

STAR ELITE WHOLESALE PARTS SALES SUPPORT PROGRAM

DEALER PARTICIPATION AGREEMENT

This Dealer Participation Agreement (“**Agreement**”) (together with the Exhibits hereto, the “**Agreement**”) is made and entered into on the date Dealer electronically accepts this Agreement through TMS/USA’s designated enrollment system which shall be determinative, (the “**Effective Date**”), by Dealer and Toyota Motor Sales, U.S.A., Inc., a California corporation, (“**TMS/USA**”) in connection with the Program (as defined below). TMS/USA and Dealer are also sometimes referred to herein individually, as a “**Party**” or, collectively, as the “**Parties**”.

RECITALS

- A. **WHEREAS**, TMS/USA maintains a voluntary subscription-based wholesale parts support program for Toyota vehicle dealerships, currently known as the *STAR Elite Program*, as re-designated or re-named by TMS/USA from time to time in its discretion (together with the Base Features (as defined below), all Additional Features (as defined below) and the Incentive Program (as defined below), the “**Program**”); and
- B. **WHEREAS**, Dealer desires to participate in the Program on a voluntary basis to obtain the benefit of its Base Features, and to have the option to subscribe to certain Additional Features, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and such other consideration as the Parties deem relevant, TMS/USA and Dealer hereby agree as follows:

1.0 PARTICIPATION IN THE PROGRAM

- 1.1 Dealer acknowledges and agrees that participation in the Program is entirely voluntary.
- 1.2 By entering into this Agreement, Dealer:
 - 1.2.1 acknowledges and agrees to comply with the terms of this Agreement and the obligations and policies set forth in the Exhibits hereto, as applicable (the “**Requirements**”);
 - 1.2.2 acknowledges and agrees that the base features and functionalities of the Program common to all participants in the Program (the “**Base Features**”) as of the Effective Date are as set forth in *Exhibit A (Base Features)*, and that the Base Features may be modified from time to time by TMS/USA in its discretion;
 - 1.2.3 acknowledges and agrees that the Program may from time to time, on a voluntary subscription basis, make available certain programs or features that are in addition to the Base Features (“**Additional Features**”), and that the Additional Features may be modified from time to time by TMS/USA in its discretion. The terms and conditions applicable to Dealer’s use and TMS/USA’s provision of each Additional Feature shall be as set forth in *Exhibits B-1, B-2 and B-3* of this Agreement, each of which are hereby incorporated by reference and made a part hereof (each, an “**Additional**”).

Features Exhibit", and collectively, the "**Additional Features Exhibits**"). As of the Effective Date, the Additional Features available to Dealer on a voluntary subscription basis are as follows:

- (a) Toyota Mechanical Parts Program, powered by *RepairLink* by OEConnection, LLC ("**TMPP**"), as further described in *Exhibit B-1 (Toyota Mechanical Parts Program Policies)*;
- (b) *Toyota Information Systems* account subscriptions ("**TIS Accounts**"), as further described in *Exhibit A (TIS Account Subscriptions)*;
- (c) The *Overall Parts Solutions (OPS)* program ("**OPS**"), as further described in *Exhibit B-2 (Overall Parts Solutions (OPS) Program)*; and
- (d) *Parts Sales Excellerator* Reporting, also known as '*PSX*' Reporting, ("**PSX Reporting**"), as further described in *Exhibit B-3 ([PSX Reporting])*.

If Dealer wishes to subscribe to any Additional Feature, the Parts Manager (as defined herein) shall opt in to such Additional Feature by accessing an opt-in portal (the applicable "**Portal**") via *toyotapartsandservicehub.com*, as such URL may be modified from time to time by written notice to Dealer ("**Opt-In URL**").

The processes for subscribing to Additional Features shall be as follows: Dealer shall (i) notify TMS/USA in writing, including but not limited, through *toyotapartsandservicehub.com* or such other mechanism designated by TMS/USA, of any Additional Features to which it wishes to subscribe, (ii) provide TMS/USA with any information requested by TMS/USA in connection with the subscription and enrollment process, and (iii) execute such Subscription Agreements specific to the applicable Additional Features as required by TMS/USA from time to time. Further, Dealer acknowledges and agrees that the applicable Additional Features Exhibit may require Dealer to enter into and comply with and maintain a Subscription Agreement as a condition of Dealer's use of the applicable Additional Feature.

- 1.2.4 represents, warrants and covenants that it is in good standing with TMS/USA in accordance with the standards set forth in the Toyota Dealer Agreement;
- 1.2.5 acknowledges and agrees to be solely responsible for its acts and omissions with respect to its personnel and Customers;
- 1.2.6 acknowledges and agrees that the Program does not require Dealer to send Personal Information to TMS/USA or the applicable Third Party Service Provider;
- 1.2.7 acknowledges and agrees that the Program is constantly evolving, and that TMS/USA reserves the right to amend, modify or supplement the requirements to which Dealer's participation in the Program is subject, as needed from time to time, provided that TMS/USA provides written notice of such amendments, modifications or supplements to Dealer;

