

FENDER.CARS DEALERSHIP PARTICIPATION AGREEMENT TERMS AND CONDITIONS

1. **Introduction and Certain Definitions.** Social Automotive Management Services, LLC, an Arkansas Limited Liability Company doing business as Fender.Cars ("**Fender.Cars**", "**Fender**", "**Fender Trade**", "**we**", "**us**", or "**our**") provides the dealer identified in the Fender.Cars Dealership Participation Agreement Form ("**Dealer**"), and if applicable, any of its Participating Dealers (Dealer and Participating Dealer collectively, "**Dealer**," "**you**," or "**your**"), access to our automotive related products and services (collectively, "**Service**"), subject to your acceptance of and compliance with these Fender.Cars Dealership Participation Agreement Terms and Conditions ("**Terms and Conditions**"), the additional terms and conditions, if any, of the Services in which you participate, including any documents referenced therein (each, "**Service Terms**"), and the terms and conditions of any Fender.Cars Dealership Participation Agreement Form you enter into that specifically references these Terms and Conditions and/or applicable Service Terms (each, a "**Agreement Form**") (collectively, "**Agreement**"). In the Agreement, (i) "**Affiliate**" means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or is under common control with that entity, (ii) "**Customer**" means a user of a Fender.Cars-powered automotive information website, including a member of Customer's household or immediate family, regardless of whether or not the Customer completes a purchase transaction with Dealer, (iii) "**Participating Dealer**" means any dealership that is owned or controlled by Dealer that participates in a Service hereunder, and (iv) "**Fender.Cars Entities**" means Fender.Cars, its Affiliates, and its and their officers, directors, consultants, contractors, agents, attorneys, employees, partners, and third-party service providers.

2. **Swipe-to-Connect Technology.** Swipe-to-Connect is the proprietary method used by Fender.Cars in their automotive related products in services. Swipe-to-Connect allows Customers to indicate their interest or disinterest in a particular automobile by swiping right to indicate interest and swiping left to indicate disinterest (a "**Swipe-to-Connect Transaction**" or "**STC Transaction**"). These STC Transactions generate lead information and analytics that we provide to Dealers and third parties. For all purposes used herein, the term "**Lead**" refers to the generated information related to a Customer when that Customer indicates interest or disinterest in Dealer's inventory or interacts with a third-party advertisement. A Lead is considered an "**Active Lead**" for sixty (60) days following the Customer's first STC Transaction with Dealer's inventory. The Lead from Customer's STC Transaction with Dealer's inventory will only be billed to those Participating Dealers paying on a per-lead basis once during the time that Customer is considered an Active Lead. An Active Lead will expire after sixty (60) days. If a new STC Transaction occurs between Customer and Dealer's Inventory after that Customer's Active Lead status has expired, the Customer will again be considered an Active Lead and the Dealer will be invoiced for this Lead as though it were a new Lead.

3. Dealer Obligations

- a. **Service Requirements.** Dealer agrees to follow the requirements of each Service that Dealer participates in, which are set forth in the applicable Service Terms, below. By entering into the Agreement, Dealer is binding its Participating Dealers to the terms hereof, and is responsible for their acts and omissions in connection with the Agreement, including paying all fees they may accrue pursuant to Section 3(b), below. Not all Services are available for participation by Dealer (please confer with your Fender.Cars representative).

 - b. **Service Fee.** You will pay us the applicable fees set forth in the Service Terms for each Service that you participate in ("**Service Fee**"). If we agree to your request to send an invoice to a third party on your behalf, and if such party does not pay the invoice timely, you will immediately pay all such amounts. Any dispute related to an invoice must be submitted in writing to Fender.Cars within 30 days of the date of such invoice, otherwise such dispute is waived and the invoice will be final and not subject to challenge.
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4. **Fender Trade.** Fender Trade is a service of Fender.Cars. Participating Dealers who enroll in Fender Trade will be provided a guaranteed bid on customer's vehicles. **Buy Bids** are those bids provided by a Fender wholesaler. Customers will be given a valuation range for their vehicle based on the information they supply regarding vehicle condition, age, etc. ("**Customer Valuation**"). Buy Bids will be greater than or equal to the lowest value of that Customer Valuation. Both the Customer Valuation and the Buy Bid will be viewable by the dealer.
 - a. **Gross Guarantee.** Participating Dealers who enroll in Fender Trade are guaranteed a certain level of monthly gross incomes, credits, and savings (collectively, "gross") based on that dealer's individual contract.
 1. **"Gross" Definition.** Includes any incomes, credits and cost savings that have a positive financial affect for the dealership and which may be attributed to any lead, sale, or trade which Fender.Cars or an affiliated service participated. These incomes and savings include, but are not limited to, sale transaction gross revenue, financing revenues, service and parts repair and orders revenues on trade ins, dealer Packs, manufacturers bonus from monthly volume programs or special manufacturer programs, floor plan savings. This also applies to those transactions involving customers who request a bid from Fender Trade but elect to purchase without trading their current vehicle.

