



# CRB AUTO

*Where Relationships Matter*

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## CALIFORNIA REPUBLIC BANK – (FRANCHISE) DEALER AGREEMENT (CALIFORNIA)

This Agreement is made and entered into by and between \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Dealer") and California Republic Bank, a California Corporation, with its principal place of business at \_\_\_\_\_, Irvine, California \_\_\_\_\_ (hereinafter "CRB") entered into on \_\_\_\_\_. Dealer sells new and used cars to retail buyers, co-buyers, and guarantors (hereinafter referred to individually or collectively as appropriate for the context as "Obligor"), on an installment basis under retail installment sales contracts (hereinafter "RISC"). Dealer desires to sell RISCs to CRB. CRB purchases and/or discounts RISCs, and desires to purchase from Dealer RISCs that have been approved by CRB. Therefore, and in consideration of the provisions set forth herein and the mutual benefits to be derived there from, the parties agree as follows:

### ARTICLE I. CONTRACT ACQUISITIONS

#### Section 1.1. DEALER'S GENERAL REPRESENTATIONS, WARRANTIES, AND COVENANTS

Dealer makes the following representations, warranties, and covenants, which are material to CRB entering into this Agreement, are material CRB's purchase of each RISC assigned to it by CRB, and shall control over any contrary provision in any assigned RISC:

##### (a) **Due Organization, Licensure, Good Standing, and Continuity.**

Dealer (a) is duly organized, validly existing, and in good standing under the laws of its State of organization, and is in good standing under the laws of State of California; (b) has full power and authority necessary to carry on its business and to enter into this Agreement; (c) is in compliance with all applicable laws, including such laws relating to doing of business under a fictitious name; (d) has obtained and maintained as current all licenses, certificates of occupancy, permits and authorizations, governmental or otherwise, to conduct its business; and (e) has filed all required Federal, State, county, municipal income tax returns, and sales and use tax returns, and has paid all required taxes; (f) has not been and shall not be subject to any of the notice-triggering events set forth in Article I, Section 1.1(d)(1)-(4), (g) has not and will not sell, transfer, or otherwise dispose of its assets except in the ordinary course of business; and (g) has not and will not consolidate with or merge into any other business concern.

(b) **Dealer's Compliance with Nondiscrimination Laws.** Dealer has treated and will treat all Obligors fairly without regard to race, color, national origin, gender, religion, age, marital status, sexual orientation, disability or any other basis prohibited by law, and the conduct of Dealer in originating any RISC offered to CRB will not subject CRB to suit or administrative proceeding under any State or Federal law, rule or regulation which may apply to the transaction, including without limitation, the Federal Truth in Lending Act and Regulation Z, the Federal Equal Credit Opportunity Act and Regulation B, and any retail installment sales act or comparable law or regulation of any State.

(c) **Dealer's Compliance with Privacy Laws.** Dealer agrees to comply with all privacy and data protection laws, rules and regulations, and has implemented and will maintain appropriate safeguards, procedures, and security measures to all protect non-public personal information or Customer Information (as defined in 16 C.F.R. § 314.2(b)).

**(d) Notices Regarding Operation of Business.**

**(i) Change of Ownership.** Within ten (10) business days of such event, and prior to submitting additional RISCs to CRB, Dealer shall inform CRB in writing of any change in corporate officers, change in ownership of its equity interests exceeding 10%, or change in name or corporate status. Time is of the essence.

**(ii) Charges.** Within three (3) business days of notice of such event, Dealer shall notify CRB in writing of any state or federal actions, administrative or criminal charges, claim or charge. Time is of the essence.

**(iii) Claims or Suits.** Within three (3) business days of notice of such event, Dealer shall advise CRB in writing of notice of any claim, demand, legal, investigative or administrative proceeding related to any RISC that was assigned to CRB. Time is of the essence.

