

HOME ACCEPTANCE CORPORATION
MASTER DEALER AGREEMENT FOR THE SINGLE PURCHASE AND BULK PURCHASE OF MERCHANDISE CONTRACTS
(READ CAREFULLY BEFORE SIGNING)

This **MASTER DEALER AGREEMENT FOR THE SINGLE PURCHASE AND BULK PURCHASE OF MERCHANDISE CONTRACTS** is made and entered into on _____, 202_ by and between **HOME ACCEPTANCE CORPORATION**, a California corporation (the "Buyer"), and _____ (individually and collectively the "Dealer"); and, _____ (individually and collectively the "Individuals"), all of which shall collectively hereinafter be referred to as "Parties".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definitions. The following terms have the following meanings:

- (a) "Agreement": This Master Dealer Agreement for the Single Purchase and Bulk Purchase of Merchandise Contracts, together with Exhibit "A", Exhibit "B", and Exhibit "C" attached hereto; and, all schedules, riders, attachments, addenda and exhibits hereto, all as modified and amended from time to time.
- (b) "Amount Financed": The total cash price paid for the Merchandise minus the total down payment and any prior payments in respect of the principal obligation under the Merchandise Contract, plus any other costs and charges as specified in the Merchandise Contract, as of the date of the Buyer's purchase of the Merchandise Contract from the Dealer. "Amount Financed" may also, as the context may require, refer to the principal balance upon which interest, if any, will be paid by the Customer.
- (c) "Authorization Facility": The conditional approval service and facility that may be provided by the Buyer hereunder whereby the Buyer may conditionally approve the Buyer's purchase of a Merchandise Contract upon satisfaction of certain terms and conditions. The Buyer shall not be obligated to offer or make available the Authorization Facility at any time or with respect to any proposed Customer or Merchandise Contract.
- (d) "Buyer": Home Acceptance Corporation, a California corporation.
- (e) "Customer": Any person who is obligated to pay for Merchandise under a Merchandise Contract.
- (f) "Credit Slip": The document used by the Dealer to record a credit adjustments as contemplated in Exhibit "B."
- (g) "Dealer": The Party identified as such in the introductory paragraph to this Agreement.
- (h) "Down Payment": The cash amount paid by the Customer at the time of his purchase of Merchandise.
- (i) "First Payment Default": Failure by the Customer to pay to Buyer, in accordance with the terms of the Merchandise Contractor or any modifications agreed thereto between Customer and Buyer, the first scheduled payment amount in full on or before the scheduled due date.
- (j) "Guarantor": Each person guaranteeing the obligations of the Dealer under this Agreement.
- (k) "Individual": Each Party identified as such in the introductory paragraph to this Agreement, who are owners of or principals of, or managers of, or officers or members of the Dealer. If there is no person identified as an Individual in such introductory paragraph, all references in this Agreement to "Individual" or "Individuals" shall be disregarded.
- (l) "Loss Reserve Accrual": As defined in Section 9 hereof.
- (m) "Merchandise": Goods or services sold to and performed or to be performed for a Customer by the Dealer, including any accessories and additions to such goods.
- (n) "Merchandise Contract": A retail installment sale contract or a retail installment account evidencing a sale of Merchandise and/or services to a Customer by the Dealer and the obligation of the Customer to pay for such Merchandise and/or services.
- (o) "Merchandise Contract Classifications": Class A & TIER 1 are equivalent Merchandise Contract Classifications, Class B & TIER 2 are equivalent Merchandise Contract Classifications, Class C & TIER 3 are equivalent Merchandise Contract Classifications, Class D & TIER 4 are equivalent Merchandise Contract Classification and Class E & TIER 5 are equivalent Merchandise Contract Classifications.
- (p) "Net Deficiency": As defined in Section 9(d) hereof.
- (q) "Net Unpaid Balance": As defined in Section 9(d) hereof.
- (r) "Operational Guidelines": As defined in Section 3(n) hereof.
- (s) "Parties": As defined in the introductory paragraph.
- (t) "Payment Default": Failure by the Customer to pay to Buyer, in accordance with the terms of the Merchandise Contract or any modifications agreed thereto between Customer and Buyer, a scheduled payment amount in full on or before the scheduled due date.
- (u) "Principal": An owner of, or an officer, or a manager, or a member of a Dealer entering into this Agreement.
- (v) "Potentially Purchasable States" The following is a list of the thirty-two (32) potentially purchasable states, and in addition it includes the District of Columbia: AL, AZ, CA, CO, DC, DE, FL, GA, HI, IL, IN, LA, MD, MI, MN, MO, MS, NC, NJ, NM, NV, OH, OR, PA, SC, TN, TX, UT, VA, WA, WI, WV, WY.
- (w) "Repurchase Price": The contractual balance due pursuant to the terms of the Customer's Merchandise Contract being repurchased from the Buyer by the Dealer, plus any and all collection and enforcement costs incurred by the Buyer in the enforcement or interpretation of the Merchandise Contract or this Agreement.
- (x) "Total Outstanding Balance": The sum of all unpaid payments, late charges and non-sufficient fund charges owed to the Buyer on a Customer's Merchandise Contract, plus all costs and expense of collection efforts by the Buyer, including attorneys' fees.

2. Scope.

(a) **Conforming Merchandise Contracts.** Before submitting a Merchandise Contract to the Buyer for a single purchase or as part of a bulk purchase, the Dealer may submit a purchase application and related materials and information concerning the Customer and the Merchandise Contract to the Buyer for the Buyer's conditional approval for a single purchase or as part of a bulk purchase from the Dealer under the Authorization Facility. The Buyer may conditionally approve or disapprove the proposed Merchandise Contract under the Authorization Facility in the Buyer's sole discretion. The Buyer, in its sole discretion, may assign to each Merchandise Contract conditionally approved by it for purchase a classification as provided on Exhibit "A", incorporated herein by this reference. On and subject to the terms and conditions contained in this Agreement, the Buyer shall purchase from the Dealer, from time to time, conforming Merchandise Contracts that were conditionally approved by the Buyer and that Buyer subsequently unconditionally approves as being in conformity with the Buyer's underwriting standards in effect from time to time and its sole judgment concerning the creditworthiness of the Customer and compliance of the Merchandise Contract and the sale and financing contemplated therein with the Buyer's requirements, as in effect from time to time.

(b) **Non-Conforming Merchandise Contracts.** For any Merchandise Contracts which do not conform to the provisions of Exhibit "A," the purchase price shall be determined on a contract-by-contract basis, with the Dealer being notified by telephone, email or facsimile prior to purchase of the price, discount, reserve and other charges or terms.

(c) **Certain Ratios.** If the outstanding dollar balance of the Class A (or TIER 1) and Class B (or Tier 2) classification Merchandise Contracts purchased by the Buyer falls below **fifty percent (50%)** of the total outstanding balance of all Merchandise Contracts purchased by the Buyer from the Dealer, then, at the Buyer's sole discretion, it may curtail purchases of any additional Class C (or TIER 3) and Class D (or TIER 4) and Class E (or TIER 5) classification Merchandise Contracts until the percentage of Class A and Class B Merchandise classification Contracts purchased by the Buyer from the Dealer increases above the percentage set herein.

(d) **Limitations on the Buyer's Obligations.** Notwithstanding anything contained herein, the Buyer shall be under no obligation to purchase any Merchandise Contract from the Dealer, to conditionally approve the Buyer's purchase of any Merchandise Contract or to unconditionally approve the Buyer's purchase of any Merchandise Contract the purchase of which it previously conditionally approved.

