Dealer may provide a logo for inclusion in the body of any Welcome Email generated from a Consumer Request that was transmitted to Dealer. The Welcome Email will also include a link to Dealer's SR Page. Ad copy shall be provided by Dealer and approved by Company. The placement and format of such logo and link is subject to the review and approval of Company.

(e) **Voice Transmission Consumer Request Programs**

(i) **General.** If Dealer has elected to participate in the Phone Connect Program or the Pay-Per-Call Program and has been approved for participation in such program, Dealer will be assigned a toll-free telephone number ("**Program Telephone Number**")<sup>1</sup> that will be displayed by Company and may be used by Dealer solely in connection with the applicable Voice Transmission Consumer Request Lead Program selected by Dealer, and not for any other marketing or advertising or other Dealer use. Dealer acquires no rights to the assigned Program Telephone Number, and the assignment of the Program Telephone Number to Dealer and Dealer's use of the Program Telephone Number will terminate upon the cessation of Dealer's participation in the applicable Voice Transmission Consumer Request Lead Program. Upon termination of Dealer's right to use the Program Telephone Number, Dealer shall thereafter remove, amend or cancel all publications, advertisements, promotions and other items bearing any Program Telephone Number; and (ii) shall not thereafter distribute or sell any media, content or other item bearing the Program Telephone Number. The parties acknowledge and agree that Dealer's use of any Program Telephone Numbers may be further limited by, among other factors, changes to telephone carrier terms, changes in carrier relationships, guidelines recommended by federal, state or local regulators, or changes to applicable law and regulation from time to time.

(ii) **Use of Program Telephone Number.**

(1) **Assignment of Dedicated Line.** Each Dealer participating in a Voice Transmission Consumer Requests Lead Program agrees to assign and provide a dedicated telephone number ("**Dedicated Telephone Number**") to which all calls by Consumers to the Dealer's Program Telephone Number will be directed. The Dedicated Telephone Number is subject to approval by Company and Company's third party vendor.

(2) **Misuse of Program Telephone Number.** Dealer shall be solely responsible for all use or misuse of the Dealer's Program Telephone Number, and shall at all times comply with all applicable laws, rules, and regulations, including but not limited to federal and state Do Not Call and Consumer privacy and protection laws, statutes, and regulations.

(3) **Dealer's Use of Call Recording Services.** Dealer acknowledges that the Voice Transmission Consumer Request Lead Programs allow for monitoring, recording, transcribing, analyzing and archiving of telephone conversations between Dealer employees and Consumers ("**Recorded Call Services**"). Dealer acknowledges and consents to the

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<sup>1</sup> On a case-by-case basis Company will evaluate requests from Dealers to be assigned a local number rather than a toll-free number as the Program Telephone Number. The Company provides no assurances that a local number may be issued in response to any such Dealer request.

monitoring, recording, transcribing, analyzing and archiving of such phone calls by Company or its third party vendors. Dealer shall comply with all applicable laws, rules and regulations when using the Recorded Call Services and in notifying Dealer's employees and callers of this service. Dealer has the sole responsibility to (i) advise all callers prior to any commencement of a call with Dealer that the call is subject to recording, transcription, monitoring and archiving for quality assurance purposes and any other relevant details and required notices ("**Recorded Call Notice**"); (ii) implement or effect such Recorded Call Notice to ensure that the each call receives a Recorded Call Notice in a legally compliant manner and to obtain all necessary consents or approvals with respect to the use of the Recorded Call Services; and (iii) establish proper procedures to protect the privacy of all callers and call recipients in connection with the Recorded Call Services. Any sample or default pre-recorded notices or messages made available by Company or its third party vendor within the Recorded Call Services are for illustration purposes only, and neither Company nor its third party vendor makes any representations or warranties with respect to any use of any Recorded Call Notice by Dealer. Dealer is solely responsible for, and neither Company nor its third party vendor shall have no liability with respect to, (i) Dealer's use of the Recorded Call Services; (ii) the legality of recording, transcribing, monitoring, analyzing, archiving and/or disclosing the contents of telephone calls or caller/ call recipient identification; (iii) the legality of the language used in any Recorded Call Notice; or (iv) the legality of any use, handling, retention and disclosure of information or data acquired by Dealer as a result of the use of the Recorded Call Services. Dealer's employees or other representatives answering these calls must be made aware by Dealer that the conversations are being recorded, and Dealer represents and warrants to Company that Dealer shall at all times require every employee or other representative who may answer calls subjected to the Recorded Call Services to execute a disclosure and consent form regarding the monitoring and recording of calls and retain such disclosure and consent form in the Dealer's personnel or other applicable files for such employee or other representative.

### **2.3 Redirect Traffic.**

(a) Company will drive high-intent, low-funnel consumers to Dealer's SR Page following the submission of a Consumer Request from an AutoWeb Owned Website that is transmitted to Dealer ("**Redirect Traffic**"). Company is not responsible for any misspellings or inaccurate URLs.

(b) Dealer represents and warrants that all information in on Dealer's SR Page to which the Redirect Traffic links: (a) does not violate any law or regulation; (b) does not infringe any copyright, patent, trademark, or trade secret of any third party; (c) is not false or misleading; and/or (d) is neither defamatory, libelous, slanderous or threatening.

(c) Dealer hereby acknowledges that Company is not responsible for the maintenance of Dealer's SR Page or of Dealer's website(s). Dealer must update its listings if any information is not a current and accurate description of information available on its website. Dealer further acknowledges that Dealer's websites do not contain any Company owned or licensed content.

(d) Company makes no warranty or guarantee regarding Dealer's results with Redirect Traffic. Company is in no way responsible for any failures to meet Dealer's expectations. Company gives no guarantee as to the volume of traffic produced by Redirect Traffic.

### **2.4 AutoWeb Traffic.**

(a) Company provides access to AutoWeb Traffic that includes driving high-intent, low-funnel Consumers to Dealer's website pages and enables Dealer to target Consumers by make, model and geography. AutoWeb Traffic is available through one or more websites owned, operated or hosted by Company or its affiliated entities (each, an "**AutoWeb Traffic Website**"), each of which pertain to one or more specific type of product or service for which Dealer may elect to advertise, including but not limited to consumer-focused new and used automotive content. Company does not guarantee that Dealer's listings will be placed or included on any AutoWeb Traffic Websites or on websites in the AutoWeb Traffic publisher network and Dealer understands that Company reserves the right to not place Dealer's listings, and/or discontinue placing Dealer's listings at any time. Company is not responsible for any misspellings, inaccurate URL's or ineffective ad copy. Dealer's listings shall appear exactly as Dealer has entered them into the control panel features available through the AutoWeb Traffic portal. Company has the right to exclude Dealer's listings from display if Company deems in its sole discretion that they contain offensive, defamatory or irrelevant text in the titles or site descriptions.

(b) Dealer's right to access their account through Company is personal and non-assignable. Dealer agrees not to use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access Dealer account or to monitor or copy the Company Sites or the content contained therein except those automated means expressly made available by Company.

(c) Dealer may submit material for listings either by email. Dealer represents and warrants that all information, in the listing itself or through the website to which the listing links, (a) does not violate any law or regulation; (b) does not infringe any copyright, patent, trademark, or trade secret of any third party; (c) is not false or misleading; and/or (d) is neither defamatory, libelous, slanderous or threatening.



(d) Dealer hereby acknowledges that Company is not responsible for the maintenance of Dealer's website(s). Dealer must update Dealer's listings if any information is not a current and accurate description of information available on Dealer's website(s). Dealer further acknowledges that Dealer's websites do not contain any Company owned or licensed content.

(e) Dealer listings may be subject to Company's current policies and rates relating to minimum bids or bid increments. Dealer understands and acknowledges that (a) the various product and service categories offered through the Company may have separate minimum bids and within certain categories there may be separate minimum bids by geography, make or model (e.g., different minimum bids for new Ford Focus in Florida); and (b) any such minimum bids may be subject to change with a minimum of 15 days advance notice, as posted on the Company account management system or as otherwise communicated by Company. Traffic will be priced on a CPC (cost-per-click) basis and calculated as described on the applicable Dealer Agreement Schedule.