**(iv) Insolvency.** Dealer shall immediately advise CRB if it ceases to transact business as a going concern, a petition in bankruptcy for insolvency or for the appointment of a receiver is filed by or against the Dealer, a creditor's committee is named for the Dealer, the Dealer makes an assignment for the benefit of creditors, the dealer makes a "bulk sale", or an attachment or execution is levied upon the property of the Dealer and such attachment or execution is not released within a period of ten (10) calendar days. Time is of the essence.

**Section 1.2. Dealer's Specific Representations and Warranties as to Each Assigned RISC.**

**(a) RISC Valid and Enforceable.** The RISC is valid and enforceable by CRB in all respects against each Obligor, and there are no defaults, disputes, offsets, legal or equitable defenses, or counterclaims against the RISC or the vehicle. Each Obligor is solvent and financially able to pay the RISC.

**(b) Obligor Capacity and Identity.** Obligor is of legal age, legal residency of the United States, and competent to execute the RISC. Dealer verified Obligor's identity by use of a driver's license or other identification document which contains the Obligor's photograph issued by the person's State of residency, and verified Obligor's identity in compliance with the Fair Credit Reporting Act, FACT Act, Consumer Credit Reporting Agencies Act, and federal and state Red Flag Rules: Dealer delivered to CRB the Credit Application and all credit information supplied by Obligor, and all such information is true, complete, and accurate.

**(c) Received Goods and Services.** Obligor took delivery of the Vehicle at the time of sale, and such vehicle was free of any prior liens or title defects, including but not limited to salvage, flood, 'lemon law', frame damage, or taxi usage. Each Obligor received a completed signed copy of their RISC and any other document required by law, and in the sequence required by law. All agreements between the Dealer and Obligor are contained in a single document, except where otherwise permitted by law. Any extended service agreement, mechanical breakdown protection, or other ancillary product (including but not limited to any Credit, Life and Disability Insurance, GAP Insurance, or Debt Cancellation Agreements) sold under the RISC is optional to the Obligor; has been agreed to, paid for, and signed for by the Obligor; and has been placed with the third party vendor responsible for such item.

**(d) Obligor Paid in Good Funds.** Obligor fully paid the Down Payment in cash; no part of the Down Payment was loaned or deferred. If any portion of the Down Payment was deferred, such payments are accurately itemized on the face of the RISC, such payments were timely paid-in-full per the schedule disclosed on the RISC, and the deferral, payment schedule, and disclosure thereof comply with all state and federal laws.

**(e) No Disputes or Misrepresentations.** Neither Dealer nor its agents or employees induced the Obligor to enter into the RISC by any intentional or negligent misrepresentation or

omission of fact. Neither Dealer nor any of its agents or employees made any oral or written promise to the Obligor that is not contained in the RISC or that contradicts any term in the RISC.

(f) **Disclosures and Compliance with Law.** The transaction, including the RISC itself as well as the application for the extension of credit, complies with all applicable laws and regulations including, without limitation, the Fair Credit Reporting Act, the FACT Act (including risk-based pricing rules), the Consumer Credit Reporting Agencies Act, federal and state Red Flag Rules, the Equal Credit Opportunity Act, the Federal Truth in Lending Act, Regulation Z, the FTC Used Motor Vehicle Trade Regulation Rule, the Federal Trade Commission Act, the Magnuson-Moss Warranty Act, the Song-Beverly Act, the Car Buyers' Bill of Rights, California Civil Code § 1632, the Rees-Levering Automobile Sales Finance Act and all other federal, state, and local laws, rules and regulations that apply to the extension of credit, consumer transactions or the sale or financing of the vehicle or goods and services covered by the RISC.

(g) **Valid and Clear First Lien; Title and Perfection.** The RISC covers a vehicle, goods or services sold by Dealer free and clear of all liens, security interests, claims, encumbrances, or title defects, including but not limited to title branding or competing liens, or security interests. Within twenty (20) days from the RISC date, or less than twenty (20) days if required by law or California DMV regulations, Dealer will apply to the California DMV for a valid Certificate of Title evidencing the Obligor's ownership of the vehicle described in the RISC, and reflecting CRB's security interest. CRB has a valid first priority lien and security interest in the vehicle described in the RISC, will be entitled to enforce its rights in the vehicle with priority and as provided in the RISC documents, and will receive the Certificate of Title (or comparable electronic evidence) reflecting perfection of CRB's security interest within sixty (60) days of the Obligor's execution of the RISC.

