

**ALLY FINANCIAL BUYER’S CHOICE AGREEMENT**

WHEREAS, Dealer (as identified below) desires that Ally Financial Inc. (“Ally”) purchase retail installment sale contracts (“Contracts”) with certain special prepayment features;

WHEREAS, Ally is willing to purchase such Contracts under certain conditions;

NOW THEREFORE, for good and valuable consideration, Ally and Dealer agree as follows:

**Section 1. Terms and Conditions of Drafting Privileges.** Dealer and Ally agree to the terms and

conditions set forth in Exhibit A, which are incorporated by reference.

**Section 2. No Commitment to Purchase Retail Transactions.** Nothing in this agreement constitutes a commitment by Ally to purchase Contracts from Dealer or to make any other credit accommodations or loans to Dealer. Ally purchases Contracts at its sole discretion.

**Section 3. Governing Law.** Federal law and Michigan law apply to this agreement.

**DEALER**

Dealer Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
By (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: **ALLY FINANCIAL**

**ALLY BANK BUYER’S CHOICE AGREEMENT**

WHEREAS, Dealer (as identified below) desires that Ally Bank (“Bank”) purchase retail installment sale contracts (“Contracts”) with certain special prepayment features;

WHEREAS, Bank is willing to purchase such Contracts under certain conditions;

NOW THEREFORE, for good and valuable consideration, Bank and Dealer agree as follows:

**Section 1. Terms and Conditions of Drafting Privileges.** Dealer and Bank agree to the terms and

conditions set forth in Exhibit A, which are incorporated by reference; except that all references to “Ally” shall instead be read as “Bank”.

**Section 2. No Commitment to Purchase Retail Transactions.** Nothing in this agreement constitutes a commitment by Bank to purchase Contracts from Dealer or to make any other credit accommodations or loans to Dealer. Bank purchases Contracts at its sole discretion.

**Section 3. Governing Law.** Federal law and Utah law apply to this agreement.

**DEALER**

Dealer Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
By (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: **ALLY BANK**

**ADDITIONAL TERMS FOR ALLY BUYER'S CHOICE**

Ally may purchase, subject to terms and conditions set forth below and any other terms between Ally and Dealer relating to retail installment contracts (including the Retail Plan between the parties), certain retail installment contracts (each a "BC Contract") between Dealer and a retail buyer (a "Buyer") from Dealer that contain a provision allowing Buyer to prepay the BC Contract by selling the vehicle securing the contract (a "BC Vehicle") at a designated price:

**Section 1. Dealer Finance Income.**

(a) Dealer Finance Income for Non-Buyer's Choice Contracts. Any prior agreement between Dealer and Ally regarding the dealer finance income to be paid in connection with retail installment contracts other than BC Contracts ("Non-BC Contracts") remains unchanged.

(b) Dealer Finance Income for Buyer's Choice Contracts. Ally may pay dealer finance income in connection with BC Contracts from time to time, in Ally's sole discretion, and subject to any modifications, caps, limitations, repayment obligations, or other conditions set by Ally. The amount of dealer finance income to be paid shall be determined in accordance with this agreement and any applicable Ally Bulletins.

(c) Repayment of Dealer Finance Income. Any prior agreement between Dealer and Ally regarding Dealer's obligation to repay dealer finance income in the event that Ally elects to repossess a vehicle securing a retail installment contract remains in force and unchanged. Any such agreement shall apply to both BC Contracts and Non-BC Contracts.

**Section 2. Buyer's Choice Contracts.**

(a) Dealer Warranties and Representations for Buyer's Choice Contracts. With respect to each BC Contract submitted to Ally, Dealer warrants and represents that:

- i. The BC Vehicle conforms to the eligibility requirements communicated by Ally or an Ally affiliate;
- ii. The BC Contract and any related documentation reflects the sale price, special prepayment date, excess mileage deduction, disposition fee, and other terms required by the Buyer's Choice program guidelines then in effect for that BC Vehicle; and
- iii. Dealer has provided to Ally all documentation required by the Buyer's Choice program guidelines in connection with Ally's purchase of a BC Contract.

These representations and warranties are cumulative with any other representations or warranties provided by Dealer to Ally in connection with a retail installment contract (e.g., in the Retail Plan between the parties). Ally has the same rights to indemnification and/or repurchase in connection with the breach of any of these representations and warranties that Ally has in connection with any breach of any other representation or warranty given by Dealer in connection with the purchase of a contract.

(b) Vehicle Return. If a BC Vehicle is delivered to Dealer pursuant to the Buyer's special prepayment option, Dealer shall (i) immediately notify Ally that the vehicle has been provided to the Dealer, and (ii) comply with all Ally Bulletins and other instructions regarding processing the vehicle. If Dealer prepares a vehicle condition report, Dealer shall report all excess wear (as defined in the BC Contract) or excess mileage that a reasonable inspection should have discovered.

