

## DEALER AGREEMENT

This agreement ("Agreement") is entered into between Berkenpas Financial, Inc. d/b/a U Drive Acceptance Corporation ("Finance Company") located at 1119 4th Street, Suite 102., Sioux City, Iowa, 51101 an Iowa corporation, and \_\_\_\_\_ ("Dealer") located at \_\_\_\_\_, effective as of the date set forth under Finance Company's signature below.

Dealer sells motor vehicles ("Vehicle(s)") to retail buyers ("Buyer(s)") on credit pursuant to retail installment sales contracts ("Contract(s)"). Dealer may offer to sell Contracts to Finance Company, from time to time. This Agreement sets forth the terms and conditions under which Finance Company will buy Contracts from Dealer, and the rights and obligations of Dealer and Finance Company regarding said Contracts. In consideration of the mutual promises and agreements contained herein, Finance Company and Dealer agree as follows:

**1. Application Process and Purchase Price:** Dealer may forward credit applications ("Credit Application(s)") to Finance Company for Finance Company to consider purchasing the related Contract(s). Finance Company will review each Credit Application, make a credit decision and communicate its decision to Dealer. The credit decision will identify the terms under which Finance Company offers to purchase the related Contract, including the purchase price ("Offer"). Finance Company's Offer shall be valid for 30 calendar days. Finance Company shall, in its sole discretion, determine whether it will make an Offer to purchase any Contract. In the event an Offer is made, it shall be deemed a preliminary approval, and is subject to Finance Company's receipt of all the Required Documents (as hereinafter defined and set forth in Section 3) and satisfaction of the Contract Representations (as hereinafter defined and set forth in Section 6). If Dealer accepts Finance Company's Offer, it shall promptly notify Finance Company of such decision.

**2. Credit Programs:** Finance Company may make different credit programs available to Dealer from time to time ("Credit Program"). The terms associated with each Credit Program shall be detailed in separate program guidelines, or other similarly designated documents. Finance Company is not required to offer any particular Credit Program, and Finance Company may discontinue any Credit Program at any time, in its sole discretion.

**3. Conditions of Purchase:** The following conditions must be satisfied for Finance Company to purchase a Contract ("Conditions of Purchase"): (i) receipt by Finance Company of the original executed Contract, the signed Credit Application, and any other documentation associated with such Contract as Finance Company may reasonably require ("Required Documents"), (ii) satisfaction of any stipulation(s) set forth in the Offer (referred to collectively with the Contract as "Contract") and receipt of proof thereof, (iii) each of the Contract Representations set forth in Section 6 are true and

correct as to such Contract, and (iv) Dealer is not in default of this Agreement.

**4. Purchase of Contracts:** Dealer is not required to sell, and Finance Company is not required to purchase, any Contract(s). For each Contract upon which Finance Company has made an Offer and Dealer has accepted such Offer, Dealer shall execute and deliver to Finance Company an assignment of the Contract in a form acceptable to Finance Company, together with the Required Documents. Any such assignment shall include all rights, title and interest held by Dealer regarding such Contract, including, but not limited to, a security interest or lien on the applicable Vehicle. Unless purchased pursuant to a Credit Program that provides for recourse, any purchase of a Contract shall be without recourse, subject to the Repurchase obligations set forth in Section 7. Finance Company shall pay Dealer for the Contract promptly after all of the Conditions of Purchase set forth in Section 3 have been satisfied.

**5. Change in State of Affairs:** Notwithstanding any other provision in this Agreement, Finance Company may elect not to purchase a Contract (*e.g.*, not fund), if it determines in good faith that: (i) there has been a material adverse change in the condition of the Vehicle securing the Contract, (ii) there has been a material adverse change in the financial condition of any Buyer, (iii) there are facts or circumstances that would constitute a basis for demanding repurchase of a Contract under Section 7, or (iv) Dealer has become insolvent or the subject of a voluntary or involuntary Chapter 7 Bankruptcy petition filing. The foregoing right to refuse to purchase a Contract applies to every stage of the transaction between Dealer and Finance Company, including, but not limited to, after Dealer has received the Offer and/or Finance Company has received the Required Documents.