(h) **Dealer to Pay Taxes.** Dealer shall promptly forward to the proper authorities all Federal, State and local fees and taxes due in connection with the sale and financing of the vehicle, goods and services, and shall accurately calculate, segregate, itemize, and disclose all taxes and fees due to such agencies. Dealer shall be responsible for returning to Obligor any excess taxes or fees paid to such agencies.

### **Section 1.3. Required Documents.**

Dealer agrees to supply CRB with all documents CRB shall require as a condition of purchasing or accepting assignment of any RISC as part of CRB's approval process, which CRB may change or revise at its exclusive discretion.

### **Section 1.4. Power of Attorney.**

Dealer grants to CRB a power of attorney to endorse and deposit all checks made payable to Dealer; to sign and endorse documents necessary to protect CRB's security interest in or to register the vehicle; or to sign and endorse any other document necessary to perform Dealer's or CRB's obligations relevant to any RISC originated by Dealer and purchased by CRB.

### **Section 1.5. Payments by Obligors.**

Dealer agrees to remit in kind all funds collected or received as payment on RISCs purchased by CRB, such remittances to be made within twenty-four (24) hours of receipt from Obligor. Dealer agrees that it is responsible to CRB for any payments received by Dealer regardless of loss thereof as the result of misplacement, theft, embezzlement or dishonesty by the agents or employees of Dealer.

## **ARTICLE II. DEFENSE AND INDEMNIFICATION**

### **Section 2.1. Dealer Repurchase.**

If CRB becomes aware of any facts or allegations which would constitute a breach of any warranty, representation, or covenant by Dealer or which could provide the Obligor with a right of dispute, offset, legal or equitable defense, or counterclaim against the RISC or the vehicle, Dealer shall repurchase the RISC within ten (10) calendar days from written or oral demand by CRB. No adjudication of fact or allegation is required before Dealer's obligation arises; Dealer's obligations shall exist whether such allegations are groundless, false, or fraudulent.

### **Section 2.2. Defense; Indemnity; Hold Harmless.**

Dealer agrees to defend, save, indemnify and hold CRB harmless to the full extent of any and all liabilities, settlements, funds, judgments, attorneys' fees and/or costs which may be incurred or expended by CRB in connection with any demand, investigation, claim, administrative proceeding or lawsuit which may be directed to CRB or to which CRB may be made a party arising out of Dealer's origination or servicing of any RISC or arising from allegation or facts which could constitute a breach of any representation, warranty, or covenant in this Agreement. Dealer's obligations shall exist whether such allegations are groundless, false, or fraudulent. Dealer's obligations shall exist notwithstanding the existence of direct claims against CRB. On demand by CRB, Dealer shall (i) repurchase any Contract, (ii) reimburse CRB for any attorneys' fees and costs incurred, (iii) defend, indemnify, and hold CRB harmless from and against any such demand, investigation, claim, administrative proceeding or lawsuit. Dealer's obligations shall survive termination of this Agreement. CRB's continued servicing of any RISC shall not affect or waive CRB's demand or rights.

**Section 2.3.** The repurchase price of the RISC shall be equal to the then remaining amounts owing with respect to such RISCs, including, without limitation, all unpaid principal, accrued and unpaid interest, and all other amounts due and payable under or pursuant to the RISC, together with any costs, expenses, and attorneys' fees incurred by CRB, including any costs associated with collection of the RISC or repossession of the vehicle.

### **Section 2.4. Offset.**

CRB shall have a right of offset, without notice or demand, to deduct from any funds, deposit, account, obligation or any other amounts due from Dealer, including without limitation any repurchase price or any chargeback amount. CRB's offset rights exist whether or not Dealer participates in the Dealer Reserve Program.

