

Dealer Agreement

This Dealer Agreement (the "Agreement") dated as of _____, 201_ (the "Effective Date"), is entered into by and between Finco Holding Corp. dba Equitable Finance Company, a [describe form of entity], ("EFC"), with its principal place of business at [insert address] and [LEGAL NAME] [STATE OF ORGANIZATION] [TYPE OF LEGAL ENTITY] ("Participant"), with its principal place of business located at [ADDRESS], (each hereinafter referred to individually as a "Party" or collectively as the "Parties"), as of _____ (the "Effective Date"), with reference to the following:

WITNESSETH

- A. Participant is in the business, among other things, of selling motor vehicles to consumers for cash and over time on a retail installment sales contract ("RISC") and assisting consumers in the finding and arrangement of obtaining loans, accepting loan applications and forwarding such applications to a prospective lender, providing verification of information and witnessing execution of contract and collection of required documentation;
- B. EFC is in the business, among other things, of originating, funding and servicing loans that may be secured by motor vehicles and purchasing RISCs secured by motor vehicles that are originated by Participants; and,
- C. EFC and Participant desire to enter into an arrangement pursuant to the terms herein and as described in any attached addendum(s), incorporated herein by reference and any subsequently executed addendum;

NOW THEREFORE, in consideration for the mutual covenants, promises, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, EFC and Participant agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS.

- A. "Consumer" shall mean and refer to any person or entity, including a co-borrower or co-signer, seeking a Loan whereby Participant documents the Loan for EFC, to whom or to which EFC proposes to lend money, or to whom EFC has agreed to loan money, the repayment of which may be secured by a first priority security interest in and to a motor vehicle owned by Consumer, including a co-borrower or co-signer. "Consumer" includes the debtor on a RISC.
- B. "Contract(s)" shall mean and refer to the documents, such as a promissory note, memorializing a Loan originated by EFC, or a RISC originated by the Participant, including instruments securing those Loans or RISCs, such as a security agreement or personal guaranty.
- C. "Loan(s)" shall mean and refer to the indebtedness evidenced by the Contract(s), whereby Participant may act as agent for EFC. The Loans are consumer-purpose in nature in that the Consumers obtain them for personal, family or household purposes. Loan as used herein includes a RISC unless otherwise specified.

- D. "Financing Program" shall mean a Loan or RISC program offered by EFC pursuant to which EFC will make various types of Loans or purchase various types of RISCs. EFC may offer more than one Financing Program.
 - E. "Motor Vehicle" shall mean the motor vehicle financed by the Loan or RISC.
 - F. "RISC" means a motor vehicle-secured retail installment sales contract showing a contractual relationship between a Participant and a Consumer pursuant to which the Consumer agrees to make installment payments over time as shown in the RISC for the purchase of the motor vehicle.
2. **APPLICATION PROCESS.** If a prospective Consumer desires to finance the purchase of a Motor Vehicle, Participant may inform Consumer of the availability of financing pursuant to the Financing Program. If the Consumer expresses interest in applying for a Loan, Participant will then ask Consumer to complete and sign a credit application ("Credit Application") and provide such additional information as instructed by EFC to evaluate the Credit Application. In connection with obtaining a Credit Application, Participant will verify, in accordance with the procedures established in the Financing Program, all information provided by a Consumer. Only employees of Participant may submit Credit Applications to EFC under this Agreement.
3. **FINANCING PROGRAMS.** Each Financing Program will identify the general criteria, terms and conditions under which EFC will make Loans to Consumers or purchase RISCs from Participants, and will be documented in program guidelines or other similarly designated documents that will also include, without limitation, the amount or method of computing any compensation to be paid to Participant ("Participant Compensation"). EFC may amend or discontinue any Financing Program at any time, in its sole discretion. Participant's submission of a Credit Application to EFC on or after the effective date of the amendment of a Financing Program or program guidelines constitutes acceptance of such amendment.
4. **APPROVAL AND DOCUMENTATION.** Participant is under no obligation to submit Credit Applications to EFC and EFC is under no obligation to accept Credit Applications from Participant. Participant acknowledges and agrees that EFC will make Loans to Consumers or purchase RISCs originated by Participants in its sole discretion. Further, EFC is not obligated to make a Loan to a prospective Consumer or to purchase a RISC from a Participant. Notwithstanding the foregoing, to the extent the Parties submit and accept Credit Applications, make Loans or purchase RISCs, they agree to do so in a manner that does not illegally discriminate against protected persons under federal or state law (e.g., Equal Credit Opportunity Act and Regulation B). For Credit Applications approved by EFC, EFC grants Participant the limited authority to prepare and complete all forms necessary for EFC to make the Loan, and to facilitate the signing of such documents; however, only to the extent specifically instructed by EFC. Participant is not authorized to underwrite Loans or evaluate the creditworthiness of a potential Consumer.
5. **FUNDING CONDITIONS.** All of the following conditions must be satisfied for EFC to make a Loan to Consumer or to purchase a RISC from a Participant ("Funding Conditions"):
- a) EFC must receive all of the following documents (collectively, the "Financing Documents"):
 - i) The original, properly completed and fully executed Contract(s): (A) matching the terms of the approved Credit Application (and/or terms specified in EFC's approval), (B)

satisfying the terms and conditions of the applicable Financing Program, and (C) documented in a form acceptable to EFC,

