

TOYOTA MECHANICAL PARTS PROGRAM (TMPP) 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**, Toyota Motor North America, Inc., a California corporation, (“**TMNA**”), an affiliate of TMS/USA, has entered into an agreement with OEConnection LLC, a Delaware limited liability company (“**Service Provider**”), pursuant to which Service Provider will provide to End Users a software as a service with respect to Service Provider’s *Repairlink* application (the “**Application**”) and related products and services (the “**Services**”), enabling authorized dealers to sell Authorized Products (as defined below) to Customers in the United States (for clarity, including Alaska, but excluding Hawaii) (the “**Territory**”);
- B. **WHEREAS**, TMS/USA wishes to use the Application and the Services to provide certain rebates, discounts and/or other incentives (collectively, “**Incentives**”) to Dealers of Authorized Products through the Services (the “**Program**”); and
- C. **WHEREAS**, the Program is called the “TMS/USA Mechanical Parts Program – *powered by RepairLink*”, and may be re-designated or referred to by a different name in the future, at TMS/USA’s discretion;
- D. **WHEREAS**, Dealer desires to participate in this voluntary Program pursuant to the terms and conditions contained herein.

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 acknowledges and agrees:
 - 1.2.1 to enter into and maintain throughout the Term a Subscription Agreement with Service Provider.
 - 1.2.2 to comply with the Program requirements, including the “Obligations of Dealer” set forth as Exhibit A and “Program Policies” set forth as Exhibit B hereto (the “**Requirements**”).
 - 1.2.3 to be solely responsible for its acts and omissions with respect to its Customers.

- 1.2.4 that this Program does not require Dealer to send Non Public Personal Information to TMS/USA or Service Provider.
- 1.2.5 that TMS/USA does not sell Authorized Products, is not a party to any transaction between any Customer and Dealer, and has no role in the actual sales transaction, including, without limitation, acting as a broker in a transaction. TMS/USA is not the Customer's or any Participating Dealer's agent or broker for any purpose.
- 1.2.6 that the Program is constantly evolving, and that TMS/USA reserves the right to amend, modify or supplement the Requirements as may be needed from time to time, provided that TMS/USA provides written notice of such amendments, modifications or supplements to Dealer.
- 1.2.7 that TMS/USA may increase the cost of the Program to the Dealer at any time with a sixty (60) day 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).
- 1.2.8 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.
- 1.2.9 that TMS/USA may terminate the Program and this Agreement at any time and TMS/USA is under no obligation to continue the Program.
- 1.2.10 that (a) the Platform and all services in connection therewith will be provided directly and solely by Service Provider or its affiliates, and not by TMS/USA, and (b) Dealer shall look only to Service Provider to address and/or resolve any issues or concerns with respect to the Platform and/or the services provided by Service Provider.
- 1.2.11 that TMS/USA is not responsible for the terms of sale of Authorized Products through the Platform.
- 1.2.12 that the Program is limited to the sale of Authorized Products only, and Dealer shall not display, market, advertise or sell any other products or services on or through the Platform during the term of this Agreement.
- 1.2.13 that Dealer's participation in the Program, including access and use of the Platform and receipt of services from Service Provider in connection therewith, are subject to subscription pricing and the other fees and terms and conditions set forth in the Subscription Agreement.
- 1.2.14 to remain solely responsible for all costs and expenses related to its (1) participation in the Program including a one-time set-up fee and recurring monthly Subscription Fees, and (2) own systems (including its DMS applications), equipment, network, website and means of connection with all integration points; and

1.2.15 to pay TMS/USA a monthly Subscription Fee (the “**Subscription Fee**”) in consideration of their enrollment in and subscription to the Application, which Subscription Fees will be invoiced, collected and remitted to TMS/USA (for subsequent disbursement to Service Provider).

1.3 Collection of Subscription Fees. Dealer acknowledges and agrees that TMS/USA shall have the obligation to invoice Dealer for its Subscription Fees and to collect such Subscription Fees from Dealer via the Monthly Parts Statement.

2.0 TERM

This Agreement shall commence on the Effective Date of the 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 adherence to Dealer’s obligations under this Agreement. TMS/USA’s right to audit shall survive termination or expiration of this Agreement.

4.0 OBLIGATIONS OF DEALER

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 for in Section 1 of this Agreement.

5.0 OBLIGATIONS OF TMS/USA

TMS/USA agrees, during the Term, to provide Dealer the following:

5.1 Access to and use of the Services by paying Service Provider directly for the monthly one-time set-up fee and recurring monthly Subscription Fees incurred by Dealer who is enrolled with Service Provider for the Services described in this Agreement. Instructions to gain access to and use of the Services will be delivered to Dealer by Service Provider.

5.2 Varying monthly Incentives on Authorized Products, as determined by TMS/USA in its sole discretion in accordance with **Exhibit B**.

5.3 Monthly sales and Incentive reporting via the Dealer Parts Statement, accessible through Dealer’s Dealer Daily application.

5.4 Training on use of the software delivered to Dealer by Service Provider.

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, 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 and use the Services and to access, use, display, download, distribute and create derivative works of the TMS/USA Data and, during the Term solely for the purposes and 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 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 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 any portion therein.
- 6.3 Notwithstanding anything contained herein to the contrary, as between Dealer and TMS/USA or 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 Service Provider to the foregoing, remain with TMS/USA or 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 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 LAW, 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

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 Service Provider and/or Dealer's use of any materials provided by TMS/USA or 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 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 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 the RepairLink, including, without limitation, in connection with the provision of the Platform in connection with the Program, is subject to an agreement between Service Provider and 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 Service Provider and 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 "**Authorized Products**" is defined as TMS/USA-approved Toyota, Lexus or Scion-branded motor vehicle parts and accessories.
- 14.2 "**Customer**" is defined as person(s) that access and/or use the Platform and/or services provided by Service Provider through the Platform, regardless of whether such person(s) complete a transaction through the Platform.
- 14.3 "**Customer Data**" is defined as all data and/or information related to a Customer that is provided to, or obtained by, a Participating Dealer and/or Service Provider, including from the operation of the Platform. Customer Data shall include, without limitation, all data and/or information created, collected, generated, processed, or

stored by a Participating Dealer and/or Service Provider in connection with transactions between such Participating Dealer and its Customers. Customer Data may consist of Sensitive Information.

- 14.4 **“Dealer Data”** is defined as (a) all Customer Data that constitutes Sensitive Information, (b) Order Data, (c) all data and/or information provided to Service Provider by, or obtained by Service Provider from, a Participating Dealer in connection with the Subscription Agreement or the services provided by Service Provider thereunder, (d) Dealer Profile Data, and (e) all intellectual property rights with respect to any of the foregoing.
- 14.5 **“Dealer Profile Data”** is defined as data, information and/or Materials that are not Sensitive Information provided by or on behalf of a Participating Dealer to Service Provider (including visual customizations, marketing and promotional Materials, pricing and shipping rates) to customize and/or operate such Participating Dealer’s offering and sale of Authorized Products, subject to the terms and conditions of the Subscription Agreement.
- 14.6 **“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.
- 14.7 **“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.
- 14.8 **“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.
- 14.9 **“Non Public Personal Information”** or **“NPPI”** 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, email 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.

- 14.10 “**Order Data**” is defined as Customer Data relating to a Customer’s transaction with Participating Dealer which does not constitute Sensitive Information. For clarity, Order Data shall include data and/or information that is normally found on a purchase receipt, invoice, bill of sale, return receipt or return merchandise authorization (RMA), including, without limitation, transaction date, transaction number, customer identifier, items ordered/returned, quantities ordered/returned, price, taxes and other charges, shipping method, shipment date/pick-up date, etc.
- 14.11 “**Platform**” is defined as Service Provider’s online framework, data processing routines, reports, dashboards, catalog system and back-end tools related to the Application, including but not limited to: source code, styles, hardware, database schema and database source code created by Service Provider and used to control the interface, appearance and function of the Application, and the provision of Incentives.
- 14.12 “**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 patent letters 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.
- 14.13 “**Security Breach**” is defined as any breach of security of the Application or the Platform, Participating Dealer’s systems, 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.
- 14.14 “**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 become subject to applicable Data Protection Laws.
- 14.15 “**Subscription Agreement**” is defined as an agreement between Service Provider and Participating Dealer governing the terms and conditions under which Service Provider shall provide services to the Participating Dealer in connection with the Program, including access and use of the Platform, fees and payment terms, and the parties’ respective rights and obligations with respect thereto or in connection therewith.

14.16 **"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 Law; 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

TMS/USA Mechanical Parts Program (TMPP)

OBLIGATIONS OF DEALER

- a. Dealer understands and agrees that, in exchange for the opportunity to participate in the Program pursuant to the terms and conditions of the Agreement, Dealer is required to comply with the obligations set forth in this Exhibit A.
- b. **Enrollment.** To enroll, you must visit *toyotapartsandservicehub.com* or such other mechanism designated by TMS/USA and, choose the TMPP Program
- c. **Consulting.** For up to six (6) months following the Effective Date of this Agreement, Dealer shall require Dealer's managers to participate in intermittent consulting sessions provided by Service Provider.
- d. **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 including;
 - 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 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.
- e. **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.
- f. **Branding.** Dealership shall only advertise as directed by TMS/USA in the context of this Program.
- g. **Marketing Covenant.** Dealer shall comply with the TMS/USA Dealer Marketing Covenant (TDMC), including abiding by the Minimum Allowable Advertised Price set forth in the TDMC.

- h. **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.
- i. **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).

EXHIBIT B

TMS/USA Mechanical Parts Program (TMPP)

PROGRAM POLICIES

Dealer understands and agrees that, in exchange for the opportunity to obtain rebates under this Program pursuant to the terms and conditions of the Agreement, Dealer is required to comply with the obligations set forth in this Exhibit B.

- 1) Only the sale of 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 DMA, as displayed in the OEC Platform;
 - ii) fulfill the order;
 - ii) bill its Customer for the price for the price of its 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)

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 has the right to cease payment of all earned or unearned rebate payments immediately.
- 11) TMS 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.