- b. **Unit Guarantee.** Participating Dealers who enroll in Fender Trade are guaranteed a certain number of unit sales each month based on that dealer's individual contract.
- c. **Monthly Bill Waiver Eligibility.** Those participating dealers who do not achieve the level of gross or unit sales at or above those guaranteed by their contract are eligible to have their monthly bill waived until such guaranteed gross is achieved. To be eligible for this waiver, the participating dealer must:
 - 1. Utilize Fender Trade services to bid at least eighty percent (80%) of trade ins the dealer participates in.
 - 2. Request the waiver in writing on or before the due date of the invoice.
 - 3. Provide Fender.Cars staff with access to all CRM records, sale logs, and financial statements necessary to audit any representations about gross and/or service use for the month in question.
- d. **Gross Reimbursement Eligibility.** Those participating dealers who do not achieve the level of gross at or above those guaranteed by their contract are eligible to have the difference of their actual gross and their guaranteed gross reimbursed by Fender.Cars. To be eligible for this reimbursement, the participating dealer must:
 - 1. Utilize Fender Trade services to bid at least eighty percent (80%) of trade ins the dealer participates in.
 - 2. Request the reimbursement in writing on or before the due date of the invoice.
 - 3. Provide Fender.Cars staff with access to all CRM records, sale logs, and financial statements necessary to audit any representations about gross and/or service use for the month in question.
- e. **Customer Representations.** Customer's representations about their vehicle must be complete and accurate. Participating Dealers will be allowed to conduct an independent inspection to verify that information supplied by the customer is complete and accurate. In the event that, upon inspection, the Dealer concludes that the customer representations were incomplete or inaccurate, the Dealer may refuse to honor the Buy Bid.
- f. **Time to Honor.** Buy Bids and Customer Valuations are valid for seven (7) calendar days from the date they are issued.
- g. **Dealer Responsibilities.** Participating Dealers acknowledge and agree to:
 - 1. To conduct honest and thorough inspection of Customer vehicles;
 - 2. To secure all liens, titles, and representations of ownership of the vehicle, including trailers, motorcycles, ATVs, etc.;

3. To notify us in writing upon agreeing to participate in Fender Trade of any “**No Trade**” specifications (i.e., if Dealer does not trade for trailers, motorcycles, ATVs, etc.);
 4. To follow all applicable state and federal laws concerning payoffs, securing of title, satisfaction of liens, etc.;
 5. To provide us or a Fender Trade associated wholesaler access to any CarFax or similar report that a dealer runs on the Customer vehicle.
 6. By accepting a traded vehicle from a buyer based on a Buy Bid or Customer Valuation amount, you agree that all customer representations about the vehicle are true and accurate and you adopt and ratify those representations as your own. Participating Dealers must certify the condition of the vehicle before asking Fender and/or a Fender Trade associated wholesaler to honor a Buy Bid;
 7. Fender and/or Fender Trade associated wholesalers are under no obligation to honor a Buy Bid on a vehicle that is not in the condition represented by the customer. Fender and/or Fender Trade associated wholesalers shall be allowed to conduct an independent inspection before honoring a Buy Bid and may refuse to honor said Buy Bid if the vehicle condition was misrepresented; and
 8. For all vehicles sold to us or a Fender Trade associated wholesaler, said buyer shall have three (3) business days after all liens have been satisfied and title secured to pick up the vehicle from the Participating Dealer.
5. **Fender.Cars Overlay.** Participating Dealers who subscribe to the Fender.Cars overlay service agree to give us access to their website and inventory information for the purpose of applying the Fender.Cars Swipe-to-Connect technology to the Dealer’s website. Participating Dealers understand and acknowledge that use of this technology is on a limited license basis.
6. **Fender Sure.** Participating Dealers who subscribe to the Fender Sure service authorize the Fender Sure widget to appear on their website as part of the Fender overlay. The Fender Sure widget will provide insurance and/or financing quotes to customers who provide the required information. We make no warranties or guarantees of the accuracy of these quotes, of the information provided by the customer, nor of the ability of the customers to qualify for quoted services.
7. **Restrictions on Use of Information and Data.** Each party represents, warrants, and covenants that it has implemented adequate administrative, procedural, technical, and physical safeguards designed to (i) provide for the security and confidentiality of non-public personal information provided, collected, and/or received in connection with the