3. Dealer's and Individuals' Representations and Warranties. To induce the Buyer to enter into this Agreement and possibly to purchase Merchandise Contracts from the Dealer, the Dealer and the Individuals make the following representations and warranties to the Buyer, which representations and warranties shall be deemed made upon entering into this Agreement; and, upon each and every delivery for the sale of a Merchandise Contract to the

Buyer and which shall survive the termination of this Agreement:

- (a) Merchant represents and warrants that all services covered by each Merchandise Contract have been or will be fully provided to the satisfaction of the Customer.
- (b) All application information pertaining to each Customer provided to the Buyer is genuine, complete, up to date and accurate.
- (c) Each Merchandise Contract represents the complete and entire agreement between the Dealer and the Customer with respect to the sale and financing of the sale of the Merchandise.
- (d) All signatures purporting to be those of each Customer on applications, sales slips, or other documents (including the Merchandise Contract) are genuine, not forged, unauthorized or fraudulent. All documents, including the Merchandise Contract, are legible and are filled in correctly, accurately and completely.
- (e) Each Merchandise Contract is the valid and binding agreement of the Customer and is enforceable against the Customer in accordance with its terms and is and will remain free of any defense, offset, counterclaim or recoupment maintainable by the Customer. All Customers in connection with their Merchandise Contract had the capacity to contract at the time they executed their Merchandise Contract and have the ability to pay their debts as they become due.
- (f) With respect to each Customer Credit Application, Merchandise Contract, the sale of the Merchandise to the Customer and all actions taken by the Dealer in connection therewith or in the performance of its obligations hereunder and thereunder comply with any and all applicable state and federal laws and regulations, including, but not limited to any and all applicable federal and state consumer protection and consumer privacy laws and regulations.
- (g) All form contracts and related documents utilized by the Dealer in connection with the sale of Merchandise have been pre-approved by the Buyer in writing.
- (h) For any and all Unapproved States in which a Customer resides at the time of their entering into a Merchandise Contract, each and every Merchandise Contract is the legal, valid and binding agreement of the Customer and is legally enforceable against the Customer in their state of residence in accordance with its terms and is and will remain free of any defense, offset, counterclaim or recoupment maintainable by the Customer. With respect to all contracts, documents and actions taken by the Dealer in connection with the sale of the Merchandise to any and all Customers residing in Unapproved States and all contracts, documents and actions taken by the Dealer in connection with or in the performance of its obligations hereunder and thereunder comply with any and all applicable state and federal laws and regulations.
- (i) With Respect to any and all form contracts and related documents used in connection with the sale of the Merchandise to any and all Customers residing in Unapproved States (including any and all information inserted into the contracts and related documents by the Dealer) utilized by the Dealer in connection with the sale of Merchandise in the Unapproved States, the Dealer acknowledges that those form contracts and related documents have not been approved by the Buyer for any specific use and the Buyer does not make any representation concerning their legality, enforceability, completeness or validity in the Unapproved States.
- (j) Upon submitting a Merchandise Contract from an Unapproved State for sale to the Buyer, the Dealer shall give the Buyer written notice that the Customer resides in an Unapproved State.
- (k) The Dealer and the Dealer's employees are and shall remain duly licensed or registered as may be required by applicable law in all Approved States; and, the Dealer and the Dealer's employees are and shall remain duly licensed and/or validly registered as may be required by any and all Unapproved States for any and all services rendered to and Merchandise Contracts entered into with any and all Customers residing in Unapproved States.
- (l) The Dealer has the full power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement is the Dealer's (including its principal(s)) legal, valid and binding obligation, enforceable in accordance with its terms, the making and performance of which do not and will not contravene or conflict with any presently existing requirement or restriction imposed by judicial, arbitral or other governmental instrumentality or any agreement, instrument or indenture by which the Dealer or its assets are bound.
- (m) **The Dealer, each Individual and each Guarantor have been advised to seek independent legal counsel and business and accounting professional advice with respect to the negotiation, execution and acceptance of this Agreement and the transactions governed by this Agreement and that they have freely and voluntarily entered into this Agreement as the product of arm's length negotiation. Dealer and Individuals acknowledge having received a copy of this Agreement and each has had ample time to thoroughly review, examine and negotiate its terms and understand the consequences and effect of entering into this Agreement.**
- (n) With respect to each Merchandise Contract, all actions required under the Operational Guidelines set forth in Exhibit "B" have been or prior to the purchase of the Merchandise Contract shall have been performed by Dealer in accordance with the requirements of such Operational Guidelines.
- (o) If a Merchandise Contract sold to the Buyer under this Agreement involves future services, unperformed services and/or undelivered goods and services those services shall be performed and be fully completed within a reasonable time from the date of sale.
- (p) Each of the Dealer's Customers submitted to the Buyer for approval has duly authorized the Buyer to make a credit inquiry and obtain their credit report through a credit bureau.
- (q) No representative or agent of the Buyer has made any promises, guarantees, representations, warranties, assurances or agreements not specifically contained in this Agreement, and the Dealer has not relied upon any communication by the Buyer, its agents or representatives in forming its decision to enter into this Agreement.
- (r) The Dealer has access to other financing sources and is not dependent on the Buyer to meet its funding requirements. In addition, the Dealer represents that there are numerous other sources of finance companies willing to purchase the Dealer's Merchandise Contracts, and if this Agreement is terminated or if the Buyer fails or refuses to purchase one or more Merchandise Contracts from the Dealer, the Dealer will not suffer any economic loss.
- (s) The Dealer and the Individuals (a) are solvent and have assets that exceed their respective liabilities, (b) are able to pay their respective debts as they come due, (c) have sufficient capital to carry on their respective business and transactions and all businesses and transactions in which they intend to engage and (d) will not incur debts beyond their ability to repay the same as they mature.
- (t) All Merchandise Contracts and collateral offered to Buyer are owned by the Dealer and/or the Individuals free and clear of any and all interests held by third parties, including, but not limited to, assignments, security interests, encumbrances, claims, liens and levies.
- (u) During the term of this Agreement, the Dealer and Individuals will: (i) maintain and provide evidence of malpractice (where applicable), error and omissions and liability insurance coverage in amounts and types reasonably satisfactory to Buyer and to name Buyer as an additional insured upon written request from Buyer.
- 4. Dealer's and Individuals' Covenants.** As long as there is any outstanding balance due the Buyer from a Customer on a Merchandise Contract, the Dealer and the Individuals shall:
- (a) Permit the Buyer's representatives at any reasonable time to examine Dealer's books and records relating to Merchandise Contracts purchased by the Buyer and make copies of those books and records;
- (b) Deliver profit and loss statements and balance sheets to the Buyer upon request, but no less frequently than quarterly;
- (c) Comply with the terms and conditions of this Agreement and any and all other documents, instruments and agreements executed and delivered by the Dealer to the Buyer or the Customer, as applicable, in connection with the transactions that are the subject of this Agreement (including any security agreement);
- (d) Upon Buyer's request, Dealer shall provide valid copies and/or verification of any and all State licenses and/or valid State registration certificates required by any and all of the States where their Customer resided at the time of entering into a Merchandise Contract;
- (e) Not accept payments made by Customers on the Buyer's accounts, unless agreed to in writing by Buyer. All Customer payments shall be transmitted to Buyer the next business day immediately following receipt of a Customer payment;
- (f) Expeditiously handle all warranty claims;
- (g) Execute and deliver to the Buyer, as and when requested, any and all documents, instruments and agreements that the Buyer may request to effectuate the intent of this Agreement;
- (h) Not allow an event to occur which shall have a material adverse affect on the operations or financial condition of the Dealer or the Individuals;

- (i) Pay their respective debts as they become due;
- (j) Not file a petition in bankruptcy or a petition to take advantage of any insolvency act or other act for relief or aid of debtors; and,

(k) **Give the Buyer no less than six (6) months prior written notice of the Seller's intent** to voluntarily suspend the transaction of usual business or to allow an event to occur which restrains or in any way prevents the Dealer or the Individuals from conducting all or a material part of their respective business affairs in the ordinary course of business.