(c) Vehicle Transfer. In connection with a Buyer exercising the special prepayment option in a BC Contract,

- i. Dealer shall obtain all documents that Ally requires from a Buyer to effectuate transfer of a BC Vehicle to Ally, such as certificates of title, powers of attorney, odometer disclosure statements; and
- ii. Dealer shall not take possession of a BC Vehicle unless all of the conditions of the special prepayment option in the BC Contract are met. This includes, but is not limited to, Dealer obtaining from Buyer all documents Ally requires from the Buyer to transfer the BC Vehicle to Ally.
- iii. Dealer shall cooperate with any commercially reasonable request by Ally to allow Ally or a third party access to the BC Vehicle in connection with the BC Vehicle's return or sale.

(d) Vehicle Storage. Dealer will, at Ally's option, provide Ally safe storage of BC Vehicles tendered to Dealer at no charge for a period not to exceed 30 days from the day that Dealer notifies Ally that Dealer has the BC Vehicle. During such time, stored vehicles may be posted to SmartAuction<sup>SM</sup> or other auction websites. Dealer is not required to provide primary insurance coverage on stored BC Vehicles. If, however, a BC Vehicle is damaged while in the possession of Dealer, Dealer is required to document the facts relating to the damage. If a Dealer employee, or any person authorized by

Dealer, is responsible for the damage, Dealer is required to file a claim under Dealer's garage-keeper's legal liability insurance policy.

**Section 3. Compliance with Applicable Law.** Dealer shall comply with applicable Law in connection with any and all transactions or communications related to, or arising from, any application submitted to Ally for consideration or any BC Contract submitted for purchase by Ally.

**Section 4. Compliance with Ally Bulletins.** In connection with any application submitted for Ally's consideration and any BC Contract submitted for Ally's purchase, Dealer shall comply with all applicable Ally Bulletins.

**Section 5. Repurchase.** If any warranty or representation regarding a BC Contract or any term in this agreement is breached, Dealer shall, upon demand, accept assignment of any BC Contract related to such breach and pay to Ally the full amount of the unpaid balance under the BC Contract, the unearned portion of any dealer finance income paid in connection with the BC Contract, and reimbursement for any repossession expenses incurred. Ally has no duty to repossess or transfer a vehicle to Dealer as a condition of a contract repurchase. If Ally does sell or transfer the vehicle, Dealer takes that vehicle "AS IS", "WHERE IS", and without any warranty.

**Section 6. Indemnification.** Dealer shall indemnify Ally for all Losses that Ally incurs due to (i) breach of any representation or warranty above, (ii) breach of any term or covenant contained in this agreement, (iii) any BC Contract being rescinded, declared unenforceable, or voided by a court or an arbitrator, and (iv) any claim or defense asserted against Ally because of any act or omission by Dealer. Furthermore, Dealer shall indemnify Ally for all Losses arising from, any action, claim, suit, order, fine, judgment, or settlement relating to any express or implied warranties to the vehicle sold under a BC Contract. Finally, Dealer shall indemnify Ally for any Loss that Ally incurs due to Dealer's willful misconduct or gross negligence.

**Section 7. Termination.** Ally reserves the right to terminate this agreement at any time without prior notice. Dealer may terminate this agreement upon ten (10) days written notice to Ally.

**Section 8. Survival.** Except as otherwise provided, termination of this agreement shall not terminate the

rights or obligations of a party relating to (i) any application submitted for Ally's consideration or BC Contract submitted to Ally for purchase prior to termination, (ii) any obligations of Dealer in connection with the inspection, transfer, and/or storage of BC vehicles, or (iii) any indemnification or repurchase obligation.

**Section 9. Prior Agreements.** Unless modified by the terms of this agreement, the terms of any other agreement between Ally and Dealer remain in force and unchanged.

**Section 10. Miscellaneous.**

(a) No agency, partnership, joint venture, employer-employee or franchisor-franchisee relationship is intended or created by this agreement. Dealer is an independent business and not acting on Ally's behalf. Neither party owes the other any fiduciary obligation.

(b) Ally may rely in good faith on the authority of agents, employees, officers and other representatives of Dealer and on the genuineness of any purported signature or communication from such persons.

(c) No oral modification or waiver of this agreement is valid.

**Section 11. Definitions.**

*Ally Bulletin* means any bulletin, letter, guide, manual, rate sheet, dealer website, or other communication, whether in written or electronic form, containing terms, conditions, rules, or requirements for dealers submitting applications to Ally or its affiliates for consideration or retail installment contracts or leases for purchase by Ally or its affiliates.

*Law* means, as may be amended and in effect from time to time, (i) any federal, state or local law (including common law), statute, regulation, or ordinance, (ii) any written guidance or substantive recommendation issued by a regulator of Ally or its affiliates, and (iii) any injunction, order, judgment, directive or determination of any governmental authority or court, or any order or judgment of any arbitrator. Unless the context requires otherwise, a reference to applicable Law means each and every Law applicable in that context.

*Loss* means any loss, liability, damage (whether direct or indirect), cost or expense of any nature, including but not limited to, reasonable attorneys' fees.