(f) Company employs proprietary technology to protect Company and Dealer from repetitive clicks generated by the same user. Company's proprietary technology is relatively effective in protecting against invalid clicks, such as those generated by search bots, web crawlers or other automated methods; however if, at any time, Dealer suspects Consumer traffic originating from invalid clicks, Dealer should contact its account manager in writing.

## **2.5 AutoWeb Traffic Reload.**

(a) High-intent, low-funnel consumers will be presented with Dealer's advertisement following the submission of a Consumer Request on an AutoWeb Owned Websites that is transmitted to Dealer ("**AutoWeb Traffic Reload**"). Following the submission of such a Consumer Request on an AutoWeb Owned Website, Company will place Dealer's listing on Company's ad page. Company is not responsible for any misspellings or inaccurate URLs.

(b) Dealer represents and warrants that all information in on Dealer's SR Page to which the AutoWeb Traffic Reload links: (a) does not violate any law or regulation; (b) does not infringe any copyright, patent, trademark, or trade secret of any third party; (c) is not false or misleading; and/or (d) is neither defamatory, libelous, slanderous or threatening.

(c) Dealer hereby acknowledges that Company is not responsible for the maintenance of Dealer's SR Page or of Dealer's website(s). Dealer must update its listings if any information is not a current and accurate description of information available on its website. Dealer further acknowledges that Dealer's websites do not contain any Company owned or licensed content.

(d) Company makes no warranty or guarantee regarding Dealer's results with AutoWeb Traffic Reload. Company is in no way responsible for any failures to meet Dealer's expectations. Company gives no guarantee as to the volume of traffic produced by AutoWeb Traffic Reload.

**2.6 Webleads+ Website Leads Program.** If Dealer has elected to participate in the Webleads+ Website Leads Program, upon acceptance of Dealer for participation in such Program by Company, the Company, will supply an "on-line coupon" that will be formatted into an Electronic Transmission Consumer Request and then forwarded to Dealer. Dealer is responsible for providing the Company with the most current information as it relates to the on-line coupon. Dealer agrees to insert code provided by the Company on the Dealer's website in order for the coupon to initiate when a Consumer searches the Dealer's website. The Company agrees that it will not market to a Consumer whose information is included in a Consumer Request obtained through Webleads+ Website Leads Program coupons if the Consumer or information regarding the Consumer is not otherwise known to the Company through other means or Consumer Requests. The Company agrees that a Consumer Request originated for a Dealer through a Webleads + Website Leads Program coupon will not be delivered by the Company to any other vehicle dealer, whether a Dealer or non-Dealer.

## **2.7 Local Texas Dealer Advertising Program<sup>2</sup>.**

(a) **Program Description.** The provisions of this Section 2.6 apply to Dealers electing to participate in the Local Texas Dealer Advertising Program. The Local Texas Dealer Advertising Program provides for the placement of text-only ads up to 1,000 characters/spaces in length on the Company Websites. The size of such advertisement is selected by Dealer pursuant to the Dealer Agreement. A link to Dealer's advertisement shall be displayed on the Consumer Request form page on the Company Websites when a Consumer with a zip code in Dealer's New Vehicle Consumer Requests Market Area requests information for a vehicle make and model offered for sale or lease by Dealer. Advertisements and links to advertisements under the Local Dealer Ad Program are non-exclusive to Dealer and may be displayed with advertisements and links for other Dealers.

(b) **Dealer Responsibility for All Advertising Content.** Dealer shall be responsible for reviewing and approving all Advertising Content prior to publishing, even if the overall form of the advertisement was created using Company's

<sup>2</sup> Available only to Dealers located in the State of Texas and participating in the New Vehicle Consumer Requests Program.

advertisement template or contains any Advertising Content supplied by Company. Dealer will honor all prices and promotions set forth in any advertisement. Dealer will be responsible for providing and updating advertisements complying with all applicable laws, rules and regulations and the Company Advertising Guidelines and Requirements, including the deadlines for submission of complying advertisements as set forth therein. Without limiting the foregoing, advertisements shall:

- be factually accurate and shall not contain, reference, or link to any fraudulent, false, or deceptive material or violate any laws, rules, or regulations governing unfair competition or unfair or deceptive advertising;
- comply with all laws, rules and regulations governing motor vehicle or motor vehicle dealer advertising;
- not contain, reference or link to any obscene, indecent or offensive material, including material of an inappropriate adult nature or which uses inappropriate language, or material that misrepresents, ridicules, attacks or discriminates against any individual or group on the basis of age, color, national origin, race, religion, sex, sexual orientation or handicap;
- not contain, reference or link to any libelous, slanderous or defamatory material;
- not contain, reference, or link to any materials or references to alcoholic beverages, firearms, ammunition, gambling, pornography, tobacco, or the simulation of news or an emergency;
- not violate, infringe, or misappropriate any intellectual property rights of any third parties, including any copyright, patent, trademark, trade secret, or other proprietary or property right; and
- not invade or violate any right of privacy or publicity of any third party.

(c) **Company Review of Advertising.** All advertisements are subject to review and acceptance by Company, and Company may reject or cancel any advertisement at any time for any reason, even if it was initially accepted for publication. Review and acceptance of any advertisement for publication does not release or waive Dealer's other obligation under this Section 2.6. Company reserves the right to modify or change the sizes of advertisements or the placement of advertisements on any Company Websites or Third Party Website for any reason. In the event any Dealer advertisement fails to comply with the provisions of this Dealer Agreement, Dealer fails to provide an advertisement, or Dealer is otherwise not in compliance with this Dealer Agreement, in addition to all other rights or remedies of Company under this Dealer Agreement, Company may elect to suspend publishing any advertisement for Dealer pending Dealer's submission of a complying advertisement and compliance with this Dealer Agreement.

(d) **Allowances For Company Errors.** Claims for allowances relating to Company errors must be made within five (5) days after the advertisement's run date. Error allowances will be limited to credit, prorated based on the daily advertising rate, for the days the advertisement ran with a Company error, not to exceed thirty (30) days. Credit allowances will be the sole obligation of Company for Company errors.

(e) **Ownership and Use of Advertising.**

(i) All advertisements as they appear on any Company Website or Third Party Website become the property of Company and Dealer hereby assigns all ownership interest in the advertisement, under the applicable copyright laws or otherwise, to Company.

(ii) If Company creates or supplies any Advertising Content or templates, (1) Dealer remains is responsible for all Advertising Content approved by Dealer, but Company retains all rights in and/or ownership of any such Advertising Content or templates, and Dealer will not have any right therein except as expressly set forth in this Dealer Agreement; (2) Company reserves the right to supply such Advertising Content or templates to other Dealers; (3) Dealer has no right to use advertising developed, authored, created, or supplied by Company except in connection with this Dealer Agreement, unless Dealer obtains Company's prior written consent; and (4) Dealer will not have the right to allow others to use such Advertising Content, unless it has obtained Company's prior written consent.

(iii) Dealer grants Company the non-exclusive, irrevocable, royalty-free, unrestricted right, license and authority to: (a) use, store, reproduce, publish, publicly perform, display, distribute and prepare derivative works based upon, any Advertising Content supplied by Dealer as Company may deem necessary in connection with the publication of such Advertising Content on any Company Website or Third Party Website and/or the performance of any obligations under this Dealer Agreement, during the term of this Dealer Agreement; and (b) grant third parties the right, sublicense and authority to exercise all or any portion of the rights afforded Company under this Dealer Agreement, subject to such terms and conditions as Company may deem appropriate.

(f) **Advertising Placements.** Company reserves the right to make placements of Dealer advertisements solely on Company Websites or on websites in the Company Advertising Network (including Company Websites) as the Company may determine from time to time in its sole discretion.

**2.8 iControl by AutoWeb Program.** If Dealer has elected to participate in the iControl by AutoWeb Program, Dealer agrees that changes to the iControl console must be approved by the Company.

**2.9 Data Extraction**

(a) **Data Extraction for iControl by AutoWeb Program** – If Dealer has elected to participate in the Data Extraction for iControl by AutoWeb Program, Dealer authorizes the Company’s third party vendor to extract data from the Dealer’s Dealer Management System (“DMS”) using the access method and configuration provided by the Dealer to gather DMS data necessary to support the iControl by AutoWeb Program marketing campaigns. Company may assess a fee for this service in its sole discretion as defined on the Dealer Agreement. Company agrees that any data extracted from Dealer’s DMS is Confidential Information of Dealer for purposes of Section 5.3 of these Standard Terms and Conditions.