- 1.2.8 acknowledges and agrees that TMS/USA may increase the cost of the Program to the Dealer at any time upon sixty (60) days' notice to Dealer prior to the effective date of any price increase and Dealer may continue to participate by paying the increased fees or terminate participation in the Program in accordance with Section 13.0 (Termination);
- 1.2.9 acknowledges and agrees that TMS/USA makes no representations or warranties whatsoever with respect to the Program and that Dealer is participating in the Program at its own risk;
- 1.2.10 acknowledges and agrees that TMS/USA may terminate the Program and this Agreement at any time and TMS/USA is under no obligation to continue the Program;
- 1.2.11 acknowledges and agrees that (a) all Third Party Services will be provided directly and solely by the applicable Third Party Service Provider or its affiliates, and not by TMS/USA, and (b) Dealer shall look only to such Third Party Service Provider to address and/or resolve any issues or concerns with respect to the Third Party Services provided by such Third Party Service Provider;
- 1.2.12 acknowledges and agrees that Dealer's participation in the Program, including the receipt of Third Party Services, are subject to subscription pricing and the other fees and terms and conditions set forth in the applicable Additional Features Exhibit and/or Subscription Agreement;
- 1.2.13 acknowledges and agrees to remain solely responsible for all costs and expenses related to its (1) participation in the Program, and (2) own systems (including its DMS applications), equipment, network, website and means of connection with all integration points; and
- 1.2.14 acknowledges and agrees to pay TMS/USA and/or the applicable Third Party Service Providers certain Subscription Fees ("**Subscription Fees**") in consideration of its access to the Program and/or specific Additional Features, which Subscription Fees will be invoiced, collected and remitted to TMS/USA or as otherwise set forth in the applicable Additional Features Exhibit.

2.0 TERM

This Agreement shall commence on the Effective Date of this Agreement and shall terminate in accordance with Section 13.0 (Termination) of this Agreement (the "**Term**").

3.0 SCOPE OF PROGRAM

- 3.1 During the Term, TMS/USA shall comply with its obligations set forth in Section 5. In consideration, Dealer shall comply with the terms and conditions of this Agreement.
- 3.2 TMS/USA reserves the right to alter, modify, expand, restrict and/or cancel the Program at any time.

- 3.3 TMS/USA may audit Dealer's books, records, facilities, personnel and operations to verify Dealer's adherence to Dealer's obligations under this Agreement, including, without limitation, compliance with the terms of the Incentive Program, Dealer's YOY Growth and Incremental Net Sales (each as defined in *Exhibit C (Wholesale Sales Incentive Program-WSIP)*). TMS/USA's right to audit shall survive termination or expiration of this Agreement.

4.0 OBLIGATIONS OF DEALER

- 4.1 In consideration of TMS/USA's provision of the Program to Dealer, Dealer agrees that it will comply, and cause its employees, agents, representatives and vendors to comply, with all the provisions set forth in this Agreement.
- 4.2 Dealer shall designate an individual (the "**Parts Manager**") who is authorized to enroll Dealer in one or more Additional Features as further set forth herein.
- 4.3 To enroll in any Additional Features, the Parts Manager shall access the applicable Portal, as provided in Section 1.2.3.

5.0 OBLIGATIONS OF TMS/USA

In addition to any other obligations of TMS/USA under applicable Additional Features Exhibits, TMS/USA agrees, during the Term, to provide Dealer the following:

- 5.1 Access to and use of the Services by paying TMS/USA and/or the applicable Third Party Service Provider directly for the costs, fees and expenses, including, without limitation, any applicable Subscription Fees, as applicable, in each case as further provided herein.
- 5.2 Varying quarterly sales incentives ("**Incentives**"), pursuant to TMS/USA's sales incentive program (the "**Incentive Program**"), as determined by TMS/USA in its sole discretion in accordance with *Exhibit C*.

6.0 LICENSES; OWNERSHIP

- 6.1 As between Dealer and TMS/USA, Dealer shall be the sole and exclusive owner of all right, title and interest in and to the Dealer Data, including all Intellectual Property Rights therein. Dealer grants to TMS/USA a non-exclusive, irrevocable, royalty-free, fully-paid, non-transferable (with the right to sublicense), perpetual license to access, use, display, download, distribute and create derivative works of the Dealer Data.
- 6.2 As between Dealer and TMS/USA, TMS/USA shall be the sole and exclusive owner of all right, title and interest in and to the TMS/USA Data and Marketing Materials, including all Intellectual Property Rights therein. TMS/USA grants to Dealer a non-exclusive, royalty-free, fully-paid, non-sub-licensable, non-transferable license to access, use, display, download and distribute TMS/USA Data and Marketing Materials during the Term solely for the purposes and solely to access and use the Services in accordance with the terms and conditions set forth herein. Dealer shall not, nor shall it permit others to: (i) use the Services or TMS/USA Data or Marketing Materials for purposes other than those set forth

herein; (ii) download, copy, recreate, disassemble, modify, translate, reverse engineer or decompile the Services, or any portion therein; (iii) tamper or interfere with the Services or TMS/USA Data or Marketing Materials, or any portion therein; (iv) operate a service bureau; or (v) assign, sell, sublicense, lease, or otherwise transfer Dealer's right to use the Services or TMS/USA Data or Marketing Materials, or any portion therein.

- 6.3 Notwithstanding anything contained herein to the contrary, as between Dealer and TMS/USA or the applicable Third Party Service Provider, all right, title and interest, including, without limitation, Intellectual Property Rights, in and to the Services, as well as updates, enhancements, modifications, derivative works or changes made by TMS/USA or the applicable Third Party Service Provider to the foregoing, remain with TMS/USA or the applicable Third Party Service Provider and are protected by trademark, copyright, patent and/or trade secret Laws.

7.0 DATA; SECURITY; BREACHES

- 7.1 TMS/USA and Dealer understand and agree that with regard to data accessible through this Program, they each shall:

7.1.1 use the data in accordance with Laws;

7.1.2 use commercially reasonable efforts to maintain the confidentiality and security of the data; and

7.1.3 not to disclose or use the data other than as agreed to herein.

- 7.2 Dealer understands that its Dealer Data will be shared with TMS/USA and its respective affiliates to be used for, with respect to TMS/USA and its affiliates, its and/or their own business purposes, including but not limited to, data analytics and reporting.

