

Schedule "A"

CONSIGNMENT AUCTION AGREEMENT

THIS AGREEMENT is entered into by and between Enterprise Fleet Management Canada, Inc. (hereinafter referred to as "Enterprise") and _____ (hereinafter referred to as "CUSTOMER") on this _____ day of _____, 20____ (hereinafter referred to as the "Execution Date").

RECITALS

- A. Enterprise is in the business of selling previous leased and rental vehicles at wholesale auctions; and
- B. The CUSTOMER is in the business of _____.
- C. The CUSTOMER and Enterprise wish to enter into an agreement whereby Enterprise will sell at wholesale auction, vehicles consigned by CUSTOMER from time to time as described in one or more schedules in the form attached as Exhibit A, each of which is attached hereto and incorporated herein (collectively, the "Vehicles").

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

TERMS AND CONDITIONS

1. Right to Sell: Enterprise shall have the non-exclusive right to sell any Vehicles consigned to Enterprise by a CUSTOMER within Canada, excluding Quebec.
2. Power of Attorney: CUSTOMER appoints Enterprise as its true and lawful attorney-in-fact to sign all documentation required to effect the transfer of the ownership and registration of any Vehicle and hereby grant Enterprise power in any and all matters pertaining to the transfer of ownership and registration of any Vehicle, including the discharge of any liens and encumbrances on the Vehicle, on behalf of CUSTOMER. The rights, powers and authorities of said attorney-in-fact granted in this instrument shall commence and be in full force and effect on the Execution Date, and such rights, powers and authority shall remain in full force and effect thereafter until terminated as set forth herein.
3. Consignments: Vehicles may be consigned to Enterprise by phone, fax or electronically, in all cases subject to the completion of a schedule in the form of Exhibit A. CUSTOMER shall provide Enterprise with any information and documentation about a Vehicle as reasonably requested by Enterprise. Title to each Vehicle and risk of loss remains with CUSTOMER until such Vehicle is sold to a third-party purchaser.
4. Consignment Fee: For each Vehicle sold, CUSTOMER shall pay Enterprise a fee of \$⁴⁹⁵_____ ("Service Fee"). CUSTOMER shall also reimburse Enterprise for all seller fees, auction fees, towing costs, registration fees, enhancement fees, lien discharge fees and charges, and any other expenses reasonably incurred by Enterprise while selling each Vehicle (collectively with the Service Fee, the "Consignment Fees").
5. Sales Process: Enterprise shall use reasonable efforts sell each Vehicle. CUSTOMER may, at its discretion, place a Minimum Bid or Bid to be Approved (BTBA) on any Vehicle by providing prior written notification to Enterprise. Any unsold Vehicle may be returned to CUSTOMER at any time. Provided that Enterprise has not sold the Vehicle, CUSTOMER may demand the return of any consigned Vehicle.
6. Time for Payment:
 - (a) No later than ten (10) business days after the collection of [funds] for the sale of a Vehicle, Enterprise will remit to the CUSTOMER an amount equal to the Vehicle sale price minus any seller fees, auction fees, Service Fees, towing costs, title service fees, enhancement fees and any expenses incurred by Enterprise while selling Vehicle, regardless of whether the purchaser pays for the Vehicle.
 - (b) Enterprise's obligations pursuant to Section 6(a) shall not apply to Vehicle sales involving mistakes or inadvertences in the sales process where Enterprise reasonably believes that fairness to the buyer or seller justifies the cancellation or reversal of the sale. If Enterprise has already remitted payment to CUSTOMER pursuant to Section 6(a) prior to the sale being reversed or cancelled, CUSTOMER agrees to reimburse Enterprise said payment in full. Enterprise will then re-list the Vehicle and pay CUSTOMER in accordance with this Section 6. Examples of mistakes or inadvertences include, but are not limited, to Vehicles sold using inaccurate or incomplete vehicle or title descriptions and bids entered erroneously.

7. Indemnification and Hold Harmless: Enterprise and CUSTOMER agree to indemnify, defend and hold each other and their respective parent, employees and agents harmless to the extent any loss, damage, or liability arises from the negligence or willful misconduct of the other, its agents or employees, and for its breach of any term of this Agreement. The parties' obligations under this section shall survive termination of this Agreement.
8. Liens, Judgments, Titles and Defects: CUSTOMER shall defend, indemnify and hold Enterprise its parent, employees and agents harmless from and against any and all claims, expenses (including reasonable legal fees and disbursements on a solicitor-own client basis), suits and demands arising out of, based upon, or resulting from any judgments, liens or citations that were placed on the Vehicle, defects in the Vehicle's title, or mechanical or design defects in the Vehicle.
9. Odometer: Enterprise assumes no responsibility for the correctness of the odometer reading on any Vehicle and the CUSTOMER shall defend, indemnify and hold Enterprise its parent, employees and agents harmless from and against any and all claims, expenses (including reasonable legal fees and disbursements on a solicitor-own client basis), suits and demands arising out of, based upon or resulting from inaccuracy of the odometer reading on any Vehicle or any odometer statement prepared in connection with the sale of any Vehicle, unless such inaccuracy is caused by an employee, Enterprise, or officer of Enterprise.
10. Bankruptcy: Subject to applicable law, in the event CUSTOMER becomes insolvent, commits an act of bankruptcy, CUSTOMER files a petition in bankruptcy, institutes any insolvency proceedings, appoints a receiver or a receiver is appointed on its behalf, or makes an involuntary assignment of its assets for the benefit of creditors, or any similar action is taken under applicable bankruptcy and insolvency laws with respect to CUSTOMER, Enterprise may accumulate sales proceeds from the sale of all Vehicles and deduct all Consignment Fees from said funds. Enterprise will thereafter remit to CUSTOMER the net proceeds of said accumulated sales proceeds, if any.
11. Compliance with Laws: Enterprise shall comply with all federal, provincial, and local laws, regulations, ordinances, and statutes, including those of any provincial motor vehicle or transportation departments.
12. Insurance: CUSTOMER shall obtain and maintain in force at all times during the term of this Agreement and keep in place until each Vehicle is sold and title is transferred on each Vehicle, automobile third party liability of \$1,000,000 per occurrence and physical damage coverage on all Vehicles. This insurance shall be written as a primary policy and not contributing with any insurance coverage or self-insurance applicable to Enterprise.
13. Term: This agreement is effective on the Execution Date and shall continue until such time as either party shall notify the other party with thirty (30) days prior written notice to terminate the Agreement with or without cause. Any unsold Vehicles shall be returned to CUSTOMER at CUSTOMER's expense.
14. Modification: No modification, amendment or waiver of this Agreement or any of its provisions shall be binding unless in writing and duly signed by the parties hereto.
15. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, with respect to the subject matter hereto. This Agreement will inure to the benefit of and be binding upon Parties and their respective heirs, successors, and assigns.
16. Further Assurances: Each of the parties covenants and agrees to take all such action and to execute all such documents as may be necessary or advisable to implement the provisions of this Agreement fully and effectively and to make them binding on the parties hereto .
17. Liability Limit: In the event Enterprise is responsible for any damage to a Vehicle, Enterprise's liability for damage to a Vehicle in its possession shall be limited to the lesser of: (1) the actual cost to repair the damage to such Vehicle suffered while in Enterprise's possession; or (2) the negative impact to the salvage value of such Vehicle. Enterprise shall not be liable for any other damages to a Vehicle of any kind, including but not limited to special, incidental, consequential or other damages.
18. Legal Fees: In the event that a party hereto institutes any action or proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party reasonable legal fees and costs on a solicitor-own client basis for legal services rendered to the prevailing party.
19. Governing Law; Severability: This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
20. Authorization: Each party represents and warrants to the other party that the person signing this Agreement on behalf of such party is duly authorized to bind such party.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

“ENTERPRISE”

Signature: _____

Printed Name: _____

Title: _____

Date Signed: _____, _____

“CUSTOMER”

Signature: _____

Printed Name: **Matthew Shoemaker**

Title: **Mayor**

Signature: _____

~~Date Signed:~~ _____, _____

Printed Name: **Rachel Tyczinski**

Title: **City Clerk**

Date Signed: _____