(b) **Data Extraction for Programs** – If Dealer has elected to participate in Data Extraction for Programs, Dealer authorizes the Company’s third party vendor to extract data from the Dealer’s DMS using the access method and configuration provided by the Dealer to gather DMS data necessary to support the Programs in which Dealer participates, including such Programs’ marketing campaigns. Company may assess a fee for this service in its sole discretion as set forth on the AutoWeb Dealer Agreement Schedule. Company agrees that any data extracted from Dealer’s DMS system is Confidential Information of the Dealer for the purposes of section 5.3 of these Standard Terms and Conditions.

**2.10 Payment Pro.** The Payment Pro products and services are, owned, operated and provided by Automobile Consumer Services, Inc. (“ACS”). Company is solely a reseller of the ACS products and services, and Company shall not be responsible for or have any liability to Dealer for the ACS products and services or Dealer’s use of the ACS products and services. If Dealer has elected to participate in the Payment Pro Program, and has been approved for participation in such program, Dealer’s website provider will integrate the ACS software with the Dealer’s website. By electing to use ACS products and services, Dealer agrees to be bound by and comply with the following ACS terms and conditions for the benefit of ACS and Company. Additional fees may apply for credit pulling services.

### **ACS Payment Pro Terms and Conditions**

Dealer agrees to the following terms under which Dealer may access the Payment Pro Service offered by Company and powered by Automobile Consumer Services, Inc. (“ACS”). This agreement supplements and shall be considered a part of the Dealer Agreement between Dealer and Company. To the extent that there are inconsistencies between the terms hereof and of the Dealer Agreement, the terms hereof shall apply to the Payment Pro Service, but only to the extent of the inconsistency. The charges for this service are included in the overall package pricing described in the Dealer Agreement.

### **RECITALS**

(A) ACS has developed software to provide a service that can conduct a preliminary consumer credit eligibility determination. Dealer’s web provider integrates that software with dealer Internet websites. Once the software has been integrated, the Dealer Internet website can provide consumers with the option of agreeing to have their eligibility for credit financing of a specific vehicle checked on a preliminary basis by ACS. ACS’s service is not a full-fledged approval for credit. The service is intended to provide a prediction or indication, similar to pre-qualification, as to whether the consumer might be approved for such credit.

(B) Dealer, for purposes of this Agreement, is an authorized motor vehicle dealer that has entered into a Dealer Agreement with Company.

(C) Company is an authorized reseller of the Payment Pro Service.

### **AGREEMENT**

#### **1. Definitions.**

As used in this Agreement, and in addition to any terms defined elsewhere in this Agreement, the following words have the following meanings, whether used in the singular or plural:

1.1. “Payment Pro Service” means the service made available by Company to Dealer whereby ACS, with the consumer’s consent, determines on a preliminary basis whether the consumer may be eligible for vehicle financing.

1.2. “Limited Consumer Information” means the name and contact information provided by a consumer to ACS reflecting the consumer’s interest in and consent to participating in ACS’s Payment Pro Service. ACS provides the consumer’s Limited Consumer Information to Dealer following receipt of the consumer’s consent and participation in the Payment Pro Service. .

1.3. “Party” means Dealer, ACS or Company.

1.4. “State(s)” means all fifty states, the District of Columbia, Puerto Rico, and all other territories and possessions of the United States.

## **2. The Payment Pro Service.**

2.1. Dealer Website. Dealer’s Website will serve as the initial point of contact with any consumer who will participate in the Payment Pro Service. In the event a consumer elects to utilize the Payment Pro Service, consumer will be directed to the ACS website and consumer will be asked to provide the Limited Consumer Information through the ACS application program interface (the “API”).

2.2. ACS API. Once ACS receives Limited Consumer Information, ACS will apply the Payment Pro Service to that information. This service involves obtaining and using consumer report information provided by a consumer reporting agency. ACS will rely on its own independent subscriber agreement with a nationwide consumer reporting agency and its own permissible purpose to obtain and use consumer report information under the federal Fair Credit Reporting Act.

2.3. Consumer Creditworthiness. ACS’s Payment Pro Service involves applying to a consumer’s file Dealer’s creditworthiness criteria (or Dealer-utilized lender or OEM promotional lending rates and terms) that has been provided to ACS in accordance with ACS’s procedures (“Criteria”). When a consumer satisfies the Criteria, the Payment Pro Service will generate a response indicating the consumer’s possible eligibility and provide that information to Dealer. When a consumer does not satisfy the Criteria or if ACS is otherwise unable to apply the Payment Pro service to consumer’s information (such as due to erroneous information) the consumer will receive a message indicating that the Payment Pro Service is unable to provide an estimated vehicle payment at that time.. In such case ACS will notify Dealer as to the failed prequalification attempt and provide the Limited Consumer Information from consumer to Dealer.. The Payment Pro Service shall prompt the consumer to contact the Dealer for financing options.

## **3. Consumer Information.**

3.1. Consumer Consent. A consumer consents to participation in the ACS Payment Pro Service by communicating such consent to ACS. Consumers who provide such consent submit Limited Consumer Information to ACS and consent to having that information conveyed to Dealer. ACS will be exclusively responsible for securing valid consent from the consumer for that consumer’s participation in ACS’s Payment Pro Service. The Parties specifically agree that the consumer consent obtained by ACS shall comply with applicable federal laws and regulations addressing valid consumer consent. ACS shall bear sole responsibility for complying with federal laws and regulations governing consumer consent. Dealer shall make no representations or statements inconsistent with the Payment Pro service and agrees to comply with all credit and consumer financing laws. These laws and regulations include but are not limited to the Fair Credit Reporting Act. ACS will obtain and use consumer report information regarding Consumers provided by Dealer in the course of applying the Payment Pro Service.

3.2. Privacy Policy. Dealer represents that it has and will maintain comprehensive policies for maintaining the privacy of any consumer information, including but not limited to Limited Consumer Information.

3.3. Information Security Policy. Dealer represents that it has developed, implemented, and will maintain effective information security policies and procedures that include administrative, technical, and physical safeguards designed to: (1) ensure the security and confidentiality of information received within the operation of ACS’s Payment Pro Service; (2) protect against anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access or use of such information. Each Party’s policy will also address reasonable disposal of consumer information, including but not limited to Limited Consumer Information. All personnel handling such information have been trained in the implementation of each Party’s information security policies and procedures. Each party regularly audits and reviews its information security policies and procedures to ensure their continued effectiveness and determines

whether adjustments are necessary in light of circumstances, including but not limited to changes in technology, customer information systems or threats or hazards to stored information.

#### **4. Miscellaneous.**

4.1. Ownership of Intellectual Property. ACS owns, and will continue to own, all goods, services, software, and systems, constituting the Payment Pro Service and all intellectual and other property rights therein. This Agreement merely grants to Dealer a limited, revocable provisional license to interface with the Payment Pro Service throughout the States, and to Dealer's use and display of ACS's and the Payment Pro marks for the purposes of its performance hereunder.

4.2. Dealer Responsibility for Software/Data Back Up and Hardware Integrity. Dealer acknowledges that it is solely responsible for all data security and back up in the event of software or hardware malfunction. Under no circumstances shall Company or ACS be responsible or held liable for the integrity of any software or data contained on the Dealer's hardware or for Dealer hardware failures. Dealer will defend, indemnify, and hold harmless Company and ACS for the loss of any data or software under any circumstances whatsoever.

4.3. Disclaimer of Warranty; General Release; and Limitation of Liability. Dealer acknowledges and agrees that the Payment Pro Service is provided by ACS, subject to ACS's procedures and that Company has no responsibility or liability for the performance of the Payment Pro Service or the acts or omissions of ACS. THE PAYMENT PRO SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE". ACS AND COMPANY HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, FAILURE OF PERFORMANCE, OR FREEDOM FROM QUIET ENJOYMENT, VIRUS, OR INFRINGEMENT, AND DEALER HEREBY RELEASES COMPANY AND ACS FROM ANY AND ALL RESPONSIBILITY AND/OR LIABILITY WHICH MAY OTHERWISE BE ASSOCIATED THEREWITH. IN NO EVENT SHALL COMPANY OR ACS BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY OF THE SERVICES TO BE PROVIDED BY ACS, OR ANY DAMAGES WHATSOEVER RESULTING FROM THE LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH ANY OF THE SERVICES PROVIDED BY ACS, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, EVEN IF COMPANY OR ACS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.4. Termination. ACS and Company reserve the right to terminate the Payment Pro Service at any time and for any reason. In the event of termination as provided herein, dealer will not be required to pay for the Payment Pro Service following the date of termination.