**6. Contract Representations Warranties and Covenants:** As of the date of this Agreement, each date Dealer forwards a Credit Application to Finance Company, and each date Finance Company purchases a Contract from Dealer – Dealer represents, warrants and covenants with respect to each Contract (“Collectively “Contract Representations”) the following:

**a. Application for Credit:** Each applicant Buyer, co-buyer, co-signer or guarantor, if any (referred to collectively with the Buyer as “Buyer”) on a Credit Application has expressed a definitive interest in purchasing a vehicle on credit from Dealer or has otherwise provided Dealer with written authorization to obtain a consumer report.

**b. Buyer:** Buyer has full legal capacity to enter into the Contract, and Buyer is a bona fide good faith purchaser in the ordinary course of Dealer’s business.

**c. Buyer’s Identity:** Dealer has verified the identity of Buyer. At a minimum, Dealer has reviewed a valid and unexpired driver’s license or other government-issued identification with a photograph. The procedures to verify identity are commercially reasonable and in compliance with applicable law. To the extent Dealer includes a photocopy of Buyer’s identification in submitting the Credit

Application or Required Documents to Finance Company to show compliance with this requirement, Dealer agrees to redact or “black-out” Buyer’s photograph prior to the submitting the photocopy to Finance Company. If there is a “fraud alert” or “active duty alert” on a Buyer’s consumer report, Dealer will comply with all FCRA (as hereinafter defined in Section 6(p)) requirements with respect to such alert, including performing additional due diligence to confirm the identity of the Buyer. Dealer further agrees to perform any other due diligence as reasonably requested by Finance Company. The provisions of this Section 6(c) shall apply to all Credit Applications submitted to Finance Company.

**d. Information:** Dealer furnished Finance Company all credit information received by Dealer relative to the Credit Application and Contract and such information is, to the best of Dealer’s knowledge, true, complete and accurate. All statements, documents and information furnished to Finance Company by Buyer, Dealer and all other persons are, to the best of Dealer’s knowledge, true, complete and accurate.

**e. Transaction:** The Contract fully and accurately sets forth the terms of the transaction between Dealer and Buyer, and accurately identifies all products and services sold and financed. Dealer has not made any oral or written promise, affirmation, warranty or representation to Buyer not contained in the Contract. The Buyer is the person who will primarily drive the Vehicle (*i.e.*, Buyer is not a “straw purchaser”). All products and services financed in the Contract have been delivered to Buyer and Dealer has paid for such products and services, along with any related labor and materials (as applicable).

**f. Contract:** The Contract is genuine, legally valid and fully enforceable in accordance with its terms and not subject to any offsets, counterclaims, rescission rights or defenses. Dealer has no knowledge of any fact that would impair the Contract’s validity or enforceability. The signature(s) of Buyer on the Contract and all other documents are genuine. Dealer has no knowledge of any event which indicates or suggests the prospective uncollectability of the Contract.

**g. Vehicle Cash Price:** The “cash price” of the Vehicle as shown on the Contract is the “cash price” as defined by applicable state and federal law and was not increased because the Vehicle is being sold on credit, to a member of a protected class under the ECOA (as hereinafter defined in Section 6(p)) or comparable state law, or sold to a member of the U.S. armed services. The “cash price” represents the fair retail market value of such Vehicle and was not overstated or inflated in any way.

**h. Down Payment and Credits:** Except as Dealer has disclosed to Finance Company in writing, Dealer has not extended credit to the Buyer or assisted the Buyer in obtaining credit to be used in whole or in part to provide the down payment. The down payment was paid in full – in cash, in trade-in equity or as otherwise disclosed to Finance Company in writing – and no part was loaned to Buyer, and no part was otherwise provided directly or indirectly by Dealer. Any credit or rebate provided to Buyer (*e.g.*, trade-in, Dealer rebate or manufacturer rebate) has been fully disclosed to Finance Company and is separately itemized in

the Buyer's order or Contract, and has not been included in the cash-portion of the down payment.

**i. Vehicle:** The Vehicle was delivered to and accepted by Buyer at Dealer's licensed place of business. The certificate of title to the Vehicle is not branded (*e.g.*, salvage, flood-damaged, rebuilt, etc.), the odometer of the Vehicle was not rolled back (at any time), the Vehicle does not have flood damage, the Vehicle is not a grey market vehicle, the Vehicle does not have frame damage and there is no other condition that would adversely affect the value of the Vehicle.