- ii) The Consumer-signed, properly-completed Credit Application related to the Loan on a form acceptable to EFC,
 - iii) Copies of any signed, properly-completed broker disclosures and/or broker agreement as required by applicable laws,
 - iv) Documentation necessary to perfect EFC's security interest in the related Motor Vehicle, in a form acceptable to EFC, and
 - v) Any other documentation that EFC requires and communicates to Participant to make the Loan or purchase the RISC, including disclosures related to the installation of Starter Interrupt and GPS Devices.
- b) Any stipulations or other requirements: i) communicated with EFC's approval of a Credit Application, ii) set forth in the applicable Financing Program, or iii) otherwise communicated to Participant by EFC, must be satisfied, and EFC must receive proof of such satisfaction in a form acceptable to it.
- c) The Motor Vehicle must have been delivered to and accepted by Consumer without dispute or claim by Consumer.
- d) Each of the representations, warranties, and covenants in Section 7 and Section 8 must be true, accurate, and correct as to such Loan.
- e) Participant must not be in default of this Agreement.

6. **FUNDING PROCESS.** Upon receipt of the Financing Documents and satisfaction of all Funding Conditions, EFC shall, in the case of a Loan make the Loan and fund it by transmitting the Loan amount to Participant on behalf of the Consumer or, in the case of the purchase of a RISC, by transmitting to Participant the RISC purchase price established in accordance with the applicable Financing Program. EFC, in its sole discretion, reserves the right to determine how to pay the Participant in connection with a Loan or a RISC (e.g., check or ACH).

7. **REPRESENTATIONS, COVENANTS AND WARRANTIES OF PARTICIPANT.** Participant hereby represents, covenants and warrants to EFC as follows:

- a) Participant is in good standing in the state of its incorporation or organization, is qualified as a foreign corporation or organization in any state where required to do so, and possesses any required license or registration required under state, federal, or local law, regulations, or ordinance to transact its business as current conducted and to engage in the activities described in this Agreement;
- b) Participant conducts its activities in compliance with all state and federal laws applicable to its business and all guidelines established by the Consumer Financial Protection Bureau, and Participant's employees and authorized agents have been trained with regard to Participant's

obligations under this Agreement and under all applicable laws and regulations;

- c) Participant has full authority and corporate power to enter into this Agreement and to perform its obligations under this Agreement, and its performance of this Agreement will not violate any applicable law or regulation or any agreement to which it may now be bound;
- d) The owner(s), general partner(s), board member(s), or other principal(s) ("Principal") of the Participant has not been (i) convicted of an act of fraud, dishonesty, breach of trust, or money laundering; or (ii) convicted of any felony in the prior three years from the date of this Agreement;
- e) Participant may conduct business at more than one location and under more than one name, however, this Agreement shall be enforceable against and binding upon Participant, regardless of the name under which Participant does business, or the form that business takes or where that business is conducted;
- f) No consent, approval or authorization of any government or governmental body is required in connection with the execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated hereby; and
- g) There are no pending or threatened actions or proceedings by or before any court, administrative agency or arbitrator, that could if adversely determined, materially and adversely affect the ability of Participant to perform its obligations hereunder, and there are no presently existing orders of any court, administrative agency or arbitrator that could have a material and adverse effect on the ability of Participant to perform its obligations hereunder.
- h) Participant shall provide EFC, upon EFC's request, any documentation, including, but not limited to, Participant's licensing information, regulatory and/or legal compliance history (including, but not limited to, prior enforcement actions), privacy policies and procedures, general policies and procedures, hiring and training materials, insurance and any additional documentation relevant to the scope of compliance with all applicable laws and regulations; and shall respond to all requests by EFC to enable EFC to audit Participant as a service provider consistent with the Consumer Financial Protection Bureau's Service Providers Bulletin, CFPB Bulletin 2012-03 (April 13, 2012), a copy of which is provided to the Participant on the date that Participant entered into this Agreement.
- i) Participant represents that its consumer credit forms, including the Credit Application and RISC, comply in all material respects with applicable federal and state laws.

Each of the above representations, warranties and covenants is material to EFC's decision to make a Loan. These representations, warranties and covenants are not waived if EFC makes a Loan knowing that a representation, warranty, or covenant has been/is breached. The representations, warranties and covenants and all other provisions of this Section 7 shall survive the execution, delivery, expiration or termination of this Agreement.

8. **ADDITIONAL REPRESENTATIONS, COVENANTS AND WARRANTIES OF PARTICIPANT.** For the purposes of this Section 8, "Participant" includes all employees of Participant involved in taking and processing Credit Applications and originating Loans and the knowledge, representations, actions and failures to act of such employees will be attributed to Participant in interpreting this Section 8. As of

the effective date of this Agreement, each date Participant forwards a Credit Application to EFC, each date Participant submits completed Financing Documents to EFC, and each date EFC makes and funds a Loan or purchase a RISC from a Participant, Participant represents, warrants and covenants the following:

- a) Furnished Information. Participant furnished EFC all credit information received by Participant relative to the Credit Application and the Loan or RISC and such information is true, complete and accurate. All statements, documents and information furnished to EFC by Consumer, Participant and all other persons are accurate, complete and true.
- b) Consumer. Each Consumer has completed and signed a Credit Application and has expressed a definitive interest in purchasing a Motor Vehicle on credit from Participant or has otherwise provided Participant with written authorization to obtain a consumer report. Consumer has full legal capacity to enter into the Financing Documents, and Consumer is a bona fide good faith purchaser in the ordinary course of Participant's business.
- c) Consumer's Identity. Participant has verified the identity of each Consumer. At a minimum, Participant 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. If there is a "fraud alert" or "active duty alert" on a Consumer's consumer report, Participant will comply with all FCRA (as defined below) requirements regarding such alert, including performing additional due diligence to confirm the identity of the Consumer. Participant further agrees to perform any other due diligence as reasonably requested by EFC. This subsection shall apply to all Credit Applications submitted to EFC, including without limitation, Credit Applications that do not result in the making of a Loan by EFC.
- d) Financing Documents. Each Financing Document is genuine, legally valid and fully enforceable under its terms and not subject to any offsets, counterclaims, rescission rights or defenses. Participant has performed all of its obligations under the Financing Documents. Participant does not know of any fact that would impair the validity or enforceability of any Financing Documents. Each of the Financing Documents was completely and accurately filled-in when signed by Consumer, and Consumer received a completed copy of any Financing Documents completed or executed by Consumer. The signature of Consumer on each Financing Document requiring Consumer's signature is genuine. Participant does not know of any event which indicates or suggests the prospective impairment of EFC's ability to collect the Loan. The Financing Documents fully and accurately set forth the terms of the transaction between Participant and Consumer, and accurately identify all products and services sold and financed. Participant has made no oral or written promise, affirmation, warranty or representation to Consumer not contained in the Financing Documents. All products and services financed with the Loan have been delivered to Consumer and Participant has paid for such products and services, with any related labor and materials.
- e) Motor Vehicle. The Motor Vehicle was accepted by Consumer. The certificate of title to the Motor Vehicle is not branded (e.g., salvage, flood-damaged, rebuilt, etc.), the odometer of the Motor Vehicle was not rolled back, the Motor Vehicle was not damaged in a flood, the Motor Vehicle is not a grey market vehicle, the Motor Vehicle has not suffered frame damage and there is no other condition that would adversely affect the value of the Motor Vehicle.

- f) Security Interest and Lien. Participant has submitted all documents necessary to obtain and perfect a valid and enforceable first priority security interest of EFC in the Motor Vehicle, within the time periods required by applicable law, and as necessary to prevent the avoidance of EFC's security interest in bankruptcy or other insolvency-type proceeding, or any other adverse effects upon the certificate of title and/or EFC's security interest.
- g) Taxes and Fees. Participant will promptly forward, pay and/or cause to be paid to the proper authorities all federal, state and local fees and taxes due with the sale, financing, titling and/or registration of the Motor Vehicle.
- h) Insurance. The Motor Vehicle is insured by fire, theft and comprehensive and collision insurance with a deductible not greater than \$500 fully protecting EFC's interest in the Vehicle, naming the Consumer as insured and naming EFC as loss payee and an additional named insured. Participant verified the foregoing with Consumer's insurance agent or provider, and submitted satisfactory evidence thereof to EFC.
- i) Ancillary Products. All "add on" or ancillary products, including, but not limited to, mechanical breakdown protection, service contracts, GAP, and credit insurance ("Ancillary Products"), purchased by the Consumer and financed with the proceeds of a Loan comply with applicable law. All representations and disclosures regarding such Ancillary Products were complete, accurate and properly made, and all documents required to be delivered have been delivered, all in compliance with applicable law. All representations and disclosures regarding such Ancillary Products were complete, accurate and properly made, and all documents required to be delivered have been delivered, all in compliance with applicable law. If an Ancillary Product is a debt cancellation, debt suspension or insurance type product (e.g., GAP, credit insurance), Participant has notified Consumer in writing that EFC does not require Consumer 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. Participant has disclosed each Ancillary Product to Consumer and made clear to Consumer in writing that the purchase of each Ancillary Product is optional. Participant has paid in full any Ancillary Product charges, fees or premiums to the companies providing them to ensure that such products will be in full force and effect for Consumer.
- j) Misstatements. Participant has made no representations, warranties, claims or other statements regarding: (i) the Motor Vehicle, (ii) the finance charge, including without limitation, regarding obtaining the lowest or best rate available for the Consumer, (iii) other terms of the Financing Documents, or (iv) any other matter relating to the Financing Documents or related transactions. The Participant shall notify EFC immediately if it learns any information that the Participant provided to EFC regarding a Credit Application, Motor Vehicle, Financing Documents, Consumer, or other related matter is not true.
- k) Disclosures, Forms and Procedures. All disclosures required by law were provided to Consumer in connection with the Loan (and the transactions for which the Loan proceeds will be used) and were complete, accurate and properly made by Participant in full compliance with applicable law.

