

This Terms & Conditions Agreement ("Agreement") is entered into effective the same date as the Agent Application (the "Effective Date") by and between XpressLane Auto Buying Service ("XpressLane") and Affinity Partner ("Affinity Partner") with reference to the following:

Whereas XpressLane provides auto-buying services, to the Customers of various Companies, through its XpressLane Auto Buying Service. The Auto Buying Service includes telephonic and on-line auto-buying assistance through XpressLane's partner, AutonationDirect ("AN Direct"), AN Direct's telephone call center and a web-based application used to facilitate the selection, configuration and purchase of new and used cars and related services or products (the "Auto Buying Services"); and

Whereas, Affinity Partner desires to facilitate the offering of XpressLane's Auto Buying Services to its Customers under the terms contained in this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

#### **I. XPRESSLANE'S AUTO BUYING SERVICES**

1.1 *Auto Buying Services:* During the term of this Agreement, XpressLane will provide the Auto Buying Services to Affinity Partner's Customers in the manner described in this Agreement.

1.2 *Marketing Materials:* XpressLane will, at its discretion and sole cost and expense, provide an XpressLane branded website ("Site"), sample marketing materials and website banners for use by Affinity Partner. All applications, text, graphics, interactive content, data or information relating to any of the products, shall be the sole and exclusive property of XpressLane, and Affinity Partner shall acquire no rights in the XpressLane website.

1.3 *Compliance with Law:* XpressLane will comply with all applicable state and federal laws, rules and regulations related to the sale of automobiles and optional products. XpressLane will promptly inform Affinity Partner if it becomes the subject of any disciplinary proceeding, or it is otherwise the subject of any governmental order that materially affects its right or ability to perform its obligations under this Agreement.

1.4 *Reports:* By the 15th day of the month following each month during the term of this agreement, XpressLane shall provide Affinity Partner with a monthly report of sales for the preceding period.

1.5 *Customer Data:* XpressLane will keep all non-public, personally identifiable information regarding Affinity Partner's Customers with whom XpressLane conducts business confidential. XpressLane will comply with its privacy policy, and all applicable federal and state privacy laws.

1.6 *Indemnity:* XpressLane will indemnify, defend and hold harmless Affinity Partner and its directors, officers, employees and Customers against all losses, claims, damages or liability (including reasonable attorney's fees) that arises solely out of the violation by XpressLane of any law, rule or regulation applicable to XpressLane or its affiliates or to the extent caused solely by the gross

negligence of *XpressLane* or its affiliates. Affinity Partner shall (i) give *XpressLane* prompt notice of the relevant claim, (ii) cooperate with *XpressLane*, at Affinity Partner's expense, in the defense of such claim, and (iii) give *XpressLane* the right to control the defense and settlement of any such claim. Affinity Partner shall have the right to participate in the defense at its expense.

1.7 **Compensation:** *XpressLane* will compensate Affinity Partner \$100.00 per vehicle sold to Affinity Partner's customer. Reporting and Compensation paid to Affinity Partner shall be deemed true and correct unless disputed by Affinity Partner within sixty (60) days of the date of the Report or date Compensation was paid.

## **II. AFFINITY PARTNER'S OBLIGATIONS**

2.1 **Exclusivity:** During the term of this Agreement, *XpressLane* shall be the sole and exclusive automobile buying/leasing service of Affinity Partner and Affinity Partner will not endorse or enter into any agreement or otherwise authorize or permit any other automobile buying service or auto dealership to solicit or conduct business with Affinity Partner's Customers. Affinity Partner agrees to be exclusive only in those states that *XpressLane* currently services. If Affinity Partner should desire to offer its Customers any other services with respect to automobiles, *XpressLane* will be given the first opportunity to submit a proposal and a right of first refusal to match any proposal by third parties relating to such additional services.