**j. Vehicle Title, Security Interest:** Dealer has good and marketable title to the Vehicle, has the right to sell the Vehicle to Buyer and has the right to assign its security interest in the Vehicle – free and clear of all other interests, claims and encumbrances. Dealer has applied for a certificate of title for the Vehicle and submitted all documents necessary to obtain and perfect a valid and enforceable first priority security interest of Finance Company in the Vehicle, within the time periods required by applicable law, and as necessary to prevent the avoidance of the security interest in a bankruptcy or other insolvency-type proceeding, or otherwise adversely affect the certificate of title and/or Finance Company's security interest.

**k. Taxes and Fees:** Dealer will promptly forward, pay and/or cause to be paid to the proper authorities all federal, state and local fees and taxes due in connection with the sale, financing, titling and/or registration of the Vehicle.

**l. Insurance:** The Vehicle is insured by fire, theft and comprehensive and collision insurance with deductibles not greater than \$500 fully protecting Finance Company's interest in the Vehicle and naming Finance Company as loss payee and a as an additional named insured. Dealer has verified the foregoing with Buyer's insurance agent or provider, and submitted satisfactory evidence thereof to Finance Company.

**m. Ancillary Products:** All "add on" or ancillary products, including, but not limited to, mechanical breakdown protection, service contracts, GAP, credit insurance, alarm systems or any other Finance Company-approved ancillary products ("Ancillary Products"), financed in the Contract comply with applicable law, all required disclosures were complete, accurate and properly made, and all documents required to be delivered have been delivered. If an Ancillary Product is a debt cancellation, debt suspension or insurance type product (*e.g.*, GAP, credit insurance), Dealer has notified Buyer in writing that Dealer does not require Buyer to purchase such product to obtain credit. If an Ancillary Product is of a type that can be offered in cash sales (*e.g.*, service contract, alarm system), Dealer has offered it for sale in comparable cash transactions at a price equal to that disclosed in the Contract, and Dealer has notified Buyer that Dealer does not require Buyer to purchase such product to obtain credit. For all Ancillary Products, the price for which it is sold represents the fair retail market value of such product and was not overstated or inflated in any way. Dealer will pay in full any Ancillary Product charges, fees or premiums to the companies that are providing them to ensure that such products will be in full force and effect for Buyer. Dealer has disclosed each Ancillary Product to Buyer and made clear to Buyer that the purchase of each

Ancillary Product is optional.

**n. Representations about Relationship with Finance Company:** Dealer has not represented and will not represent that the Dealer is Finance Company's agent or representative.

**o. Rate:** Dealer has made no representations, warranties, claims or other statements regarding the finance charge, including regarding obtaining the best rate, the lowest rate or similar claim.

**p. Compliance with Law:** All disclosures required by law to be provided to Buyer in connection with the Contract (*i.e.*, the sale and financing of the products and services) were complete, accurate and properly made by Dealer, and Dealer has complied with all applicable federal, state and local laws and regulations, including, usury laws, the Truth in Lending Act and Regulation Z, the Equal Credit Opportunity Act ("ECOA") and Regulation B, the Fair Credit Reporting Act ("FCRA"), Title V of the Gramm-Leach Bliley Act ("GLBA"), 12 U.S.C. § 5531 (which prohibits unfair, deceptive, or abusive acts or practices and is commonly known as "UDAAP"), the Federal Trade Commission Act (commonly known as "UDAP"), and all implementing regulations and rules, including the Federal Trade Commission's Trade Practice Rules, together with all other federal, state and local laws, regulations and rules applicable to the transactions contemplated hereunder.

Each of the Contract Representations is material to Finance Company's purchase of a Contract. The Contract Representations are not waived if Finance Company buys a Contract knowing that a Contract Representation has been/is breached. The Contract Representations and all other provisions of this Section 6 shall survive the execution, delivery, expiration or termination of this Agreement.