## **ARTICLE III. DEALER RESERVE PROGRAM**

**Section 3.1.** This Dealer Reserve Program (hereinafter "DRP") is part of this Dealer Agreement entered into by Dealer, unless declined where indicated below. Dealer is not obligated to participate in the Dealer Reserve Program.

**Section 3.2.** In addition to the Purchase Price, CRB will pay Dealer a reserve ("Dealer Reserve"), based on the Ratio Method:  $(\text{Contract Rate} - \text{Buy Rate}) / (\text{Contract Rate} \times \text{Finance Charges}) = \text{Dealer Reserve}$ . The "Contract Rate" is the APR provided on the Contract. The "Buy Rate" is the rate provided in the preliminary approval of the Application and in the offer to purchase the related Contract. The "Finance Charges" are the total amount of finance charges to be paid by the Obligor as disclosed on the Contract. The maximum annual percentage rate that may be added to the Buy Rate to produce the Contract Rate will be set forth in our current Rate Sheet.

**Section 3.3.** The Dealer Reserve shall equal \_\_\_\_ percent of the amount calculated in accordance with the formula defined in Section 3.2. The remaining \_\_\_\_ percent will be retained by CRB and Dealer shall have no right or interest in such amounts at any time.

**Section 3.4.** Provided that the Dealer is not in default under the Dealer Agreement or otherwise does not owe CRB any amount, CRB will pay the Dealer Reserve on a monthly basis in the month following the purchase and funding of the related RISC. If Dealer is in default of the Dealer Agreement or otherwise owes us any amount, no obligation to pay any of the Dealer Reserve shall arise. Dealer shall not be entitled to any interest on the Dealer Reserve.

**Section 3.5.** CRB will establish a reserve account ("Reserve Account"). The Reserve Account shall be evidenced solely by entries on CRB books and Dealer shall have no right, title or interest in the Reserve Account except as expressly provided herein. The Reserve Account is not an actual bank account rather it is a credit to an "account" or "register", even if an actual bank account is maintained.

**Section 3.6.** The Dealer Reserve is subject to chargeback if before the first three regularly scheduled payments, the Contract is cancelled, prepaid, charged off or terminated for any reason, the vehicle is repossessed, or the Dealer is obligated to repurchase the Contract. In such event, CRB may charge the Reserve Account a sum equal to a pro-rated Dealer Reserve calculated based on the term remaining on the Contract.

**Section 3.7.** CRB may terminate or modify this DRP, the calculation of the Dealer Reserve or programs related thereto at any time by written notice.

**Section 3.8.** If Dealer reaches "Inactive" status, CRB can charge and collect as a fee for its efforts an amount not to exceed 25% of the proceeds it receives from the collection of any previously charged off RISCs. In addition, CRB shall earn and receive a fee of \$250 on a repossessed vehicle which is the subject collateral on any RISC Dealer fails to repurchase within 10 days of notification as required above. Dealer shall be considered "Inactive" if CRB has not purchased five (5) or more contracts over the prior three (3) month period, or, if CRB has not purchased any contracts over the prior 45 day period.

**Section 3.9.** CRB has the right to apply the whole or any part of the Reserve Account in satisfaction of any delinquent obligation of Dealer under this Agreement or otherwise, regardless of whether the delinquent obligation would constitute or deplete the entire Reserve Account. The remedy of CRB to apply money from the Reserve Account is cumulative with all other remedies and CRB may at any time pursue any other right or remedy which CRB may have against Dealer. No prior notice to Dealer is required to implement the repurchase of a Contract and transfer of the entire payoff amount from the Reserve Account to CRB, but CRB shall notify Dealer of such repurchase and transfer within a reasonable period of time thereafter. This right of offset shall include the right to offset, debit, or retain sums in any Reserve Account.

**Section 3.10.** The Undersigned Dealer declines to participate in the Dealer Reserve Program:

\_\_\_\_\_.