Except for any forms, procedures, or documents provided by EFC (or any forms, procedures, or documents that EFC requires Participant to utilize), all forms, procedures, charges, fees and other

documents created and/or used by Participant for the Motor Vehicle sale or the Loan comply with all applicable federal, state and local laws and regulations, including without limitation:

- i) Laws limiting the maximum finance charge, or other fees and charges related to the Loan;
 - ii) State motor vehicle installment sales acts, credit codes or similar laws;
 - iii) The federal Truth in Lending Act and Regulation Z and similar state and local laws and regulations;
 - iv) The federal Equal Credit Opportunity Act and Regulation B and similar state and local laws and regulations (“ECOA”);
 - v) The federal Fair Credit Reporting Act and similar state and local laws (“FCRA”);
 - vi) Title V of the Gramm-Leach-Bliley Act and similar state and local laws;
 - vii) 12 U.S.C. § 5531 (which prohibits unfair, deceptive, or abusive acts or practices and is commonly known as “UDAAP”) and similar state and local laws;
 - viii) The Federal Trade Commission Act (commonly known as “UDAP”) and similar state and local laws;
 - ix) All implementing regulations and rules, including without limitation the Federal Trade Commission’s Trade Practice Rules and regulations and rules of the Consumer Financial Protection Bureau; and
 - x) All other federal, state and local laws, regulations and rules applicable to the Motor Vehicle sale or the Financing Documents.
- l) Notices to Consumer Required by Law. Participant has provided to all prospective Consumers for whom a Credit Application was submitted to EFC and to Consumers to whom EFC has made a Loan, 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, the FCRA, and the rules promulgated thereunder. Participant notified each prospective Consumer for whom a Credit Application is submitted to EFC that the Consumer’s Credit Application was being submitted to EFC at EFC’s current address.
- m) Future Payments and Information Received By Participant. Participant shall accept no payments on the Loan or RISC and will direct Consumer to make all payments to EFC. If Participant receives payment on the Loan or RISC, Participant will hold it in trust for the benefit of EFC, and will promptly forward it to EFC. Participant will also promptly forward to EFC copies of any written communication it receives regarding a Loan.
- n) Starter Interrupt and GPS Devices. EFC may elect to make a Loan or purchase a RISC on the condition that the Motor Vehicle that secures it be equipped with a GPS or starter interrupt device (“Device”). In such event, Participant agrees to install and activate the Device as set forth in the applicable Financing Program guidelines, and in full compliance with applicable law. EFC may

require that Participant purchase the Device; and in such event Participant agrees that it will not pass the cost of the Device on to the Consumer, and further that it will not require Consumer to pay for the installation or removal of the Device. Participant further agrees that Consumer must voluntarily consent to the Device. Participant understands that EFC will require Consumer to sign an addendum to the Contract on a form approved by EFC (“Device Addendum”). At a minimum, the Device must have, and the Device Addendum must describe, emergency access to override any disablement of the Motor Vehicle.

o) Additional RISC Provisions. As to each RISC assigned to EFC by Participant, the following provisions apply:

i) Vehicle Cash Price. The “cash price” of the Motor Vehicle shown on the Contract is the “cash price” as defined by applicable state and federal law and represents the fair retail market value of the Motor Vehicle charged by Participant for substantially similar vehicles in cash transactions. Such “cash price” has not been increased because the Contract may be sold at a discount (an amount which is less than the Amount Financed stated in the Contract), or because the Motor Vehicle will be sold: (i) on credit, (ii) to a member of a protected class under the ECOA (as defined in Section 7(p)) or comparable state law, or (iii) to a member of the U.S. armed services or another party protected by the federal Servicemembers Civil Relief Act or comparable state law.]

ii) Down Payment, Trade-ins, Prior Credit or Lease Balances. The down payment is properly disclosed in the Contract and was paid in full by the Consumer, in cash, in a check drawn on a deposit account, certified funds, immediately available funds, and/or in trade equity before the Contract was submitted to EFC for purchase. At EFC’s sole discretion, it may purchase Contracts where part of the down payment is payable to Participant after Contract consummation (“Deferred Down Payment”). Participant must disclose any Deferred Down Payment to EFC at the time of Credit Application. No part of the down payment or any other payment was loaned by Participant or any other person or entity and no part of the down payment or any other payment was otherwise provided directly or indirectly by, or results from any other assistance of Participant. No part of the down payment was paid by credit card, check drawn on a credit card account, or with the proceeds of any other credit transaction, unless disclosed to EFC by Participant at the time of the Credit Application. No part of the down payment was paid with a check, other instrument, or electronic debit later dishonored or otherwise refused by any financial institutions to which it was presented regardless of whether Participant has or will receive the proceeds of the dishonored check, other instrument or electronic debit from another source (for example, a check guarantee service). Participant shall immediately notify EFC in writing if any check, other instrument, or electronic debit used to pay any part of the down payment for a Contract is dishonored or otherwise refused. Participant properly handled or disposed of any down payment or trade-in or the proceeds thereof as agreed with Consumer and no part was paid or rebated to Consumer. Participant has properly disclosed all indebtedness or obligations related to a vehicle taken as a trade-in in the Contract or necessary to satisfy any other prior credit or lease balance disclosed in the Contract (“Prior Credit or Lease Balances”). Participant has promptly paid and/or caused to be promptly paid such Prior Credit or Lease Balances.