**7. Contract Repurchase:** In the event any Contract Representation is inaccurate, untrue or otherwise breached, Dealer shall repurchase the Contract ("Repurchase"). Dealer's Repurchase obligation applies whether or not the Buyer has defaulted. The Repurchase shall be without recourse, and paid in cash upon demand. Finance Company shall assign the Contract to Dealer "AS IS," without any warranties or representations, expressed or implied. The Repurchase price shall be the balance owed by Buyer to Finance Company, including repossession costs, attorney's fees and any other sums owed to Finance Company by Buyer and/or Dealer with respect to such Contract ("Repurchase Price"). Finance Company shall not be obligated to first repossess the Vehicle or otherwise exhaust its recourse against Buyer. Dealer's obligation to repurchase a Contract and the Repurchase Price will not be affected by Finance Company or Dealer's inability to obtain possession of the Vehicle or the physical condition of the Vehicle. Additionally, Dealer's repurchase obligations shall not be affected by the inability to obtain possession of the Vehicle or the physical condition of the Vehicle. The provisions set forth in this Section 7 shall survive the execution, delivery, expiration or termination of this Agreement.

**8. Notices to Buyer Required by Law:** Dealer will provide to all prospective Buyers

for whom a Credit Application was submitted to Finance Company and to Buyers for whom Finance Company has purchased a Contract, any and all notices required by applicable law, including, but not limited to, adverse action notices and Risk Based Pricing notices that may be required under the ECOA and Regulation B, and the FCRA and the Risk-Based Pricing Rule. Dealer shall notify each prospective Buyer for whom a Credit Application is submitted to Finance Company that their Credit Application is being submitted to Finance Company, together with Finance Company's current address.

**9. Failure to Maintain Vehicle Insurance:** Dealer agrees to pay Finance Company for any loss suffered as a result of the Buyer's failure to have insurance in place at the time Finance Company purchases the Contract.

**10. Responsibility for Underlying Sale:** Dealer shall have the sole responsibility for the underlying sale transaction and for the nature, quality, and performance of the Vehicle, and Ancillary Products. Dealer will make a good faith effort to resolve any disputes with Buyers concerning the underlying sale transaction.

**11. Information and Payments Received By Dealer:** After purchase of a Contract by Finance Company, Dealer will not accept any payments on the Contract and will direct Buyer to Finance Company. If for some reason, Dealer receives payment on the Contract or written communication with respect to a Contract, Dealer will hold it in trust for the benefit of Finance Company, and will promptly forward it to Finance Company. The provisions of this Section 11 shall survive the execution, delivery, expiration or termination of this Agreement.

**12. Insurance And Service Contract Refunds And Rebates:** If a Contract is prepaid in full, an Ancillary Product is cancelled, or Dealer accepts the return of an Ancillary Product, Dealer shall work with Finance Company to ensure that any refund, rebate, credit and/or unearned premium due Buyer ("Refund") is credited to the Buyer's Contract or returned to the Buyer, in compliance with applicable law. If Dealer receives a Refund or notice of potential Refund, Dealer shall immediately notify Finance Company of such. The provisions of this Section 12 shall survive the execution, delivery, expiration or termination of this Agreement.

**13. Buyer Voluntary Surrenders:** In the event a Buyer attempts to return or surrender a Vehicle to Dealer, which is the subject of a Contract purchased by Finance Company (*e.g.*, a voluntary repossession), Dealer shall immediately notify Finance Company and take all reasonable steps necessary to secure and deliver possession of the Vehicle to Finance Company as soon as practicable.

**14. GPS and Starter Interrupt Devices:** Finance Company may elect to buy a Contract only if the Vehicle that secures it is equipped with a GPS or starter interrupt device ("Device"). In such event, Dealer agrees to install and activate the Device as set forth in the applicable Credit Program guidelines and/or rate sheet, and in full

compliance with applicable law. Finance Company may require that Dealer purchase the Device; and in such event, Dealer agrees that it will not pass the cost of the Device on to the Buyer, and further that it will not require Buyer to pay for the installation or removal of the Device. Dealer further agrees that Buyer must voluntarily consent to the Device. Dealer agrees to have Buyer sign an addendum to the Contract, on a form approved by Finance Company (“Device Addendum”). At a minimum, the Device must have, and the Device Addendum must describe, emergency access to override any disablement of the vehicle.

**15. Privacy and Data Security:** Dealer shall comply with all federal and state privacy and data protection laws, rules and regulations. Without limiting the general application of the preceding sentence, in the course of its performance under this Agreement, Finance Company and Dealer may disclose to each other or may receive personal information regarding consumers that is sensitive, private or otherwise nonpublic in nature (hereinafter referred to as “Personal Information”). A subset of Personal Information is information that meets the definition of nonpublic personal information, as that term is defined under the GLBA (“Nonpublic Personal Information”). The parties acknowledge and understand that privacy, data protection and identity theft protection laws and regulations may use terms such as personal information, sensitive information and nonpublic personal information. The intention of the parties is for Personal Information to include such terms and definitions.

**a.** Dealer agrees that it will not use or disclose Nonpublic Personal Information to any nonaffiliated third party except (i) to the extent necessary to carry out the purpose or purposes for which Finance Company discloses the information to Dealer, (ii) in the ordinary course of business to carry out the purpose or purposes for which the Nonpublic Personal Information was disclosed, and/or (iii) as permitted by law and this Agreement. Dealer shall maintain physical, electronic and procedural safeguards in compliance with applicable laws to protect the Nonpublic Personal Information, including, but not limited to, the maintenance of appropriate safeguards to restrict access to Nonpublic Personal Information to those employees, agents or service providers who need such information to carry out the purpose or purposes for which such Nonpublic Personal Information was disclosed.

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

The provisions of this Section 15 shall survive the execution, delivery, expiration or termination of this Agreement.

**16. Representations, Warranties and Covenants of Dealer:** As of the date of this Agreement, each date Dealer forwards a Credit Application to Finance Company, and

each date Finance Company purchases a Contract from Dealer – Dealer represents, warrants and covenants the following:

**a. Organization:** Dealer is a corporation, limited liability company or limited partnership, duly organized, validly existing, qualified and authorized to transact business in, and is in good standing under the laws of the jurisdiction of its organization and each jurisdiction in which it performs or will perform its obligations under this Agreement.

**b. Capacity, Authority, Validity:** Dealer has the power, authority and legal right to execute, deliver, and perform this Agreement and its obligations. The execution, delivery and performance of this Agreement by Dealer has been duly authorized by all necessary action, and this Agreement is enforceable against Dealer in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, and other laws relating to or affecting creditors' rights generally and by general equity principles.

**c. Licenses:** Dealer is, and throughout the term of this Agreement will remain, duly authorized and properly licensed under all applicable laws to transact business as presently conducted, and to perform the transactions contemplated under this Agreement.

**d. Compliance with Law:** All business practices, acts and operations of Dealer are in compliance with all applicable federal, state and local laws, regulations and ordinances.

**17. Power of Attorney:** Dealer hereby appoints Finance Company and its authorized officers and attorneys-in-fact, as its true and lawful agents and attorneys-in-fact, with full power and authority to do any and all things necessary or appropriate in Dealer's name to carry out the intent of this Agreement, including, but not limited to, signing and endorsing the name of Dealer to any assignment of a Contract and endorsing Dealer's name on payment checks applicable to Contracts purchased by Finance Company.

The aforementioned power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that Finance Company will be relying upon this power to act as contemplated by this Agreement. This power of attorney shall extend to Dealer's successors and assigns. Dealer shall execute and deliver to Finance Company, within 15 calendar days of receipt of the Finance Company's request, such further designation, powers of attorney and/or other instruments as Finance Company deems necessary to effectuate this power of attorney.

**18. Sales Tax Credit for "Bad Debt":** Dealer acknowledges that the laws of certain states permit a credit or refund for sales tax financed by installment sale contracts that go into default. Dealer agrees that all of its right, title and interest in any funds related to Contracts purchased by Finance Company hereunder are hereby assigned, transferred and relinquished to Finance Company. Specifically, unless prohibited by law, Dealer agrees that it has not and will not claim a credit or refund with respect to any such Contracts, and it relinquishes to Finance Company all right to claim such credit or



refund. Dealer agrees that any such credit or refund mistakenly received by Dealer shall be remitted to Finance Company to be applied to the Buyer's obligations under the applicable Contract. Dealer agrees to furnish any and all documentation or information that Finance Company may reasonably request to support any claim for such refund or credit.

**19. Changes to Dealer:** Dealer shall notify Finance Company of any material or significant change in Dealer's ownership, organization or business, including the death of a principal, whether a shareholder, general partner, or owner, a dissolution, merger, consolidation, or reorganization, or a conversion to another form of legal entity or type of business. Such notice shall be provided 30 calendar days before such change or, if unknown to Dealer before the change, then within 30 calendar days after Dealer has knowledge of such change.