- 7.3 DEALER ACKNOWLEDGES AND AGREES THAT IT SHALL NOT LOOK TO TMS/USA OR ITS AFFILIATES FOR ANY DAMAGES (AS DEFINED BELOW) THAT ARISE FROM ANY SECURITY BREACH EXCEPT IF, AND ONLY TO THE EXTENT, SUCH SECURITY BREACH ARISES OUT OF TMS/USA'S ACTS OR OMISSIONS OR OCCURS IN TMS/USA SYSTEMS AND DOES NOT ARISE OUT OF ANY ACT OR OMISSION OF DEALER. TMS/USA, FOR ITSELF AND ITS AFFILIATES, HEREBY EXPRESSLY AND IRREVOCABLY DISCLAIMS ANY AND ALL LIABILITY OF TMS/USA OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH ANY SECURITY BREACH, EXCEPT IF, AND ONLY TO THE EXTENT, SUCH SECURITY BREACH ARISES OUT OF TMS/USA'S ACTS OR OMISSIONS OR OCCURS IN TMS/USA SYSTEMS AND DOES NOT ARISE OUT OF ANY ACT OR OMISSION OF DEALER.

- 7.4 TMS/USA ACKNOWLEDGES AND AGREES THAT IT SHALL NOT LOOK TO DEALER FOR ANY DAMAGES THAT ARISE FROM ANY SECURITY BREACH EXCEPT IF, AND ONLY TO THE EXTENT, SUCH SECURITY BREACH ARISES OUT OF DEALER'S ACTS OR OMISSIONS OR OCCURS IN DEALER SYSTEMS AND DOES NOT ARISE OUT OF ANY ACT OR OMISSION OF TMS/USA. DEALER, FOR ITSELF AND ITS AFFILIATES, HEREBY EXPRESSLY AND

IRREVOCABLY DISCLAIMS ANY AND ALL LIABILITY OF TMS/USA OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH ANY SECURITY BREACH, EXCEPT IF, AND ONLY TO THE EXTENT, SUCH SECURITY BREACH ARISES OUT OF TMS/USA'S ACTS OR OMISSIONS OR OCCURS IN TMS/USA SYSTEMS AND DOES NOT ARISE OUT OF ANY ACT OR OMISSION OF DEALER.

8.0 PRIVACY

Each Party represents, warrants and covenants that it is, and shall continue to be throughout the term of this Agreement, in compliance with all applicable privacy Laws and its respective privacy policies.

9.0 COMPLIANCE WITH LAWS

In performing its obligations under this Agreement, Dealer shall comply, and shall cause each of its affiliates, subsidiaries, directors, officers, employees, agents and contractors to comply, with all applicable Laws.

10.0 CONFIDENTIALITY

As used herein, "**Confidential Information**" shall mean any information disclosed during the Term by one Party to the other, which is or should be reasonably understood to be confidential and/or proprietary including, without limitation, the material terms of this Agreement, technical processes and other unpublished financial information, product and business plans, projections and marketing data. In addition, subject to the exclusions hereunder, any information designated "Confidential" by either Party shall be deemed Confidential Information. The Party receiving Confidential Information agrees to hold such Confidential Information in trust and confidence and, except as may be authorized by the other Party in writing, shall not use such Confidential Information for any purpose other than as expressly set forth in this Agreement or disclose any Confidential Information to any person, company or entity, except to those of its employees and professional advisers: (a) who need to know such information in order for the receiving Party to perform its obligations hereunder; and (b) who have entered into a confidentiality agreement with the receiving Party with terms at least as restrictive as those set forth herein. Information shall not be deemed Confidential Information to the extent that the receiving Party can verify with substantial proof that such information: (i) is generally available to or known to the public through no wrongful act of the receiving Party; (ii) was independently developed by the receiving Party without use of Confidential Information; or (iii) was disclosed to the receiving Party by a third party under no obligation of confidentiality to the disclosing Party. The receiving Party agrees that monetary damages for breach of confidentiality may not be adequate and that the disclosing Party shall be further entitled to seek injunctive relief.

11.0 WARRANTIES/LIMITATION OF LIABILITIES

11.1 NO WARRANTIES. TMS/USA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO THIS PROGRAM OR ANY THIRD PARTY SERVICE PROVIDER'S PRODUCTS OR SERVICES, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT. DEALER ACKNOWLEDGES THAT, BY PARTICIPATING IN THE PROGRAM, DEALER IS

ASSUMING THE RISK THAT THE PROGRAM MAY NOT FUNCTION OR OPERATE AS EXPECTED AND THAT TMS/USA IN NO WAY PROMISES OR GUARANTEES ANY PARTICULAR RESULTS. DEALER ACKNOWLEDGES AND AGREES THAT DEALER ACCEPTS THE PROGRAM MATERIALS AND DOCUMENTS "AS IS" AND "WITH ALL FAULTS" AND UNDERSTANDS AND AGREES THAT DEALER MUST UNDERTAKE ITS OWN EVALUATION AND INVESTIGATION OF THESE ASSETS TO DETERMINE WHAT, IF ANY, CHANGES NEED TO BE MADE PRIOR TO ANY USE OR RELIANCE BY DEALER HEREUNDER.

- 11.2 NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT SHALL TMS/USA BE LIABLE FOR DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CLAIMS OF ANY OF DEALER'S CUSTOMERS FOR DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT OR DERIVING FROM THE PROGRAM ACTIVITIES, IRRESPECTIVE OF HOW SUCH DAMAGES MAY BE CAUSED, WHETHER OR NOT BECAUSE OF NEGLIGENCE, STRICT LIABILITY, FAULT OR DELAY OF TMS/USA, OR ITS BREACH OR FAILURE OF PERFORMANCE HEREUNDER, EVEN IF TMS/USA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST THE DEALER BY ANY OTHER PARTY.

12.0 INDEMNITY

- 12.1 Dealer agrees to defend, indemnify, and hold harmless TMS/USA and its respective affiliates, subsidiaries, directors, officers, employees, agents and contractors, from any claims, lawsuits, liabilities, demands, damages, costs and expenses (including without limitation, bodily injury, property damage, and attorney's fees and legal expenses) (collectively, "**Damages**") arising from or related to: (a) the Program, including Dealer's reliance on any advice from any Third Party Service Provider and/or Dealer's use of any materials provided by TMS/USA or any Third Party Service Provider, (b) any breach of Dealer's obligations under this Agreement, (c) Dealer's business, (d) any dispute or complaint involving Customers, and/or (e) any alleged or actual (i) misrepresentation or misleading statement or unfair or deceptive trade practice of Dealer, (ii) negligence and/or willful or intentional misconduct and/or omission in connection with Dealer's participation in the Program, and/or (iii) failure to comply, in whole or in part, with any obligations assumed by Dealer pursuant to, or any of Dealer's representation or warranties set forth in, this Agreement. The provisions of this Section 12.1 shall survive termination or expiration of this Agreement.

13.0 TERMINATION

- 13.1 This Agreement shall be effective as of the Effective Date and shall continue in effect until either Party terminates this Agreement as permitted hereunder (the "**Term**").
- 13.2 Dealer acknowledges and agrees that TMS/USA may discontinue any components of the Program (including any Additional Features or any components

of the Base Features) or the Program in its entirety, at any time with or without reason and without penalty. TMS/USA covenants and agrees that it shall provide sixty (60) days' written notice to Dealer prior to any such discontinuation. A discontinuation of the Program shall automatically terminate this Agreement.

- 13.3 Either Party may terminate this Agreement if either Party does not cure any material breach of this Agreement within thirty (30) days of written notice of such material breach.
- 13.4 This Agreement shall remain in full force and effect unless and until terminated by either Party upon sixty (60) days' written notice; provided, however, that upon expiration or termination of the TMS/USA Dealer Agreement, this Agreement shall automatically terminate without requirement of notice by either Party effective on the date of the expiration or termination of the TMS/USA Dealer Agreement.
- 13.5 Dealer understands and acknowledges that Dealer's rights to use Third Party Services may be subject to an agreement between the applicable Third Party Service Provider and TMS/USA or Toyota Motor North America ("TMNA"). Accordingly, notwithstanding anything in this Agreement to the contrary, this Agreement shall automatically terminate without requirement of notice by either Party effective on the date of expiration or termination of such agreement between the applicable Third Party Service Provider and TMS/USA or TMNA.

14.0 DEFINITIONS

In addition to those definitions set forth elsewhere in this Agreement, the following capitalized terms shall have the meanings set forth below:

- 14.1 "**Customer**" is defined as a commercial customer of Dealer that repairs Toyota, Lexus and Scion motor vehicles.
- 14.2 "**Customer Data**" is defined as all data and/or information related to a Customer that is provided to, or obtained by, Dealer and/or the applicable Third Party Service Provider, including from the operation and/or use of the Program and/or the Services. Customer Data shall include, without limitation, all data and/or information created, collected, generated, processed, or stored by Dealer and/or the applicable Third Party Service Provider in connection with transactions between such Dealer and its Customers. Customer Data may consist of Sensitive Information.
- 14.3 "**Dealer Data**" is defined as (a) all Customer Data that constitutes Sensitive Information, (b) all data and/or information provided to the applicable Third Party Service Provider by, or obtained by the applicable Third Party Service Provider from, Dealer in connection with the applicable Subscription Agreement or the services provided by the applicable Third Party Service Provider thereunder, (c) Dealer Profile Data, and (d) all intellectual property rights with respect to any of the foregoing.
- 14.4 "**End User**" means any user of the Services and may include TMS/USA, Dealer, a Customer, and/or any other third party with access credentials.

- 14.5 **“Laws”** is defined as all now existing or hereafter enacted or amended applicable domestic or foreign (a) country, state, provincial, local or other law or statute, (b) rule or regulation issued by a governmental regulatory body, (c) written or authoritative interpretation by a governmental regulatory body of any such law, statute, rule or regulation, (d) enforceable regulatory guidance, judicial, governmental, or administrative order, judgment, decree or ruling, or (e) written and enforceable requirements of self-regulatory bodies and organizations to which a Party belongs or is otherwise bound (individually and collectively referred to as “Laws”). For further clarity, “Laws” includes Data Protection Laws and the CAN-SPAM Act of 2003, as amended.
- 14.6 **“Materials”** is defined as, collectively, software, technical and user documentation relating to the Materials, systems, literary works, other works of authorship, specifications, designs, analyses, programs, program listings, programming tools, other documentation, user materials, reports, report output, drawings, illustrations, data, databases, spreadsheets, machine-readable text, graphics, pictures, music, animations, videos, content (including web content), files, financial models and work product and any derivative works of the foregoing.
- 14.7 **“Personal Information”** or is defined as (a) any information about an individual which can be used to distinguish or trace an individual's identity, and any other information that is linked or linkable to an individual, which may include but is not limited to: name, address, telephone number, e-mail address, social security number, driver's license number; state-issued identification card number; and/or an account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account; and/or (b) any “non-public personal information” as that term is defined under 15 U.S.C. § 6809 of the Federal Gramm-Leach-Bliley Act, as well as under any other Laws protecting from disclosure, use and/or reproduction information linked to a particular individual.
- 14.8 **“Intellectual Property Rights”** means any and all intellectual property rights existing under any Laws, including patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law (together with all of the goodwill associated therewith), unfair competition law, publicity rights law, or privacy rights law, other proprietary rights, and applications, renewals, extensions and restorations of any of the foregoing, now or hereafter in force or effect worldwide. For the purposes of this definition, rights under patent Law shall include rights under any and all patent applications and patents (including letters patent and inventor's certificates) anywhere in the world, including any provisions, substitutions, extensions, supplementary patent certificates, reissues, renewals, divisions, continuation in part (or in whole), continued prosecution applications, requests for continued examination, and other similar filings or stages thereof provided for under the Laws of the United States, or of any other country.
- 14.9 **“Security Breach”** is defined as any breach of security of a Third Party Service Provider's software, applications or information technology, Dealer's systems, the Portal or TMS/USA's systems that results in or causes any unauthorized access to or acquisition, use, loss, destruction, alteration, compromise or disclosure of any Dealer Data.

