



## Dealer Agreement

This agreement is between Peak Acceptance, LLC ("Peak Acceptance") and

---

a \_\_\_\_\_ ("Dealer").

**Whereas**, Dealer is in the business of selling new and used motor vehicles in its ordinary course of business;

**Whereas**, Dealer, in its ordinary course of business, arranges financing for the purchase of such motor vehicles for the Dealer's customers (each hereinafter referred to as a "Debtor," whether one or more persons signed the documents for a particular motor vehicle); and

**Whereas**, Peak Acceptance desires to purchase from Dealer and Dealer agrees to sell to Peak Acceptance certain contracts, promissory notes, security agreements, guaranties, chattel documents, financing instruments and other documents acquired by the Dealer from the Debtors as part of the financing of the purchase of the motor vehicles purchased by such Debtors (such contracts, promissory notes, security agreements, guaranties, chattel documents, financing instruments and other documents hereinafter referred to collectively as the "Receivables" and all such documents with respect to the financing of a single motor vehicle referred to as the "Receivable") as Peak Acceptance from time to time and in its sole discretion shall elect to purchase, upon the following terms and conditions:

1. Dealer agrees and does hereby warrant, represent and covenant as to each Receivable purchased by Peak Acceptance as follows:

(a) That the motor vehicle described in each such Receivable was owned by the Dealer immediately prior to the sale of such vehicle to the Debtor, the Dealer was in possession of the Manufacturer's Statement of Origin or the original certificate of title for such vehicle at the time of sale to Debtor, and the motor vehicle is owned by the Debtor at the time of the assignment of the Receivable to Peak Acceptance;

(b) That each Receivable is a valid deferred payment obligation for the amount set forth therein, owing by the Debtor named therein, and secured by a valid first lien security interest on the title of the motor vehicle described therein, which vehicle is free and clear of any other security interest;

(c) That all documents constituting each Receivable are genuine and complete originals of such documents, all persons signing such documents had full legal capacity to contract, the documents delivered to Peak Acceptance are the only documents executed by Dealer or Debtor in connection with the sale and financing of the motor vehicle described therein, and such documents are and will continue to be free from defenses and offsets;

(d) That the description of the motor vehicle contained in the documents constituting the Receivable is correct;

(e) That the Debtor named in the Receivable is the same person whose financial and credit information was furnished to Peak Acceptance by Dealer in connection with Dealer's offer of the Receivable to Peak Acceptance;

(f) That Dealer has not made and will not make any agreement, either oral or written, affecting Peak Acceptance's rights against or relationship with Debtor without Peak Acceptance's prior express written approval;

(g) That Dealer sold the motor vehicle to Debtor in the ordinary course of Dealer's business;

(h) That Debtor has not purchased the motor vehicle for resale and will not be holding the motor vehicle as inventory;

(i) That within 30 days of the date of the sale Dealer will take all steps necessary to perfect Peak Acceptance's security interest according to applicable law, including filing a proper application for a certificate of title for the subject vehicle naming Debtor as the owner of the vehicle and Peak Acceptance as the holder of the first lien security interest in the vehicle;

(j) That Dealer is either a sole proprietorship or a corporation, partnership or limited liability company in existence in its state of formation, qualified to do business (if necessary) in the state in which the Receivable was originated; that Dealer has all licenses required under applicable law to conduct its business; that Dealer is the sole and unconditional owner of each Receivable and Dealer has the legal right to sell, assign and transfer each Receivable to Peak Acceptance;

**(k)** The Dealer has sold, delivered and transferred the motor vehicle described in the subject Receivables to Debtor and has performed all services required to be performed by Dealer in connection therewith, and Debtor has accepted the motor vehicle and such services;

**(l)** That the sale and related financing of the subject motor vehicle, and all other actions taken by Dealer in connection therewith, complied with all applicable federal, state, and local laws and regulations thereunder, including, without limitation, usury laws, the Uniform Consumer Credit Code, and other consumer credit laws and equal credit opportunity and disclosure laws;

**(m)** That the purchase price of said motor vehicle was not increased due to or as part of the financing thereof or due to or as part of the arrangement of the financing described herein; that the down payment made by the Debtor has been made in cash unless otherwise specifically provided in writing in said Receivable; and that no part of the down payment made by the Debtor has been loaned or given directly or indirectly by Dealer to the Debtor; and

**(n)** That prior to assigning each Receivable to Peak Acceptance the requisite period, if any, during which the customer had the right to rescind such transaction had expired and such customer had not rescinded the transaction.