**20. DMV, Regulator or Floorplanner Actions:** Dealer shall notify Finance Company of any Department of Motor Vehicle (or analogous state agency) or other regulator (state or federal) claim, action, proceeding or other charge ("Regulator Charge") against Dealer within 3 business days of receiving the Regulator Charge. Dealer shall also notify Finance Company of any claim against Dealer by its floorplanner or other similar creditor ("Creditor Claim"), within 3 business days of receiving the Creditor Claim.

**21. Setoff:** Dealer agrees that Finance Company has the ongoing right to deduct from any funds, deposit, account, obligation or other amounts due Dealer by Finance Company, whether under this Agreement or any other agreement, any and all amount(s) Dealer owes Finance Company or its affiliates.

**22. Indemnity:** Dealer agrees to indemnify, defend and hold Finance Company, and its respective shareholders, directors, officers, employees, representatives, agents, servants, successors and assigns, harmless from and against any and all claims, losses, damages, injuries, liabilities, costs, expenses, actions, suits and proceedings, including, but not limited to, court costs and attorney's fees, arising out of or relating to (i) Dealer's breach of this Agreement, (ii) Dealer's maintenance, use or disclosure of Buyer's information (including Personal Information), (iii) Dealer's evaluation of Buyer for financing, (iv) Dealer's pricing of the Vehicle or pricing of the credit as relates to the Buyer, (v) Dealer's denial of financing, or other adverse action, relating to a Buyer, or (vi) any actions or failure to act of Dealer in connection with the Credit Applications and Contracts sold by it under this Agreement. The provisions of this Section 22 shall survive the execution, delivery, expiration or termination of this Agreement.

**23. Books and Records:** Dealer shall maintain complete and accurate records concerning the following (i) Credit Applications forwarded to Finance Company for consideration, (ii) any Contract sold to Finance Company, (iii) any Vehicle that is the subject of a Contract sold to Finance Company, and (iv) any Ancillary Product that is the subject of a Contract sold to Finance Company ("Dealer Records"). Finance Company

has the right to review and inspect Dealer Records upon reasonable notice to Dealer (which shall in no event be less than 5 business days), during normal business hours. Dealer shall reasonably cooperate with Finance Company during such review and inspection.

**24. Further Assurances:** Dealer agrees to perform all acts and execute all supplementary instruments or documents that may be necessary to carry out the provisions of this Agreement.

**25. Default:** Each of the following shall constitute an event of default by Dealer under this Agreement (i) any representation, warranty or covenant contained in this Agreement, with the exception of the Contract Representations, proves untrue or misleading in any material respect, (ii) Dealer fails to pay Finance Company any indebtedness when due or fails to perform any other obligation hereunder, after written notice and a 30 business day opportunity to cure, (iii) Dealer ceases to do business as a going concern, (iv) Dealer becomes insolvent or makes any assignment for the benefit of creditors, or any bankruptcy, reorganization, arrangement, receivership, insolvency or other state or federal proceeding for the relief of debtor is commenced by or against it and is not dismissed within 30 business days of such filing.

Should Dealer be in default, including, but not limited to, failing to complete a Repurchase, Finance Company may cease paying Dealer for any Contract purchases, or otherwise any amounts due Dealer, until Finance Company is paid in full.

**26. Applicable Law:** This Agreement shall be governed by the laws of the State of Iowa, without regard to its conflicts of law provisions.

**27. Severability:** Should any provision of the Agreement, or any phrase, sentence, clause or paragraph be determined to be unenforceable, such enforceability shall not affect any other term or condition of this Agreement; rather, this Agreement shall be construed as if such invalid, illegal, or unenforceable term or condition had never been contained in the Agreement.

**28. Effective Date and Termination:** This Agreement shall become effective as of the date set forth under Finance Company's signature below and shall be binding on Dealer and Finance Company and any respective successors and/or assigns as to all Contracts Dealer sells to Finance Company whether before or after the effective date until terminated by receipt of written notice by either party from the other. Finance Company or Dealer may terminate this Agreement at any time upon 30 calendar days prior written notice to the other party. Such termination shall in no way affect or relieve either party from any obligation or liability incurred prior to the effective date of termination.