- 14.10 “**Sensitive Information**” is defined as (a) any data and/or information that is subject to any Data Protection Laws (including names, addresses, telephone numbers, email addresses, dates of birth, social security and similar personal identification numbers, and all employee-related information), (b) PCI Data and other cardholder data, and (c) vehicle identification numbers. For clarity, IP addresses and device identifiers shall not constitute Sensitive Information unless IP addresses and unique identifiers are or becomes subject to applicable Data Protection Laws.
- 14.11 “**Services**” shall mean the provision of the Base Features and applicable Additional Features.
- 14.12 “**Subscription Agreement**”, with respect to any Additional Feature, is defined as an agreement between a Third Party Service Provider and Dealer governing the terms and conditions under such Third Party Service Provider shall provide and make available the applicable Additional Feature to the Dealer, including fees and payment terms and the parties’ respective rights and obligations with respect thereto or in connection therewith. As of the Effective Date, Dealer shall be required to execute Subscription Agreements with respect to PSX Reporting, OPS and TMPP.
- 14.13 “**Third Party Service Provider**” shall mean a third-party service provider providing the applicable Third Party Services.
- 14.14 “**Third Party Services**” means Base Features or Additional Features provided by a third-party service provider (*i.e.*, an entity other than TMS/USA or its affiliates).
- 14.15 “**TMS/USA Data**” is data that originates through TMS/USA to describe, price and discount TMS/USA authorized parts, including any electronic parts catalog provided by TMS/USA

15.0 GENERAL PROVISIONS

- 15.1 Entire Agreement. This Agreement supersedes and replaces any and all prior agreements, understandings or arrangements, whether oral or written (including, without limitation, any letter of intent), heretofore made between the Parties relating to the subject matter hereof, and together with the Exhibits attached hereto constitutes the entire understanding of the Parties with respect to the subject matter of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns. This Agreement may not be altered or amended except by an express written agreement signed by both Parties hereto.
- 15.2 Assignability. Without TMS/USA’s prior written consent, Dealer shall not assign, transfer, pledge, hypothecate or otherwise dispose of this Agreement or any of its rights hereunder, nor delegate any of its obligations herein.
- 15.3 Applicable Laws; Disputes. This Agreement shall be governed by and construed according to the Laws of the state in which Dealer is located. Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, shall be determined and settled by arbitration in the State in which the Dealer is located

pursuant to the rules then pertaining of Judicial Arbitration and Mediation Services, Inc. (JAMS), and any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The Parties will share equally the administrative costs of such arbitration proceedings and each Party shall be responsible for its own attorney fees and costs.

- 15.4 No Franchise. Dealer warrants that it has paid no fee, nor has it provided any goods or services in lieu of same, to TMS/USA in consideration of entering into this Agreement. Nothing in this Agreement is intended to amend, alter or modify the terms of or the Parties' respective rights and obligations under the TMS/USA Dealer Agreement.
- 15.5 Publicity. Dealer may not issue any public statement concerning this Agreement without the prior review of and written consent to such statement of TMS/USA.
- 15.6 Notices. All notices, demands, requests or other communications that may be or are required to be given hereunder shall be in writing and mailed by first-class registered or certified mail, return receipt requested, postage repaid, or transmitted by hand delivery, or by overnight delivery service, or by facsimile transmission followed by original hard copy via U.S. mail with the receiving party acknowledging receipt addressed as follows:

To TMS/USA: TMS/USA Motor Sales, U.S.A., Inc.
6565 Headquarters Drive
Plano, TX 75024
Attention: Rod Amezcua, Wholesale Conquest and Star Analyst

To Dealer: At the address and phone number listed on the signature page hereof.

All notices shall be deemed effective upon receipt or refusal thereof.

- 15.7 Waiver. No failure, delay, or omission by a Party to exercise any right, remedy or power it has under this Agreement shall impair or be construed as a waiver of such right, remedy or power. A waiver by any Party of any breach of covenant shall not be construed to be a waiver of any succeeding breach of such covenant or a breach of any other covenant. All waivers shall be in writing and signed by an authorized representative of the waiving Party.
- 15.8 Severability. If any of the provisions or any portion of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or portion thereof.
- 15.9 Force Majeure. Neither Party will be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to an act of God or circumstances beyond the reasonable control of the non-performing Party.

- 15.10 Independent Contractor. Nothing in this Agreement is intended to create, or shall be construed as creating, a joint venture, partnership, agency, or employer/employee relationship between TMS/USA and Dealer. This Agreement does not render either party hereto the agent or legal representative of the other for any purpose whatsoever. Dealer shall retain sole and exclusive right to control, direct and supervise Dealer's employees, and Dealer shall be the sole and exclusive employer of the persons employed by Dealer. Dealer and TMS/USA agree that no act or omission of Dealer or TMS/USA shall be construed to make or render them joint employer, co-employer or alter ego of each other.
- 15.11 Survival. The Parties hereto hereby covenant and agree that, notwithstanding the termination of this Agreement as provided for herein or otherwise, the provisions of the first sentence in Sections 6.1 and 6.2, Section 6.3 and Sections 10-12, and 14 of this Agreement shall survive such termination and shall continue in full force and effect according to their terms.
- 15.12 Counterparts. If applicable, this Agreement may be executed in separate counterparts, each of which shall be deemed to constitute an original, and all of which together shall constitute one and the same agreement.

I understand and accept the terms and conditions of the Program, and acknowledge that they are reasonable. I agree to meet and maintain the Requirements at all times so long as I am participating in the Program. I also understand and agree that TMS/USA may suspend or terminate my participation as a result of my non-compliance with any of the prerequisites either as set forth above, or as amended by TMS/USA in its sole discretion.

Exhibit A

Base Features

1) Toyota Service Opportunity Access for Retention Program (“SOAR”).

i) Features.

- (a) Customized Market Analysis, for dealers, which maps or lists Customers in the dealer’s market area.
- (b) Increased visibility regarding a Customer’s market penetration arena.
- (c) Quantification of number of Customers, size of Customers and their business.

ii) Terms of Use.

- (a) SOAR and information obtained through SOAR is to be used solely for the purpose of working with Customers, and for no other purpose.
- (b) Dealer may only access SOAR with proper access credentials issued by TMS/USA and with Dealer’s applicable dealer code.
- (c) Dealer shall not share SOAR or any information obtained from it with any competitor of TMS/USA, including aftermarket parts companies.

2) TIS Accounts.

i) Features.

- (a) Dealer shall receive up to eight (8) accounts (“**TIS Accounts**”) *Toyota Information Systems (TIS)* accounts (“**TIS**”) for Customers per calendar year.

ii) Terms and Conditions.

- (a) Dealer, in its sole discretion, may select which Customers may receive complimentary TIS accounts; and
- (b) Dealer shall cause Customers receiving TIS Accounts to be registered as follows:
- (c) Dealer shall enter the Customers contact information into TIS Portal on the Toyota Parts and Service Hub website in the TIS portal;
 - (1) Portal generates a coupon code for enrollment and automatically sends to IRF; and
 - (2) Customers have the responsibility to enroll and use the coupon code to take advantage of the complimentary TIS Account.

- (d) Dealer shall not provide any persons or entities or permit access to TIS who are not Customers.

Exhibit B-1

Toyota Mechanical Parts Program (“TMPP”)

OBLIGATIONS OF DEALER

Dealer understands and agrees that, in exchange for the opportunity to participate in this Program, an Additional Feature, Dealer is required to comply with the obligations set forth in this Exhibit B-1.

- a) **Enrollment.** To enroll, Dealer must visit toyotapartsandservicehub.com or such other mechanism designated by TMS/USA and, choose the TMPP Program.
- b) **Consulting.** For up to six (6) months following the Effective Date of opting-in for this Feature, Dealer shall require Dealer’s managers to participate in intermittent consulting sessions provided by Service Provider.
- c) **Training.** Dealer shall allot sufficient time and resources for training of Dealer’s employees by Service Provider including:
 - i) Training for Dealer’s managers on the supporting process for the Program and corresponding new responsibilities;
 - ii) Training for Dealer’s sales associates on supporting processes and new responsibilities;
 - iii) Supporting audits by TMS/USA or TMS/USA’s third party auditor, in the event TMS/USA determines, in its sole discretion to audit Dealer, to ensure that Dealer’s employees are properly implementing the Program, as well as onboarding new employees where needed. If Dealer determines that it is necessary to hire any new employees in order to participate in the Program, Dealer commits to using best efforts to hire such employees prior to these trainings;
 - iv) Completing all assigned pre-work, as communicated to Dealer by TMS/USA from time to time.
- d) **Product and Job Specific Training.** Dealer shall bear the cost of any training for dealership employees that is not specific to the Services (vehicle product knowledge, finance product knowledge, tools and technology). Any training not provided by Service Provider may need to be provided by the Dealer at its own cost in advance of or in conjunction with the training provided by Service Provider.
- e) **Branding.** Dealership shall only advertise as directed by TMS/USA in the context of this Program.
- f) **Marketing Covenant.** Comply with the TMS/USA Dealer Marketing Covenant (TDMC), including abiding by the Minimum Allowable Advertised Price set forth in the TDMC.
- g) **Feedback.** Dealer shall provide feedback to TMS/USA in connection with the Program in the form requested by TMS/USA, including responding to surveys and questionnaires provided by or on behalf of TMS/USA. This obligation shall continue throughout the Term.

- h. **Privacy Policy.** Dealer shall update its posted privacy policy to include accurate information regarding Dealer's collection and sharing of Customer information (with TMS/USA and TMS/USA's and Dealer's third party service providers).

TMPP PROGRAM POLICIES

Dealer understands and agrees that, in exchange for the opportunity to obtain rebates pursuant to this Program, an Additional Feature, Dealer is required to comply with the policies and procedures set forth in this Exhibit B-1 below.

- 1) Only the sale of Toyota genuine auto parts ("**Toyota Genuine Parts**") purchased from TMS/USA or TMS/USA's authorized distribution channels will be considered for TMPP rebates.
- 2) Dealer is prohibited from submitting requests for rebate payments for any gray market parts. (Reference PANT Bulletin 2017-059 and 2015-006.)
- 3) Dealer must adhere to the list price for each Toyota Genuine Part displayed to the Dealer's Customer, as set forth on the OEC Platform.
- 4) Any available rebate shall be displayed next to the corresponding Toyota Genuine Part on the OEC Platform.
- 5) TMS/USA shall only pay rebates to Dealer for parts actually sold and delivered from Dealer parts inventory to a Customer who purchased parts from Dealer.
- 6) **Order Process**
 - a) Customer submits order through OEC Platform;
 - b) Dealer receives system notification of order;
 - c) Dealer accepts the order through the OEC Platform;
 - d) When Dealer accepts the order, Dealer must:
 - i) invoice Customer for the order through Dealer DMS, as displayed in the OEC Platform;
 - ii) fulfill the order;
 - iii) bill its Customer for the price of the Toyota Genuine Part(s) at their regular Customer discount and net of the rebate amount;

For clarity, see rebate example below:

Example		
MSRP	Minus Regular Customer Discount (25% example)	Minus rebate amount (10% example)
\$100	\$75	\$65 (Sale Price to Customer)

iv) deliver/convey invoice parts to Customer.