Agreement ("**Non-Public Personal Information**"), (ii) protect against any anticipated threats or hazards to the security or integrity of Non-Public Personal Information, and (iii) protect against unauthorized access to or use of Non-Public Personal Information which could result in substantial harm to a Customer. In addition, each party will notify Customers of security breaches as required by applicable law. Notwithstanding anything to the contrary in the Agreement, we may share vehicle inventory and asking price information with the Fender.Cars Entities who may use such information to, among other things, provide broader exposure to, and marketing of, Dealer's inventory; and you will only use the Non-Public Personal Information provided to you through the Service solely to carry out your obligations under the Agreement.

8. Limited Licenses.

- a. Dealer grants the Fender.Cars Entities a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free, worldwide license to use its logos, trademarks and service marks (collectively, "**Marks**") as well as its likenesses solely in connection with the Agreement, provided that we will not modify the Marks (resizing acceptable) without Dealer's prior written consent. Fender.Cars may use Dealer's Marks and likenesses in connection with marketing campaigns and/or press releases in print, digital, or audio format, including, but not limited to, Fender.Cars's website, news articles, promotional marketing materials, direct marketing campaign advertisements, and any and all other formats reasonably believed to aid in client acquisition.
- b. Fender.Cars grants Dealer a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free, worldwide right to access and use our proprietary, dynamic web-based portal ("**Dealer Portal**") solely for fulfilling Dealer's obligations pursuant to the Agreement, provided that Dealer will not (i) modify or manipulate the Dealer Portal; (ii) publicly display, copy, decompile or disassemble the Dealer Portal; or (iii) grant or permit any third party to use or access the Dealer Portal.
- c. For those Participating Dealers subscribing to the Fender.Cars Exclusive Overlay ("**Overlay**") service, Fender.Cars grants said Dealer a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free, worldwide right to access and use our proprietary, dynamic web-based Fender.Cars Exclusive Overlay featuring Swipe-to-Connect technology. Dealer will not (i) modify or manipulate the Overlay or any of its components; (ii) copy, decompile, or disassemble the Overlay or any of its components; or (iii) grant or permit any third party to use or access the Overlay or any of its components.

- 9. Confidentiality.** "**Confidential Information**" means information disclosed by you to us or us to you, either directly or indirectly, in writing, orally, or by inspection of tangible

objects that is designated as "Confidential," "Proprietary," or some similar designation. Information communicated orally and/or other intangible information will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Notwithstanding the foregoing, the Dealer Portal is deemed Confidential. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information will not, however, include any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files, records, and/or other competent evidence immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. The receiving party will not at any time (a) disclose, sell, license, transfer, or otherwise make available to any person or entity any Confidential Information of the disclosing party, except to employees, contractors, agents, or Affiliates, in each case who have a legitimate need to know such Confidential Information and are bound to confidentiality and non-use obligations no less restrictive than those contained in the Agreement, or (b) use, reproduce, or copy any Confidential Information of the disclosing party, except as necessary in connection with the purpose for which such Confidential Information is disclosed to the receiving party by the disclosing party, or in connection with or as set forth in the Agreement. The receiving party may disclose Confidential Information of the disclosing party in connection with subpoenas, court orders, other legal processes, or as otherwise required by law, provided that the receiving party gives the disclosing party prompt written notice of such requirement (unless expressly prohibited in writing in such subpoena, court order, or other legal process) prior to such disclosure and takes reasonable steps to protect the information from public disclosure, and provided further that any such disclosure is limited to the minimum extent necessary to comply with the legal requirement. Notwithstanding anything to the contrary in the Agreement, without consent, either you or we may disclose (i) the Agreement (or the existence of the Agreement) to bona fide potential investors or prospective purchasers of a portion of its assets or beneficial ownership interests provided such disclosure is subject to confidentiality and non-use obligations no less restrictive than those contained in the Agreement, and/or (ii) as required by law, including any governmental or regulatory filings.

10. **Representations.** You represent, warrant, and covenant that you (i) have the corporate or other applicable right, power and authority to enter into the Agreement, (ii) are a licensed automobile dealership pursuant to applicable laws, and (iii) with respect to new vehicle sales, possess the required franchises with the applicable manufacturer to represent each brand you sell.

11. Indemnification.

- 11.1(a).Indemnification by Fender.Cars. Subject to the Cap Amount (defined below), the Aggregated Cap Amount (defined below), if applicable, and Sub-Sections (a), (b), (c), (d), (e), (f), and (g) of Section 11.1, Fender.Cars will defend, indemnify and hold each Participating Dealer and its Affiliates, and its and their directors, officers, employees, agents and representatives, and each of their permitted successors and assigns (each, a "**Dealer Indemnitee**" and, collectively, "**Dealer Indemnitees**") harmless from all Claims (defined below) that arise out of or relate to: (i) an actual or alleged violation of or non-compliance with state or federal law by Fender.Cars during the term of the Agreement or by a Dealer Indemnitee arising from its use of the Fender.Cars Service during the term of the Agreement; and/or (ii) a breach of the Agreement by Fender.Cars.
- 11.1(b).Definition of "Claim". "**Claim**" means all fines, penalties, costs, charges, assessments or damages asserted by any third party against any Dealer Indemnitee, and all reasonable expenses and costs to defend each such Dealer Indemnitee against such third-party claims, including reasonable attorneys' fees. Notwithstanding the foregoing, "Claim" does not include any (i) first-party loss incurred by any Dealer Indemnitee, including lost profits, consequential damages, or other loss that arises out of or results from any injunctive or other non-economic relief or remedy granted to third parties or imposed on any Dealer Indemnitee, including any suspension or termination of any license granted to any Dealer Indemnitee or any other temporary or permanent interruption of a Dealer Indemnitee's business activities or operations, or (ii) claim that would not have arisen but for the content, information, or materials provided by a Dealer Indemnitee, acts or omissions of a Dealer Indemnitee, and/or breach of the Agreement by a Dealer Indemnitee. Fender.Cars shall have no liability whatsoever to any Dealer Indemnitee in connection with any fine, penalty, cost, charge, assessment, damage, loss, or liability incurred by any Dealer Indemnitee that does not qualify as a Claim.
- 11.1(c).Other Definitions. "**Cap Amount**" means Fender.Cars's exclusive and only indemnification obligation owed to all Dealer Indemnitees, which shall be limited to a maximum of \$25,000, and multiple claims shall not expand this limitation; provided however, for any Claim(s) for which Fender.Cars has an obligation of indemnity hereunder, the Cap Amount may be aggregated in any given state where a Claim is asserted, with such aggregation to be determined by multiplying the number of Participating Dealers located in that state at the time of the occurrence of the acts or omissions giving rise to the Claim asserted against the Dealer Indemnitees by \$25,000, the product of which shall represent the "**Aggregated Cap Amount**" and shall be applicable to all Claims asserted in that particular state (and only in that particular state). By way of example only, if Claims are asserted in State A, and there are ten (10) Participating Dealers located in State A at the time the acts or omissions giving rise to the Claims occurred, then the Aggregated Cap Amount for the Claims asserted in State A shall be 10 x \$25,000, for a total of \$250,000. However, if the same Dealer has only one

Participating Dealer located in State B, and the Claims are asserted in State B, then no aggregation is permitted in connection with such Claims asserted in State B, and the \$25,000 Cap Amount shall apply, notwithstanding the presence of the ten (10) Participating Dealers located in State A.

- 11.1(d).Notice Requirement. Dealer Indemnitee shall promptly notify Fender.Cars in writing of any Dealer Indemnitee's receipt of any Claim for which indemnification is sought under the Agreement. Failure to provide written notice of a Claim within 15 days after any Dealer Indemnitee's first receipt of a Claim shall eliminate any duty by Fender.Cars to indemnify such Dealer Indemnitee in connection with such Claim.
- 11.1(e).Cooperation and Mitigation Requirements. Each Dealer Indemnitee shall reasonably cooperate with Fender.Cars in connection with the defense of any Claim, including making available records relating to such Claim and furnishing, without expense to Fender.Cars, employees of any Dealer Indemnitee as may be reasonably necessary for the defense of any such Claim, or for testimony as a witness in any proceeding relating to such Claim. Each Dealer Indemnitee shall at all times mitigate and take reasonable measures to reduce or eliminate each Dealer Indemnitee's risk of loss in connection with any Claim and, upon direction by Fender.Cars, take additional reasonable measures to reduce or eliminate Dealer Indemnitee's risk of loss in connection with any Claim as instructed by Fender.Cars, including taking appropriate cease-and-desist measures in response to a Claim. In all instances, each Dealer Indemnitee shall use commercially reasonable efforts to mitigate any risk of loss to each such Dealer Indemnitee and/or Fender.Cars in connection with any Claim to the same extent as would a reasonable and prudent person to whom no indemnity were available.
- 11.1(f).Defense and Selection of Counsel. Fender.Cars shall control the defense of any Claim, including the right to: (i) settle or not to settle any Claim; provided however, Fender.Cars shall not agree to any settlement that imposes any obligation or liability on any Dealer Indemnitee without its prior written consent, not to be unreasonably withheld, delayed, or conditioned; and (ii) select and retain counsel to represent Dealer Indemnitee in connection with any Claim; provided however, any Dealer Indemnitee may elect to defend itself and retain counsel of its own choosing at its own expense, but in such instance, Fender.Cars shall not be required to advance attorneys' fees or costs on behalf of any Dealer Indemnitee. In the event of a final and non-appealable adjudication by a court of competent jurisdiction that Fender.Cars is liable for the applicable Claim, and only in such instance, Fender.Cars shall reimburse reasonable attorneys' fees and costs incurred by each Dealer Indemnitee in connection with the Claim subject to the Aggregated Cap Amount, and all other conditions and limitations described in Section 11.1.
- 11.1(g).Insurance. Each Dealer Indemnitee shall promptly notify its insurers in writing of any Dealer Indemnitee's receipt of any Claim for which indemnification is sought under the Agreement. Fender.Cars's obligations to any Dealer Indemnitee as set forth in Section 11.1 shall not extend to any Claim for which any Dealer Indemnitee maintains insurance, but if any Claim shall exceed

the amount of the effective and collectible insurance in question, Fender.Car's obligations as set forth in Section 11.1 shall apply to such excess.

- 11.2(a).Indemnification by Dealer. Subject to the Dealer Cap Amount (defined below), the Dealer Aggregated Cap Amount (defined below), if applicable, and Sub-Sections (a), (b), (c), (d), (e), (f), and (g) of Section 11.2, Dealer will defend, indemnify and hold Fender.Cars and its Affiliates, and its and their directors, officers, employees, agents and representatives and each of their permitted successors and assigns (each, a "**Fender.Cars Indemnitee**" and, collectively, "**Fender.Cars Indemnitees**") harmless from all Dealer Claims (defined below) that arise out of or relate to: (i) an actual or alleged violation of or non-compliance with state or federal law by Dealer during the term of the Agreement other than an actual or alleged violation or event of non-compliance within the control of Fender.Cars during the term of the Agreement; and/or (ii) a breach of the Agreement by Dealer.
- 11.2(b).Definition of "Dealer Claim". "**Dealer Claim**" means all fines, penalties, costs, charges, assessments or damages asserted by any third party against any Fender.Cars Indemnitee, and all reasonable expenses and costs to defend each such Fender.Cars Indemnitee against such third-party claims, including reasonable attorneys' fees. Notwithstanding the foregoing, "Dealer Claim" does not include any (i) first-party loss incurred by any Fender.Cars Indemnitee, including lost profits, consequential damages, or other loss that arises out of or results from any injunctive or other non-economic relief or remedy granted to third parties or imposed on any Fender.Cars Indemnitee, including any temporary or permanent interruption of a Fender.Cars Indemnitee's business activities or operations, or (ii) claim that would not have arisen but for the content, information, or materials provided by a Fender.Cars Indemnitee, acts or omissions of a Fender.Cars Indemnitee, and/or breach of the Agreement by a Fender.Cars Indemnitee. Dealer shall have no liability whatsoever to any Fender.Cars Indemnitee in connection with any fine, penalty, cost, charge, assessment, damage, loss, or liability incurred by any Fender.Cars Indemnitee that does not qualify as a Dealer Claim.
- 11.2(c).Other Definitions. "**Dealer Cap Amount**" means Dealer's exclusive and only indemnification obligation owed to all Fender.Cars Indemnitees, which shall be limited to a maximum of \$25,000, and multiple claims shall not expand this limitation; provided however, for any Dealer Claim(s) for which Dealer has an obligation of indemnity hereunder, the Dealer Cap Amount may be aggregated in any given state where a Dealer Claim is asserted, with such aggregation to be determined by multiplying the number of Participating Dealers located in that state at the time of the occurrence of the acts or omissions giving rise to the Dealer Claim asserted against the Fender.Cars Indemnitees by \$25,000, the product of which shall represent the "**Dealer Aggregated Cap Amount**" and shall be applicable to all Dealer Claims asserted in that particular state (and only in that particular state). By way of example only, if Dealer Claims are asserted in State A, and there are ten (10) Participating Dealers located in State A at the time the acts or omissions giving rise to the Dealer Claims occurred, then the Dealer Aggregated Cap Amount for the Dealer Claims asserted in State A shall be 10 x

\$25,000, for a total of \$250,000. However, if the same Dealer has only one Participating Dealer located in State B, and the Dealer Claims are asserted in State B, then no aggregation is permitted in connection with such Dealer Claims asserted in State B, and the \$25,000 Dealer Cap Amount shall apply, notwithstanding the presence of the ten (10) Participating Dealers located in State A.