**29. Jurisdiction and Venue:** Dealer and Finance Company agree that any dispute

arising out of, related to or in connection with this Agreement shall be adjudicated in the state of Iowa. As applicable, Dealer consents to personal jurisdiction in the state of Iowa.

**30. Attorney's Fees and Costs:** In the event an action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs, including, but not limited to, attorneys' fees and court costs.

**31. Modification and Assignment:** Finance Company can modify and amend this Dealer Agreement at any time by written notice to Dealer. Each time Dealer sends Finance Company a Credit Application and/or accepts payment for a Contract, Dealer expresses its agreement to and acceptance of the then current terms of the Dealer Agreement. Dealer may not assign this Agreement without the prior written consent of Finance Company. Finance Company may assign this Agreement upon written notice to Dealer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**32. Waiver and Remedies:** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. No failure or delay by a party to insist upon the strict performance of any term or condition under this Agreement or to exercise any right or remedy available under this Agreement at law or in equity, and no course of dealing between the parties, shall imply or otherwise constitute a waiver of such right or remedy, and no single or partial exercise of any right or remedy by any party will preclude any other or further exercise thereof. All rights and remedies provided in this Agreement are cumulative and not alternative; and are in addition to all other available remedies at law or in equity.

**33. Entire Agreement:** This Agreement (including any addenda, schedules, or exhibits referenced herein or attached hereto) constitutes the entire agreement between the parties relating to the subject matter hereof.

**34. Miscellaneous:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. A facsimile copy of a signature shall be treated as an original. Headings at the beginning of each paragraph are for convenience only and are not intended to otherwise influence or affect the interpretations of any provision of this Agreement.

**35. Notices:** All notices required or permitted to be given must be in writing to the addresses provided above in the first paragraph of this Agreement (unless changed as described in this Section 35), and will be effective: upon receipt if by personal delivery or facsimile; the next business day if by overnight delivery service; or 5 business days, if

by U.S. mail, postage prepaid and properly addressed.

**36. Independent Contractor:** The relationship between Dealer and Finance Company is that of an arm's length seller and purchaser of consumer installment sale contracts, or independent contractor, and shall not be construed as a joint venture, partnership or principal-agent relationship or contractual servicer of consumer installment sale contracts, and there is no intention to create any partnership, joint venture, principal-agency or servicer relationship. This Agreement shall not be construed as authority for either party to act for the other in any agency or any other capacity or to make commitments of any kind for the account of or on behalf of the other, except as expressly set forth in this Agreement, or otherwise agreed to by the parties in writing

**37. Communications with Dealer:** Dealer authorizes Finance Company to send faxes and e-mails to Dealer at any facsimile numbers and e-mail addresses provided to Finance Company by Dealer. Dealer also authorizes Finance Company to send electronic communications via Dealertrack, RouteOne or similar dealer management software and communication portals, as applicable.

**38. WAIVER OF JURY TRIAL. THE PARTIES HERETO RECOGNIZE AND AGREE THAT ANY CLAIM, DISPUTE OR OTHER CONTROVERSY BETWEEN THE PARTIES UNDER THIS AGREEMENT, ANY SCHEDULE OR ADDENDA HERETO, OR ARISING OUT OF THE RELATIONSHIP CREATED BY THIS AGREEMENT OR ANY SCHEDULE OR ADDENDA HERETO, WOULD INVOLVE DIFFICULT AND COMPLEX ISSUES THAT WOULD BE MORE APPROPRIATE TO TRY BEFORE A JUDGE WITHOUT A JURY. THE PARTIES DESIRE TO MINIMIZE THE DELAYS, TIME AND EXPENSES THAT ARE INHERENT IN JURY TRIALS AND TO EXPEDITE THE RESOLUTION OF ANY SUCH CLAIMS, DISPUTES AND CONTROVERSIES. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT, OR ANY TRANSACTIONS CONTEMPLATED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY SCHEDULE OR ADDENDA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY RELATED DOCUMENT.** This provision is a material inducement for the parties entering into the subject transaction.

**39. Independent Counsel and Interpretation:** Dealer and Finance Company acknowledge and agree that they have been or have had the opportunity to be represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement. Accordingly, it is agreed that any legal rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

**IN WITNESS WHEREOF,** Finance Company and Dealer have executed this Agreement

with proper authority effective as of the date set forth herein.

**FINANCE COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEALER:** \_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_