7) Return Process

- a) If Customer returns a Toyota Genuine Part(s) that qualified for a rebate, Dealer is required to utilize return functionality in the OEC Platform within five (5) days of accepting a return from a Customer.
- b) If Dealer accepts an order and receives a cancellation of that order before having sent the part to Customer, Dealer must treat the cancellation as a return in the OEC Platform.

8) Rebate Payment Process

- a) Subject to receipt from OEC of the order confirmation and rebate amount, Dealer shall be paid at the end of the month following the month that the transaction occurred. Such payment shall appear on the Dealer Monthly Parts Statement.
 - b) Rebates shall be paid net returns of Toyota Genuine Parts sold.
- 9) Dealer is prohibited from any misrepresentation of quantity of Toyota Genuine Parts sold.
- 10) Without waiving termination rights, if the Dealer breaches this Agreement, TMS/USA has the right to cease payment of all earned or unearned rebate payments immediately.
- 11) TMS/USA shall have the right to use the rebate payments due to off-set any other obligations that Dealer has to Toyota as to this Agreement.

Exhibit B-2

TMS/USA Overall Parts Solutions (OPS) Value Tracks Program

OBLIGATIONS OF DEALER

Dealer understands and agrees that, in exchange for the opportunity to participate in the OPS Program, an Additional Feature, Dealer is required to comply with the obligations set forth in this Exhibit B-2.

- a. **Enrollment.** To enroll, Dealer must visit toyotapartsandservicehub.com or such other mechanism designated by TMS/USA and, choose the OPS Program.
- b. **Consulting.** For up to six (6) months following the Effective Date of opting-in for this Feature, Dealer shall require Dealer's managers to participate in intermittent consulting sessions provided by Service Provider.
- c. **Training.** Dealer shall allot sufficient time and resources for training of Dealer's employees by Service Provider including:
 - i. Training for Dealer's managers on the supporting process for the Program and corresponding new responsibilities;
 - ii. Training for Dealer's sales associates on supporting processes and new responsibilities;
 - iii. Supporting audits by TMS/USA or TMS/USA's third party auditor, in the event TMS/USA determines, in its sole discretion to audit Dealer, to ensure that Dealer's employees are properly implementing the Program, as well as onboarding new employees where needed. If Dealer determines that it is necessary to hire any new employees in order to participate in the Program, Dealer commits to using best efforts to hire such employees prior to these trainings;
 - iv. Completing all assigned pre-work, as communicated to Dealer by TMS/USA from time to time.
- d. **Product and Job Specific Training.** Dealer shall bear the cost of any training for dealership employees that is not specific to the Services (vehicle product knowledge, finance product knowledge, tools and technology). Any training not provided by Service Provider may need to be provided by the Dealer at their own cost in advance of or in conjunction with the training provided by Service Provider.
- e. **Branding.** Dealership shall only advertise as directed by TMS/USA in the context of this Program.
- f. **Marketing Covenant.** Comply with the TMS/USA Dealer Marketing Covenant (TDMC), including abiding by the Minimum Allowable Advertised Price set forth in the TDMC.
- g. **Feedback.** Dealer shall provide feedback to TMS/USA in connection with the Program in the form requested by TMS/USA, including responding to surveys and questionnaires provided by or on behalf of TMS/USA. This obligation shall continue throughout the Term.

- h. **Privacy Policy.** Dealer shall update its posted privacy policy to include accurate information regarding Dealer's collection and sharing of Customer information (with TMS/USA and TMS/USA's and Dealer's third party service providers.

TMS/USA OPS Value Tracks Program - PROGRAM POLICIES

Dealer understands and agrees that, in exchange for the opportunity to obtain rebates pursuant to this Program, an Additional Feature, Dealer is required to comply with the policies and procedures set forth in this Exhibit B-2.

- 1) Only the sale of Toyota Genuine Parts purchased from TMS/USA or TMS/USA's authorized distribution channels will be considered for OPS Value Tracks rebates ("rebates").
- 2) Dealer is prohibited from submitting requests for rebate payments for any gray market parts, aftermarket, salvage, etc. (Reference PANT Bulletin 2017-059 and 2015-006.)
- 3) Dealer must adhere to and sell parts to the customer at the "Buy It Now" price for each Toyota Genuine Part displayed to the Dealer's Customer, as set forth on the OPS Platform.
- 4) TMS/USA shall only pay rebates to Dealer for Toyota Genuine Parts actually sold from Dealer's parts inventory, documented by the Dealer's valid parts invoice, and delivered to the Customer who effected the purchase from Dealer through the OPS Platform.
- 5) Any available rebate shall be displayed next to the corresponding Toyota Genuine Part on the OPS Platform.
- 6) **Order Process**
 - a) Customer commits/submits order through OPS Platform and agrees to displayed quantities, part numbers, and prices;
 - b) Dealer receives system notification of order;
 - c) Dealer accepts the order through the OPS Platform;
 - d) When Dealer accepts the order, Dealer must:
 - i) invoice Customer through Dealer DMS for the order at the "Buy Now" price, as displayed in the OPS Platform;
 - ii) close invoice in OPS Platform to finalize and deliver invoice to Customer;
 - iii) fulfill the order and deliver/convey invoiced parts to the Customer.
- 7) **Return and Cancellation Process**
 - a) If Customer returns a Toyota Genuine Part(s) that qualified for a rebate, Dealer is required to enter into the OPS Platform a credit invoice that references the original selling invoice.