- 11.2(d).Notice Requirement. Fender.Cars Indemnatee shall promptly notify Dealer in writing of any Fender.Cars Indemnatee's receipt of any Dealer Claim for which indemnification is sought under the Agreement. Failure to provide written notice of a Dealer Claim within 15 days after any Fender.Cars Indemnatee's receipt of a Dealer Claim shall eliminate any duty by Dealer to indemnify such Fender.Cars Indemnatee in connection with such Dealer Claim.
- 11.2(e).Cooperation and Mitigation Requirements. Each Fender.Cars Indemnatee shall reasonably cooperate with Dealer in connection with the defense of any Dealer Claim, including making available records relating to such Dealer Claim and furnishing, without expense to Dealer, employees of any Fender.Cars Indemnatee as may be reasonably necessary for the defense of any such Dealer Claim, or for testimony as a witness in any proceeding relating to such Dealer Claim. Each Fender.Cars Indemnatee shall at all times mitigate and take reasonable measures to reduce or eliminate each Fender.Cars Indemnatee's risk of loss in connection with any Dealer Claim and, upon direction by Dealer, take additional reasonable measures to reduce or eliminate Fender.Cars Indemnatee's risk of loss in connection with any Dealer Claim as instructed by Dealer, including taking appropriate cease-and-desist measures in response to a Dealer Claim. In all instances, each Fender.Cars Indemnatee shall use commercially reasonable efforts to mitigate any risk of loss to each such Fender.Cars Indemnatee and/or Dealer in connection with any Dealer Claim to the same extent as would a reasonable and prudent person to whom no indemnity were available.
- 11.2(f).Defense and Selection of Counsel. Dealer shall control the defense of any Dealer Claim, including the right to: (i) settle or not to settle any Dealer Claim; provided however, Dealer shall not agree to any settlement that imposes any obligation or liability on any Fender.Cars Indemnatee without its prior written consent, not to be unreasonably withheld, delayed, or conditioned; and (ii) select and retain counsel to represent Fender.Cars Indemnatee in connection with any Dealer Claim; provided however, any Fender.Cars Indemnatee may elect to defend itself and retain counsel of its own choosing at its own expense, but in such instance, Dealer shall not be required to advance attorneys' fees or costs on behalf of any Fender.Cars Indemnatee. In the event of a final and non-appealable adjudication by a court of competent jurisdiction that Dealer is liable for the applicable Dealer Claim, and only in such instance, Dealer shall reimburse reasonable attorneys' fees incurred by each Fender.Cars Indemnatee in connection with the Dealer Claim subject to the Dealer Aggregated Cap Amount, and all other conditions and limitations described in Section 11.2.
- 11.2(g).Insurance. Each Fender.Cars Indemnatee shall promptly notify its insurers in writing of any Fender.Cars Indemnatee's receipt of any Dealer Claim for which indemnification is sought under the Agreement. Dealer's obligations to any

Fender.Cars Indemnitee as set forth in Section 11.2 shall not extend to any Dealer Claim for which any Fender.Cars Indemnitee maintains insurance, but if any Dealer Claims exceeds the amount of the effective and collectible insurance in question, Dealer's obligations as set forth in Section 11.2 shall apply to such excess.

12. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, (i) EACH SERVICE IS PROVIDED "AS IS," WITHOUT WARRANTY, REPRESENTATION, CONDITION, OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WHETHER YOUR DEALER INFORMATION WILL BE DISPLAYED TO POTENTIAL CUSTOMERS, AND YOUR USE THEREOF IS AT YOUR OWN RISK, AND (ii) WE AND YOU DISCLAIM ON BEHALF OF EACH OF OURSELVES ANY AND ALL WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES, INCLUDING ANY WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

13. **Limitation of Liability.** EXCEPT FOR LIABILITY ARISING OUT OF THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, ABOVE, (i) ANY LIABILITY OF YOU AND/OR THE FENDER.CARS ENTITIES IN CONNECTION WITH THE AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY, IS LIMITED TO THE AMOUNT PAID OR PAYABLE BY YOU PURSUANT TO THE AGREEMENT IN THE SIX-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM, AND (ii) IN ADDITION TO ANY OTHER LIMITATION(S) IN THE AGREEMENT, NEITHER YOU NOR WE ARE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT.

