## **Sample Data Processing Agreement**

**DATA PROCESSING ADDENDUM**

This Data Processing Addendum (“DPA”) forms part of the Agreement (“Principal Agreement”) between (i) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“VENDOR”) and (ii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“DEALERSHIP”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In case of any conflict or inconsistency with the terms of the Principal Agreement, this DPA shall take precedence over the terms of the Principal Agreement to the extent of such conflict or inconsistency.

**1. DEFINITIONS**

1.1 “**Data Subject**” means a living individual who is the subject of any of the Personal Data;

1.2 “**Data Privacy Legislation**” means all laws and regulations, in any country of the world, which protect the privacy rights of individuals, in so far as those laws and regulations apply to the Processing of Personal Data in connection with this DPA;

1.3 “**Data Security Breach**” means any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, access to, acquisition of, or use of any data or materials, in any form, received from DEALERSHIP;

1.4 “**Personal Data**” shall mean any information that VENDOR has received or collected for processing pursuant to the Principal Agreement that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, to a particular consumer or household;

1.5 “**Processing**” shall mean any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction.

**2. OWNERSHIP**

Each party hereby acknowledges and agrees that DEALERSHIP owns all rights, title, and interest in and to the Personal Data which is processed by VENDOR on behalf of DEALERSHIP pursuant to the Principal Agreement.

**3. DATA PRIVACY**

VENDOR must:

3.1 Comply with Data Privacy Legislation, and use all reasonable endeavors to assist DEALERSHIP in its own compliance with Data Privacy Legislation, in connection with this DPA;

3.2 Not do, or cause or permit to be done, anything in relation to the information provided to or processed by VENDOR which may result in a breach by DEALERSHIP of any applicable laws, regulations, regulatory requirements, or the Data Privacy Legislation;

3.3 VENDOR shall not: (i) sell the Personal Data or share the Personal Data with any third parties without DEALERSHIP’s permission; (ii) retain, use or disclose the Personal Data for any purpose other than the purposes specified in the Principal Agreement, including retaining, using or disclosing the Personal Data for a commercial purpose other than to provide VENDOR’s services to DEALERSHIP; and (iii) retain, use or disclose the Personal Data outside of VENDOR’s business relationship with DEALERSHIP. Specifically, Vendor must only process personal information in accordance with DEALERSHIP’s documented instructions, which may be specific instructions or standing instructions of general application in relation to the performance of Vendor’s obligations under this Agreement, unless otherwise required by law. If a law or warrant requires VENDOR to disclose Personal Data for a purpose unrelated to the service in the Principal Agreement, VENDOR must first inform DEALERSHIP of the legal requirement and give DEALERSHIP an opportunity to object or challenge the requirement, unless the law prohibits otherwise;

3.4 Put in place measures to ensure that any employees who have access to Personal Data: (i) do not process the data except on instructions from DEALERSHIP, unless required to do so by law; (ii) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality; (iii) comply with applicable Data Privacy Legislation in the context of that individual’s duties to DEALERSHIP; (iv) only access the Personal Data as strictly necessary for the purposes of the Principal Agreement; and (v) comply with applicable Data Privacy Legislation in the context of that individual’s duties to DEALERSHIP;

3.5 Not disclose the Personal Data to any other body (including any subprocessor) without DEALERSHIP’s express agreement in writing;

3.6 Not subcontract to a subprocessor any of VENDOR’s duties under this DPA unless: (i) VENDOR has obtained prior express agreement in writing from DEALERSHIP; and (ii) the subprocessor is subject to a written agreement which imposes on the subprocessor the same obligations that are imposed on you under this DPA. Any consent which DEALERSHIP gives pursuant to this clause or this DPA generally for subcontracting will not relieve VENDOR from any liability for the performance of its obligations under this DPA;

3.7 Comply with all reasonable requests or directions by DEALERSHIP to enable it to verify and/or procure that VENDOR is in full compliance with its obligations under this DPA;

3.8 Upon termination of its provision of services, delete or return all Personal Data to DEALERSHIP and delete any existing copies of the Personal Data, save where applicable law requires VENDOR to retain copies of such data. VENDOR shall provide written certification that it and each of its subprocessors have fully complied with this section within 60 days of the termination of the provision of services; and

3.9 If the Principal Agreement requires VENDOR to collect Personal Data on DEALERSHIP’s behalf, VENDOR will always provide a CCPA-compliant notice addressing use and collection methods that the DEALERSHIP specifically pre-approves in writing. VENDOR will not modify or alter the notice in any way without the DEALERSHIP’s prior written consent.