- b) If Dealer accepts and invoices an order and receives a cancellation of that order, Dealer must treat the cancellation as a return in the OPS Platform.
- 8) **Rebate Payment Process**
- a) Subject to receipt from OPS of the order confirmation and rebate amount, Dealer shall be paid by the end of the month following the month that the transaction occurred. Such payment shall appear on the Dealer Monthly Parts Statement.
 - b) Rebates shall be paid net returns of Toyota Genuine Parts sold.
- 9) Dealer is prohibited from any misrepresentation of quantity of Toyota Genuine Parts sold.
- 10) Without waiving termination rights, if the Dealer breaches this Agreement, TMS/USA has the right to cease payment of all earned or unearned rebate payments immediately.
- 11) TMS/USA shall have the right to use the rebate payments due to off-set any other obligations that Dealer has to Toyota as to this Agreement.

Exhibit B-3

PSX Reporting Features

- 1.0 **Enrollment.** To take advantage of the Wholesale Sales Incentive Program, an Additional Feature, Dealer must enroll in one of the following PSX Reporting Features:
- 1.1 PSX Reporting.
- 1.1.1 To enroll, Dealer must visit toyotapartsandservicehub.com or such other mechanism designated by TMS/USA and, choose the PSX Reporting Feature.
- 1.1.2 The PSX Reporting Feature is offered at no additional charge.
- 1.2 PSX Advanced Reporting.
- 1.2.1 To enroll, Dealer must visit toyotapartsandservicehub.com or such other mechanism designated by TMS/USA and choose the PSX Advanced Reporting Feature.
- 1.2.2 This feature offers expanded analytical and advanced reporting and Customer Relationship Management tools to Active Users at no additional charge.
- 1.2.3 For those Dealers who do not qualify as Active Users, a monthly Subscription Fee of \$350 shall be charged.
- 2.0 Active User Usage Requirements.
- 2.1 In order receive PSX Advanced Reporting at no additional charge, Dealer must be an Active User.
- 2.2 An Active User is an enrolled Dealer that has logged into the PSX Reporting functionality and/or opened one PSX generated report during each ninety (90) day period from the date of enrollment.
- 2.3 TMS/USA, in its sole discretion, reserves the right to change, amend or modify the standards by which it determines an Active User with sixty (60) days' notice to Dealer.
- 2.4 TMS/USA shall evaluate Dealer for active usage with respect to each calendar year.
- 2.5 If TMS/USA determines that Dealer is not an Active User in any calendar year, Dealer will have until June 30 of the following calendar year to become an Active User.
- 2.6 If Dealer does not become an Active User by June 30, Dealer will have the option to pay for PSX Advanced Reporting or be removed from PSX Advanced Reporting.

Exhibit C

Wholesale Sales Incentive Program (WSIP)

Program Policies

1.0 Overview

- 1.1 The purpose of the Wholesale Sales Incentive Program is to increase wholesale sales of Toyota genuine auto parts (“**Toyota Genuine Parts**”).
- 1.2 TMS/USA contribution of funds are intended to allow Dealer flexible earnings to invest back into their Wholesale Parts sales business.

2.0 Term, Enrollment, Eligibility Requirements

- 2.1 The Term of the Incentive Program is January 1, 2019 to December 31, 2019, and each subsequent calendar year thereafter (each such calendar year, commencing with calendar year 2019, the applicable (“**Incentive Program Term**”).
- 2.2 To enroll, Dealer must visit *toyotapartsandservicehub.com* or such other mechanism designated by TMS/USA, and, choose the WSIP.
- 2.3 To participate in the Incentive Program, Dealer is required to:
 - 2.3.1 enroll in the WSIP;
 - 2.3.2 enroll in PSX or PSX Advanced Reporting (as defined Exhibit B-3); and
 - 2.3.3 grant TMS access to and use of wholesale parts sales historical data dating back to January 1st of the year prior to enrollment in WSIP.
- 2.4 Only sales of Toyota Genuine Parts procured directly from TMS/USA shall be considered in the calculation of Incremental Net Sales and Incentive amounts. “**Incremental Net Sales**” means sales minus returns of Toyota Genuine Parts to Customers.
- 2.5 If TMS/USA determines that Dealer is using Toyota part numbers while selling automotive parts for Toyota vehicles from vendors other than Toyota, Dealer will forfeit any unpaid Incentives (whether earned or not), and TMS/USA may suspend or terminate this Agreement and/or Dealer’s participation in the WSIP.

3.0 Payout Terms

- 3.1 For each Incentive Program Term for which Dealer is eligible to receive Incentives, Incentives will be paid out on a calendar quarterly basis in April of the applicable Incentive Program Term (for sales activity from January 1 through March 31 of the applicable Incentive Program Term), July of the applicable Incentive Program Term (for sales activity from April 1 through June 30 of the applicable Incentive Program Term), October of the applicable Incentive Program Term (for sales activity from July 1 through September 30 of the applicable Incentive Program

Term) and January of the subsequent calendar year (for sales activity from October 1 through December 31 of the applicable Incentive Program Term).

3.2 Payout of Incentives will be made on an Incremental Net Sales over prior calendar year progress so that any increases in YOY Growth determined on a Quarterly Calculation basis shall result in a payment of the incremental increase in Incentives to which Dealer is entitled based on such YOY Growth as compared to the immediately preceding calendar year.

3.2.1 “**Year-Over-Year Growth**” or “**YOY Growth**” means, with respect to any successive calendar years (e.g., 2018 and 2019), the amount by which Incremental Net Sales in the later calendar year (e.g., 2019) are greater than the Incremental Net Sales in the earlier calendar year (e.g., 2018).

3.2.2 YOY Growth will be calculated by TMS/USA on a calendar quarterly basis (“**Quarterly Calculations**”).

4.0 Incentive Categories.

4.1 Incentives are paid out based on the following incentive categories:

<u>YOY Growth</u>	<u>Incentive</u>
5%	0.500%
10%	0.875%
15%	1.250%