5. Sale and Assignment.

(a) The Dealer hereby sells, assigns and transfers to the Buyer all of the Dealer's rights, title and interests in and to any and all Merchandise Contracts approved by and sold to the Buyer pursuant to this Agreement. With respect to each Merchandise Contract, the sale shall be on a **with recourse basis, except for when the terms and conditions set forth in this Agreement or in Exhibit "A" attached hereto specify otherwise.** Irrespective of any amounts credited to the Loss Reserve Accrual, the Dealer and the Individuals UNCONDITIONALLY agree to repurchase at the Repurchase Price immediately from the Buyer, upon the Buyer's demand, each Merchandise Contract with respect to which there has been any fraud, misrepresentation and/or a breach of any warranty, covenant or agreement under this Agreement and/or in connection with any Merchandise Contract, with respect to the Customer or the Buyer; or, that have had any Payment Default with respect to any of the installment payments required by the applicable Merchandise Contract classification as identified in Exhibit "A"; or, in the case of a non-conforming Merchandise Contract, any other agreement between the Buyer and Dealer with respect thereto; and, all Merchandise Contracts if the Dealer fails or refuses to repurchase any Merchandise Contract as provided in the immediately preceding clauses. The Dealer shall pay the Repurchase Price for a Merchandise Contract to the Buyer in immediately available funds in an amount equal to (i) the Amount Financed, plus all accrued but unpaid interest, late charges, default interest and other sums due and payable under the Merchandise Contract, together with all costs and reasonable attorney's fees incurred in enforcing this Agreement, minus (ii) all payments of principal received by the Buyer.

(b) Each Merchandise Contract shall include a provision providing for the assignment of the Merchandise Contract by the Dealer to the Buyer in form and substance acceptable to the Buyer. Such provision shall be filled in completely and correctly by the Dealer and validly executed by the Dealer. The Dealer shall notify each Customer in writing within seven (7) days of the assignment of the Customer's Merchandise Contract to the Buyer pursuant to a Notice of Assignment in the form of Exhibit "C," with appropriate insertions. If the Dealer fails to notify a Customer of such assignment in writing within the seven (7)-day period, then the sale of that Merchandise Contract will be on a with recourse basis.

(c) If Dealer fails to repurchase any Merchandise Contract as required herein within seven (7) days of demand by the Buyer, the Buyer may, in its sole discretion, and without limiting any other rights or remedies of the Buyer under this Agreement, debit the Loss Reserve Accrual in an amount equal to the Repurchase Price for the Merchandise Contract or offset such amount against any sums due and owing from the Buyer to the Dealer.

(d) The Dealer acknowledges and agrees that (i) it is contemplated between the Parties that the Customers will mail all of their installment payments to the Buyer on or before their date scheduled under the applicable Merchandise Contract without the necessity of any collection or other activity by the Buyer, (ii) the Buyer is not a collection agency and is not obligated to make any collection efforts under the terms of this Agreement, and (iii) if the Buyer undertakes any collection or other activity of any kind that activity shall not be considered a change, modification or waiver of any terms, conditions or obligations of this Agreement, nor shall it impose any duty to continue such activity.

6. **Remedies for Breach of a Representation, Warranty, Covenant or Agreement.** It is the intent of the Parties to this Agreement that the use of one or more of the remedies listed in this paragraph is at the option of and in its sole discretion of the Buyer, and the Buyer is not required to exercise its right to use any of them. In addition to any and all other remedies at law or in equity, in the event of any breach of a representation, warranty, covenant or agreement contained in this Agreement, or any other remedy provided in this Agreement or any guaranty of the Dealer's obligations hereunder, the Buyer may, at its option and in its sole discretion, and without limiting any other rights or remedies of the Buyer under this Agreement or at law or in equity, do any one or more of the following:

- (a) Notwithstanding any limitations under Section 3 of Exhibit "A" hereto, make written demand upon the Dealer to repurchase any or all Merchandise Contracts, by paying the Repurchase Price therefore in immediately available funds.
- (b) Offset against any amounts due and owing from the Buyer to the Dealer amounts owed by the Dealer to the Buyer under this Agreement and/or credit any additional amounts owing from the Buyer to the Dealer to the Loss Reserve Accrual.
- (c) Require the Dealer to deposit with the Buyer, in immediately available funds, an amount equal to the Net Unpaid Contractual Balance of any or all Merchandise Contracts.
- (d) Terminate this Agreement by written notice to the Dealer.
- (e) Debit the Loss Reserve Accrual an amount equal to the Repurchase Price of any or all Merchandise Contracts up to the total amount of the Loss Reserve Accrual.
- (f) Debit the Loss Reserve Accrual for any and all damages and losses sustained by the Buyer as a result of any breach of any representation, warranty, covenant or agreement in this Agreement; and any and all damages and losses the Buyer otherwise has sustained or reasonably could sustain in connection with Merchandise Contracts purchased from the Dealer.
- (g) Debit the Loss Reserve Accrual for any amounts owed by the Dealer to the Buyer.
- (h) In addition to all other remedies available at law (which none of the Parties waive by the exercise of any rights hereunder), the Buyer shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Dealer and Individual hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

In the event that any of the Parties institutes any legal suit, action, or proceeding against any other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action, or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such prevailing Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

(i) Upon reasonable notice to Dealer of a default, debit from any Dealer account on file with Buyer an amount sufficient to cure any unpaid default amount.

7. **Operational Guidelines.** The Dealer shall comply in all respects with the Operational Guidelines with respect to the handling and processing of Merchandise Contracts submitted to the Buyer by the Dealer for the purpose of approval, verification and purchase of the Merchandise Contract. If the Dealer fails to comply with any of the Operational Guidelines, the Buyer may elect not to purchase a Merchandise Contract, to terminate this Agreement or exercise any or all of its other rights and remedies under this Agreement.

8. **Termination.** The Buyer or the Dealer may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, if there is a material change in any law or regulation which would render the continuation of this Agreement unprofitable to the Buyer, or if there is any adverse change in the operation, assets, condition (financial or otherwise), reputation, business or ownership of the Dealer, any misrepresentation by the Dealer, or breach of any terms of this Agreement by the Dealer, the Buyer may immediately terminate this Agreement. Termination of this Agreement by either Party shall not impair or affect the liability or obligations of the Dealer to the Buyer under this Agreement, including that with respect to any Merchandise Contracts purchased by the Buyer from the Dealer prior to the time such notice of termination is given or received by the Buyer. Without limiting the generality of the foregoing, the Dealer shall further pay the Buyer in full upon demand any amounts owing to the Buyer pursuant to this Agreement, which arise after any termination.

9. Loss Reserve Accrual.

(a) For accounting purposes, the Buyer shall maintain records for amounts accruing to a loss reserve (the "Loss Reserve Accrual"). The Buyer shall credit amounts to the Loss Reserve Accrual for conforming Merchandise Contracts as provided in Exhibit "A" and, in the case of non-conforming Merchandise Contracts, amounts as otherwise agreed upon by the Dealer and the Buyer. Notwithstanding anything contained herein, the Buyer may, from time to time, in its sole discretion, modify or amend the provisions of Section 1 of Exhibit "A". Amounts credited to the Loss Reserve Accrual shall not be allocated or identified to any specific Merchandise Contract or Contracts. If the aggregate amount credited to the Loss Reserve Accrual at any time falls below the aggregate amount required pursuant to Exhibit "A", as modified and amended, and any other applicable agreement, then (i) upon notice to the Dealer, the Buyer may credit additional amounts from the purchase price of Merchandise Contracts to the Loss Reserve Accrual until no shortfall exists or (ii) the Dealer

shall, upon demand, pay to the Buyer such amounts as may be necessary to make up such shortfall.

(b) Subject to all the terms and conditions contained within this Agreement, Dealer is responsible for and required to maintain at all times the Loss Reserve Accrual at **ten percent (10.00%)** of the aggregate amount of the Total Outstanding Balances of all open Merchandise Contracts purchased from the Dealer by the Buyer, plus the aggregate amount of the Total Outstanding Balances of all Merchandise Contracts purchased from the Dealer by the Buyer for which a Payment Default has existed for thirty-one (31) days or more (this Loss Reserve Accrual requirement is hereinafter referred to as the "**Dealer Loss Reserve Accrual Minimum Balance**"). If the amount of the Dealer Loss Reserve Accrual Minimum Balance falls below the required balance, then (i) upon notice to the Dealer, the Buyer may credit additional amounts from the purchase price of Merchandise Contracts to the Loss Reserve Accrual until it equals the required Dealer Loss Reserve Accrual Minimum Balance or (ii) the Dealer shall, upon demand, pay to the Buyer in immediately available funds such amounts as may be necessary to increase the Loss Reserve Accrual until it meets the required Dealer Loss Reserve Accrual Minimum Balance.