**2.** If Dealer learns, after the assignment of any Receivable to Peak Acceptance, that any representation contained in paragraph 1, above, is untrue, Dealer shall promptly notify Peak Acceptance.

**3.** Except as specifically provided in paragraph 4 or 5, below, the sale, transfer, and assignment of the Receivables to Peak Acceptance shall be without recourse.

**4.** At any time prior to payment in full of the Receivable, and upon notice and demand from Peak Acceptance, the Dealer hereby agrees to repurchase from Peak Acceptance any Receivable for which there has been a breach of any one or more of the Dealer's representations, warranties or covenants as set forth in Paragraph 1, above. In the event that the Dealer is required to repurchase any receivable pursuant to this Paragraph 4, the Dealer's repurchase price shall be equal to the total outstanding indebtedness currently due (at the time of payment by Dealer to Peak Acceptance) under the terms of said Receivable.

**5.** In addition to the covenants contained in paragraph 4, Dealer agrees to defend Peak Acceptance, its agents, servicers, and assignees, and their respective officers, employees and agents (collectively, "Indemnitees") (with counsel reasonably acceptable to the affected Indemnitees), and indemnify and hold harmless Indemnitees, from and against any and all claims, suits, costs, expenses, losses, damages, and liabilities arising out of or resulting from (i) any failure of the Dealer to comply with any applicable law in connection with the sale or financing of the motor vehicle or the assignment of the Receivable to Peak Acceptance, or (ii) any breach of any of the Dealer's representations, warranties or covenants contained in this Agreement. As further explanation of, and not in limitation thereof, claims, suits, costs, expenses, losses, damages, and liabilities shall be deemed to include (i) loss of principal and/or interest, (ii) claims, including counterclaims of any type, (iii) claims for damage to any property, and (iv) attorney's fees, court costs, costs of investigation, and related costs. If an Indemnity incurs any expenses or pays any liabilities of a type against which Dealer has indemnified such Indemnity under this paragraph 5, Dealer will reimburse Peak Acceptance promptly on demand, and if Dealer does not reimburse Peak Acceptance within 30 days of such demand, interest will accrue on the amount owing to Peak Acceptance at the rate of 18% per annum, not to exceed the maximum amount permitted by applicable law.

**6.** The obligations of the Dealer contained in this agreement, and the representations, warranties and covenants provided in paragraph 1 hereof, shall survive the closing hereof and shall remain in full force and effect during any period that any principal or interest for any Receivable shall remain unpaid, and thereafter with respect to a Receivable until the statute of limitations has expired with respect to any claim for a refund by the Debtor under such Receivable.

**7.** Dealer shall not require Debtor to pay a premium, increased purchase price, or other additional charge for the purchase of a motor vehicle due to or on account of the financing of such motor vehicle as described herein, and the charge of any such premium, increase or other additional charge by the Dealer shall be a breach by Dealer of paragraph 1, above.

**8.** Dealer agrees to notify Peak Acceptance promptly in writing in the event of the sale or transfer of (i) all or a substantial portion of the assets of Dealer, or (ii) majority ownership of the entity constituting Dealer (including the death of a principal owner of Dealer), including in such notice contact information for the former owners and the new owners.



9. In the event of a breach of or default under this Agreement by Dealer, Dealer will reimburse Peak Acceptance for its reasonable attorneys fees, court costs, costs of investigation, and other costs incurred by Peak Acceptance as a result of such breach or default.

10. Either party may terminate this Agreement at any time, but no such termination will have any effect on the obligations of Dealer or the rights of Peak Acceptance with respect to any Receivables purchased by Peak Acceptance from Dealer under this Agreement.

11. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. Dealer hereby consents to the jurisdiction of state and federal courts in the State of Texas, and agrees that venue in any of such courts will be deemed proper and will not be deemed inconvenient.

Peak Acceptance LLC

Dealership Name: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title (must be corporate officer): \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Address for Notices:  
Peak Acceptance LLC  
4100 Spring Valley Rd Suite 820  
Farmers Branch, Texas 75244  
Attn: Dealer Services

Address for Notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_