2.2 **Marketing Support:** Affinity Partner will cooperate with *XpressLane* and use its best efforts to market the Auto Buying Services to Affinity Partner's Customers, including, but not limited to:

- a. Statement inserts
- b. Promotional references in Affinity Partner's Newsletter(s)
- c. Display of on-site point of sale materials and brochures
- d. Conduct Affinity Partner staff- awareness meetings
- e. Website banner
- f. Various other means of promoting and making the Auto Buying Service benefit available to Customers (i.e., email or direct mail campaigns etc.).

Affinity Partner will have the right and to use the name and trademarks of *XpressLane* for the limited purpose of production and distribution of marking materials for the Auto Buying Services. No modification, alteration or mutilation of the *XpressLane* trademarks is permitted under any circumstance. The limited license to use trademarks provided hereunder shall immediately terminate upon the termination or expiration of this Agreement.

2.3 **Indemnification:** Affinity Partner shall indemnify, defend and hold harmless *XpressLane* and its affiliates and their respective directors, officers and employees against all losses, claims, damages and liability (including reasonable attorney's fees) they incur arising out of the violation by Affinity Partner or its employees and agents of any law, rule or regulation applicable to Affinity Partner or its affiliates or to the extent caused by the negligence or intentional acts of Affinity Partner or its affiliates, *XpressLane*

shall (i) give Affinity Partner prompt notice of the relevant claim, (ii) cooperate with Affinity Partner, at XpressLane's expense, in the defense of such claim, and (iii) give Affinity Partner the right to control the defense and settlement of any such claim. XpressLane shall have the right to participate in the defense at its expense.

### **III. LICENSING OF XpressLane SITE**

3.1 *Limited License:* XpressLane hereby grants a limited, non-exclusive license to Affinity Partner, its Customers and affiliates, to access the XpressLane Site including the right to: (i) publicly display portions of the Site on Affinity Partner's website; and (ii) link to the Affinity Partner's Web Site all or part of the XpressLane Site. This limited license shall immediately terminate upon the termination or expiration of this Agreement. The grant of this limited license and the use of the Site by Affinity Partner are subject to the terms and conditions of this Agreement.

3.2 *Sublicensed Data and Trademarks.* XpressLane may from time to time license portions of the XpressLane Site from third parties. Subject to the terms and conditions of this License, XpressLane hereby grants to Affinity Partner a non-exclusive, non-transferable, revocable sublicense, under common law and any registrations covering the intellectual property of third parties, licensed to XpressLane and incorporated on any page which displays or uses such property in connection with Site. XpressLane and its licensors retain the right to use such intellectual property and to sublicense or license its use to any other designee. Affinity Partner shall not represent in any manner that it has any ownership in the intellectual property licensed or sublicensed under this Agreement. This limited license shall immediately terminate upon the termination or expiration of this Agreement.

3.3 *Limitations:* Affinity Partner shall not (i) make copies of, or use or permit the use of, any portion of the Site except as authorized by this Agreement; (ii) sublicense any of its rights in the Site to any third party without the prior written consent of XpressLane; (iii) authorize any third party to frame those portions of the Site without the prior written permission of XpressLane; (iv) allow Affinity Partner's Customers to download or copy any of the Site onto any other computer or server, other than by normal web browser use of viewing and printing any web page; (v) modify any part of the Site; or (vi) use any part of the Site software to create a derivative or similar work. Affinity Partner agrees to immediately cease any other activities pertaining to the use of the Site upon written notice by XpressLane.

3.4 *Intellectual Property:* XpressLane and its Licensors retain all right, title and interest, including all copyright, patent, trade secret, trademark, and any other intellectual property rights, in and to the Site, including all updates, derivative works and modifications thereto. Affinity Partner shall gain no right, title or interest in the Site by virtue of this License, other than the nonexclusive licenses granted hereunder. Affinity Partner shall retain all trademark and other intellectual property rights to its trademarks contained on the Site. Affinity Partner shall cooperate with XpressLane to facilitate the preservation of the intellectual property rights of XpressLane and its licensors to the Site.

### **IV. RELATIONSHIP OF THE PARTIES**

4.1 *Independent Contractor:* XpressLane shall perform all services hereunder as an independent contractor of Affinity Partner. All persons employed or contracted by XpressLane are employees or agents of XpressLane and shall be under the sole direction and control of XpressLane. XpressLane shall

have the full power, authority and discretion to select the means, manner and method of performing the services under this Agreement. Neither XpressLane nor any individuals employed by XpressLane shall be considered employees of Affinity Partner, and they shall not be entitled to participate in any employee benefit plans sponsored or maintained by Affinity Partner. Neither Affinity Partner nor any individuals employed by Affinity Partner shall be considered employees of XpressLane, and they shall not be entitled to participate in any employee benefit plans sponsored or maintained by XpressLane.

4.2 *Non-exclusive Auto Buying Services:* XpressLane shall be free to provide similar or the same Auto Buying Services to other parties, including, but not limited to, credit unions, other financial institutions, affinity groups and their respective Customers.

4.3 *Responsibility for Personnel:* Except as otherwise herein expressly provided to the contrary, each party is solely responsible for compliance with employment law matters with respect to its own employees, including, without limitation, any applicable unemployment compensation, social security, Medicare, workers compensation and health and accident insurance and the filing of all required forms, returns and reports.

## **V. TERM AND TERMINATION**

5.1 *Term:* This Agreement shall commence on the Effective Date of the Agency/Agent Application submitted to XpressLane. The initial term of this Agreement shall be for a period of one (1) year beginning on the Effective Date. At the end of each term, this Agreement shall automatically renew for additional one year terms unless either party gives written notice of its election not to renew at least ninety (90) days in advance of the end of the current term. This Agreement may be terminated at any time during a renewal term upon sixty (60) days notice.

5.2 *Termination:* Either party shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Agreement as follows:

- (a) Immediately upon written notice if (i) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, or (ii) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within 60 days, or
- (b) Upon the occurrence of an uncured material breach by either party, the non-defaulting party shall have the option to terminate this Agreement by giving written notice of the exercise of such right to the defaulting party. As used herein, "uncured material breach" shall mean a breach that materially interferes with the performance of this agreement with respect to which the non-breaching party has given the breaching party written notice specifying the breach and the breach has not been cured within thirty (30) days of the delivery of the notice.
- (c) At any time by XpressLane in order to comply with Section 6.1.

5.3 *Rights Upon Termination.* Upon termination or expiration of this Agreement for any reason, (i) the rights and licenses granted by each party to the other under this Agreement shall automatically terminate; (ii) each shall return or, at the option of the other party, destroy the materials that were either

furnished by the other party or which bear the other party's trademarks. If applicable, each party shall remove from its web sites all links to the web-sites of the other, including the links to the Site and disable any proprietary software or web tools of the other, including updates, copies, derivative works, modifications, and improvements thereto. If either party requests the destruction of materials or the removal of such links, the other party shall certify to the requesting party in writing that the destruction and removal has been completed. If applicable any outstanding compensation will be calculated and distributed to Affinity Partner as of the termination date.

## **VI. REPRESENTATIONS, DISCLAIMERS OF WARRANTY, AND LIMITATION OF LIABILITY**

6.1 *General Representations.* Each Party represents and warrants to the other Party that (a) it has the right and power to perform its obligations and to grant the rights granted herein; (b) its performance under this Agreement shall not violate any agreement or obligation between it and a third party or any applicable law, ordinance or regulation; and (c) no content or materials that are provided to the other Party do now or will in the future infringe upon or violate any intellectual property right or proprietary or non-proprietary right of any third party.

### 6.2 **DISCLAIMERS OF WARRANTY AND LIMITATION OF LIABILITY**

*Auto Buying Services - Disclaimer of Warranty.* EXCEPT AS EXPRESSLY PROVIDED IN THIS PARAGRAPH, THE XPRESSLANE TRADEMARKS AND, IF APPLICABLE, SITE ARE LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. XPRESSLANE DOES NOT WARRANT THAT THE AUTO BUYING SERVICES WILL MEET AFFINITY PARTNER'S REQUIREMENTS OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE ALTHOUGH ALL DATA PROVIDED IS BELIEVED TO BE ACCURATE AT THE TIME IT WAS PROVIDED. XPRESSLANE MAKES NO WARRANTY EXPRESS OR IMPLIED WITH REGARD TO THE AUTO BUYING SERVICES. AFFINITY PARTNER'S SOLE REMEDY AND XPRESSLANE'S SOLE LIABILITY FOR A BREACH OF ANY WARRANTY SHALL BE TO REPERFORM THE SERVICES.

*Vehicles - Disclaimer of Warranty.* XPRESSLANE EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE VEHICLES SOLD THROUGH AUTO BUYING SERVICES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEW VEHICLES PURCHASED WITH THE ASSISTANCE OF THE AUTO BUYING SERVICE WILL COME WITH STANDARD MANUFACTURER WARRANTIES.

***LIMITATION OF LIABILITY.*** IN NO EVENT AND UNDER NO THEORY OF LIABILITY SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF

ANTICIPATED PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA) ARISING OUT OF THIS AGREEMENT OR RESULTING FROM THE AUTO BUYING SERVICES OR USE OR INABILITY TO USE THE AN DIRECT TRADEMARKS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH PARTIES MAXIMUM LIABILITY UNDER THIS AGREEMENT UNDER ANY THEORY OF LIABILITY SHALL BE LIMITED TO THE GREATER OF \$50,000.00.

## **VII. MISCELLANEOUS**

7.1 *Notices:* Any notices to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change that address by written notice in accordance with this section. Notices delivered personally and be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the third day following the date of mailing.

7.2 *Assignment:* Neither Party to this Agreement may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party to this Agreement, which consent may not be unreasonably withheld. Consent to an assignment shall be deemed automatically granted if said assignment is made in conjunction with the sale or other transfer of a controlling percentage of the stock of either party. Any attempted assignment or delegation in violation of this provision shall be void.

7.3 *Confidentiality:* The Parties agree to keep the terms of this Agreement confidential.

7.4 *Applicable Law and Venue:* The laws of the State of Michigan shall govern the interpretation of this Agreement. The sale and exclusive venue for any dispute arising hereunder shall be in the state and federal courts located in and for Kalamazoo County, Michigan and each party hereby irrevocably consents to the exclusive jurisdiction of said courts.

7.5 *Injunctive Relief* Affinity Partner acknowledges that the Site furnished by XpressLane under this Agreement and the XpressLane Trademarks are the unique property of XpressLane or its licensors, and the unauthorized use thereof will cause XpressLane irreparable harm that may not be adequately compensated by monetary damages. Accordingly, Affinity Partner agrees that XpressLane will, in addition to other remedies available to it, at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Agreement, without the need for posting a bond, including preventing any actual or threatened unauthorized use or sublicensing of the Site or XpressLane's Trademarks.

7.6 *Limitation of Actions:* The parties agree that any lawsuit or other judicial proceeding must be commenced within two (2) years of the date the cause of action giving rise to such action accrued.

7.7 *Entire Agreement:* This Agreement, including any addenda attached hereto, supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter of this Agreement and contains all of the covenants and agreements between the parties with respect to

that matter in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding on either party.

7.8 *Modifications:* Any modification of this agreement will be effective only if it is in writing and signed by the party to be charged.

7.9 *No Waiver:* The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

7.10 *Partial Invalidity:* If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

7.11 *Survival.* The provisions of Sections 1.6, 2.3, 3.1-3.4, 5.3, 6.1-6.2 and Section VII shall survive any termination of this Agreement.

**The parties have agreed to this Agreement as of the effective date of the Agent Application submitted to XpressLane for participation in the XpressLane Auto Buying Service.**