14. **Term and Termination.** The initial term of the Agreement commences when you sign the applicable Dealership Participation Agreement Form, and continues until terminated as set forth herein. At any time, for any or no reason, (i) either party may terminate the Agreement and/or any Service, with respect to Dealer, or any number of Participating Dealers, upon prior written notice to the other party, and (ii) we may suspend or limit your participation in any Service or part thereof. Sections 3 (for 90 days after termination), and 7 through 17 of these Terms and Conditions, the defined terms of the Agreement, and those provisions specified in any Service Terms will survive termination of the Agreement.

15. **Notices.** We may give notices to you by contacting you through the Services, or by email, first class mail or facsimile as provided by you in the Dealership Participation Agreement Form. You must ensure that your contact and account information is current and correct, and promptly notify us in writing of any changes to such information. You will send all notices to us via recognized overnight courier or certified mail, return receipt requested, to: Fender.Cars, Attn: Compliance, PO Box 8074, Columbia, Missouri 65205.
16. **Press Release.** Neither you nor we will issue any press release regarding the Agreement unless mutually agreed upon in writing.
17. **Choice of Law; Venue.** The terms of the Agreement and any dispute relating thereto will be governed by the laws of the State of Arkansas, without regard to conflict/choice of law principles. You and we agree to submit to the exclusive jurisdiction of the state and federal courts located in Washington County, Arkansas.
18. **Miscellaneous.** These Terms and Conditions and their accompanying Dealership Participation Agreement Form constitutes the entire agreement and understanding between you and us regarding the subject matter contained herein and supersedes all other agreements, understandings, negotiations, representations, claims, and communications in all forms of media, written and oral, regarding the subject matter contained herein. If there is a conflict between the Terms and Conditions, any Service Terms, and any Dealer Participation Agreement Form, the conflict will be resolved according to the following order of precedence: (1) the applicable Service Terms, (2) Terms and Conditions, and (3) applicable Dealership Participation Agreement Form. Only a written instrument specifically waiving compliance that is executed by whichever of you or us is entitled to waive such compliance may waive any term(s) and/or condition(s) of the Agreement. No waiver by either you or us of any provision hereof will be deemed a waiver of any other breach of such provision or a waiver of the provision. If any provision of the Agreement is held or made invalid or unenforceable for any reason, such invalidity will not affect the remainder of the Agreement, and the invalid or unenforceable provision will be replaced by a valid provision that has a similar effect. Neither you nor we will have any liability under the Agreement by reason of any failure or delay in the performance of your or our obligations on account of strikes, shortages, riots, acts of terrorism, insurrection, fires, flood, storm, explosions, earthquakes, Internet and/or electrical outages, computer viruses, acts of God, war, governmental action, or any cause that is beyond as applicable, your or our reasonable control. You and we are independent contractors and nothing in the Agreement will be construed to create, evidence, or imply any agency, employment, partnership, or joint venture between you

and us. Except as otherwise set forth in the Agreement, the Agreement is not intended to benefit, nor will it be deemed to give rise to any rights in, any third party. Neither you nor we may assign, sublicense or transfer the Agreement or any right or duty under the Agreement to another party, in whole or in part, without, as applicable, your or our prior written consent; provided however, either you or we may assign the Agreement without permission in connection with the reorganization, reincorporation, merger or sale of all or substantially all of the assets or stock of you or us. Your or our rights and obligations under the Agreement will bind and inure to the benefit of, as applicable, your or our permitted successors and assigns. Any assignment, transfer, or attempted assignment or transfer in violation of this Section 18 will be void and of no force or effect. Any rights not expressly granted in the Agreement are reserved by you or us, as applicable, and all implied licenses are disclaimed. Headings of Sections are for convenience only, and are not intended to affect the interpretation or construction of any other provision of the Agreement. As used in the Agreement, the word "including" is a term of enlargement meaning "including without limitation" and does not denote exclusivity, and the words "will," "shall," and "must" are deemed to be equivalent and denote a mandatory obligation or prohibition, as applicable. All definitions apply both to their singular and plural forms, as the context may require. Upon prior notice, which may be provided by email, we may change the Agreement at any time, and such revised Agreement will supersede and replace the earlier Agreement. Executed counterparts of the Agreement will each be deemed originals, whether exchanged via mail, facsimile, or electronically. Services and obligations to be performed by Fender.Cars hereunder may be performed by a Fender.Cars Entity (each of which is bound by confidentiality and non-use provisions substantially similar to those contained herein).