- iii) Credits. Any credit or rebate provided to Consumer (e.g., trade-in, dealer rebate or manufacturer rebate) has been fully disclosed to EFC, is separately itemized in the Contract, and has not been included in the cash-portion of the down payment.
- iv) Good Title and Assignment of Security Interest. Participant has good and marketable title to the Motor Vehicle and the Contract. EFC takes its interest in the Motor Vehicle and the Contract free from all security interests, liens or other encumbrances, except those which will be in favor of EFC or its designee. Participant has the right to sell the Motor Vehicle to the Consumer and assign the Contract to EFC.
- v) Contract Location. The entire transaction, including delivery of the Motor Vehicle and Consumer's acceptance of it, occurred at Participant's licensed place of business, and the Contract was generated from a direct sale by Participant and not from a third party.

Each of the above representations, warranties, and covenants is material to EFC's decision to make a Loan. These representations, warranties, and covenants are not waived if EFC makes a Loan knowing that a representation, warranty or covenant has been/is breached.

Participant will obtain and retain reasonable evidence of the truth and accuracy of all of the above representations, warranties and covenants and will make such evidence available to EFC promptly upon EFC's request for it.

The representations, warranties, and covenants and all other provisions of this Section 8 shall survive the execution, delivery, expiration or termination of this Agreement.

9. **REIMBURSEMENT OF LOANS**. If any of Participant's representations, warranties, or covenants has been/is inaccurate, untrue or otherwise breached, or if there is a first payment default (i.e., the Consumer defaults under the terms of the Loan or RISC on or before the first scheduled payment), the following obligations apply:

- a) In the case of a Loan, Participant shall reimburse EFC for the balance owed by Consumer to EFC under the Loan, together with repossession costs, attorney's fees and any other sums incurred by EFC in connection with the Loan or RISC and/or due from Participant under this Agreement ("Reimbursement Amount").
- b) In the case of a RISC, Participant shall repurchase the RISC upon request by EFC for a price equal to the Reimbursement Amount. The repurchase shall be without recourse against EFC. EFC shall assign the RISC to Participant "AS IS," with no representations, warranties, or covenants, expressed or implied.
- c) Participant's reimbursement and repurchase obligations apply regardless of whether the Consumer has defaulted. The Reimbursement Amount shall be paid in cash upon demand.

EFC shall not be obligated to first repossess the Motor Vehicle or otherwise exhaust its recourse against Consumer. Participant's repurchase and reimbursement obligations and the Reimbursement Amount will not be affected by: (i) EFC's or Participant's inability to obtain possession of the Motor Vehicle or the physical condition of the Motor Vehicle; or (ii) EFC's inability to collect amounts due

under the RISC or Loan from Consumer, including without limitation, by virtue of a bankruptcy involving Consumer.

This Section 9 shall survive the execution, delivery, expiration or termination of this Agreement.

10. **FAILURE OF VEHICLE BEING INSURED.** Participant agrees to pay EFC for any loss suffered because of the Consumer's failure to have required insurance on the Motor Vehicle in place when EFC made and funded the Loan or purchase the RISC.
11. **ANCILLARY PRODUCT REFUNDS AND REBATES.** If a Loan or RISC is prepaid in full, an Ancillary Product is cancelled, or Participant accepts the return of an Ancillary Product, EFC may require Participant to ensure that any refund, rebate, credit due Consumer upon cancellation of the Product ("Refund") is obtained on Consumer's behalf in compliance with applicable law. If Participant receives a Refund or notice of potential Refund, Participant shall immediately notify EFC of such Refund or notice. EFC may, in its sole discretion, make a Refund to Consumer by crediting it to the Loan (if the Loan proceeds were used to purchase the Ancillary Product(s)) or RISC or returning it to Consumer, and require Participant to reimburse EFC for such Refund. This Section 11 shall survive the execution, delivery, expiration or termination of this Agreement.
12. **VEHICLE RETURNS AND SURRENDERS.** If a Consumer attempts to return or surrender or returns or surrenders a Motor Vehicle that secures the Loan or RISC to Participant (e.g., a voluntary surrender), Participant shall immediately notify EFC and take all reasonable steps to secure and deliver possession of the Motor Vehicle to EFC, or its agent or designee, promptly.
13. **NON-SOLICITATION.** Participant agrees that it, or any of its subsidiaries and affiliates, shall not attempt to solicit any Consumer with an unpaid Loan or RISC under this Agreement for another loan or automobile purchase unless the Consumer has four (4) or fewer scheduled payments remaining to satisfy in full all Loans or RISCs for which Consumer is an obligor under this Agreement.
14. **WAIVER, ASSIGNMENT AND DELEGATION.** EFC's failure to exercise any of its rights under any and all Financing Documents shall not operate as waiver of any such rights, and such rights shall continue until all Loans or RISCs have been satisfied in full. All of EFC's rights, as provided herein, are cumulative and not in the alternative. Participant may not assign its rights under this Agreement, nor may Participant delegate its duties under this Agreement without the prior written consent of EFC, which EFC may not unreasonably withhold, but in connection with which, EFC may impose reasonable conditions. EFC may assign its rights and delegate its duties under this Agreement upon written notice to Participant. This Agreement and all of its terms and conditions shall inure to the benefit of and bind each and every permitted assignee or delegates. Assignments or delegations of a party's rights and obligations under this Agreement contrary to the provisions of this Paragraph are voidable by the non-assigning and/or non-delegating party.
15. **MODIFICATIONS.** EFC may from time to time make modifications in the terms of this Agreement. If such modification is made, EFC will notify Participant of the new terms and conditions by providing a copy of a new prevailing agreement by certified mail and/or electronic mail to the address and/or electronic mail address to the addresses in Section 27. Upon receipt of this agreement or consummation of the next transaction after the receipt of the new agreement or of the effective date whichever is earlier, Participant agrees that subsequent transactions will be subject to the amended terms and conditions of the new agreement.