(c) The Loss Reserve Accrual is an accounting mechanism only to account for certain of the Dealer's obligations to the Buyer hereunder. The Dealer shall not have any rights in the credits to the Loss Reserve Accrual or amounts credited to the Loss Reserve Accrual. The Dealer shall not grant a security interest in, encumber, mortgage, pledge or assign any of its rights, title or interests in or to amounts credited to the Loss Reserve Accrual that might be paid to the Dealer.

(d) The Buyer may debit the Loss Reserve Accrual from time to time by the amount of: (i) any Net Unpaid Balance or the Net Deficiency on any Merchandise Contracts purchased from the Dealer, including Merchandise Contracts purchased from the Dealer before the date of this Agreement in default of any of their installment payments; (ii) any Net Unpaid Balance or Net Deficiency on any Merchandise Contracts that have been purchased from the Dealer which Dealer has failed to repurchase due to its recourse obligation within seven (7) business days after written demand therefor was issued by the Buyer, due to Dealer's First Payment Default repurchase obligation or any other default or breach by the Dealer; (iii) any and all damages and losses sustained by the Buyer as a result of any breach of any representation, warranty, covenant or agreement in this Agreement; and (iv) any and all damages and losses the Buyer otherwise has sustained or reasonably could sustain in connection with Merchandise Contracts purchased from the Dealer. The "**Net Unpaid Balance**" means the sum of all unpaid payments, late charges and non-sufficient fund charges owed to the Buyer on a Customer's Merchandise Contract at the time the Loss Reserve Accrual is charged by the Buyer. The "**Net Deficiency**" means the sum of all unpaid payments, late charges and non-sufficient fund charges plus all costs and expense of collection efforts by the Buyer, including attorneys' fees. If the Buyer receives any payments on any Merchandise Contract for which an amount as defined above has been debited to the Loss Reserve Accrual and the Merchandise Contract has been assigned without recourse back to the Dealer by the Buyer or has been repurchased by the Dealer from the Buyer without recourse, the Buyer may credit the Loss Reserve Accrual for the amount of any such payments received by the Buyer.

(e) The Buyer may assign to the Dealer Merchandise Contracts for an amount as defined in (c) above that have been debited to the Loss Reserve Accrual. If Buyer assigns a Merchandise Contract to the Dealer, it is assigned without recourse to the Buyer.

(f) From time to time, the Buyer may provide the Dealer with a memorandum showing the credits to and debits against the Loss Reserve Accrual since the previous memorandum, if any.

(g) Upon termination of this Agreement, the Buyer shall remit to the Dealer an amount equal to the sum of all credits less the sum of all debits against the Loss Reserve Accrual, provided that (i) the Dealer is not in default of any obligation to the Buyer at the time of termination, (ii) the Dealer has satisfied in full all its obligations to all of the Customers and to the Buyer, and (iii) payment in full, including but not limited to all costs of collection, has been received by the Buyer under all of the Merchandise Contracts purchased by the Buyer from the Dealer and any indebtedness of the Dealer to the Buyer has been paid in full.

(h) With regards to the terms and conditions set forth in this Section 9, hereinabove, the following is agreed to by all Parties: Buyer's failure or delay in the exercise of any power, right or remedy, and no course of dealing between the Dealer and the Parties, shall operate as a waiver of such power, right or remedy, nor shall any single or partial exercise of any power, right or remedy preclude other or further exercise thereof or the exercise of any other power, right or remedy. In addition, Buyer's failure to give notice to or demand on the Dealer and/or the Individuals not required hereunder shall in any event entitle the Dealer and/or Individuals to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Buyer to any other or further action in any circumstances without notice or demand. Buyer's waiver of any provision of this Section 9, hereinabove, and any consent to any departure by the Dealer and/or Individuals from the terms of any provision of this Section 9, hereinabove, shall be effective only in the specific instance and for the specific purpose for which given.

10. Performance of Agreements.

(a) The Buyer may, but is not obligated to, from time to time, in its sole discretion, perform any agreement or obligation of the Dealer or Individuals hereunder which the Dealer or the Individuals have failed to perform and may take any other action which the Buyer, in its sole discretion, deems necessary for the maintenance or preservation of its rights and/or its interests under this Agreement, and the Dealer and Individuals shall reimburse the Buyer, upon demand, for all costs and expenses incurred by the Buyer in connection therewith, together with interest thereon at the rate provided herein from the date incurred until reimbursed.

(b) The rights and powers conferred upon the Buyer under this Section 10 are solely to protect its interest in this Agreement and shall not impose any duty upon it to exercise any such rights or powers. The Buyer does not in any way assume any of the Dealer's and/or Individuals' obligations under, or with respect to, this Agreement. The Dealer and Individuals shall remain fully liable with respect to all of the terms, conditions and obligations of this Agreement to the same extent as if this Section 10 were not part of this Agreement.

11. Repurchased Contracts. Unless Dealer shall have repurchased the Merchandise Contract and paid to the Buyer the Net Unpaid Balance therefor, Dealer and/or Individuals will not, without the prior written consent of the Buyer, accept payments from the Customer or accept the return or take possession of the Merchandise sold pursuant to any Merchandise Contract. Upon the Dealer's repurchasing any Merchandise Contract, the Buyer shall reassign the Merchandise Contract to the Dealer without recourse, representation, or warranty, express or implied.

12. Payments on Merchandise Contracts. Unless and until a Merchandise Contract has been reassigned to the Dealer as contemplated in Section 11, all sums payable or paid on Merchandise Contracts purchased by the Buyer from the Dealer shall be the sole property of the Buyer, and the Dealer and/or Individuals shall not accept without prior written consent any payment on any such Merchandise Contract.

13. Interest on Charges Owed. All amounts owed to the Buyer by the Dealer and/or Individuals (a) other than for the repurchase of Merchandise Contracts shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date such sums became owing until paid in full, and (b) for the repurchase of Merchandise Contracts, shall accrue interest at the interest rate charged under the terms of the Merchandise Contract at the time of purchase hereunder from the date of the Payment Default under the Merchandise Contract or the date of the repurchase demand, whichever is earlier, until paid in full.

14. Indemnity. The Dealer and each Individual hereby agree to indemnify, protect, defend and hold harmless the Buyer from and against any and all claims, demands, costs (including attorneys' fees and court costs), losses, and liabilities arising out of or related to: (a) Acts or omissions of the Dealer in connection with any Merchandise Contract; including, breach of any of its representations and warranties made in this Agreement. (b) Buyer's entering into and performing its obligations under this Agreement. (c) The Buyer's exercise of any of its rights in Section 10 or Section 15.

If any claim or demand is asserted against the Buyer, the Buyer may retain attorneys of its own selection to represent the Buyer at Dealer's expense. The Buyer shall direct the defense of the claim and shall be the sole judge of the acceptability of any settlement.

15. Power of Attorney. The Dealer and Individuals hereby irrevocably appoint the Buyer as their attorney-in-fact, with full power of substitution and with full authority in the place and stead of the Dealer and Individuals and in the name of the Dealer and Individuals, from time to time, in the Buyer's sole discretion, (a) to take any action and to execute any document, instrument or agreement the Buyer may deem advisable to accomplish the purposes of Section 10 or to exercise any rights or remedies upon the occurrence of a breach of a representation, warranty, covenant or agreement contained in this Agreement, (b) to endorse, negotiate, or otherwise transfer all payments received on any Merchandise Contract purchased by the Buyer, and (c) to execute UCC-1 financing statements to perfect security interests granted herein or in any security agreement related hereto. The Dealer and Individuals hereby ratify all acts that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and is irrevocable.

