

# **EXHIBIT B**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made this \_\_\_th day of December, 2007, by and between Frances Gecker (the "Trustee"), not individually, but as Chapter 11 trustee of Automotive Professionals, Inc. (the "Debtor" or "API"), and Premier Dealer Services, Inc., on behalf of and as agent for the dealers (the "Dealers") listed in Exhibit 1 hereto ("PDS" and together with the Trustee, the "Parties").

**WHEREAS**, on April 13, 2007 (the "Petition Date"), API filed its voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court") initiating the bankruptcy case captioned *In re Automotive Professionals, Inc.* and docketed as Case No. 07 B 06720 (the "Bankruptcy Case"). On June 12, 2007 ("Trustee Appointment Date"), on the motion of the United States Trustee for the Northern District of Illinois (the "U.S. Trustee"), the Bankruptcy Court appointed the Trustee as the Chapter 11 trustee of the Debtor's estate.

**WHEREAS**, on various dates prior to the Petition Date, the Dealers and API entered into certain Dealer Agreements (the "API/Dealer Agreements"), pursuant to which, among other things, API agreed to serve as claims administrator and obligor under vehicle service contracts (the "VSCs") that the Dealers sold through the program administered by API known as the Automotive Protection Plan Program ("API Program"). As indicated in Exhibit 1, as of July 31, 2007, there were approximately 12,290 unexpired VSCs in the API Program.

**WHEREAS**, in connection with the API Program, and pursuant to the API/Dealer Agreements, API and certain of its affiliates established multiple claim reserve accounts at JP Morgan, LaSalle Bank and Goldman Sachs as set forth in Exhibit 1 (the "Reserve Accounts"). According to the Trustee's records, as of July 31, 2007, the outstanding balance of funds on deposit in the Reserve Accounts was \$1,798,562.00.

**WHEREAS**, on February 15, 2007, API executed an assignment for the benefit of creditors, and transferred its assets to the API Creditors' Trust, administered by Michael Kayman as Assignee (the "Assignee"). Subsequently, API ceased processing claims in connection with the API Program. In addition, the Assignee transferred the funds in the Reserve Accounts to an account (the "LaSalle Account") at LaSalle Bank National Association ("LaSalle"). Accounting of the LaSalle Account allows the specific allocation of the funds deposited therein from the Reserve Accounts.

**WHEREAS**, the Trustee and LaSalle entered into a settlement agreement in connection with their respective claims and defenses against each other, including their respective claims and defenses relating to the funds in the LaSalle Account (the "LaSalle Agreement"). Pursuant to the LaSalle Agreement, among other things, LaSalle agreed to transfer and assign whatever rights, claims and interest it held in the funds that were in the LaSalle Account to the Trustee. On July 25, 2007, the Bankruptcy Court entered an order approving the LaSalle Agreement.

**WHEREAS**, to preserve the integrity of the API Program, and to otherwise facilitate and serve the interests of consumers who purchased VSCs under the API Program, PDS has

established a servicing arrangement with the Dealers to perform claims administration in connection with the API Program as detailed in the Service Contract Repair Agreement attached hereto as Exhibit 2.

**WHEREAS**, since February 12, 2007, the Dealers have not had access to the funds in the Reserve Accounts, which, under the API/Dealer Agreements, were to be used to pay repair, replacement and cancellation costs associated with claims made by consumers participating in the API Program.

**WHEREAS**, PDS will procure a Contractual Liability Insurance Policy (the "GAIC Policy") from Great American Insurance Company ("GAIC") naming the Trustee as the Named Insured, which will indemnify API's bankruptcy estate from all claims and net cancellation liability related to the API Program. Other than with respect to Graff Ottawa, Lynnes Infinity, S&W Motors and Suresky & Sons, coverage under the GAIC Policy will become effective with respect to each of the Dealers on the date that the Transferred Funds allocated to such Dealer are transferred to PDS. Coverage under the GAIC Policy with respect to Graff Ottawa, Lynnes Infinity, S&W Motors and Suresky & Sons will become effective on the Effective Date, it being understood by the Parties that the funds allocated to such Dealers are GS Reserves, subject to the distribution provisions of paragraph 2.b. below.

**WHEREAS**, in an effort to minimize any further disruptions and inconveniences to dealers and consumers holding contracts issued under the API Program, and to resolve any issues regarding the disposition of the Reserve Accounts, the Parties have engaged in good faith, arm's-length discussions with respect to resolving all of the respective rights, obligations, claims and defenses of the Dealers, the Trustee, API and API's bankruptcy estate in connection with the API/Dealer Agreements and the subject matter thereof. In order to fully resolve all such rights, obligations, claims and defenses, and to protect the rights of consumer purchasers of the VSCs, including the ongoing administration of the API Program, the Parties have elected to enter into this Settlement Agreement as being in the best interests of API's estate, the Dealers and PDS, respectively.

**NOW THEREFORE**, in consideration of the mutual releases and additional consideration set forth herein, which each of the Parties agrees is good and valuable consideration for the various covenants and understandings set forth in this Settlement Agreement, it is hereby agreed by the Parties as follows:

1. Effective Date. This Agreement will become effective on the date that an order approving this Settlement Agreement becomes final and non-appealable (the "Effective Date").

2.a. Reserve Accounts. Within five business days (5) of the Effective Date, and as consideration for GAIC providing the GAIC Policy, the Trustee will cause to be transferred to PDS funds (the "Transferred Funds") in an amount equal to the aggregate balance in the Reserve Accounts, as of July 31, 2007, as set forth in Exhibit 1 (the "Total Reserve Balance"), less (a) the outstanding balance, as of July 31, 2007, of the Reserve Accounts on deposit at Goldman Sachs, in which Goldman Sachs asserts a lien (the "GS Reserves"); (b) the outstanding balance, as of July 31, 2007, of the Reserve Accounts allocated to Account No. 30002514, in which the

Superintendent of the New York State Department of Insurance (the “Superintendent”) may assert an interest (the “NYS Reserves”); and (c) an amount (the “Retained Amount”) equal to 10% of the Total Reserve Balance less the sum of (i) the GS Reserves and (ii) the NYS Reserves. The Retained Amount, and the accrued interest earned to date on the unencumbered portion of the Reserve Accounts, will be held by the Trustee as an asset of API’s bankruptcy estate. It is understood by the Parties that the initial distribution of Transferred Funds to PDS will total \$977,837.50, and the initial Retained Amount will equal \$108,648.61.

2.b. Trustee’s Recovery of GS Reserves and/or NYS Reserves. To the extent that the Trustee is successful in recovering any of the GS Reserves and/or the NYS Reserves, free and clear of any claims, liens or interests asserted by Goldman Sachs or the Superintendent, respectively, such funds will be transferred to PDS, and retained by the Trustee, as the case may be, in the same manner and in the same proportion as set forth in paragraph 2.a. herein. Any transfers to PDS pursuant to this paragraph 2.b. will be made within fourteen (14) days after the later of the date that (a) an order becomes final and non-appealable, which order declares that the interest of API’s bankruptcy estate in any such funds is superior to the claims, liens or interests asserted by Goldman Sachs or the Superintendent, respectively, in such funds; (b) the Trustee enters into an agreement, approved by a final, non-appealable order of the Bankruptcy Court, pursuant to which Goldman Sachs or the Superintendent, as the case may be, releases its claims, liens or interests in such funds, and (c) the Trustee’s receipt of any such funds into the Trustee’s operating account maintained in connection with the Trustee’s administration of API’s bankruptcy estate.

2.c. General Unsecured Claim. PDS shall have a general unsecured claim against API’s bankruptcy estate for the amount retained by the Trustee as an asset of API’s bankruptcy estate pursuant to paragraph 2.a. and/or 2.b. herein.

3. Use of Transferred Funds and Periodic Reporting. Upon the delivery of the Transferred Funds to PDS, PDS will procure a Contractual Liability Insurance Policy naming the Trustee as the Named Insured, to cover valid repair claims and net cancellation claims under the VSCs. Commencing on the tenth (10<sup>th</sup>) day of the second month following the Effective Date, and continuing on the tenth (10<sup>th</sup>) day of each succeeding month, until such time as the Trustee determines in her sole discretion, PDS will provide the Trustee, or her designated agent, with a report detailing all payments and claims processed under the VSCs during the prior month.

Guaranteed Price Refund Contracts. Nothing in this Settlement Agreement shall, or shall be deemed to, obligate PDS to perform under guaranteed price refund contracts sold by the Dealers in connection with the API Program.

4. Representation and Warranties by PDS. PDS hereby represents and warrants that it will comply with all applicable federal, state and local laws and regulations in connection with the administration of the VSCs, including maintaining insurance and/or cash reserves as necessary and/or required by law in connection therewith. In addition, PDS hereby represents and warrants that, until the expiration of all VSCs insured by GAIC, PDS will:

- A. provide the Trustee with no less than 60 days' prior written notice of the employment of any administrative agent other than PDS to administer claims under the API/Dealer Agreements; and
- B. provide the Trustee with proof of insurance in connection with the administration of the VSCs.

5. Mutual Release. Effective upon the Effective Date, other than claims relating to the enforcement of this Settlement Agreement and as set forth herein, and PDS's unsecured claim against API's bankruptcy estate described in paragraph 2 above, the Trustee, on behalf of the Trustee, any of the Trustee's successors and/or assigns, and API's bankruptcy estate, and PDS, on behalf of itself, the Dealers, and any of their successors and/or assigns, each hereby releases, remises and discharges the other, and any and all of such Party's successors and/or assigns, affiliates, officers, directors, principals, employees, attorneys, other professionals, agents and/or any other representatives from any and all claims and causes of action, known or unknown, from the beginning of time up through and including the Effective Date, including but not limited to all claims, counterclaims, defenses and affirmative defenses, relating to the API/Dealer Agreements, the VSCs, the Reserve Accounts, the LaSalle Account, and all claims relating to the relationship between and among any of PDS, the Dealers, API, API's affiliates, and the Trustee.

6. Indemnification. PDS agrees to hold harmless and indemnify the Trustee and API's bankruptcy estate from and against any and all claims, demands, penalties, damages, obligations, and costs of any nature whatsoever, including the Trustee's attorneys' fees and costs incurred in connection therewith, asserted against the Trustee or API's bankruptcy estate in connection with this Settlement Agreement, the API/Dealer Agreements, the API Program, the VSCs or the Reserve Accounts.

7. Notice of the Agreement. The Trustee has filed with the Bankruptcy Court a motion, pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 9019, seeking approval of this Settlement Agreement and the transactions and arrangements contemplated herein (the "PDS Settlement Motion"). Notice of the PDS Settlement Motion has been posted on the Bankruptcy Court-approved website maintained by the Trustee in the Bankruptcy Case, and provided to the U.S. Trustee, API and its affiliates, counsel for the Official Committee of Unsecured Creditors, API's twenty largest creditors as listed in the Petition, the Superintendent, all parties that have requested notice of all pleadings filed in the Bankruptcy Case, and the Attorney General of each state in which VSCs were sold. Other than through posting on the Trustee's website for the Bankruptcy Case, separate notice of the PDS Settlement Motion will not be provided to the consumer purchasers of the VSCs.

8. Authority. The Parties state that they have read and understand this Settlement Agreement, that they have had an opportunity to consult with their attorneys concerning the terms and conditions herein, and that they have entered into this Settlement Agreement for reasons of their own and not based upon representations of any other Party hereto, and that the person signing this Settlement Agreement on behalf of each of the Parties has full authorization to do so. PDS further states that it has full authorization to enter into this as agent for and on behalf of each of the Dealers.

9. Costs. Each Party shall pay its own respective costs and attorneys' fees incurred in connection with this Settlement Agreement.

10. Entire Agreement. This Settlement Agreement constitutes the entire agreement and supersedes all prior written or oral agreements between the Parties. This Settlement Agreement may not be amended or modified except in writing by both Parties.

11. Counterparts. This Settlement Agreement may be executed by signatures on more than one counterpart. If so executed, the various counterparts shall be considered one instrument. A facsimile or electronic signature hereto shall have the same force and effect as an original signature.

12. No Admissions. Neither the execution of this Settlement Agreement nor the settlement of the matters herein between the Trustee, the Dealers and PDS shall constitute an admission of liability by either the Trustee, the Dealers or PDS.

13. Governing Law. This Settlement Agreement shall be construed under the internal laws (and not the laws of conflict) of the State of Illinois. This Settlement Agreement shall not be construed against either of the Parties but shall be given a reasonable interpretation. Should any part of this agreement be found void or unenforceable, the remaining portions of the agreement shall remain in full force and effect.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement.

**FRANCES GECKER, not individually, but as  
Chapter 11 Trustee of Automotive Professionals, Inc.**

**PREMIER DEALER SERVICES, INC.**

By: \_\_\_\_\_  
One of her attorneys

By: \_\_\_\_\_  
Its authorized representative

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

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

# **EXHIBIT 1**

Automotive Professionals, Inc.  
Reserve Analysis, LenmoreReserveAnalysis  
As of July 31, 2007

Obligor	dfname	refnum	Allocated Balance	JP Morgan	LaSalle Bank	Goldman Sachs	Total Banks	accountbalance	ComCnt
AO	DCH LONG ISLAND SATURN LLC	30002514	60,338.96	7,003.84	-	53,335.13	60,338.96	1,910,563.22	943
AO	DCH LONG ISLAND SATURN LLC	30002514	25,594.47	2,970.88	-	22,623.60	25,594.47	1,910,563.22	400
AO	DCH LONG ISLAND SATURN LLC	30002514	28,729.79	3,334.81	-	25,394.99	28,729.79	1,910,563.22	449
DO	SATURN OF STAMFORD, INC.	30002506	162,132.13	13,092.61	-	149,039.52	162,132.13	1,414,876.52	622
DO	PERKINS (DAN) SUBARU, INC.	30002506	42,748.66	3,452.07	-	39,296.59	42,748.66	1,414,876.52	164
DO	HAMDEN CHRYSLER-PLYMOUTH, INC.	30002506	13,554.45	1,094.56	-	12,459.90	13,554.45	1,414,876.52	52
DO	PERKINS (DAN) CHEVROLET GEO, INC.	30002506	84,976.00	6,862.04	-	78,113.96	84,976.00	1,414,876.52	326
AO	PERKINS (DAN) CHEVROLET, INC.	30002506	10,687.17	863.02	-	9,824.15	10,687.17	1,414,876.52	41
AO	SATURN OF WHITE PLAINS, INC.	30002514	36,344.15	4,218.64	-	32,125.50	36,344.15	1,910,563.22	568
AO	SATURN OF LARCHMONT, INC.	30002514	15,740.60	1,827.09	-	13,913.51	15,740.60	1,910,563.22	246
AO	KING PLAZA JEEP EAGLE, INC.	30002508	17,021.01	17,021.01	-	-	17,021.01	550,541.51	58
AO	BARON AUTOMALL, INC.	30002514	4,926.94	571.89	-	4,355.04	4,926.94	1,910,563.22	77
AO	OMNI AUTO GROUP, INC.	30002508	70,431.75	70,431.75	-	-	70,431.75	550,541.51	240
AO	AIRPORT AUTO GROUP, INC.	30002514	10,557.72	1,225.49	-	9,332.23	10,557.72	1,910,563.22	165
AO	JPT AUTOMOTIVE INC.	30002514	21,819.29	2,532.67	-	19,286.61	21,819.29	1,910,563.22	341
AO	JPT AUTOMOTIVE	30002514	3,007.35	349.08	-	2,658.27	3,007.35	1,910,563.22	47
AO	NATIONAL AUTO INSPECTIONS LLC	30002633	51,623.62	51,623.62	-	-	51,623.62	319,062.63	72
AO	NEMET MOTORS	30002586	171,328.08	-	171,328.08	-	171,328.08	171,328.08	849
AO	NEMET CHEVROLET LTD.	30002587	58,366.67	-	58,366.67	-	58,366.67	58,366.67	213
AO	SATURN OF NEWBURGH, INC.	30002514	38,839.61	4,508.30	-	34,331.31	38,839.61	1,910,563.22	607
AO	SATURN OF NEWBURGH, INC.	30002514	24,826.64	2,881.75	-	21,944.89	24,826.64	1,910,563.22	388
AO	S & W MOTORS, INC.	30002514	29,369.65	3,409.08	-	25,960.58	29,369.65	1,910,563.22	459
AO	WHITE PLAINS NISSAN, INC.	30002510	27,263.12	-	27,263.12	-	27,263.12	125,829.78	208
AO	ACTION NISSAN	30002510	98,566.66	-	98,566.66	-	98,566.66	125,829.78	752
DO	SCARPO (HP) & SONS	30002506	5,995.24	484.13	-	5,511.11	5,995.24	1,414,876.52	23
AO	BIANCO & SON AUTO SALES LTD.	30002515	55,975.88	55,975.88	-	-	55,975.88	233,376.37	65
AO	AUTO NETWORK OF LONG ISLAND LLC	30002515	61,142.89	61,142.89	-	-	61,142.89	233,376.37	71
AO	MINT AUTO SALES, INC.	30002515	5,167.00	5,167.00	-	-	5,167.00	233,376.37	6
AO	LUXURY AUTOS OF GREAT NECK LLC	30002515	16,362.18	16,362.18	-	-	16,362.18	233,376.37	19
AO	TLL MOTORS, INC.	30002514	14,140.94	1,641.41	-	12,499.54	14,140.94	1,910,563.22	221
AO	SURESKY (R. I.) & SON	30002514	41,718.99	4,842.53	-	36,876.46	41,718.99	1,910,563.22	652
AO	CUNNINGHAM MOTORS, INC.	30002514	25,146.57	2,918.88	-	22,227.68	25,146.57	1,910,563.22	393
AO	MILLER (PAUL) MOTORS LLC	30002508	13,205.95	13,205.95	-	-	13,205.95	550,541.51	45
AO	GARDEN CITY SAAB MOTORS CORPORATION	30002514	5,118.89	594.18	-	4,524.72	5,118.89	1,910,563.22	80
AO	SUNRISE AUTOMOTIVE LLC & OAKDALE IMPORTS LLC	30002508	296,693.75	296,693.75	-	-	296,693.75	550,541.51	1,011
AO	AUTO CONNECTION, INC.	30002514	5,758.76	668.45	-	5,090.31	5,758.76	1,910,563.22	90
AO	GRAFF MOTOR SALES, INC.	30002498	51,726.89	-	51,726.89	-	51,726.89	37,065.14	176
AO	GRAFF AUTO MALL, INC.	30002666	37,065.14	-	37,065.14	-	37,065.14	37,065.14	304
AO	WINK (BILL) CHEVROLET	30002553	54,545.59	-	54,545.59	-	54,545.59	54,545.59	396
AO	GRAFF CHEVROLET-OTTAWA, INC.	30002486	-	-	-	-	-	NULL	410
AO	LYNNES INFINITI	30002652	2.65	-	2.65	-	2.65	379.31	41
			1,798,561.78	658,971.41	498,864.79	640,725.58	1,798,561.78		12,290

## **EXHIBIT 2**

[REDACTED]

## SERVICE CONTRACT REPAIR AGREEMENT

This agreement (hereinafter "Agreement") is by and between Premier Dealer Services, Inc. (hereinafter "Premier") and \_\_\_\_\_ (hereinafter "Dealer").

### RECITALS

**WHEREAS**, Dealer markets Premier's vehicle service contracts (hereinafter "Service Contracts") to certain consumers who purchase vehicles from Dealer;

**WHEREAS**, Dealer formerly marketed Service Contracts to consumers on behalf of Automotive Professionals, Inc. (hereinafter "API");

**WHEREAS**, Premier assumed API's obligations for claim payment and claim administration arising under certain of API's Service Contracts;

**WHEREAS**, Premier's assumption of API's Service Contract obligations included certain Service Contracts sold by Dealer (hereinafter "Dealer Contracts"), as listed in Attachment I hereto.

**NOW THEREFORE**, in consideration of the recitals and other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows.

### DEALER'S OBLIGATIONS FOR BREAKDOWN REPAIRS

1.1 Dealer shall provide breakdown repairs for the Dealer Contracts upon Premier's request and in accordance with the following terms and conditions:

- A. Prior to commencing repairs, Dealer shall diagnose the nature and cause of the breakdown and prepare an estimate of the cost of the required repairs. In preparing the cost estimate Dealer shall utilize (a) the labor rate agreed upon between the parties (not to exceed Dealer's posted labor rate); (b) the repair time as specified by a nationally recognized manual designated by Premier (e.g. Alldata); and (c) the price for like kind and quality parts, as available or as directed by Premier.
- B. Dealer shall determine that the owner of a covered vehicle has receipts evidencing completion of the manufacturer's required maintenance services, and when requested by Premier, provide evidence that such maintenance was performed.
- C. Dealer shall obtain Premier's authorization on the Dealer Contract holder's behalf prior to commencing any repair work for which reimbursement is sought from Premier. The Dealer Contract holder is responsible for the cost of services and or repairs not covered by the Dealer Contract or not authorized by Premier. The cost of tear-down and diagnosis shall be paid by Premier only if there is a covered breakdown. Dealer shall facilitate inspection by independent inspectors employed by Premier.
- D. Dealer shall guarantee to the Dealer Contract holder and Premier all workmanship and parts in connection with a covered repair for a period of twelve (12) months after the date the repair is completed and, if requested by Premier, keep all parts removed from the vehicle in a safe place for up to thirty (30) days.
- E. Dealer shall not attempt to collect from the Dealer Contract holder the cost of repairs authorized by Premier and payable to the Dealer.

1.2 Dealer shall perform repairs for all Dealer Contracts as directed Premier and at Premier's sole discretion. Premier shall make exceptions under the following circumstances.

- A. Dealer's repair facility lacks the technical ability or expertise to perform the repair;
- B. The Dealer Contract holder is unable or unwilling to have the repairs performed at Dealer's repair facility.

- 1.3 Dealer acknowledges that it shall not intentionally encourage Dealer Contract holder to have repairs performed at an alternate repair facility.

### **PAYMENT FOR REPAIRS**

- 2.1 Premier shall reimburse Dealer for repairs performed pursuant to Section 1 herein in accordance with the reimbursement schedule shown in Attachment 2 hereto.
- 2.2 Payment is contingent upon Premier's receipt of an itemized and date repair order including but not limited to following information: the Dealer Contract holder's name, the vehicle's current odometer mileage, the vehicle's make, model and year and the vehicle identification number.
- 2.3 Payment shall be made in a manner acceptable to Dealer.

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 3.1 Dealer and all employees through whom Dealer transacts sales hereunder shall procure and maintain in good standing all licenses and permits required under applicable laws and regulations and shall conduct sales in compliance therewith and shall not engage in unlawful discrimination, misrepresentation, or any unfair trade practice prohibited by applicable law. Dealer shall notify Premier of the receipt of legal notices or service of process affecting Premier or its insurer and shall immediately forward same to Premier. Dealer shall cooperate with in the resolution of repair disputes, including but not limited to attending hearings and trials, giving and securing evidence, and obtaining attendance of witnesses.
- 3.2 Dealer warrants the accuracy of all information provided to Premier with respect to repairs performed pursuant to this Agreement.
- 3.3 Dealer shall be solely responsible for the payment of compensation to all employees utilized by Dealer in the performance of this Agreement and shall indemnify and defend Premier from and against any claim for compensation by said employees.

### **EFFECTIVE DATE AND TERMINATION**

- 4.1 This Agreement shall be effective upon acceptance by Premier and shall remain continuously in effect until terminated in accordance with this section.
- 4.2 This Agreement shall automatically terminate if either party:
- A. commits fraud or any serious violation of law.
  - B. sells, transfers or merges the business to a successor person or entity (unless this Agreement has been assigned to such successor with the written consent of the other party);
  - C. files, or has filed against it, bankruptcy;
  - D. is insolvent and unable to pay its debts as due;
  - E. makes an assignment for the benefit of creditors;
  - F. has a receiver appointed to conduct its affairs; and
  - G. has substantially all of its assets attached or levied against.
- 4.3 This Agreement may be terminated by Premier at any time for any reason by either party hereto upon thirty (30) days advance written notice to Dealer.

### **MISCELLANEOUS**

- 5.1 Indemnification. Each party shall indemnify, defend, and hold harmless the other party from and against any and all damages, claims, liabilities, judgments, awards, penalties, fines and expenses, including but not limited to reasonable attorneys' fees and punitive or exemplary damages, resulting from or arising out of (a) any act, error, or omission committed by the other party, its agents and employees and causing loss to a third party, except to the extent the party seeking indemnification also caused, contributed to, or compounded the loss; or (b) the failure by the other party, its agents and employees to comply with any law, regulation, rule or governmental directive of the jurisdiction in which this Agreement applies. The obligation of the parties to indemnify each other shall survive the termination of this Agreement.

- 5.2 Entire Contract. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof and supersedes all prior agreements between the parties.
- 5.3 Waiver. The failure of Premier to insist on the performance of any provision of this Agreement shall not constitute a waiver of Premier's right of redress with respect to such nonperformance or to insist on future performance.
- 5.4 Modification. This Agreement, except as provided herein, may not be revised, modified or altered except by written addendum executed by both parties.
- 5.5 Independent Contractor. At all times while performing its marketing functions and other authorities granted herein, or otherwise, Dealer will be deemed an independent contractor. Neither Dealer nor employees of Dealer will be regarded as employees of Premier.
- 5.6 Right of Offset: Premier shall have the general right to set-off any sums which Dealer may owe Premier, or its insurer, from any of Dealer's funds in its possession.
- 5.7 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California, the place of making this Agreement.
- 5.8 Conformity with Law. If any provision of this Agreement is ruled invalid under the laws of any jurisdiction in which the repairs are performed, then this Agreement shall be deemed reformed to the extent necessary to comply with the minimum requirements of such law, but in all other respects this Agreement shall remain valid and enforceable.
- 5.9 Assignment. This Agreement may not be assigned by Dealer without Premier's prior written consent.
- 5.10 Consent to Suit and Jurisdiction. In the event Premier initiates legal action against Dealer to obtain legal or equitable remedy against Dealer for the breach of this Agreement, Dealer hereby consents to the jurisdiction of any federal or state court within California, and hereby waives any and all defenses or objections to such legal action based on lack of personal jurisdiction or improper venue.
- 5.11 Notices. All notices and other communications of Premier shall be in writing and shall be mailed to Dealer, postage prepaid, first class, to Dealer's address as shown in Premier's records.

**IN WITNESS WHEREOF**, the Parties hereto by their respective duly authorized representatives have executed this Agreement as of the date by the respective signatures below.

**Dealer**

**Premier Dealer Services, Inc.**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

TIN: \_\_\_\_\_

Sales Tax Certificate #: \_\_\_\_\_

**ATTACHMENT 1**  
**DEALER SERVICE CONTRACTS**

ATTACHMENT 2

REIMBURSEMENT FOR REPAIRS

MONTHLY SERVICE CONTRACT VOLUME*	REIMBURSEMENT**
	70%
	30%

\* Calculated as the average monthly volume of written Premier Service Contracts over any rolling consecutive six (6) month period preceding any repair payment due date.

\*\* Percentage of total amount of repair ([labor × labor time] + parts - deductible) which Premier shall pay Dealer for the repair.