16. **TERMINATION**. This Agreement or any addendum may be terminated at any time by either Party, upon written 30 days' notice of termination sent to the other; provided, however, that such termination shall not affect the responsibilities of EFC and Participant as to any Loan originated by EFC prior to receipt of such notice. Additionally, termination of any addendum does not affect the Parties' rights or responsibilities under this Agreement or any other addendum that is still in effect. Notice of termination shall be sent to the address or the electronic mail address in Section 27.
17. **GOVERNING LAW/ARBITRATION/VENUE**. The interpretation and construction of this Agreement, wherever made and executed and wherever to be performed, shall be governed by the laws of the State of Oregon, without regard to conflict of laws provisions. Any dispute, controversy or claim arising out of or relating to this Agreement (hereinafter "Arbitrable Dispute") shall promptly and expeditiously be submitted to arbitration in Oregon, before a retired or former judge of any appellate court or superior court of the Oregon, any United States appellate court or the United States District Court for any district in Oregon and selected in accordance with Oregon law. The Parties shall have the right to conduct discovery in such arbitration in accordance with the provisions of Oregon law. The decision of the arbitrator shall be final, conclusive and binding upon the parties and may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement, subject to the provisions of Oregon law, inclusive. The arbitrator shall have the authority and discretion to allocate reasonable and equitable costs and fees associated with the Arbitrable Dispute (including attorneys' fees). Should any party to this Agreement pursue any Arbitrable Dispute by any method other than said arbitration, (except injunctive relief as hereinafter provided), that party shall not be entitled to recover attorneys' fees from the other party in that action or in any arbitration thereafter compelled by the other party and the party initiating the unauthorized action shall pay to the other party all costs and expenses, including attorney's fees, incurred as a result of compelling arbitration. Notwithstanding the foregoing, either of the Parties to this Agreement may file an action in any court of competent jurisdiction in Oregon to obtain temporary, preliminary and permanent injunctive relief in accordance with the procedures set forth in Oregon law.
18. **AUDIT RIGHTS**. Throughout the term of this Agreement and during the ordinary course of EFC servicing Participant's stores, if any, EFC or its representatives may, periodically inspect any physical locations of Participant as it deems necessary to ensure compliance with this Agreement's or any subsequently executed addendum(s)'s terms and conditions. Participant shall reasonably cooperate with EFC in conducting any such inspection. EFC agrees that no inspection hereunder shall unreasonably interfere with Participant's business. EFC's inspection rights shall not extend to any portions of the business that do not relate to EFC's products or services to the extent they relate or pertain to third parties or their products or materials. If upon inspection EFC finds a deficiency Participant shall promptly use its efforts to take such action as is necessary to correct any deficiencies identified by EFC and bring Participant in compliance pursuant to EFC's guidelines and all applicable laws and regulations. Participant's refusal to comply promptly or failure to remedy the deficiency within thirty (30) calendar days of receipt of notice from EFC or within a reasonable time contemplated between the Parties shall be grounds for immediate termination. EFC's failure to notify of any deficiency identified during an inspection conducted under this Section 18 is not a waiver of any claim of EFC against Participant.
19. **ATTORNEY'S FEES**. In the event any legal action (including arbitration) is necessary to enforce any provision of this Agreement, the unsuccessful party shall pay the successful party reasonable

attorney's fees and costs.

20. **NONPUBLIC PERSONAL INFORMATION.** The Parties represent and warrant that each maintains, and will continue to maintain, appropriate information security programs and measures designed to ensure the security and confidentiality of "nonpublic personal information" ("NPI") (as defined in the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 *et seq.*) and any rules promulgated thereunder). Such information security programs and measures shall include appropriate procedures designed to (a) protect against anticipated threats or hazards to the security or integrity of NPI; (b) protect the security of NPI; and (c) to protect against unauthorized access to or use of NPI. The Parties further agree that, except as may be required or allowed by law, they will not disclose any NPI to any third party, and will not use NPI other than to carry out the purposes for which it was disclosed, unless another use is expressly permitted by a written agreement executed by the other Party or required by law. Each Party shall have access, upon reasonable notice, to review any internal and external audits and records of the other as may be reasonably necessary to assess compliance with the security provisions of this Agreement. Each Party shall promptly notify the other if it receives any complaint or notice concerning a violation of privacy rights or becomes aware of a breach of customer data security. This Section 20 shall survive the execution, delivery, expiration or termination of this Agreement.
21. **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.** Participant acknowledges and agrees that EFC has developed and acquired certain confidential, proprietary information and trade secrets regarding its business, including, but not limited to, the contents of this Agreement and any other agreements between Participant and EFC its products, fee structures, customer data, marketing plans and strategies, business plans and strategies, pricing and purchasing policies and practices, computer software, programs, source code, algorithms, record layouts, routines, report formats, data, compilers, assemblers, design concepts, inventions, discoveries, copyrights, concepts and ideas, patents, patent applications, know-how, processes and methods, and other proprietary business information and intellectual property (collectively, "Confidential Information"), all of which are valuable assets of EFC. Participant further acknowledges and agrees that it has been or will be granted access to Confidential Information, and that the economic value of Confidential Information would be destroyed by its unauthorized disclosure, thereby causing significant harm to EFC, and that this Paragraph is necessary to protect the value of Confidential Information. Therefore, Participant agrees to keep all Confidential Information confidential and will not directly or indirectly disclose or reveal to any third party or utilize for its own benefit, other than pursuant to this Agreement, any Confidential Information and any information derived therefrom. Participant further agrees to notify EFC in the event that it discovers any unauthorized disclosure of Confidential Information and agrees to take all reasonable steps to preserve the confidentiality of Confidential Information. Participant shall assume responsibility that its employees will similarly preserve Confidential Information and agrees to limit access to Confidential Information to only those employees that have a bona fide need to know Confidential Information. Participant agrees that upon termination of this Agreement, Participant will discontinue all use of Confidential Information and, at no cost to EFC, promptly return all Confidential Information disclosed during the term of this Agreement and any information derived therefrom. The obligations of Participant under this Paragraph shall survive termination of this Agreement. Participant also agrees that its obligations under this Paragraph shall also apply to any confidential information or trade secrets of any third party which EFC has agreed to keep confidential and not disclose, and of which Participant has actual or constructive notice of such agreement. The Parties recognize that money damages would not be an adequate remedy to EFC for breach of this Paragraph and agree that in the event of a breach or threatened breach of this Paragraph, EFC is entitled to seek