## **ARTICLE IV. GENERAL PROVISIONS**

### **Section 4.1. No Agency.**

Dealer is not the agent or employee of CRB. The relationship of Dealer and CRB shall be that of an independent contractor rendering professional services. Nothing in this Agreement shall be deemed to create a relationship of employer and employee, or principal and agent, joint venturer or partner. Neither Dealer nor any of its employees shall have any authority to represent themselves as employees of CRB, or to execute contracts or make commitments on CRB's behalf. Nothing in this Agreement shall require CRB to purchase any or all RISCs from Dealer, or require Dealer to sell all RISCs to CRB exclusively.

## **Section 4.2. Novation; Integration; No Oral Modification.**

This Agreement shall supersede any and all prior similar agreements entered into by and between the Dealer and CRB, and shall act as a novation thereof. This Agreement is a final expression of the Agreement by and between Dealer and CRB and may not be contradicted by evidence of any alleged oral agreement. Dealer and CRB affirm that no unwritten oral agreement(s) exist. No modification of this Agreement shall be valid unless in writing and signed by the party to be charged.

## **Section 4.3. Banking.**

When electronic funds transfer (EFT) is authorized by separate agreement between the parties, the Dealer shall promptly notify CRB of any changes in established banking relationships stated in that authorization.

## **Section 4.4. Legal Notice Addresses.**

Any notices required under this Agreement shall be directed to the addresses set forth in the first paragraph of this Agreement by United States Postal Service, first class postage pre-paid or by overnight courier service. Dealer shall notify CRB in writing thirty (30) days in advance of any change in mailing or agent for legal service of process address or business location address change or additional location(s).

## **Section 4.5. Facsimile or Electronic Mail Notice.**

Dealer expressly consents to CRB sending communications to Dealer via facsimile or electronic mail at the number(s) or e-mail address(s) provided by Dealer and to any number or e-mail address Dealer may require.

## **Section 4.6. Transferability.**

This Agreement shall not be assigned or transferred without the prior written consent of CRB.

## **Section 4.7. Waiver.**

CRB's failure to exercise any of its rights shall not operate as a waiver of any such rights, and such rights shall continue until all Contracts have been paid in full. All of CRB's rights shall be cumulative and not in the alternative.

## **Section 4.8. Termination.**

This Agreement may be terminated by either party upon giving the other party written notice of election to terminate and may be based on the sole discretion of either party and for whatever reason. The rights and obligations of the parties as to RISCs purchased by CRB pursuant to this Agreement shall survive the termination of this Agreement.

## **Section 4.9. Joint and Several Liability.**

In the event Dealer consists of more than one person or entity, the obligations of Dealer are joint and several.

## **Section 4.10. Partial Invalidity.**

If a court of competent jurisdiction holds any provision of this Agreement to be unlawful, unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected.

## **Section 4.11. Captions.**

Captions and titles shall not affect the interpretation of the body of this Agreement.

#### **Section 4.12. Choice of Law and Venue.**

This Agreement shall be governed by the laws of the State of California. Venue of any suit brought by either party shall be in the Superior Court of the State of California in and for the County of Orange.

#### **Section 4.13. Executed In Counterparts.**

This Agreement may be executed in counterpart originals by the parties, and in compliances with the Electronic Signatures in Global and National Commerce Act ("E-sign Act"), with each to have the full force and effect of an original for all purposes. This Agreement shall inure to the benefit of and bind the parties, their heirs, personal representatives, successors and assigns.

#### **Section 4.14. Advice of Counsel.**

Dealer and CRB do hereby acknowledge and agree that they have been or have had the opportunity to be represented by independent legal counsel of their own choosing throughout all negotiations which proceeded the execution of this Agreement and that they have executed this Agreement with the consent and upon advice of said independent counsel. Accordingly, it is agreed that any legal rule of construction to the effect that ambiguities or any addenda, amendments, additions or supplements thereto that may be construed against CRB are of no force and effect in the interpretation of this Agreement.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: _____ Name (signed) _____ Position: _____	By: _____ Name (signed) _____ Position: _____
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