16. Entitlement to Tax Refund or Deduction on Merchandise Contracts. The Dealer and the Buyer agree that the Buyer is the party entitled to claim any potential state sales tax refunds or deductions as a result of bad debt losses charged off by the Buyer on any and all Merchandise Contracts currently existing or created in the future which have been acquired by the Buyer from the Dealer and assigned by the Dealer to the Buyer. Dealer's assignment to the Buyer includes the right to claim any and all state sales tax refunds, deductions or credits; and the right to claim any and all such state sales tax refunds, deductions or credits are irrevocably assigned, transferred and relinquished to the Buyer by the Buyer. The Dealer agrees that it has not and will not claim a deduction or refund with respect to any Merchandise Contracts acquired by the Buyer from the Dealer, currently existing or created in the future and hereby relinquishes to the Buyer all rights and claims to such deductions or refunds to said Merchandise Contracts. The Dealer represents and warrants that it reported the tax on the sale of the property with respect to the Merchandise Contracts as required by state law in the state the sale occurred in, and that it will report the tax on the sale of the property with respect to future Merchandise Contracts as required by state law in the state the sale occurred in.

17. Electronic Funds Transfers ("EFT") and ACH Payment Authorization. Dealer authorizes Buyer to initiate and use EFT over the ACH network (or any other network the Buyer chooses) to charge (debit) the Dealer's Bank Account and deposit (credit) into the Dealer's Bank Account identified in the Dealer Application for any and all amounts the Dealer owes or is owed under this Agreement on or after the due date for any such amounts owed. Dealer also authorizes Buyer to initiate a separate EFT to charge (debit) the Dealer's Bank Account for any late fees, return item charge fee (\$15.00 or less) for each returned EFT transaction (rejected for Non Sufficient Funds, submission error, or other bank related return reasons) or other charges required by the terms and conditions of this Agreement. Dealer agrees that the Buyer may resubmit any returned EFT as permitted by law and network rules. Buyer is not responsible for any bank fees the Dealer incurs in connection with returned EFT payments. Instead of or in addition to any of the EFT transactions described in this Section, Dealer also authorizes the Buyer to process any EFT you subsequently authorize by phone, fax, text message or email. In the event that the Buyer makes an error in processing an EFT, the Dealer authorizes the Buyer to initiate an EFT to (credit) or from (debit) the Dealer's Bank Account to correct the error. Dealer may terminate or update this authorization to initiate EFT or Credit/Debit Card or update the Bank Account information or Credit/Debit Card information so long as the Dealer makes and delivers the termination or update request to Buyer **in writing or notifies Buyer orally**, at least three (3) business days before the scheduled payment. Dealer is required to deliver a written confirmation to Buyer of any oral request to terminate or update Dealer's authorization within fourteen (14) days of when Dealer made the oral request, otherwise Dealer's oral request will be void. If any amount owed cannot be obtained by EFT, the Dealer remains responsible and liable for such amount owed. The Dealer authorizes the Buyer to create and process drafts against the Bank Account, instead of an EFT, if the Dealer terminates this authorization to initiate an EFT. Dealer understands and agrees that terminations **must be made or confirmed in writing**. Dealer agrees not to dispute any EFT processed by the Buyer with the Dealer's bank, so long as the EFT transaction corresponds to the terms indicated in this authorization and Agreement. Dealer acknowledges and represents that Dealer is the owner or authorized signer on the Bank Account information entered in the Dealer Application.

18. Miscellaneous Provisions.

(a) **No Agency.** Neither the Dealer nor any Individual is an independent contractor, joint venturer with or a partner, employee, or agent of, the Buyer, and nothing contained in this Agreement shall change or be construed to change the nature of such relationship between the Buyer and the Dealer and Individuals.

(b) **Assignability.** The Dealer may not assign any of its rights, title or interests hereunder. The Buyer may assign its rights, title and interests under this Agreement to a third party. If the Buyer makes such an assignment, the Dealer shall render performance under this Agreement to the assignee as though the assignee were a party hereto. Dealer waives and will not assert against any assignee any claims, defenses or set-offs, which Dealer could assert against the Buyer, except, defenses which cannot legally be waived.

(c) **Notices.** Unless otherwise stated in this Agreement, notices are effective when mailed, postage prepaid, by registered or certified mail, return receipt requested, to the address of the party listed on the signature page of this Agreement.

(d) **Binding Effect.** This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legatees, executors, administrators, personal representatives, successors and assigns.

(e) **Errors In Computation of Purchase Price, Loss Reserve Accrual, Discounts and Other Charges.** (i) At the time of the purchase of each Merchandise Contract, the Buyer shall provide the Dealer a report that contains a breakdown of the purchase price, loss reserve, discounts and other charges therefor. All computations by the Buyer concerning the purchase price for a Merchandise Contract and matters pertaining thereto (including the purchase price, loss reserve, discounts and other charges) shall be conclusive (absent manifest error) if not challenged by the Dealer by written statement of exceptions in reasonable detail within fourteen (14) calendar days after receipt of the purchase price from the Buyer. If the Buyer receives a written statement of exceptions from the Dealer within the above time period, including satisfactory proof of any error in computing the purchase price, loss reserve, discounts and other charges for a Merchandise Contract, the Buyer shall reimburse the Dealer for any sums withheld from the Dealer as a result of such computational error. (ii) Upon the Buyer's submission to the Dealer of evidence of manifest error in computing the purchase price, loss reserve, discounts and other charges for a Merchandise Contract, the Dealer shall reimburse the Buyer for any excess sums paid to the Dealer as a result of such computational error.

(f) **Attorneys' Fees and Collection or Enforcement Costs.** In any legal action, small claims action, arbitration, bankruptcy proceeding, appellate proceeding, post-judgment enforcement proceeding or other post-judgment enforcement activities or other proceeding brought to enforce or interpret the terms of (i) this Agreement, (ii) any Merchandise Contract purchased under this Agreement, or (iii) any individual continuing guaranty of any principal or officer of the Dealer or Individual; the prevailing party on the majority of claims and/or causes of action shall be entitled to reasonable attorneys' fees and any other costs (including time spent, mileage and lodging by the Buyer's employees if the Buyer is the prevailing party incurred in that proceeding or activity in addition to any other relief to which it is entitled. The provisions of this Section constitute a distinct and severable agreement from the contractual rights created by this Agreement. In the event of a judgment against one party concerning any aspect of this Agreement or the subject matter hereof, the right to recover post-judgment attorneys' fees and other costs incurred in enforcing the judgment shall not be merged into and extinguished by any money judgment.

(g) **Changing this Agreement.** The Buyer may change the terms upon which it will continue to purchase Merchandise Contracts pursuant to this Agreement prospectively at any time by providing the Dealer written notice at least seven (7) days before the changes are scheduled to become effective.

(h) **Grant of Authority.** The Dealer hereby authorizes the Buyer to endorse the Dealer's name upon any check, money order, or other forms of payment made by a Customer to the Buyer.

(i) **Availability of Authorization Facility.** Should the Authorization Facility be unavailable, the Buyer will not be held responsible for any losses that the Dealer might suffer because the Buyer is not purchasing or approving the purchase of Merchandise Contracts hereunder.

(j) **Advertising and Promotional Material.** Any advertising by the Dealer or any Individual related to credit programs offered by the Buyer must be reviewed and authorized in writing by Buyer. Modification or customization of the Buyer's promotional and advertising materials or the use of the Buyer's logos and service marks must be reviewed and authorized in writing by the Buyer. Modified or customized promotional and advertising materials of the Buyer must be updated whenever the Buyer makes updates to the related non-customized materials. The Dealer shall not use customer lists or pre-printed mailing labels supplied by the Buyer except for solicitation purposes in connection with the Buyer's credit programs.