4.5 Any party may terminate the Payment Pro Service without cause by giving the other parties thirty (30) days prior notice; provided, however, that Dealer shall not be entitled to terminate the Dealer's participation in the Payment Pro Service prior to the ninetieth (90<sup>th</sup>) day following the date the Payment Pro software is first installed on the Dealer's website.

**2.11 Payment Pro X.** The Payment Pro X products and services are, owned, operated and provided by ACS. Company is solely a reseller of the ACS products and services, and Company shall not be responsible for or have any liability to Dealer for the ACS products and services or Dealer's use of the ACS products and services. If Dealer has elected to participate in the Payment Pro X Program, and has been approved for participation in such program, Dealer's website provider will integrate the ACS software with the Dealer's website. By electing to use ACS products and services, Dealer agrees to be bound by and comply with the following ACS terms and conditions for the benefit of ACS and Company. Additional fees may apply for credit pulling services

#### **ACS Payment Pro X Terms and Conditions**

You, a motor vehicle dealer ("Dealer" or "You(r)"), are acquiring a subscription to the SBP Services (defined below) operated by Automobile Consumer Services, Inc. ("ACS" or "Provider," as further defined below) from Company, a third party authorized by and unrelated to ACS to sell such subscriptions (as used in the SBP Terms, "Reseller") under a separate agreement with ACS (the "Reseller Agreement"). In addition to any terms and conditions related to Your use of the SBP Services pursuant to that certain Dealer Agreement ("Dealer Agreement") by and between You and the Reseller, the SBP Terms contains the terms and conditions that govern Your access to and use of the SBP Services. ACS is an express beneficiary of the SBP Terms, and in acquiring a subscription to the SBP Services, You expressly acknowledge and agree that ACS shall have the right to enforce the SBP Terms against You and that SBP Terms constitutes the entire agreement and supersedes any and all prior agreements between You and ACS with regard to the SBP Services or Your access to or use thereof under the SBP Terms. In the event of a conflict between the terms of the SBP Terms and any agreement between Dealer and Reseller, the SBP Terms will control. Reseller is not authorized to modify, alter, delete, add,

or change the terms of the SBP Terms, or enter into any agreement that would have the same effect. By accepting the SBP Terms, either by signing the Dealer Agreement, accessing or using the SBP Services, or authorizing or permitting any agent or Consumer to access or use the SBP Services, Dealer agrees to be bound by the SBP Terms. You acknowledge, agree, and represent to ACS that the person signing the Dealer Agreement is authorized to bind Dealer. If You do not have such authority, or if Dealer does not agree with the SBP Terms, Dealer must not accept the SBP Terms and may not use (or permit its Consumers to use) the SBP Services.

1. Definitions. Capitalized terms have the meanings set forth or referred to in this Section, or in the Section in which they first appear in the SBP Terms.

(a) "API" means Provider's Application Program Interface.

(b) "Consumer" means a customer or potential customer of Dealer who is authorized and consents to utilize or otherwise access the SBP Services.

(c) "Criteria" means Dealer's creditworthiness criteria (or Dealer-utilized lender or OEM promotional rates and terms, if applicable) which have been given to Provider by Dealer in accordance with Provider's procedures.

(d) "Dealer" means you, Reseller's customer, a motor vehicle dealer authorized to do business under the laws of your state

(e) "Dealer's Website" means a group of World Wide Web pages owned and maintained by Dealer or Dealer's representatives.

(f) "Effective Date" means the last date on which the Dealer Agreement was signed.

(g) "Fees" means price paid by Dealer for use of the SBP Services.

(h) "Limited Consumer Information" means the name and contact information provided by a Consumer to Provider that reflects the Consumer's interest in and consent to participating in the SBP Services. Limited Consumer Information is provided by the Consumer and often includes, but may not always include, the Consumer's name, address, e-mail address, income (self-reported), targeted monthly payment, targeted down payment, Social Security Number, and vehicle trade-in information. ACS provides the Limited Consumer Information to Dealer following receipt of Consumer's consent to participate in the SBP Services.

(i) "Provider" means Automobile Consumer Services, Inc., 6249 Stewart Avenue, Cincinnati, Ohio 45227, a company duly authorized to do business under the laws of the state of Ohio.

(j) "Provider IP" means the SBP Services and any and all intellectual property provided to Dealer in connection with the foregoing. For the avoidance of doubt, Provider IP includes any information, data, or other content derived from Provider's monitoring of Dealer's and/or Consumer's access to or use of the SBP Services, but does not include Limited Consumer Information.

(k) "SBP Services" means the software-as-a-service offering whereby Provider, with the Consumer's consent, determines on a preliminary basis whether the Consumer may be eligible for vehicle financing. The SBP Services is not a complete credit approval system; the SBP Service is intended to provide a prediction or indication of whether a Consumer may be eligible for vehicle financing. The content, features, or functionality of the SBP Services may be modified, altered, or suspended, or discontinued by Provider upon thirty (30) days' written notice.

(l) "SBP Terms" means the SBP Terms and Conditions, applicable to customers of Reseller.

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Dealer's payment of Fees and compliance with all other terms and conditions of the SBP Terms, Provider hereby grants Dealer a non-exclusive, non-transferable (except in compliance with Section 11(g) of the SBP Terms) right to access and use the SBP Services during the Term, solely for use by Consumers in accordance with the terms and conditions herein. ACS will provide Dealer (or Dealer's website provider) with integration instructions for the SBP

Services, along with the software code and any accompanying assets. Dealer (or Dealer's website provider) must insert the code for the SBP Services into Dealer's website. Consumer will access the SBP Services through Provider's API using Dealer's website.

(b) Use Restrictions. Dealer shall not use the SBP Services for any purposes beyond the scope of the access granted in the SBP Terms. Dealer shall not at any time, directly or indirectly, and shall not permit any of Dealer's employees, agents, contractors, consultants, or representatives to: (i) copy, modify, or create derivative works of the SBP Services, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the SBP Services except as provided in the SBP Terms; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the SBP Services, in whole or in part; (iv) remove any proprietary notices from the SBP Services; or (v) use the SBP Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(c) Reservation of Rights. Provider reserves all rights not expressly granted to Dealer in the SBP Terms. Except for the limited rights and licenses expressly granted under the SBP Terms, nothing in the SBP Terms grants, by implication, waiver, estoppel, or otherwise, to Dealer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(d) Suspension. Notwithstanding anything to the contrary in the SBP Terms, Provider may temporarily suspend Dealer's and any Consumer's access to any portion or all of the SBP Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Dealer's or any Consumer's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Dealer, or any Consumer, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Dealer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the SBP Services to Dealer or any Consumer is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Dealer to access the SBP Services; or (iii) in accordance with Section 5 of the SBP Terms (collectively, a "Service Suspension"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Dealer and to provide updates regarding resumption of access to the SBP Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the SBP Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Dealer or any Consumer may incur as a result of a Service Suspension.

### 3. Consumer Information.

(a) Consumer Consent. A Consumer consents to participation in the SBP Services by affirmatively communicating such consent to Provider. Consumers who provide such consent submit Limited Consumer Information to Provider and consent to Provider providing Limited Consumer Information to Dealer. Provider is solely responsible for securing valid consent from the Consumer for Consumer's use of the SBP Services, and Provider shall comply with all applicable U.S. laws and regulations addressing valid Consumer consent. Dealer shall make no representations or statements inconsistent with the SBP Service and agrees to comply with all credit and consumer financing laws, including, without limitation, the Fair Credit Reporting Act.

(b) Creditworthiness. After receiving Consumer's consent to participate in the SBP Services, Provider will make a soft inquiry of a credit bureau in order to gather basic credit eligibility information. If Dealer is properly credentialed with the credit bureau utilized by Provider, Provider will use Dealer's code to make the soft inquiry and Dealer will receive a secure link to the credit bureau report. If Dealer is not properly credentialed, Dealer will receive basic credit eligibility information from Provider, but will not receive access to Consumer's credit score.

### 4. Privacy and Information Security.

(a) Privacy. Provider and Dealer agree that they have and will maintain comprehensive policies for maintaining the privacy and security of any information provided by the Consumer, including but not limited to Limited Consumer Information.

(b) Information Security. Provider and Dealer agree and represent that they have developed, implemented, and will maintain compliant and effective information security policies and procedures that include administrative, technical, and physical safeguards designed to: (i) ensure the security and confidentiality of information received within the operation of the SBP Services; (ii) protect against anticipated threats or hazards to the security or integrity of such information; and (iii) protect against unauthorized

access or use of such information. Each of Provider's and Dealer's policy will also address reasonable disposal of consumer information, including but not limited to Limited Consumer Information. All personnel handling such information have been trained in the implementation of each such party's information security policies and procedures. Provider and Dealer represent that it regularly audits and reviews its information security policies and procedures to ensure their continued effectiveness and determines whether adjustments are necessary in light of circumstances, including but not limited to changes in technology, customer information systems or threats or hazards to stored information.

5. Fees and Payment. Under the terms and conditions of Provider's agreement with Reseller (the "Reseller Agreement"), Provider may suspend or terminate Dealer's and Consumers' rights to access the SBP Services if: (a) Provider is informed by Reseller that Dealer has failed to pay an amount due to Reseller with respect to Dealer's subscription to the SBP Services; or (b) Reseller fails to pay Provider any amount due pursuant to the Reseller Agreement with respect to Dealer's right to access to the SBP Services. Dealer consents to these termination and suspension rights and agrees that Provider will have no liability to Dealer whatsoever with respect to any termination or suspension under this Section. Dealer's sole recourse for any such termination or suspension is against Reseller. All Fees and other amounts payable by Dealer are exclusive of taxes and similar assessments. Dealer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Dealer hereunder, other than any taxes imposed on Provider's income.

6. Confidential Information. Provider, and Dealer may disclose or make available to each other information about its respective business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each of Dealer, or Provider may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish its rights under the SBP Terms, including to make required court filings. On the expiration or termination of Dealer's right to access the SBP Services, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive for as long as such Confidential Information remains subject to trade secret protection under applicable law.

#### 7. Intellectual Property Ownership; Feedback.

(a) Provider IP. Dealer acknowledges that, as between Dealer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP. Furthermore, the Dealer acknowledges and agrees that all goodwill associated with, or that shall become associated with, said intellectual property, computer codes/programming, and/or the SBP Services shall inure to the sole benefit of Provider and be the sole property of Provider.

(b) Feedback. If Dealer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Dealer hereby assigns to Provider on Dealer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.



8. Warranty Disclaimer. THE PROVIDER IP IS PROVIDED “AS IS” AND “AS AVAILABLE” AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, FAILURE OF PERFORMANCE, OR FREEDOM FROM QUIET ENJOYMENT, VIRUS, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CONSUMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. DEALER HEREBY RELEASES PROVIDER FROM ANY AND ALL RESPONSIBILITY AND/OR LIABILITY WHICH MAY OTHERWISE BE ASSOCIATED THEREWITH.

9. Limitations of Liability.

(a) IN NO EVENT WILL PROVIDER OR RESELLER BE LIABLE UNDER OR IN CONNECTION WITH THE SBP TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER’S OR RESELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SBP TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID BY RESELLER TO PROVIDER WITH RESPECT TO DEALER’S RIGHT TO ACCESS THE SBP SERVICES DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

(b) Dealer acknowledges that it is solely responsible for all data security and back-up in the event of a hardware or software malfunction. Under no circumstances will Provider be responsible or held liable for the integrity of any software or data contained on Dealer’s hardware or for Dealer’s hardware failures. Dealer will defend, indemnify, and hold harmless Provider for the loss of any data or software under any and all circumstances whatsoever.

10. Term and Termination.

(a) Term. The initial term of the SBP Terms begins on the Effective Date and, unless terminated earlier pursuant to the SBP Terms’ express provisions, will continue in effect for one (1) year from such date (the “Initial Term”). The SBP Terms will automatically renew for additional successive one (1) year term[s] unless earlier terminated pursuant to the SBP Terms’ express provisions or the Reseller, Provider, or Dealer gives written notice to the non-terminating parties of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a “Renewal Term” and together with the Initial Term, the “Term”).

(b) Termination. In addition to any other express termination right set forth in the SBP Terms:

(i) Provider may terminate the SBP Terms, effective on written notice to Dealer, if Dealer: (A) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Provider’s delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(b), 2(c) or Section 6 of the SBP Terms;

(ii) either party may terminate the SBP Terms, effective on written notice to the other party, if the other party materially breaches the SBP Terms, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured ten (10) days after the non-breaching party provides the breaching party with written notice of such breach; or

(iii) either party may terminate the SBP Terms, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general

assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(iv) The Provider, Reseller, or Dealer may terminate the SBP Terms at any time upon thirty (30) calendar days' written notice to the non-terminating parties.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of the SBP Terms, Dealer shall immediately discontinue use of the Provider IP and, without limiting Dealer's obligations under Section 6 of the SBP Terms, Dealer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Dealer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Dealer to any refund.

(d) Survival. This Section 10(d) and Sections 1, 2(b) 5, 6, 7, 8, 9, 10(c), and 11 survive any termination or expiration of the SBP Terms. No other provisions of the SBP Terms survive the expiration or earlier termination of the SBP Terms.

## 11. Miscellaneous.

(a) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the parties at the addresses set forth below (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section):

Provider:

Automobile Consumer Services, Inc.  
6249 Stewart Road  
Cincinnati, OH 45227  
Attention: Tarry Shebesta, President  
Facsimile: (513) 527-7705

With a copy (which shall not constitute notice) to:

David R. Valz, Esq.  
Thompson Hine LLP  
312 Walnut Street, Suite 1400  
Cincinnati, Ohio 45202  
Facsimile: (513) 241-4771

Reseller: As set forth in the Dealer Agreement

Dealer: As set forth in the Dealer Agreement

All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in the SBP Terms, a Notice is effective only: (i) upon receipt by the receiving party; and (ii) if the party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall Provider be liable to Dealer, or be deemed to have breached the SBP Terms, for any failure or delay in performing its obligations under the SBP Terms, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, Internet service provider failure or delay, acts undertaken by third parties, including without limitation, denial of service attack, or passage of law or any action taken by a governmental or public authority, including imposing an embargo, or any other circumstances beyond the Provider's control, whether or not similar in nature to those listed in this Section.

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

(e) Severability. If any provision of the SBP Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the SBP Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify the SBP Terms so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. The SBP Terms are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action, or proceeding arising out of or related to the SBP Terms or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Ohio in each case located in Hamilton County, Ohio, and each party irrevocably submits to the exclusive venue and jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Dealer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. The SBP Terms are binding upon and inures to the benefit of the parties and their respective permitted successors and assigns. Provider may assign the SBP Terms in its sole discretion.

(h) Export Regulation. The SBP Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Dealer shall not, directly or indirectly, export, re-export, or release the SBP Services or the underlying software or technology to, or make the SBP Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation.

(j) Equitable Relief. Provider, and Dealer acknowledge and agree that a breach or threatened breach of any of their obligations under Section 6 of the SBP Terms or, in the case of Dealer, Section 2(b) of the SBP Terms, would cause the non-breaching party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(a) For Dealers contracting with Company for custom development work for Dealer's designated mobile marketing resources operated by Company ("Custom Mobile Development Work"), agreed upon specifications, pricing or development schedules are estimates and are dependent upon Dealer's full cooperation and timely performance of project responsibilities assigned to Dealer and provision of all materials and information required by Company from Dealer to complete the Custom Mobile Development Work in accordance with agreed upon specifications, pricing and development schedule. During development there is a certain amount of feedback and interaction from and with Dealer required in order to progress to subsequent phases and completion. Dealer understands that Company's performance of the Custom Mobile Development Work is dependent on Dealer's timely and effective performance of the applicable Dealer project responsibilities and timely decisions and approvals by Dealer.

(b) All Custom Mobile Development Work submitted to Dealer for approval shall be deemed accepted if Dealer has not provided to Company written notice identifying specifically any basis for not accepting the Custom Mobile Development Work, which notice shall be provided within five (5) days after delivery by Company. Any work that has not been identified to Company as not accepted within such five-day review period will be deemed to have been approved and accepted by Dealer. Once accepted and approved, or deemed accepted and approved, work cannot subsequently be rejected.