judicial relief, including, but not limited to, injunctive relief to enjoin any breach of this Paragraph without any requirement to post a bond or other security and/or an accounting. The Parties agree to be bound by the Confidentiality and Non-Disclosure Agreement (the "NDA") executed and effective by and between the Parties, incorporated herein by reference; any conflict or inconsistency between the provisions of the NDA and this Agreement shall be resolved by giving precedence to this Agreement.

22. **BOOKS AND RECORDS AND FINANCIAL STATEMENTS.** Upon reasonable notice, each Party reserves the right to inspect from time to time during normal business hours books, records, vehicle registration paperwork, and any files with respect to Consumers and proposed Consumers whose applications are or have been submitted to EFC. Each Party hereby agrees to provide complete financial statements prepared in accordance with Generally Accepted Accounting Principles, at such intervals may be reasonable requested.
23. **CREDIT INVESTIGATION.** Participant authorizes EFC to investigate Participant's credit worthiness and credit capacity, as may in EFC's sole discretion be necessary from time to time.
24. **TERMINATION OF FINANCING PROGRAMS.** EFC may terminate an existing Financing Program or initiate a new Financing Program at any time for any reason; provided, however, that such termination and/or initiation shall not affect the responsibilities of the Parties as to any existing Financing Program application. EFC's termination of a Financing Program or initiation of a new Financing Program shall not affect any other terms of the existing Agreement between the Parties, unless otherwise expressly stated in writing.
25. **NOTICE OF BUSINESS STRUCTURE OR PRINCIPAL CHANGES AND/OR REGULATORY ACTIONS.** Participant and EFC shall provide each other with any notice of any material or significant changes in the ownership, structure or business of Participant/EFC, including without limitation, the death of a principal, whether a shareholder, general partner or owner, and dissolution or insolvency or bankruptcy, reorganization, merger or consolidation; any sale of assets or stock or conversion to another legal structure or type of business, or cessation of business. Such notice shall be provided in writing at least thirty (30) days prior to any anticipated change(s) and within five (5) days of any unanticipated change(s). Participant shall also provide notice to EFC of any regulatory actions, administrative or criminal charges filed against the Participant, or any claims made against the Participant bond, within three (3) days of any such charges filed or actions taken against the Participant, or Participant's knowledge thereof, whichever occurs first.
26. **INDEPENDENT COUNSEL AND INTERPRETATION.** Participant and EFC do hereby 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, and that they have executed this Agreement with the consent and upon the advice of said independent counsel. Accordingly, it is agreed that any legal rule of construction to the effect that ambiguities are to be resolved against the drafting party shall both apply to the interpretation of this Agreement or any addendum, amendment, or exhibits.
27. **NOTICES.** Except as expressly permitted in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be effective upon personal delivery, confirmation of facsimile transmission, confirmation of receipt of electronic mail or three (3) calendar days after deposit in the U.S. Mail, postage pre-paid to the Party at the following addresses:

EFC:

[notice address for EFC]

PARTICIPANT:

If left blank, then the address specified on the signature page:

- 28. **RELATIONSHIP OF THE PARTIES.** Participant agrees that Participant is not a partner, joint venture, legal representative, or agent of EFC or any of EFC’s subsidiaries or associates in connection with any contract or any sale transaction or for any purpose whatsoever; and that Participant is an independent and separate legal entity which has no authority to assume or to create any obligation on behalf of or in the name of EFC or any of its subsidiaries or affiliates. Participant shall not hold itself as having any authority to act for EFC or its subsidiaries.