(k) **Other Charges.** The Dealer shall pay to the Buyer, in connection with each Merchandise Contract (i) concurrently with the submission of each Merchandise Contract and/or customer application for approval, a credit bureau report and review charge of **\$9.00** per customer application submitted for approval, and (ii) upon the Buyer's purchase of a Merchandise Contract, a **\$11.50** contract processing charge.

(l) **Modifications of Customer Obligations.** Without notice to the Dealer or the Individuals, the Buyer may, upon a customer's request, extend the time for making any payment, enter into any extension or refinancing agreement, or waive any of the terms or conditions of any Merchandise Contract. In addition, the Buyer is not required to make demand or to give any notice or to take any action in connection with any Merchandise Contract or in preserving any rights against any Party to or in connection with the same. No waivers or modifications of any provisions of any Merchandise Contracts shall affect any rights or obligations (including repurchase obligations) of the Dealer or the Individuals to the Buyer.

(m) **Waivers and Amendments.** No failure or delay on the part of the Buyer in the exercise of any power, right or remedy, and no course of dealing between the Dealer and the Parties, shall operate as a waiver of such power, right or remedy, nor shall any single or partial exercise of any power, right or remedy preclude other or further exercise thereof or the exercise of any other power, right or remedy. No notice to or demand on the Dealer and/or the

Individuals not required hereunder shall in any event entitle the Dealer and/or Individuals to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Buyer to any other or further action in any circumstances without notice or demand. No amendment, modification or waiver of, or consent with respect to any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed and delivered by the Buyer. Any waiver of any provision of this Agreement, and any consent to any departure by the Dealer and/or Individuals from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given.

(n) **Security Agreement.** To secure the performance of this Agreement, the Dealer, the Dealer's principal(s) and the Individuals have granted a security interest to the Buyer and have executed concurrently herewith a security agreement in favor of the Buyer as secured party. Upon the request of the Buyer, the Dealer and the Individuals shall execute such financing statements and other documents (and pay the cost of filing and recording the same in all offices requested by the Buyer) and do such other acts as the Buyer may from time to time request to establish and maintain a valid perfected security interest in any and all collateral used as security for payment of all liabilities of the Dealer and the Individuals to the Buyer, including depositing with the Buyer any certificate of title issued on any personal property and noting thereon the Buyer's security interest. The Dealer and the Individuals agree that any carbon, photographic or other reproduction of this Agreement or of any such financing statement shall be sufficient for filing as a financing statement and authorizes the Buyer to execute and file a financing statement in the name of the Dealer (including Dealer's principal(s)) and Individuals.

(o) **Remedies Cumulative.** The remedies provided for herein are cumulative and not exclusive of any remedies which may be available to the Buyer at law or in equity.

(p) **Payments.** All payments made by mail or other physical delivery methods to the Buyer shall be payable at Home Acceptance Corporation, P. O. Box 729, Placentia, CA 92871 or 1061 N. Kraemer Place, Suite G, Anaheim, CA 92806, or at such other place of which the Buyer shall give the Dealer notice in writing.

(q) **Exercise of Rights.** The Dealer and Individuals hereby expressly waive, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by the Buyer of any of its rights and remedies upon the Dealer's and or the Individuals' breach of a representation, warranty, covenant or agreement contained in this Agreement or any Addendum hereto.

(r) **Number, Gender and Construction.** Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders, "includes" and "including" are not limiting, "or" is not exclusive, and "all" includes "any" and "any" includes "all". The duties, covenants, agreements, representations, warranties and obligations of the Dealer and Individuals in this Agreement shall be joint and several obligations and liabilities of the Dealer and Individuals and of each Dealer and Individual if more than one. Unless otherwise provided, all references to Sections, Exhibits, Addenda and the like are to the sections, exhibits, addenda and the like hereto and hereof. All Exhibits and Addenda are incorporated herein by this reference. Headings and titles herein are for convenience only and shall not influence the construction or interpretation hereof.

(s) **Construction of Agreement.** Buyer and Dealer agree that this Agreement shall be interpreted in a fair, equal, and neutral manner as to each of the parties, notwithstanding the provisions of Section 1654 of the California Civil Code. Section 1654 of the California Civil Code provides as follows: "In the cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."

(t) **Severability.** If any provision, section, subsection, paragraph, or subparagraph of this Agreement is adjudged by any court of law to be void or unenforceable in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of this Agreement, including any other provision, paragraph, or subparagraph. Each provision, paragraph, and subparagraph of this Agreement is declared to be severable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct provision.

(u) **Amendment and Restatement of Prior Agreements; Entire Contract.** If the Dealer and the Buyer entered into any prior or other agreement pertaining to the single purchase and/or bulk purchase of consumer retail installment contracts, this Agreement supercedes the prior agreement or agreements as to the purchase and sale of Merchandise Contracts after the date hereof. All prior agreements between the Parties concerning the subject matter of this Agreement are incorporated in this Agreement, which constitutes the entire contract. The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

(v) **Governing Law.** This Agreement has been delivered at Anaheim, California, and shall be construed in accordance with and governed by the laws of the State of California.

(w) **Consent to Jurisdiction and Venue.** SUBJECT TO THE REQUEST OF EITHER PARTY AS ALLOWED IN SECTION 18.(x)(i) BELOW, AT THE OPTION OF THE BUYER, THIS AGREEMENT MAY BE ENFORCED IN ANY FEDERAL COURT OR CALIFORNIA STATE COURT SITTING IN SANTA ANA OR SAN DIEGO, CALIFORNIA; AND THE DEALER AND INDIVIDUALS CONSENT TO THE JURISDICTION AND VENUE OF ANY SUCH COURT AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT. IN THE EVENT THE DEALER AND/OR INDIVIDUALS COMMENCE ANY ACTION IN ANOTHER JURISDICTION OR VENUE ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS AGREEMENT, THE BUYER AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO ONE OF THE JURISDICTIONS AND VENUES ABOVE-DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

(x) **Dispute Resolution.**

(i) **Arbitration.** Except to the extent expressly provided below, any Dispute (as hereinafter defined) shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, California law), the applicable rules for arbitration of disputes of JAMS (as hereinafter defined) in accordance with the JAMS Comprehensive Arbitration Rules and Procedures prevailing at the time of arbitration, a copy of which may be found at [www.jamsadr.com](#) and the "Special Rules" set forth below in Section 18.(x)(ii). In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Dealer, Individuals or Buyer, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such action. For the purposes of this dispute resolution provision only, the terms "party" and "parties" shall include any parent corporation, subsidiary or affiliate of Dealer, Individuals or Buyer involved in the servicing, management or administration of any obligation described in or evidenced by this Agreement, together with each of its past, present, and future partners, employees, agents, directors, officers, shareholders, attorneys, parents, affiliates, representatives, attorneys, joint venturers, predecessors, successors, beneficiaries, grantees, transferees and assigns of each of the foregoing. ("Dispute" means any controversy, claim or dispute between or among the parties to this Agreement, including any such controversy, claim or dispute arising out of or relating to (1) this Agreement, (2) any related agreements or instruments, or (3) the transaction(s) contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). "JAMS" means JAMS LLC, a Delaware limited liability company, or any successor thereof.)

(ii) **Special Rules.** The arbitration shall be conducted in Orange County California. The arbitration shall be administered by JAMS, which will appoint an arbitrator; if JAMS is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million and no/100 Dollars (\$5,000,000.00), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Agreement, referred to collectively as the "arbitrator"). All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days. The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration. The arbitrator will have the authority to decide whether any Dispute is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis. For purposes of the application of the statute of limitations, the service on JAMS under applicable JAMS rules of a notice of Disputes is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision, including any such dispute as to the validity or enforceability of this provision, or whether a Dispute is arbitrable, shall be determined by the arbitrator. The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Agreement.

(iii) **Reservation of Rights.** Nothing in this Agreement shall be deemed to (1) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Agreement, or (2) apply to or limit the right of Buyer (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or non-judicially against any real or personal property collateral, or to exercise judicial or non-judicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Agreement in a third-party proceeding in any action brought against Buyer in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Buyer may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Agreement regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Agreement for arbitration of any Dispute.

(iv) **Conflicting Provisions for Dispute Resolution.** If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration, judicial reference or other dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (1) this Agreement, (2) any related agreements or instruments, or (3) the transaction(s) contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration, judicial reference or other dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(v) **Jury Trial Waiver in Arbitration.** By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

(vi) **Forum.** Dealer and Individuals, individually and collectively, hereby irrevocably submits generally and unconditionally for themselves and in respect of their property to the jurisdiction of Orange County, California state court or United States federal court sitting in California over any Dispute. Dealer and Individuals, individually and collectively, hereby irrevocably waive, to the fullest extent permitted by Law, any objection that Dealer and/or Individuals may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Dealer and Individuals, individually and collectively, hereby agree and consent that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding may be made by certified or registered mail, return receipt requested, directed to Dealer and/or Individuals at their address for notice set forth in this Agreement, or at a subsequent address of which Buyer received actual notice from Dealer and/or Individuals in accordance with the notice section of this Agreement, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Buyer to serve process in any manner permitted by Law or limit the right of Buyer to bring proceedings against Dealer and/or Individuals in any other court or jurisdiction.

(vii) **WAIVER OF JURY TRIAL.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED IN PARAGRAPH 18.(x)(i) AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, TO THE EXTENT PERMISSIBLE BY LAW, DEALER, INDIVIDUALS AND BUYER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY DEALER, INDIVIDUALS AND BUYER; AND, DEALER, INDIVIDUALS AND BUYER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE AGREEMENT. DEALER, INDIVIDUALS AND BUYER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. DEALER AND INDIVIDUALS FURTHER REPRESENTS AND WARRANTS THAT THEY HAVE BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

(viii) **Multiple Parties.** In the event that Claims are asserted against multiple parties, some of whom are not subject to this Agreement, the Parties agree to sever the Claims subject to this Agreement and resolve them in accordance with this Agreement.

THE UNDERSIGNED ACCEPTS AND AGREES TO THE ABOVE TERMS AND CONDITIONS AND ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE FOREGOING. IN ADDITION THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COPY OF THIS AGREEMENT.

The below signed individual(s) hereby certify and warrant that they are the only individual(s) required to transact business for the Dealer and each Individual, that they are authorized to execute this Agreement, bind and obligate the Dealer and the Individuals as their authorized officer(s), or authorized manager(s), or authorized member(s) or the sole owner(s) of the Dealer and/or the Individual; and, if the Dealer and/or the Individual is a sole proprietorship, that they are the sole authorized individual(s) to do business under the name of the Dealer and/or the Individual at the address(es) shown below.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

DEALER:

By: _____
Name:

By: _____
Name:

BUYER:
HOME ACCEPTANCE CORPORATION, a California corporation

By: _____
Name:

INDIVIDUALS:

Name:

MASTER DEALER AGREEMENT FOR THE SINGLE PURCHASE AND BULK PURCHASE OF MERCHANDISE CONTRACTS

EXHIBIT "A" - Conforming Merchandise Contract Classifications; Recourse Limitations & Repurchase Obligation

1. CONFORMING MERCHANDISE CONTRACT CLASSIFICATIONS.

(Dealer is responsible for and required to maintain at all times the Dealer Loss Reserve Accrual Minimum Balance.) Criteria and requirements for conforming Merchandise Contract classifications are as follows:

TIERS 1 - 3 PROGRAM: • Dealer shall, at its sole discretion, provide Buyer with a Merchandise Contract together with a credit application for purchase. Buyer, at its sole discretion, will review and purchase the Merchandise Contracts that it deems acceptable.

• Buyer, at its sole discretion, will purchase certain Merchandise Contracts with highest credit quality from Dealer at a **23% discount (Tier 1*)** (77% Purchase Price Advance). The Merchandise Contracts purchased under the **Tier 1** program shall be purchased at a **77% purchase price advance based on the amount currently owed by the Customer on the Merchandise Contract being purchased.**

• Buyer, at its sole discretion, will purchase certain Merchandise Contracts with higher credit quality from Dealer at a **28% discount (Tier 2*)** (72% Purchase Price Advance). The Merchandise Contracts purchased under the **Tier 2** program shall be purchased at a **72% purchase price advance based on the amount currently owed by the Customer on the Merchandise Contract being purchased.**

• Buyer, at its sole discretion, will purchase certain Merchandise Contracts from Dealer at a **38% discount (Tier 3*)** (62% Purchase Price Advance). The Merchandise Contracts purchased under the **Tier 3** program shall be purchased at a **62% purchase price advance based on the amount currently owed by the Customer on the Merchandise Contract being purchased.**

• **Down Payment** (1/24th of the Merchandise Contract Sales Price) to be collected by Buyer prior to the Merchandise Contract purchase funding advance being made. The Down payment taken by Buyer prior to Merchandise Contract funding does not count as recourse relief. The **balance of the amount owed on the Merchandise Contract will be financed over 23 months** with the first payment due no more than 30 days from date of execution of the Merchandise Contract.

TIER 4 PROGRAM: • The **Tier 4** program Merchandise Contracts to be purchased by Buyer from Dealer shall be purchased at a **50% discount (Tier4*)** (50% Purchase Price Advance). The Merchandise Contracts purchased under the **Tier 4** program shall be purchased at a **50% purchase price advance based on the amount currently owed by the Customer on the Merchandise Contract being purchased.**

• Buyer shall be entitled to receive **135%** of its Purchase Price Advance from the Customer payments received by the Buyer.

• After Buyer receives **135%** of its Purchase Price Advance from the Customer payments received by the Buyer, **all additional net Customer payments will be split 70% to Dealer and 30% to Buyer.** An Accounts Receivables Aging Report will be provided to Dealer on the **Tier 4** accounts. The payments will be evaluated once per month and paid monthly.

• The **Tier 4** program will have the following Limitations:

• Down payment minimum (1/24th of Merchandise Contract Sales Price) is to be collected by Buyer prior to the Merchandise Contract purchase price funding advance being made.

• The balance of the **Merchandise Contract will be financed over 23 months** with the first payment due no more than 30 days from date of Merchandise Contract.

• **Tier 4** is subject to the recourse provision. However, **Tier 4** is only **1 payment recourse.** The Down payment taken by Buyer prior to Merchandise Contract funding does not count as recourse relief.

TIER 5 PROGRAM: • The **Tier 5** program Merchandise Contract to be purchased by Buyer from Dealer shall be purchased at **70% discount (Tier 5*)** (30% Purchase Price Advance). The Merchandise Contracts purchased under the **Tier 5** program shall be purchased at **30% purchase price advance based on the amount currently owed by the Customer on the Merchandise Contract being purchased.**

• Buyer shall be entitled to receive **135%** of its Purchase Price Advance from the Customer payments received by the Buyer.

• After Buyer receives **135%**, of its Purchase Price Advance from the Customer payments received by the Buyer, **all additional net Customer payments will be split 80% to Dealer and 20% to Buyer.** An Accounts Receivables Aging Report will be provided to Dealer on the **Tier 5** accounts. The payments will be evaluated once per month and paid monthly

• The **Tier 5** program will have the following Limitations:

• 100% Approval, No Underwriting

• Down payment minimum (1/24th of Merchandise Contract Sales Price) is to be collected by Buyer prior to the Merchandise Contract purchase price funding advance being made.

• **Tier 5** is subject to recourse provision. However, **Tier 5** is only **1 payment recourse.** The Down payment taken by Buyer prior to Merchandise Contract funding does not count as recourse relief.

ADDITIONAL PROGRAM DETAILS: • For every application Buyer receives from Dealer there will be a **\$9.00 application/credit report fee charged to the Dealer; and upon the Buyer's purchase of a Merchandise Contract, an \$11.50 Merchandise Contract processing fee will be charged to the Dealer.** These fees will be deducted from the Merchandise Contract purchase price advances. In addition, the Dealer will also agree to pay the Buyer a **DocuSign Fee of \$1.95 per signer** on each of the Merchandise Contracts for the two factor authentication required by **DocuSign.**

• Buyer shall ACH into Dealer's Bank Account weekly any payments received from Merchandise Contracts purchased from the Merchant by the Buyer. Buyer will provide reconciliation reports with each deposit via its online portal.

• Contracts to be purchased by Buyer will have a nominal annual interest rate, as per the maximum amount allowed by state law or 24.99% whichever is less, (**California is currently at 24.99%(APR).** The interest rate may be less at Buyer's sole discretion.

• Merchandise Contracts to be purchased by Buyer from Dealer will have a term of **23 months or less.**

• **Cancel Policy:** In the event a Customer, after executing the Merchandise Contract and the Contract has been sent to Buyer for funding, cancels the Contract, Dealer agrees to pay Buyer any and all Advances made to the Dealer for the cancelled Merchandise Contract, which will also include any fees and interest accrued.

• **Buyback Policy:** On **Tiers 1-3** Dealer agrees to re-purchase any Merchandise Contract wherein any of the Customers fail to make their **first (2) payments on or before the scheduled due date** via an ACH. Subject to the same terms and conditions described under the Cancel Policy.

• **90 Day 100% Customer Satisfaction Policy:** Dealer further agrees to re-purchase any Merchandise Contract wherein the Customer is unsatisfied with any aspect of the service performed or to be performed, within an initial ninety (90) day period from the date of the original Merchandise Contract was funded. Dealer shall have 30 days to have the Customer cure (bring account current) any such Customer dispute and shall provide a written agreement to the Buyer detailing what was done to satisfy the Customer.

2. MINIMUM MERCHANDISE CONTACT BALANCES. The Amount Financed for any conforming Merchandise Contract shall not be less than \$250.00.

3. RECOURSE LIMITATIONS & REPURCHASE OBLIGATION. Notwithstanding the foregoing, there shall be no limitation of recourse with respect to (a) any and all Merchandise Contracts in the event of any fraud, misrepresentation or breach of warranty by the Dealer in connection with the Merchandise Contract, with respect to the Customer or the Buyer, (b) any and all Merchandise Contracts if there is breach of any covenant or agreement under this Agreement, and (c) all Merchandise Contracts if the Dealer fails or refuses to repurchase a Merchandise Contract as required by this Agreement upon the Buyer's request.

Dealer and the Individuals **UNCONDITIONALLY** agree to repurchase at the Repurchase Price immediately from the Buyer, upon the Buyer's demand, each Merchandise Contract with respect to which there has been any fraud, misrepresentation and/or breach of any warranty, covenant or agreement under this Agreement and/or in connection with any Merchandise Contract, with respect to the Customer or the Buyer, or in the case of a non-conforming Merchandise Contract, any other agreement between the Buyer and Dealer with respect thereto; and, all Merchandise Contracts if the Dealer fails or refuses to repurchase any Merchandise Contract as provided in the immediately preceding clauses. The Dealer shall pay the Repurchase Price for a Merchandise Contract to the Buyer in immediately available funds in an amount equal to (i) the Amount Financed, plus all accrued but unpaid interest, late charges, default interest and other sums due and payable under the Merchandise Contract, together with all costs and reasonable attorney's fees incurred in enforcing this Agreement, minus (ii) all payments of principal received by the Buyer.

EXHIBIT "B" - Operational Guidelines

A. New Account Processing with Initial Purchase:

- (1) The Dealer must verify the Customer's true identification with a valid driver's license or other forms of acceptable and valid identification.
- (2) The Dealer must confirm that the information given to and recorded by the Buyer corresponds with the information on the Customer's written credit application and Merchandise Contract.
- (3) All contracts and other related forms must be completely and properly executed by the Customer.

B. Re-Order Authorizations:

- (1) Authorization for any re-order purchase must be obtained through the Authorization Facility.

C. Merchandise Contract Information:

- (1) Until the Merchandise has been delivered to and accepted by the Customer, Merchandise Contracts will not be submitted to the Buyer for purchase.
- (2) The Merchandise Contract must contain the following:
 - (a) Date of Purchase;
 - (b) Description of the Purchased Goods or Services, with sufficient specificity to identify those goods or actual services being or to be performed;
 - (c) Complete and accurate Customer residence address and home phone number.
 - (d) When required, an attached legally valid Notice of Cancellation statement form completed and dated at the time and place of the sale if the sale is made at a location other than the appropriate trade premises of the Dealer.
- (3) In the event a discrepancy exists between the purchase amount recorded on a Merchandise Contract and the records of the Authorization Facility, the Buyer's records will prevail. A Fax copy of the Merchandise Contract and/or a Fax memo of the purchase amount from the Dealer and received by the Buyer shall become a record of the Authorization Facility.
- (4) The Merchandise Contract shall be delivered to the Buyer no later than three (3) business days following the Buyer's conditional approval of the purchase of a Merchandise Contract. If the Buyer and Seller agree that only a copy of the Merchandise Contract shall be delivered to the Buyer, the Seller shall, upon request of the Buyer, produce the original of the Merchandise Contract signed by the Customer and Seller within three (3) days. Failure to do so shall render the Merchandise Contract full recourse subject to buyback by the Seller upon demand of the Buyer.
- (5) Merchandise Contracts may not be purchased by the Buyer until it has reviewed via telephone the information with the Customer.

D. Credit/Refunds:

- (1) The Dealer shall not make any cash refunds on purchases that have been added to the Buyer's account.
- (2) All credit adjustments must be documented by the Dealer on Credit Slips. Credit Slips must not be issued for any purchase that was not originally made on the same account of the Buyer.
- (3) Credit Slips must be delivered to the Buyer no later than three (3) business days after an adjustment has been made.
- (4) Along with the Credit Slips delivered to the Buyer, the Dealer must remit payment to the Buyer on all credit adjustments that result in an amount due to the Buyer from the Dealer.

- E. Notice of Assignment:** The Dealer shall notify each and every Customer in writing within seven (7) days of the assignment of the Customer's Merchandise Contract to the Buyer, together with the Buyer's address, and that all payments under the Merchandise Contract are to be made to the Buyer directly and no payments are to be made to or through the Dealer.

EXHIBIT "C" - Form of Dealer's Notice of Assignment

[Date]

[Name and Address of Customer]

Re: [Description of Merchandise Contract: Contract Date, Contract Amount, Description of Items/Services Purchased, Payment Amount, Number of Payments and Due Date]

Dear [Insert Name of Customer]:

This letter is to advise you that we have assigned your contract described above to **HOME ACCEPTANCE CORPORATION**. Any and all payments owed on your contract described above are now owed to **Home Acceptance Corporation**. Please make all payments under your contract described above directly to **Home Acceptance Corporation** at P. O. Box 729, Placentia, CA 92871. After the date of this notice, you will only receive credit for payments actually received by **Home Acceptance Corporation** on your contract described above.

If you make a payment to anyone at _____, we will receive that payment in trust and will provide you with a written receipt and will immediately forward it to **Home Acceptance Corporation**. Nevertheless, it is equally your responsibility to ensure that **Home Acceptance Corporation** receives the payment. If receipt by **Home Acceptance Corporation** is delayed because you failed to pay them directly, your account may incur late charges and other fees.

Please be informed that, as of the date of this notice, you have thirty days in which you must notify **Home Acceptance Corporation** in writing of any facts giving rise to a claim or defense arising out of any dispute in relation to your contract described above. Failure to provide written notice of these facts may bar you from raising these matters in any future action or litigation. All correspondence should be directed to **Home Acceptance Corporation** at P. O. Box 729, Placentia, CA 92871 (Phone Number 800-413-4422; Fax Number 714-414-0985).

Very truly yours,

[Name of Dealer and Address]

By: _____

Name & Title
Business Address:
Business Phone:
Email Address:

