

## ARBITRATION AGREEMENT

Dated: \_\_\_\_\_

Motor Vehicle VIN # \_\_\_\_\_

### PLEASE REVIEW CAREFULLY – IMPORTANT – AFFECTS YOUR LEGAL RIGHTS

PLEASE NOTE – THIS ARBITRATION AGREEMENT EXPRESSLY REPLACES AND SUPERSEDES ANY ARBITRATION CLAUSE OR AGREEMENT CONTAINED IN ANY OTHER CONTRACT SIGNED BY CUSTOMER CONCURRENTLY WITH THIS AGREEMENT, AND IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THIS ARBITRATION AGREEMENT AND ANY SUCH OTHER ARBITRATION CLAUSE OR AGREEMENT, THE TERMS OF THIS AGREEMENT GOVERN.

**SCOPE OF AGREEMENT:** The parties agree that either party may elect to have any dispute between them that falls within the scope of this Arbitration Agreement resolved by final and binding arbitration, and that judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree that this Agreement applies to any claim, controversy or dispute between Customer and Dealer or Dealer's Assignee, whether in contract, tort, statute or otherwise, arising directly or indirectly out of or in any way relating to the Buyers Order, Lease Order, Retail Installment Sale Contract, Lease Agreement, and/or any other documents executed by Customer and Dealer or its Assignee concurrently with this Agreement, the vehicle which is the subject of the contract(s) executed by Customer or the sale or financing thereof (irrespective of whether the financing approvals were obtained), or the relationship between the parties, including without limitation any negotiations, advertisements or other matters that may have induced Customer to enter into a relationship with Dealer or its Assignee. The parties also agree that all issues regarding the scope, validity, performance, interpretation and termination of this Agreement or arbitrability of any dispute are subject to this Agreement. It is the intent of the parties that the scope of this Agreement be given the broadest possible interpretation. Notwithstanding the above, however, Customer and Dealer and Dealer's Assignee retain all rights to self help remedies, including but not limited to seeking those remedies in a court of competent jurisdiction. Those remedies include, but are not limited to setting off against a deposit account, repossessing property, or foreclosing on property, as well as seeking any temporary court order necessary to prevent harm to the property until arbitration is completed. By exercising said retained rights or by taking measures that do not involve a court or arbitration, neither party waives any right to arbitrate any claim or dispute. Although this Arbitration Agreement does not apply to any action for repossession of property, it does apply to any claim arising out of or relating to the exercise of the right of repossession.

**WAIVER OF RIGHT TO TRIAL BY JURY, AND CLASS ACTION WAIVER:** Should any claim or dispute between the parties be brought in any court, the parties hereby expressly consent and agree, to the extent permitted by applicable law, that such action shall be tried to the court sitting without a jury, and the parties do hereby waive any right to a trial by jury with respect to any such claim or dispute. Customer further understands and agrees that if a dispute is arbitrated, Customer will not only give up the right to a trial by jury, Customer also consents and agrees to the extent permitted by to

applicable law, to give up the right to participate as a class representative or member of any class claim against Dealer or Dealer's Assignee, including any right to class arbitration or to consolidation of individual arbitrations.

**CONDITION PRECEDENT TO ARBITRATION – MEDIATION:** The parties agree that any dispute between them which falls within the scope of this Agreement must first be mediated before a neutral court certified mediator, which mediation shall take place in the county where the Dealer or Dealer Assignee is located, unless the parties agree otherwise. The parties shall jointly select the mediator from a list of court certified mediators, if available, or by agreement; and if the parties can not agree on a mediator, either party may apply to the state court of competent jurisdiction in the county where Dealer or Dealer's Assignee is located for appointment of a mediator. The costs of mediation shall be divided equally between the parties.

**PLACE OF ARBITRATION:** The arbitration shall be held in the county where the Dealer or Dealer's Assignee is located, unless the parties agree otherwise.

**GOVERNING LAW:** This agreement and any dispute subject to this agreement shall be governed by and interpreted in accordance with the law of the State of Florida or the law of the state in which this Agreement is executed if other than Florida, and the parties hereby agree to submit to the jurisdiction of the courts of said state. The arbitrator must follow and apply the applicable law.

**METHOD, SELECTION AND QUALIFICATIONS OF ARBITRATOR:** All disputes will be arbitrated by a single neutral arbitrator. The arbitrator shall be a lawyer, preferably a court certified/qualified arbitrator, or a retired state circuit or federal district judge. The parties through a good faith effort can not agree upon an arbitrator, either party may apply to the state court of competent jurisdiction in the county where the Dealer or Dealer's Assignee is located for appointment of an arbitrator.

**LIMITATION OF ACTION:** CUSTOMER AGREES THAT ALL CLAIMS OR DISPUTES MUST BE BROUGHT UNDER THIS AGREEMENT WITHIN THE APPLICABLE LIMITATIONS PERIOD FOR FILING A LAWSUIT OR AGENCY CLAIM, BEGINNING WITH THE DATE OF THE EVENT OR OCCURRENCE GIVING RISE TO THE CLAIM OR DISPUTE, AND THAT IF NO CLAIM IS TIMELY BROUGHT, THAT CLAIM IS WAIVED AND FOREVER BARRED, AND NO ACTION OR SUIT MAY BE BROUGHT THEREAFTER IN ANY COURT OR FORUM.

### PROCEDURAL RULES:

1. Either party may invoke this Arbitration Agreement by serving the other party by certified mail return receipt requested with a written Request For Arbitration, which Request must set forth the following: (1) the factual basis for the dispute; (2) the issue(s) to be arbitrated; (3) the legal basis for the dispute (if known); (4) the remedies sought (including the amount of any monetary damages claimed); and (5) the names, addresses and telephone numbers of all known witnesses.

Any documents upon which any claim is based must also be provided with the Request For Arbitration.

2. The party upon whom a Request For Arbitration is served shall serve a written Response within 20 calendar days from the receipt thereof, by certified mail return receipt requested. The Response must set forth the following: (1) any additional issues to be arbitrated; (2) any known defenses which will be relied upon; (3) any additional facts relevant to the claim or defenses; and (4) the names, addresses and telephone numbers of any other witnesses known to have knowledge of the facts upon which any claim or defense is based. Any documents which support any defense must also be provided with the Response.

3. The parties shall select the arbitrator within 20 days from the receipt of service of the Response.

4. Fees and costs for the arbitration up to a maximum of \$1500 will be advanced by Dealer or Dealer's Assignee, which may be reimbursed by the decision of the arbitrator at the arbitrator's discretion. The prevailing party shall be entitled to recover all arbitration fees and costs to the extent paid, and shall be entitled to enforce an award of fees and costs in a court of competent jurisdiction.

5. Within 20 days of selection, the arbitrator shall confer with the parties, either in person or telephonically, for the purpose of organizing and expediting the arbitration, discussing the nature, extent and timing of any discovery to be permitted (within the arbitrator's discretion), the issues to be arbitrated, any evidentiary issues, the location of the arbitration hearing, the allocation of arbitration fees and costs, and any other issues the parties or the arbitrator may deem appropriate.

6. Any discovery permitted by the arbitrator shall be completed within 60 days of the date of said conference.

7. The arbitration hearing shall be scheduled and held no later than 120 days from the date the arbitrator is selected.

8. At the arbitration hearing, the Federal Rules of Evidence will apply.

9. The arbitrator will render an award within 30 days from the date the arbitration hearing is closed. The award shall be in writing and signed by the arbitrator, and shall include a statement of the factual and/or legal basis for the disposition of any claims.

10. The time limits set forth herein may be extended by agreement of the parties or by the arbitrator for good cause.

11. The arbitrator's award shall be final and binding on the parties, and may be enforced in any court of competent jurisdiction.

12. The arbitrator shall have authority to award the prevailing party's actual damages and any other remedies provided by statute, but shall have no authority to award punitive damages except as may be required by statute

**CONFIDENTIALITY:** Except as may be required by law, neither party nor the arbitrator may disclose the existence, content, or results of any arbitration arising hereunder without prior written consent of both parties.

**SEVERABILITY:** If any provision, section or part of this Agreement other than the waiver of class action rights is deemed illegal, invalid or unenforceable by a court of competent jurisdiction, that portion of the Agreement may be severed and shall not affect the validity or enforceability of the remaining portions of this Agreement in that jurisdiction. If the waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Agreement shall likewise be unenforceable.

**SURVIVAL:** This Arbitration Agreement shall, with respect to any dispute, survive the termination or expiration of the Buyers Order, Retail Installment Sale Contract or any other contract subject to this Agreement.

**OPT-OUT PROCESS:** YOU MAY CHOOSE TO OPT-OUT OF THIS ARBITRATION AGREEMENT BUT ONLY BY FOLLOWING THE PROCESS SET-FORTH BELOW. IF YOU DO NOT WISH TO BE SUBJECT TO THIS ARBITRATION AGREEMENT, THEN YOU MUST NOTIFY AUTO CREDIT IN WRITING WITHIN SIXTY (60) CALENDAR DAYS OF THE DATE OF THIS ARBITRATION AGREEMENT AT THE FOLLOWING ADDRESS: AUTO CREDIT OPT-OUT, P.O. BOX 57545, JACKSONVILLE, FL 32241. YOUR WRITTEN NOTICE MUST INCLUDE YOUR NAME, ADDRESS, ACCOUNT NUMBER, THE DATE OF THIS ARBITRATION AGREEMENT, AND A STATEMENT THAT YOU WISH TO OPT-OUT OF THE ARBITRATION AGREEMENT. IF YOU CHOOSE TO OPT-OUT, THEN YOUR CHOICE WILL APPLY ONLY TO THIS ARBITRATION AGREEMENT.

BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND AND AGREE TO ALL OF THE TERMS AND PROVISIONS OF THIS ARBITRATION AGREEMENT. DO NOT SIGN THIS AGREEMENT UNLESS YOU UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS.

DATED \_\_\_\_\_

X CUSTOMER	X CUSTOMER
X DEALER NAME/ DEALER ASSIGNEE	X DEALER SIGNATURE

*Fully executed copy of this entire agreement must be provided to the customer and fully executed copies retained by the dealer and Auto Credit.*