**4. SECURITY**

VENDOR must:

4.1 At a minimum, implement and maintain reasonable technical and organizational measures to ensure the security and protection of Personal Data, taking into account the nature and sensitivity of the information to be protected, the risk presented by Processing, the state of the art, and the costs of implementation, in compliance with applicable Data Privacy Legislation;

4.2 Immediately notify DEALERSHIP if VENDOR knows, discovers or reasonably believes that there has been any Data Security Breach;

4.3 In the event of a Data Security Breach, (i) immediately investigate, correct, mitigate, remediate and otherwise handle the Data Security Breach, including without limitation, by identifying Personal Data affected by the Data Security Breach and taking sufficient steps to prevent the continuation and recurrence of the Data Security Breach; and (ii) provide information and assistance needed to enable DEALERSHIP to evaluate the Data Security Breach and, as applicable, to comply with any obligations to provide timely notice to affected individuals or information about the Data Security Breach to relevant regulators; and

4.4 Reimburse DEALERSHIP for the reasonable expenses that DEALERSHIP may incur as a result of such Personal Data Breach caused by VENDOR’s acts or omissions or those of any of VENDOR’s authorized subprocessors, including but not limited to, the expenses incurred in investigating the Data Security Breach and notifying affected individuals, and providing these individuals with the support necessary under the circumstances, such as credit monitoring.

**5. LIABILITY AND INSURANCE**

Notwithstanding anything to the contrary in the Principal Agreement, VENDOR’s total aggregate liability, including any liability for subprocessors, under or in connection with this DPA, shall not exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. VENDOR presently maintains and will continue to maintain in force, at VENDOR’s sole expense, the following insurance: Cyber Risk and Privacy Liability Insurance Policy, or similar policy with a nationally recognized insurance company licensed to do business in California and DEALERSHIP as a named insured having a minimum limitation of liability of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**6. INDEMNITY**

VENDOR will indemnify and hold harmless DEALERSHIP and its officers, directors and employees from and against all third-party claims and legal actions brought against DEALERSHIP arising out of VENDOR’s breach or alleged breach of this DPA, or in the event of any injury to any person, damage to or loss of property, or any other claim arising out of or resulting from any act or omission of VENDOR, its employees, agents or subprocessors in connection with or arising out of the performance of this DPA, including without limit, any losses, liabilities, damages, judgments, fines, penalties, costs or expenses, including court costs and reasonable legal and investigation costs awarded against or incurred by DEALERSHIP. DEALERSHIP shall have the right, at its cost, to participate in the defense of any claims concerning matters that relate to DEALERSHIP. VENDOR may not enter into any settlement without DEALERSHIP’s express written consent (which shall not be unreasonably withheld), unless such settlement (i) releases DEALERSHIP in full for all claims, (ii) does not impose any obligation on DEALERSHIP, other than amounts to be paid directly by VENDOR (and not DEALERSHIP), and (iii) includes no admission of any kind by or on behalf of DEALERSHIP.

**7. CONSUMER REQUESTS UNDER THE CALIFORNIA CONSUMER PRIVACY ACT (CCPA)**

7.1 If DEALERSHIP provides written notification to VENDOR of a consumer’s CCPA request, within ten (10) business days of the date the request is sent, VENDOR shall complete the following appropriate response: for a deletion request, delete all such information from VENDOR’s records; for an opt-out request, ensure that a Data Subject’s opt-out request is implemented as of the date of the request; or for a right to know request, provide assistance as necessary to provide a full response. CCPA requests shall be sent by email to VENDOR at the following email address [*INSERT EMAIL ADDRESS*] or by U.S. mail to VENDOR’s address at [*INSERT POSTAL ADDRESS*]. If a consumer whose information is subject to this Agreement makes a data subject request directly to VENDOR, VENDOR shall notify DEALERSHIP at the following email address [*INSERT EMAIL ADDRESS*] or by U.S. mail to DEALERSHIP’s address at [*INSERT POSTAL ADDRESS*] within five (5) calendar days.

7.2 If VENDOR has received written instructions from DEALERSHIP to act on behalf of the DEALERSHIP to respond to Data Subject requests, then the VENDOR shall comply with all CCPA requirements for Processing the Data Subject request. VENDOR will keep DEALERSHIP informed of the receipt of the request, date of the request, completion of the request, and all necessary information for the DEALERSHIP’s recordkeeping requirements under the CCPA.

7.3 VENDOR shall assist with Section 7 at its own cost.

**8. TERMINATION**

VENDOR shall promptly notify DEALERSHIP of any reason why VENDOR has breached, cannot, or is not likely to be able to comply with this DPA. In such case, DEALERSHIP may, in its sole discretion, be entitled to suspend or terminate the provision of Services to DEALERSHIP.

**9. CERTIFICATION**

By executing this Addendum, Vendor certifies that it understands the restrictions on Vendor’s Processing personal information set forth in this Addendum, and will comply with them.

IN WITNESS WHEREOF, this Data Processing Addendum is entered into and becomes a binding part of the Principal Agreement with effect from [*INSERT DATE*].

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| DEALERSHIP  Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | VENDOR  Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |