

# EXOGLASS

**DEALERSHIP NAME**

**DEALERSHIP PHONE**

**ADDRESS**

**YOUR NAME**

**YOUR EMAIL**

**YOUR PHONE**

  

**DEALER AGREEMENT**

THIS AGREEMENT is made and entered into this day by and between SideCars, Inc dba ExoGloss (hereinafter "SIDE CARS") and DEALER with respect to the following.

**WHEREAS**, Provider and Dealer desire to enter into this SideCars, Inc. Dealer Agreement ("Agreement") relating to the establishment and administration of the Providers motor club, vehicle service contract, and other products (collectively "Program"), pursuant to which Provider's vehicle service contract and other products ("Contracts") are to be sold by Dealer;

**WHEREAS**, Dealer and its agents agree to offer and sell to the owners of new and used vehicles Provider's Contracts pursuant to the terms of this Agreement; and

**WHEREAS**, Dealer, pursuant to the terms set forth herein, agrees to remit to Provider a Contract Cost set forth in the then- current Dealer Remittance Schedule;

**WHEREAS**, Dealer agrees to perform the requirements set forth herein in furtherance of the Program and the requirements of the Contracts.

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **GENERAL PROVISIONS:**

Dealer is an independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as partners, joint

ventures, co-owners or otherwise, or (iii) allow Dealer to create or assume any obligation on behalf of Provider for any purpose whatsoever. Dealer is not an employee of Provider and is not entitled to any employee benefits. Dealer shall be responsible for paying all income taxes and other taxes charged to Dealer on amounts earned hereunder. All financial and other obligations associated with Dealer's business are the sole responsibility of the Dealer

In consideration of the services rendered by Dealer, Provider agrees to pay Dealer a commission equal to the amount of the retail price of the Contract less the Contract Cost as set forth in the then-current Dealer Remittance Schedule. Dealer may retain its commissions from each sale before remitting the Contract Cost to Provider. Commission shall be payable only one time per Contract. Each party agrees to maintain accurate books and records documenting transactions under the Program, and to provide all assistance necessary to enable the other to prepare accurate accounting for such transactions.

## **Indemnification**

The Provider shall indemnify and hold harmless the Dealer from and against any and all costs, expenses (including reasonable attorneys' fees), losses, claims, damages, injury and liabilities ("Losses") incurred by the Dealer to the extent that such cost, expense, loss, claim, damage, injury or liability arises out of (i) any material breach by the Provider of its representations, warranties and covenants contained in this Agreement, or (ii) the willful misconduct or gross negligence of the Provider in the performance of its duties under this Agreement.

The Dealer shall indemnify and hold harmless the Provider from and against any and all Losses to the extent that such Losses arise out of (i) any material breach by the Dealer of its representations, warranties and covenants contained in this Agreement and(ii)the willful misconduct or gross negligence of the Dealer in the performance of its duties under this Agreement.

In case any action is brought against a party (the “Indemnifying Party”) for indemnification under this section and the Indemnifying Party notifies the other party (the “Indemnified Party”) of the commencement thereof, such Indemnifying Party will assume the defense thereof and will retain counsel mutually agreeable to such Indemnified Party, and except as provided below, such Indemnifying Party will not be liable to such Indemnified Party under this section for any legal or other expenses incurred by such Indemnified Party or (ii) for any legal or other expenses incurred by such indemnified party in connection with the defense thereof subsequent to such Indemnifying Party’s assumption of the defense. In any such proceeding the Indemnified Party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the Indemnifying Party shall pay the reasonable fees and expenses of counsel retained by such Indemnified Party in the event (i) such Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel, (ii) such Indemnified Party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to such Indemnifying Party, or (iii) the named parties to any such proceeding (including any impleaded parties) include both such Indemnifying Party and such Indemnified Party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. An Indemnified Party will not, without the prior written consent of the Indemnifying Party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding for which indemnification may be sought here under unless such settlement, compromise or consent includes an unconditional release of the Indemnifying Party from all liability arising out of such claim, action or proceeding, and which settlement in each case must include reasonable confidentiality provisions and must not include any admission of liability adverse to such Indemnifying Party. The Indemnifying Party will not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding for which indemnification may be sought hereunder unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability arising out of such claim, action or proceeding, and which settlement in each case must include reasonable confidentiality provisions and must not include any admission of liability adverse to such Indemnified Party.

The provisions of this section shall survive the termination of this Agreement for latter of one (1) year afterthe Agreement Termination Date or one (1) year afterall Contracts have expired and all claims thereon have been adjudicated and paid

Agrees to offer Contracts to its qualified new and used vehicle customers (“Purchasers”) on all eligible vehicles, including vehicles that are financed or leased, during the term of this Agreement. Dealer acknowledge that much of the information acquired during the term of this Agreement may consist of Confidential Information. “Confidential Information” shall mean (i) proprietary information of either Party;(ii) information marked or designated by either Party as confidential;

(iii) information which is known, or reasonably should be known, to a Party to be confidential information of the other Party; and (iv) information provided to a disclosing Party by a third party that the disclosing Party is obligated to keep confidential, and that is identified as such to the receiving Party. Confidential Information includes, but is not limited to, data, documentation, programs, processes, customer lists, marketing plans, and financial & technical information. Dealer further acknowledges they will not recreate or offer to sell a competitive program for a term of one (1) year after termination of this Agreement as set forth in Section V.

Agrees to follow the sales, pricing, and claims guidelines established by the Provider, as updated from time to time, and using forms and/or electronic portal supplied by the Provider. Such guidelines will determine which vehicles are eligible for purchase of Provider’s Contract(s), and the pricing structure that applies to each vehicle, tire, or wheel class or type. Any violation of such guidelines will result in the Dealer being denied commission or other payment for Contracts sold in violation of Provider guidelines, and Dealer being liable for costs and expenses incurred by Provider as a result of Dealer’s violation.

Agrees that eligible tires, wheels, and vehicles include only those tires, wheels, and vehicles that qualify under the Provider’s guidelines. Any misrepresentation or concealment of a material fact by the Dealer for the purpose of selling a Contract for an otherwise ineligible tire, wheel, or vehicle, or for the purpose of remitting less than the appropriate Contract price to the Provider, shall eliminate Provider’s responsibility regarding payment of commission or other remuneration to Dealer for that Contract, and Dealer shall be liable for costs and expenses incurred by Provider as a result of Dealer’s misrepresentation or concealment. Agrees that all used vehicles sold with a Contract have been inspected and reconditioned before delivery.

Agrees to clearly inform Purchasers, at the time of sale of a Contract, that Provider is solely responsible for claims handling and claims payment under the Contract, and to repeat this information to any Purchasers seeking to make a claim under a Contract. Dealer further agrees to direct all Purchasers seeking to make a claim under a Contract to contact Provider immediately, and before service is rendered or repairs or replacement of tires or wheels is initiated.

Agrees to inform Provider promptly of any request by Purchaser to cancel a Contract, to promptly inform the Purchaser that Provider is solely responsible for Contract cancellations, and to then direct

Purchasers to contact Provider regarding all cancellation requests.

Agrees to refund to any Purchaser who has financed the purchase price of any Contract, the Dealer's retained portion of the charge financed, on a prorata basis, in the event of a cancellation of a Contract. In the event the vehicle which is the subject of the Contract is financed, refund will be made to the lien holder of the vehicle. In the event the Contract was not financed, the Dealer further agrees to return to the Purchaser his or her retained portion of the total charge for the Contract in the amount calculated by the Provider pursuant to the terms of the Contract.

Agrees to conduct its activities under this Agreement in compliance with all applicable state and federal laws and regulations. Dealer also agrees to maintain a valid business license, and any other licenses required under state law for the sale of the Contract, and to immediately inform Provider in writing of any change in Dealer's licensing status. Dealer also agrees to cease offering or selling the Contract immediately upon the lapse, suspension, or termination of such required licensing.

Acknowledges that the offer and sale of the Contract must be incidental to the purchase transaction for a qualifying new or used vehicle, which includes the lease or financing of such new or used vehicle through the Dealer or other entity.

Agrees not to act as a front for the direct or indirect sale of the Contract by any third-party, by allowing such third- party to use Dealer's name or business to evade or circumvent the requirement that only a qualified Dealer, party to a Dealer Agreement, may offer for sale or sell the Contract to a Purchaser. Dealer further agrees not to act as a front for the direct or indirect sale of the Contract to Purchasers by the Provider.

Acknowledges that Provider assumes no obligation for the workmanship, quality of repairs or replacement of parts; nor for any bodily injury or property damage caused directly or indirectly by mechanical failure or malfunction, or any other cause, of a vehicle or any part thereof.

Violent Crime Control and Law Enforcement Act of 1994. The Dealer acknowledge that the Contracts are insured by a Service Contract Contractual Liability Insurance Policy ("CLIP"). The CLIP is the business of insurance and is subject to 18 USCS 1033, the federal Violent Crime Control and Law Enforcement Act of 1994(the "Act"). In accordance with the Act, the Dealer agrees not to assign any individual to perform services under this Agreement who has ever been convicted of a felony involving dishonesty or a breach of trust. Dealer also agrees to take reasonable steps to determine if any of its employees, contractors or subcontractors has ever been convicted of any criminal felony

involving dishonesty or breach of trust or a violation of the Act. Further, Dealer agrees that it will not knowingly or willfully permit any person, contractor, or subcontractor, if so convicted, to provide any services under this Agreement. Dealer also agrees to promptly notify the Sidecars, in writing, of any employee, contractor, or subcontractor of Dealer who, after the effective date of this Agreement, is convicted of a criminal felony involving dishonesty or breach of trust or violation of the Act.

**Maintenance, Access and Retention of Records.** Dealer shall maintain at its principal office accurate and complete books and records of all transactions performed by Dealer in connection with this Agreement, which books and records shall be maintained in accordance with commercial standards of record keeping and in accordance with all applicable laws. Dealer shall permit the Provider and any applicable governmental authority having jurisdiction over the Providers access to the books and records maintained by Dealer which directly relate to any transactions performed pursuant to this Agreement during the Term and, following any termination of this Agreement, until the later of (a) three

(3) years or (b) three (3) years after all of Provider's contractual obligations under the Contracts have expired.

Dealer shall retain the books and records required by this Agreement for a period of not less than the shorter duration of three (3) years following any termination of the Agreement or three (3) years after all of Provider's contractual obligations to Contract Holders with respect to this Agreement expire.

**Office of Foreign Asset Control Compliance.** The Dealer agrees that in performing its duties and services under Agreement, that Dealer may be required to comply with the economic sanctions and trade embargoes administered and enforced by the

U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The Dealer agrees that in performing its duties and the services under this Agreement, that Dealer shall not knowingly engage in transactions that, unless specifically licensed by OFAC, involve (a) individuals or entities appearing on the "Specially Designated National and Blocked Persons ("SDN") list, or (b) the Sanctioned Countries List. Dealer represents and warrants that as of the Effective Date of this Agreement it has a process in place for ensuring OFAC compliance, which it believes it meets the requirements of applicable law. Dealer agrees to maintain an OFAC compliance process while this Agreement remains in effect.

## **THE PROVIDER:**

Agrees to install, maintain, and administer the SideCars, Inc. program(s) as identified in the in the Dealer's Remittance Schedule, including all business development, claims handling, and Program

administration requirements.

Agrees to supply to the Dealer Contract application and agreement forms, whether electronic or paper, transmittal

forms, Program guidelines, remittance rate charts, as well as any advertising materials or other such forms as the Provider may hereafter supply for use in the Program, in the quantities needed from time to time by the Dealer and all as may be amended by Provider from time to time.

Agrees to provide Dealer with instruction on sales and claims procedures regarding the Program, sufficient to allow Dealer to offer and sell the Contract to any and all of its Purchasers and to direct Purchasers to Provider for claims, cancellation, or other Program information or action.

Agrees to maintain a CLIP insuring Provider's liability under the Contracts in accordance with applicable state laws, applicable rules of automobile finance companies, and applicable rules of payment plan providers that provide financing for the Contracts.

Retains responsibility for investigation, handling, and payment of all valid claims, in accordance with Contract provisions, for all Contracts sold by Dealer under this Program and in compliance with this Agreement.

Violent Crime Control and Law Enforcement Act of 1994. The Provider acknowledge that the Contracts are insured by a Service Contract Contractual Liability Insurance Policy("CLIP").The CLIP is the business of insurance and is subject to 18 USCS 1033, the federal Violent Crime Control and Law Enforcement Act of 1994 (the "Act"). In accordance with the Act, the Provider agrees not to assign any individual to perform services under this Agreement who has ever been convicted of a felony involving dishonesty or a breach of trust. Provider also agrees to take reasonable steps to determine if any of its employees, contractors or subcontractors has ever been convicted of any criminal felony involving dishonesty or breach of trust or a violation of the Act. Further, Provider agrees that it will not knowingly or willfully permit any person, contractor, or subcontractor, if so convicted, to provide any services under this Agreement. Provider also agrees to promptly notify the Dealer, in writing, of any employee, contractor, or subcontractor of Provider who, after the effective date of this Agreement, is convicted of a criminal felony involving dishonesty or breach of trust or violation of the Act.

Maintenance, Access and Retention of Records. Provider shall maintain at its principal office accurate and complete books and records of all transactions performed by Provider in connection with this Agreement, which books and records shall be maintained in accordance with commercial standards of record keeping and in accordance with all applicable laws. Provider shall permit the Dealer and any applicable governmental authority having jurisdiction over the Dealer's access to the books and records maintained by Provider which directly relate to any transactions performed pursuant to this Agreement during the Term and, following any termination of this Agreement, until the later of (a) three (3) years or (b) three (3) years after all of Dealer's contractual obligations under the Contracts have expired. Provider shall retain the books and records required by this Agreement for a period of not less than the shorter duration of three (3) years following any termination of the Agreement or three (3) years after all of Dealer's contractual obligations to Contract Holders with respect to this Agreement expire.

Office of Foreign Asset Control Compliance. The Provider agrees that in performing its duties and services under Agreement, that Provider may be required to comply with the economic sanctions and trade embargoes administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The Provider agrees that in performing its duties and the services under this

Agreement, that Provider shall not knowingly engage in transactions that, unless specifically licensed by OFAC, involve (a) individuals or entities appearing on the "Specially Designated National and Blocked Persons ("SDN") list, or

(b) the Sanctioned Countries List. Provider represents and warrants that as of the Effective Date of this Agreement it has a process in place for ensuring OFAC compliance, which it believes it meets the requirements of applicable law. Provider agrees to maintain an OFAC compliance process while this Agreement remains in effect.

## **ASSIGNMENT AND NOTICES:**

**Governing Law and Jurisdiction** - This Agreement shall in all respects deemed to be made, interpreted, enforced and governed by the laws of the State of Missouri, without reference to its conflict of laws. In the event of any dispute concerning this Agreement, Dealer hereby consents and submits to personal jurisdiction of any state or federal court having its situs in Jasper County, MO.

All written notices required under this Agreement shall be deemed to be sufficiently given and effective if a copy thereof has been mailed by United States certified or registered mail, return receipt requested, in an envelope properly stamped and addressed, or delivered by facsimile to the appropriate address or number indicated herein.



Notice to the parties, directed to the attention of the signing representative, shall be sent to the following addresses or such other addresses either party may theretofore have furnished by written notice to the other party:

If to Provider:

SideCars, Inc.

532 S. Main Street Joplin, MO 64801 Attention:

Copy to: Facsimile

If to Dealer:

**Binding Effect.** This Agreement shall be binding upon the parties here to, and the irrespective successors, heirs and assigns. Neither party may assign any of its rights or obligations under this Agreement without prior written consent of the other.

**Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

**Entire Agreement.** This Agreement is the entire agreement between the parties, and supersedes any and all previous agreements, negotiations or understandings, written or oral, between the parties.

Provider and its affiliates shall have the right of offset for the full amount of any funds due to or from Dealer covered under the terms of this Agreement or any agreement with Dealer, the Dealer's reinsurance company, if any, or Dealer's affiliates including the Dealer's failure to pay any lender or Contract holder for a Contract cancellation.

**Integrity.** Provider has agreed that no spiff or kickback payments to anyone inside or outside of Dealer will take place based on our sales or our relationships. If any financial benefits are to be

rewarded over and above this agreement, they would apply to the Dealer's entity.

Modification. This Agreement may NOT be modified, amended or supplemented unless mutually agreed upon in writing and executed by the Provider and Dealer.

No Waiver. No term or provision of this Agreement shall be deemed waived, and no breach or default by shall be deemed excused, unless such waiver, consent or excuse is in writing, and signed by parties hereto. A waiver by a party hereto of any breach or default by the other party to this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach or default hereunder by the other party.

Headings. The headings and captions herein are inserted for convenience of reference only, and shall not serve to limit, expand or interpret the paragraphs to which they apply, and shall not be deemed part of this Agreement.

Severability. In case any one or more of the provisions in this Agreement should be declared by a court, arbitrators or government agency or department to be invalid, illegal, or contained herein shall not in any way be affected or impaired thereby.

Effective Date. This Agreement is effective as of the day set forth above, provided that this agreement has been duly executed by the parties hereto.

## ARBITRATION

If any dispute shall arise between Provider and Dealer with reference to the interpretation of this Agreement or their rights with respect to any transaction involved, the dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association. The dispute shall be referred to three (3) arbitrators knowledgeable with respect to the service contract industry. One arbitrator shall be chosen by each party and the two chosen shall

promptly select a third arbitrator. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after the receipt of written notice from the other party requesting arbitration and naming its arbitrators, the requesting party may name an arbitrator for the other party. Each party shall submit its case to the three (3) arbitrators within thirty (30) days of the appointment of the third arbitrator unless such time is extended by the arbitrators or a majority of them or by agreement between the parties. The decision of a majority of the arbitrators shall be final and binding on both

Provider and Dealer. Provider and Dealer shall each bear the expense of its own arbitrator, or one-half of the expense of two (2) arbitrators if both are appointed by the requesting party as provided above, and shall jointly bear and equally bear with the other the expense of the third arbitrator and of the arbitration. Any such arbitration shall take place in Jasper County, MO.

## **DURATION OF AGREEMENT AND TERMINATION:**

**Duration**-The term of this agreement is for 1 year and will renew automatically for successive 1-year periods unless either party provides 90 days written notice of intention not to renew.

### **Termination -**

This Agreement may be terminated at any time by either party upon giving thirty (30) days written notice to the other party. Either party may terminate this Agreement immediately upon written notice should the other party become subject to insolvency proceedings, conservatorship, or other liquidation proceedings of any court or governmental authority to which it is subject. In the event that the Provider becomes subject to insolvency, conservatorship, or other similar proceedings, Dealer agrees to remit any appropriate monies for Contracts that have not yet been remitted to the Provider pursuant to paragraph 5. of this Agreement directly to the applicable insurance company that issued the Service Contract Liability Insurance Policy for the Provider's liability under the Contracts.

This Agreement may be terminated immediately by either party for cause. Cause is defined as a material breach of this Agreement. This Agreement shall automatically terminate in the event that Provider is unable to provide an insured Program as provided for herein:

Upon termination, all obligations hereunder by either party shall cease, provided however, that the Dealer and the Provider shall remain responsible in accordance with the provisions of this Agreement for all Contracts issued and paid prior to date of termination.

This Agreement may be terminated automatically without notice should Dealer fail to timely submit Contracts to provider for fifteen (15) consecutive business days.

All supplies furnished by the Provider shall be returned to the Provider on termination of this Agreement. (Signatures to follow on next page)

IN WITNESS WHEREOF, the parties hereto have executed this Dealer Agreement on the date above first written

**SIGNATURE**

**DATE**