19. Electronic Signatures Effective.

a. By signing or entering your name into our electronic signature service and clicking on the "Click to Sign" or similar button, you create an electronic signature to the Agreement, establishing a valid, legal contract. In doing so, you agree to accept these terms and conditions and any other agreement contained or referenced herein; you also agree that we may supply you a copy of the Agreement in electronic form. Please print or save a copy of the Agreement for your records. You also may choose to receive a copy of the Agreement in non-electronic form at any time by submitting a request to us at the address set forth in Section 15, above.

b. You may choose to withdraw your consent to receive the Agreement in electronic form. Withdrawing your consent to receive the Agreement in electronic form does not change your existing obligations to us under the Agreement. Instead, withdrawing your consent simply means that you wish to have our relationship with you governed by a non-electronic form of the Agreement. If you wish to withdraw your consent to receive the Agreement in electronic form and to instead enter into a non-electronic form of the Agreement, please send a letter and self-addressed, stamped envelope to the address set forth in Section 15, above. We then will send you a non-electronic form of the Agreement. Your withdrawal of consent will become effective when we mail to you a copy of the non-electronic form of Agreement, at which point our relationship will be

governed by the terms of such Agreement. In either instance, the obligations that you incur pursuant to the electronic form of the Agreement, prior to the effective date of the withdrawal of your consent, will remain unchanged until they are fully discharged by you. **c.** In order to access and retain the electronic Agreement, you must have access to the Internet, either directly or through devices that access Web-based content, and pay any charges associated with such access. In addition, you must use all equipment necessary to make such connection to the Internet (e.g., a computer and modem or other access device). We will notify you of any changes in the hardware or software requirements needed to access and/or retain the Agreement that create a material risk that you will not be able to continue to access and/or retain the electronic Agreement.

SERVICE TERMS:

Term

1. The term of the Agreement shall commence on the date your Dealership Participation Agreement is accepted by Fender.Cars and shall continue until terminated by either party.

Service Fees

2. Participating Dealers will pay a Monthly Fee, based on the executed Dealership Participation Agreement, for access to services selected in the Dealership Participation Agreement, including but not limited to, the Dealer Portal, Inventory Use, Swipe-to-Connect messaging systems, analytics, and/or geo-tracking.
3. Those Participating Dealers obtaining services on a per-lead basis will pay a Lead Fee calculated on a per-lead basis, in an amount determined in the Dealership Participation Agreement, for access to leads generated through Fender.Cars's Swipe-to-Connect technology. Unless otherwise agreed upon by both parties in writing, there is no cap on the number of leads Fender.Cars may provide to a Dealer during a billing period and, thus, no cap on the Lead Fee a Dealer may be asked to pay during a billing period.
4. Participating Dealers may be required to pay additional inventory management fees if additional fees are incurred by Fender.Cars to access and maintain Dealer's inventory within Fender.Cars Services.
5. Participating Dealers may be required to pay an additional service fee for invoices paid by check or money order.
6. All fees are subject to change without notice.

Payment Terms

7. Dealers will be invoiced on the 10th day of the month for fees incurred in the previous calendar month. Payment of all outstanding balances is due on the 20th day of the month.
8. Outstanding balances not paid by 5:00pm Central Standard Time on the 20th day of the calendar month will be subject to a Late Fee of \$25.00 or 10% of the outstanding balance due, whichever is less.

9. Outstanding balances not paid by 5:00pm Central Standard Time on the last business day of the calendar month after they are due will be subject to an Additional Late Fee of \$25.00 or 10% of the outstanding balance due, whichever is less.
10. Dealers with Outstanding Balances which are more than sixty (60) days overdue will be subject to termination of the Dealership Participation Agreement. Such termination will not alleviate the Dealer of any obligation to pay Outstanding Balances, including Late Fees or Additional Late Fees incurred.

Termination

11. Either party may terminate the Agreement by giving written notice of such termination to the other respective party and such termination may be for any reason the termination party elects or for no reason other than the terminating party's convenience.
12. Upon the termination of the Agreement for any reason, by either party, any licenses granted either party under this Agreement shall terminate immediately, and if not already done, you shall cease use of Fender.Cars's Services.
13. Dealers whose Dealership Participation Agreement is terminated will be required to enter into a new Dealership Participation Agreement, the terms of which may differ from the previous Agreement.
14. Monthly Fee will not be pro-rated or refunded in whole or in part for Dealers whose Agreement is terminated.

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The Agreement, including the Terms and Conditions and Service Terms, was last updated on and is effective as of December 14, 2017.