- 29. **DEFENSE AND INDEMNIFICATION.** Each Party agrees to indemnify, defend and hold harmless the other Party and its directors, officers, shareholders, employees and agents from and against all losses in the event: (a) one Party is named as a defendant in any action brought or claim made by any Consumer or prospective Consumer on a Loan made under this Agreement as a result of the conduct of the other Party or its employees; (b) if one Party is investigated by any state or local regulatory or enforcement agency as a result of the conduct of the other Party or its employees. Participant shall indemnify, defend and hold harmless EFC and its directors, officers, shareholders, employees and agents from and against all losses related to or arising out of Participant’s breach of any representation, warranty, covenant or obligation of Participant under this Agreement or any effective addendum. The indemnifying Party’s indemnification obligations are conditioned upon the indemnified Party: (a) giving prompt notice to the indemnifying Party of the claim or action; (b) granting to the indemnifying Party sole control of the defense or settlement of the claim or action (except that the indemnifying Party shall not settle any matter in a manner that adversely affects the rights of the indemnified Party without the indemnified Party’s prior written consent, which shall not be unreasonably withheld or delayed; and (c) providing reasonable cooperation and, at the indemnifying Party’s request, assistance in the defense or settlement of the claim or action.

- 30. **REMEDIES.** The remedies provided under this Agreement are cumulative, and are in addition to any remedies provided by law equity. No course of dealing between Participant and EFC or any delay or failure on the part of EFC in exercising any rights under this Agreement shall operate as a waiver of any rights of EFC.

- 31. **SEVERABILITY/INTEGRATION.** Any portion or provision of this Agreement which is held by an arbitrator or court of competent jurisdiction to be invalid or illegal or unenforceable, shall not affect in any way the remaining portions or provisions hereof to the extent permitted by law. The within Agreement is the entire Agreement between and among the parties concerning the subject matter hereof; and any all covenants, conditions, promises and representations of the parties are fully set forth in this Agreement. All prior negotiations, agreements, arrangements and understandings between or among the parties are merged into this Agreement.

- 32. **GENERAL.** This Agreement inures to the benefit of and is binding upon the heirs, legatees, personal

representatives, successors and assigns of the Parties. Paragraph titles are for convenience only and are not part of the terms hereof. Each signatory hereto warrants and represents that he or she is legally competent in all respects and is authorized to enter into this Agreement on behalf of the Party for which he or she purports to sign.

33. **INTELLECTUAL PROPERTY.** Subject to the terms of this Agreement, EFC hereby grants Participant a non-exclusive, non-assignable, non-sublicenseable, royalty-free, limited license to use and display EFC's name, trade names, trademarks, service marks, symbols, logos, copyright protected materials and other related marks or intellectual property (collectively the "Marks") solely as necessary to perform Participant's obligations under this Agreement and as specifically described in any effective addendum. Participant acknowledges and agrees that (a) Participant shall not use EFC's Marks in any manner that is not authorized in writing by EFC; (b) Participant will comply with any and all then current branding and/or Marks usage guidelines that EFC may communicate from time to time; (c) Participant shall submit to EFC any and all materials created by Participant using EFC's Marks for EFC's review and written approval prior to any use, publication and/or distribution thereof; and (d) all materials that represent the creative effort of EFC and/or the utilization of creativity, illustrations, labor, composition or material furnished by EFC is and remains the property of EFC, including all rights of intellectual property therein and Participant cannot authorize reproduction, in whole or in part, of any such material in any other medium without EFC's written consent.
34. **POWER OF ATTORNEY.** Participant appoints EFC and its authorized officers and attorneys-in-fact, as its true and lawful agent and attorney-in-fact, with full power and authority to do all things necessary or appropriate in Participant's name to carry out the intent of this Agreement, including without limitation, signing and endorsing the name of Participant on any checks, drafts, money orders, or other forms of payment that may come into Participant's possession as payments of or on account of any Loan. The foregoing power of attorney is irrevocable and a special power coupled with an interest, because EFC will rely upon this power to act as contemplated by this Agreement. This power of attorney shall extend to Participant's successors and assigns. Participant shall execute and deliver to EFC, within 15 days of receipt of the EFC's request, such further designation, powers of attorney and/or other instruments as EFC deems necessary or appropriate to effectuate this power of attorney. The provisions, agreements and obligations of this Section 34 shall survive the execution, delivery, expiration or termination of this Agreement.
35. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform or delay in performance under this Agreement or any effective addendum, to the extent such failure or delay is caused by conditions beyond the reasonable control of a Party and which renders the performance of this Agreement or any effective addendum by the affected Party either impossible or commercially impracticable including, without limitation to, acts of any governmental or regulatory body and/or agency having jurisdiction ("Regulatory Authority") over the affected Party, a directive from any federal, state, and/or local laws, rules, regulations, orders, ordinances, acts, or mandates which prohibit, restrict, or regulate the affected Party's performance of its obligations under this Agreement or any effective addendum, or in the event of an act of God or other natural disaster rendering the performance of the terms of this Agreement or any effective addendum impossible. The Party unable to perform, or whose performance has been rendered illegal or who has been so advised by a Regulatory Authority, must provide prompt notice to the other Party of the Force Majeure event and may terminate this Agreement or any effective addendum by giving written notice at least 30 days in advance of termination to the other Party, unless such change or communication from such

Regulatory Authority requires earlier termination, in which case termination shall be effective upon such earlier required date.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date above.

PARTICIPANT NAME
Street Address
City, State Zip Code

(Signature)

(Signature)

Date signed: _____

Date signed: _____

By:
Title:

By: _____
Title: _____