(c) Material changes to the scope of any Custom Mobile Development Work shall be made only in writing executed or acknowledged by Dealer and Company.

(d) Company shall exclusively and solely retain all rights, title and interests in and to any Custom Mobile Development Work and all deliverables under any such work, including all copyright, patent, trade secrets and other intellectual property rights. Upon final payment for such work and deliverables, Dealer shall have a limited, non-transferable, non-exclusive, non-sublicensable right and license to use the Custom Development Work and deliverables on Dealer's designated mobile marketing resources operated by Company as long as Company continues to operate such resources for Dealer. The foregoing license granted to Dealer is subject to payment by Dealer of the fees associated with the Custom Mobile Development Work. In the event of non-payment or other breach by Dealer, Company shall have the right to suspend its performance until payment is received or Dealer's breach has been remedied in accordance with this Dealer Agreement.

### **III. Program Fees and Payment Terms**

**3.1 Applicable Program Fees and Costs.** Dealer agrees to pay the fees, charges, rates and costs in effect for the applicable billing period for the Programs in which Dealer elects to participate. The Company, in its sole discretion, may change the amount, structure, method and/or basis of any Program fees, charges, rates or costs at any time during the Term. Any changes shall be effective upon thirty (30) days' notice to Dealer and shall not require an affirmative response or any further action by the parties.

**3.2 Payment Terms.** All fees, charges and costs are due and payable by Dealer upon receipt of invoice and are delinquent thirty (30) days after invoicing. At the election of Company, invoicing may be made in the form of an Electronic Transmission. Company invoices will be deemed correct and accepted by Dealer, and Dealer's obligation to pay the invoiced amounts shall be absolute and unconditional and not subject to any offset, defense or counterclaim, unless Dealer advises Company by notice of any disputed items within thirty (30) days of Dealer's receipt of an invoice. Late payments shall bear interest at the rate of 1% per month, or the maximum legal rate, whichever is less. In addition to all other remedies available to Company or its affiliated entities, Company reserves the right to immediately suspend all Programs and services under any agreement between Dealer, or any entity affiliated with Dealer, and Company, or any entity affiliated with Company, upon notice to Dealer, if any payment to Company or any Company affiliated entity is past due until such account is brought current.

**3.3 Taxes and Other Assessments Excluded.** All fees, charges and costs are exclusive of federal, state and local excise, sales, use and other taxes or assessments now or hereafter levied or imposed for the provision of the Program services. Except for taxes on Company's net income, Dealer shall be liable for and pay all other taxes, assessments and levies, regardless of whether included on any invoice.

**3.4 Operating Costs and Expenses.** Other than Program costs invoiced to Dealer, each party is responsible for all of its internal costs, if any, associated with implementation and operation of the Programs.

### **IV. Term and Termination**

**4.1 Term.** The term of the Dealer Agreement shall commence as of the Effective Date and shall continue until terminated in accordance with the Dealer Agreement ("**Term**").

#### **4.2 Early Terminations**

(a) Either party may terminate the Dealer Agreement upon written notice in the event that the other party: (i) makes an assignment for the benefit of creditors; (ii) commences or has commenced against it any action appointing a receiver over its assets; (iii) commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or similar laws which, in the case of an involuntary proceeding, is not dismissed within ninety (90) days of its filing; (iv) breaches any material term or provision hereof, and such party fails to cure such breach within thirty (30) days following written notice detailing such breach from the non-breaching party; **provided, however**, that the cure period for the breach of an obligation to pay the fees pursuant to Article III when due shall be three (3) business days following receipt of a notice of such breach.

(b) Either party may terminate the Dealer Agreement without cause by giving the other party thirty (30) days' prior written notice.

(c) The Dealer Agreement is subject to change or termination to the extent necessary to comply with federal, state or local laws and regulations. To the extent either party is advised by legal counsel, or either party is advised in writing by a regulatory body with jurisdiction over its activities, that certain aspects of its performance under the Dealer Agreement do not or may

not comply with federal, state, or local law or regulations, that party will be entitled, in its sole discretion, to suspend those certain aspects of its performance, including any payment obligations to it, immediately upon notice to the other party and will not be liable for failure to perform or delay in its performance of those certain aspects. Either party may immediately terminate the Dealer Agreement upon written notice to the other party if such party reasonably believes that (i) performance of the Dealer Agreement violates, or is being conducted in a manner that does not comply with, applicable law, regulation, licensing requirement, ordinance or order, and (ii) such violation or non-compliance cannot be remedied or the cost of remediation or compliance is prohibitive.

(d) Company is authorized by Dealer to obtain credit reports on Dealer from the agencies selected by Company. A favorable credit report (as determined by Company in its sole discretion) is a condition precedent to the effectiveness of the Dealer Agreement and for its ongoing continuation and Dealer's participation in the Programs, and an unfavorable credit report at any time during the Term shall, notwithstanding anything to the contrary herein, entitle Company to terminate the Dealer Agreement immediately upon notice to Dealer. Unless Dealer has been approved for credit by Company, or if Dealer's credit approval is rescinded by Company, the Company may require Dealer to pay for all Program services in advance.

(e) Dealers requesting termination of the Dealer Agreement must send such notifications in accordance with the notice provisions of these Standard Terms and Conditions and should not include any notifications or other correspondence with payment remittances.

**4.3 Effect on Rights.** Expiration or termination of the Dealer Agreement by either party shall not act as a waiver of any breaches of this Dealer Agreement and shall not act as a release of either party from any liability for breaches of the Dealer Agreement. Any payments due one party to the other that have accrued before expiration or termination of this Dealer Agreement for any reason shall be due and payable within thirty (30) days after the date of expiration or termination. Upon any expiration or termination of the Dealer Agreement, Dealer shall immediately discontinue all use of the Programs and Program Systems, any Company Intellectual Property Rights, and return all Program materials to Company.

**4.4 Survival.** Termination or expiration of the Dealer Agreement for any reason shall not release any party from any liabilities or obligations set forth in the Dealer Agreement which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration including, but not limited to, Section 4.3, this Section 4.4, Article V, Article VI, Article VII and Article VIII.

## **V. Intellectual Property and Confidentiality**

**5.1 Intellectual Property Rights.** Each party is the owner of all right, title, and interest in and to its Intellectual Property Rights. With limiting the generality of the foregoing, all Intellectual Property Rights associated with the Programs and Program Systems are owned by and proprietary to Company or its third party vendors. Each party specifically acknowledges that this Dealer Agreement does not confer upon such party any interest in or right to use any Intellectual Property Rights of the other party or its third party vendors except as expressly set forth in this Dealer Agreement. If a party wishes to utilize the Intellectual Property Rights of the other party in advertising or promotional materials, it must submit such materials to the other party for approval prior to each use of such advertising and promotional materials. In no event may either party or any affiliated or associated person or entity utilize the other party's Intellectual Property Rights in connection with any products or services other than the Programs and services contemplated herein.

**5.2 Ownership and Use of Compiled Information.** The Company shall own all right, title and interest in and to all Consumer Requests and all information included therein. During the Term, the Company grants to Dealer a limited, non-exclusive, revocable, non-transferable license to use the Valid Consumer Requests delivered to, and paid for by, Dealer and information included therein solely in accordance with the terms and conditions of this Dealer Agreement. Dealer obtains no rights under the foregoing license with respect to Invalid Consumer Requests.

### **5.3 Confidential Information.**

(a) The parties acknowledge that during the performance of this Dealer Agreement, either party may be required to disclose to the other party Confidential Information, which such party, as the disclosing party, regards as proprietary or confidential. Each party, as the receiving party of Confidential Information, agrees to keep confidential any Confidential Information in its possession as provided below. Each party, as the receiving party, further understands and agrees that misuse and/or disclosure of such Confidential Information could adversely affect the disclosing party's business. Accordingly, each party, as the receiving party, agrees that, subject to the terms hereof, it shall use and reproduce such disclosed Confidential Information only for purposes of this Dealer Agreement and only to the extent necessary for such purpose and shall restrict disclosure of such Confidential Information to its officers, directors, employees, agents, consultants, attorneys, independent contractors, or affiliates ("**Representatives**") with a

need to know and shall not disclose such Confidential Information to any other third party without the prior written approval of the disclosing party. Each receiving party agrees that it will give notice of such covenant of confidentiality to its Representatives and require such Representatives to comply with such covenant. The parties acknowledge that the terms set forth on the Dealer Agreement Schedule are Confidential Information of the Company.

(b) The foregoing obligations shall not apply to the extent Confidential Information: (i) must be disclosed by the receiving party to comply with any requirement of law or order of a court or administrative body (provided that the receiving party will endeavor to notify the disclosing party of the issuance of such order and cooperate in its efforts to convince the court or administrative body to restrict disclosure) or to enforce the receiving party's rights under this Dealer Agreement; (ii) is known to or in the possession of the receiving party prior to the disclosure of such Confidential Information to the receiving party, as evidenced by the receiving party's written records; (iii) is known or generally available to the public through no act or omission of the receiving party or its Representatives in breach of this Dealer Agreement; or (iv) is made available free of any legal restriction to the receiving party by a third party not bound by confidentiality to the disclosing party.

(c) The duties and requirements under this Section 5.3 will continue for Confidential Information that (i) that constitutes trade secrets under applicable law, for as long as such Confidential Information remains trade secret of the disclosing party; (ii) for Confidential Information that is required by applicable law to be kept confidential, for as long as required by applicable law; and (iii) for all other Confidential Information, during the Term of this Dealer Agreement and for a period of three (3) years thereafter.

## **VI. Representations and Warranties**

6.1 **Representations and Warranties of Company.** Company represents and warrants that it is duly licensed, authorized, and certified by all applicable governmental regulatory authorities to operate its business as it is now conducted and no applicable law, regulation, court order, or material agreement to which Company is a party is or will be violated by Company's execution, delivery or performance of this Dealer Agreement.

6.2 **Representations and Warranties of Dealer.** Dealer represents and warrants that it is duly licensed, authorized, and certified by all applicable governmental regulatory authorities to operate its business as it is now conducted and no applicable law, regulation, court order, or material agreement to which Dealer is a party is or will be violated by Dealer's execution, delivery or performance of this Dealer Agreement.

## **VII. Indemnification; Disclaimer of Warranties; Limitation of Liability**

7.1 **DISCLAIMER OF WARRANTIES.** COMPANY PROVIDES THE PROGRAMS AND PROGRAM SYSTEMS "AS IS." NEITHER COMPANY NOR ITS THIRD PARTY SUPPLIERS OR VENDORS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, ORAL, IMPLIED OR STATUTORY, REGARDING THE PROGRAMS OR PROGRAM SYSTEMS; THE PERFORMANCE, AVAILABILITY, SERVICE LEVEL, UP-TIME OR OPERATION OF THE PROGRAM SYSTEMS; THE SALES CLOSING SUCCESS RATES FOR ANY PROGRAMS; OR THE ACCURACY OR COMPLETENESS OF CONTENT OR DATA INCLUDED IN ANY PROGRAM PRODUCTS OR SERVICES (INCLUDING ANY CONSUMER REQUESTS) AND SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTY, INCLUDING, BUT NOT LIMITED TO, THE QUALITY, COMPLETENESS, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROGRAMS AND THE PROGRAM SYSTEMS OR COURSE OF DEALING, COURSE OF CONDUCT OR COURSE OF PERFORMANCE.

7.2 **LIMITATION OF LIABILITY.** NEITHER COMPANY NOR ITS THIRD PARTY SUPPLIERS OR VENDORS SHALL BE LIABLE TO DEALER FOR INJURY TO ANY PERSON OR PROPERTY WHATSOEVER RESULTING FROM THE USE OF OR INABILITY TO USE THE PROGRAMS OR THE PROGRAM SYSTEMS OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL OR OTHER DAMAGES, COSTS OR EXPENSES OF ANY KIND (SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR DAMAGE TO OR LOSS OF PERSONAL PROPERTY OR DATA), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THE COMPANY OR ANY THIRD PARTY SUPPLIER OR VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR EXPENSES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER THE COMPANY NOR ANY OF ITS THIRD PARTY SUPPLIERS OR VENDORS SHALL BE RESPONSIBLE FOR ANY DAMAGES, COSTS OR EXPENSES RELATING TO BUSINESS INTERRUPTION, LOSS OF DATA, DELAYS OR ERRORS IN TRANSMISSION OF DATA, COST OF RECOVERING SOFTWARE OR DATA, COST OF SUBSTITUTE SOFTWARE OR DATA, OR OTHER SIMILAR DAMAGES, COSTS OR EXPENSES. IN THE EVENT THAT EITHER PARTY BREACHES ITS OBLIGATIONS UNDER THIS DEALER AGREEMENT, THE NON-BREACHING PARTY SHALL HAVE THE RIGHT

**TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT THE LIABILITY OF THE BREACHING PARTY, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED, AND IN NO EVENT SHALL SUCH ACTUAL DAMAGES EXCEED THE TOTAL AMOUNT PAID TO COMPANY BY DEALER DURING THE SIX (6) MONTH PERIOD PRIOR TO THE CLAIM. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 7.2, THE FOREGOING LIMITATIONS ON LIABILITY SHALL NOT APPLY TO (I) BREACHES OF A PARTY'S OBLIGATIONS UNDER ARTICLE V; (II) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.3; (III) A BREACH OF A PARTY'S REPRESENTATIONS AND WARRANTIES UNDER ARTICLE VI; OR (IV) DEALER PAYMENT OBLIGATIONS UNDER ARTICLE III (DEALER SHALL REMAIN OBLIGATED FOR THE AGGREGATE AMOUNT OF PAYMENT OBLIGATIONS OWED TO COMPANY PURSUANT TO THE DEALER AGREEMENT).**

### **7.3 Indemnification**

(a) Each party to this Dealer Agreement will defend, indemnify and hold harmless the other party and each of its parent company, affiliate companies, officers, directors, employees, agents, and in the case of Dealer as the indemnifying party, the Company's Consumer Request suppliers and Program vendors, against and in respect of any loss, debt, liability, damage, obligation, claim, demand, fines, penalties, forfeitures, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "**Damages**") arising out of, resulting from or based upon any claim, action or proceeding by any third party, including any governmental or regulatory body, alleging facts or circumstances constituting (i) a breach of the obligations, representations or warranties of the indemnifying party set forth in this Dealer Agreement; (ii) any infringement or misappropriation of any third party's Intellectual Property Rights; or (iii) any violation of any law, rule, regulation or order.

(b) If a party entitled to indemnification under this Section 7.3 (an "**Indemnified Party**") makes an indemnification request to the other party, the Indemnified Party shall permit the other party (the "**Indemnifying Party**") to control the defense, disposition or settlement of the matter at its own expense, and the Indemnifying Party, at its discretion, may enter into a stipulation of discontinuance and settlement thereof, provided that the Indemnified Party is fully and unconditionally released from such claims. The Indemnifying Party, however, will not have any authority to obligate the Indemnified Party in any way. The Indemnified Party shall be permitted to participate in such defense and represent itself at its own expense and to use counsel of its own choosing. The Indemnified Party shall notify the Indemnifying Party promptly of any claim for which Indemnifying Party is responsible and shall cooperate with the Indemnifying Party in every commercially reasonable way to facilitate defense of any such claim; provided that the Indemnified Party's failure to notify Indemnifying Party shall not diminish Indemnifying Party's obligations under this Section 7.3 except to the extent that Indemnifying Party is materially prejudiced as a result of such failure. An Indemnified Party shall at all times have the option to participate in any matter or litigation through counsel of its own selection and at its own expense.

## **VIII. General Provisions**

**8.1 Entire Agreement.** This Dealer Agreement, including the exhibits attached thereto and documents incorporated therein by reference, (i) constitutes the complete and exclusive statement of agreement between the parties; (ii) supersedes all contemporaneous or prior agreements, understandings, representations or warranties, and communications of any kind by and between the parties, whether written or oral, with respect to the subject matter of this Dealer Agreement; and (iii) contains all of the representations, warranties, covenants, and understandings between the parties with respect to the Programs and Program Systems. **Each party to this Dealer Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Dealer Agreement.**

**8.2 Amendments and Waivers.** Except as otherwise provided in this Dealer Agreement, including without limitation these Standard Terms and Conditions, where changes or amendments may be made or given by notice only, this Dealer Agreement may be amended, modified, superseded, or cancelled, and the terms and conditions hereof may be waived, only by a written instrument executed by the parties hereto or, in the case of a waiver, by the party waiving compliance. No delay or failure on the part of any party in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of any party of any right hereunder, nor any single or partial exercise of any rights hereunder, preclude any other or further exercise thereof or the exercise of any other right hereunder.

**8.3 Assignment.** Neither party may assign or otherwise transfer or delegate this Dealer Agreement or any of a party's rights, duties or obligations under this Dealer Agreement to another person or entity without the prior written consent of the other party. Notwithstanding the foregoing, this Dealer Agreement may be assigned or transferred by Company, in whole or in part, without the consent of Dealer to any person or entity that (i) succeeds Company by operation of law; (ii) controls, is controlled by or is under

common control with Company; (iii) acquires all or substantially all of the assets or stock of Company or all or substantially all of the business of Company; or (iv) acquires all or substantially all of the business of Company related to this Dealer Agreement. This Dealer Agreement will be binding on and inure to the benefit of each party hereto and to each party's respective permitted successors and assigns.

**8.4 Notices.** Any notice required or permitted under this Dealer Agreement will be considered to be effective in the case of (i) certified mail, when sent postage prepaid and addressed to the party for whom it is intended at its address of record, three (3) days after deposit in the U.S. mail; (ii) Delivery Notice, upon receipt by recipient as indicated on the courier, messenger's or overnight delivery service's receipt; or (iii) Electronic Transmission, upon receipt of an Electronic Transmission by the party that is the intended recipient of the Electronic Transmission. The record addresses, facsimile numbers of record, and electronic mail addresses of record for the Dealer are set forth on the Dealer Agreement Cover Page. All notices to the Dealer will be directed to the most current address, facsimile number, or email address of record for the Dealer provided by the Dealer in this Dealer Agreement Schedule or as revised in accordance with the notice procedures set forth in this Section 8.4. All notices to Company shall be directed to the following address, facsimile number or email address (as applicable):

AutoWeb, Inc.  
400 North Ashley Drive, Suite 300  
Tampa, Florida 33602  
Facsimile: 949-797-0456  
Email: [dealersupport@autoweb.com](mailto:dealersupport@autoweb.com)  
Termination Notifications: [cancellations@autoweb.com](mailto:cancellations@autoweb.com)  
Attention: Dealer Support

**8.5 Marketing and Communications.** Except as may be required, as determined in good faith by the disclosing party, by applicable law, rules, regulations or orders or the rules of any securities exchange or market, neither party will make any public statement or release concerning this Dealer Agreement or any of the transactions contemplated by this Dealer Agreement, except for such written information as has been approved in advance in writing as to form and content by the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, (i) neither party shall have the right to review or approve any filings or other disclosures that the other party determines in good faith are reasonably required to be made in any filings with the Securities and Exchange Commission, with any other governmental agency, or any securities exchange or market; and (ii) Company may refer to the existence of this Dealer Agreement and to Dealer's name in sales and marketing communications and materials.

**8.6 Independent Parties.** The relationship of the parties is that of independent contractors. Nothing contained in this Dealer Agreement will be construed as creating a franchise, joint venture, agency, employment, partnership or fiduciary relationship among the parties hereto nor will any party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of any other party.

**8.7 Force Majeure.** Neither party will be liable hereunder by reason of any failure or delay in the performance of its obligations under this Dealer Agreement (except payment obligations) on account of labor or employment disruptions (including strikes or shortages); material shortages, interruptions in third party transportation or communications facilities, acts of God (including flood, storm, explosions, or earthquakes), Internet or telecommunication failures or outages, electricity blackouts or brownouts, war, riots, insurrection, terrorism, military action or criminal conduct (including but not limited to hackers), governmental action, or any other similar cause that is beyond the reasonable control of such party. A party experiencing a delaying event shall work diligently and promptly to mitigate the impact and length of the delay, and such shall be excused from performance, but only for so long as and to the extent that any force majeure prevents, restricts or interferes with that party's performance.

**8.8 Further Assurances.** Each party agrees to execute and deliver any and all further documents, and to perform such other acts, as may be reasonably necessary or expedient to carry out and make effective this Dealer Agreement.

**8.9 Choice of Law.** This Dealer Agreement, its construction and the determination of any rights, duties or remedies of the parties arising out of or relating to this Dealer Agreement will be governed by, enforced under and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws of such state.

**8.10 Severability.** Each term, covenant, condition, or provision of the Dealer Agreement will be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision will be deemed to be invalid or unenforceable, the arbitrator or court finding such invalidity or unenforceability will modify or reform the Dealer Agreement to give as much effect as possible to the terms and provisions of the Dealer Agreement. Any term or provision which cannot be so modified or reformed will be deleted and the remaining terms and provisions will continue in full force and effect.



**8.11 Interpretation.** Every provision of this Dealer Agreement is the result of full negotiations between the parties, both of whom have either been represented by counsel throughout or otherwise been given an opportunity to seek the aid of counsel. Each party hereto further agrees and acknowledges that it is sophisticated in legal affairs and has reviewed this Dealer Agreement in detail. Accordingly, no provision of this Dealer Agreement shall be construed in favor of or against any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof. Captions and headings of sections contained in this Dealer Agreement are for convenience only and shall not control the meaning, effect, or construction of this Dealer Agreement. Time periods used in this Dealer Agreement shall mean calendar periods unless otherwise expressly indicated.

**8.12 Dispute Resolution, Forum.**

(a) The parties consent to and agree that any dispute or claim arising hereunder shall be submitted to binding arbitration in Orange County, California, and conducted in accordance with the Judicial Arbitration and Mediation Service (“JAMS”) rules of practice then in effect or such other procedures as the parties may agree in writing, and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere. The parties hereunder further agree that (i) any request for arbitration shall be made in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen; provided however, that in no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statute(s) of limitations; (ii) the appointed arbitrator must be a former or retired judge or attorney at law with at least ten (10) years’ experience in commercial matters; (iii) costs and fees of the arbitrator shall be borne by both parties equally, unless the arbitrator or arbitrators determine otherwise; (iv) depositions may be taken and other discovery may be obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings; and (v) the award or decision of the arbitrator, which may include equitable relief, shall be final and judgment may be entered on such award in accordance with applicable law in any court having jurisdiction over the matter.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS DEALER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) The parties acknowledge and agree that money damages may not be a sufficient remedy for a breach of certain provisions of this Dealer Agreement, including but not limited to Article V, and accordingly, a non-breaching party may be entitled to specific performance and injunctive relief as remedies for such violation. Accordingly, notwithstanding the other provisions of this Section 8.12, the parties agree that a non-breaching party may seek relief in a court of competent jurisdiction for the purposes of seeking equitable relief hereunder, and that such remedies shall not be deemed to be exclusive remedies for a violation of the terms of this Dealer Agreement but shall be in addition to all other remedies available to the non-breaching party at law or in equity.

(d) In any action, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Dealer Agreement, or seeks a declaration of any rights or obligations under this Dealer Agreement, the prevailing party will be entitled to reasonable attorney’s fees, and subject to Section 8.12(a), reasonable costs and expenses incurred to resolve such dispute and to enforce any final judgment.

(e) No remedy conferred on either party by any of the specific provisions of this Dealer Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of one or more remedies by a party will not constitute a waiver of the right to pursue other available remedies.

**8.13 Counterparts; Execution and Authorized Persons.** This Dealer Agreement and any amendments, modifications, cancellation or waivers of the terms and conditions hereof may be executed in counterparts, each of which will be deemed an original hereof and all of which together will constitute one and the same instrument. This Dealer Agreement and any amendments, modifications, cancellation or waivers of the terms and conditions hereof may be executed by facsimile, digital signature, electronic signature, Electronic Transmission or PDF signature by either party and such signature shall be deemed binding for all purposes hereof, without delivery of an original signature being thereafter required. Absent notice from Dealer to Company that identifies specific individuals or positions at the Dealer who are authorized or not authorized to act on behalf of and to bind Dealer, Company may rely upon the execution of the Dealer Agreement or any amendment, modification, cancellation or waiver of the terms and conditions hereof, and upon any notice given hereunder, by any individual that Company reasonably believes to be acting on behalf Dealer.