**(1)……………………………………………….**

**(2) MARSH FINANCE LIMITED**

**AND**

**(3) MARSH FM LLP**

**D2C DEALER OPERATING AGREEMENT**

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**This** **DEALER OPERATING AGREEMENT** is dated (**Agreement**)

And made between:

(1) **…………………..** (Company number ……..) of …………………………………………………… (the **Dealer**);

(2) **Marsh Finance Limited** (company number 1138291) of Crossfield Mill, Crawford Street, Rochdale OL16 5RS

(3) **MARSH FM LLP** (company number OC351145) of Crossfield Mill, Crawford Street, Rochdale OL16 5RS (together **Marsh**).

**TERMS AGREED**

1. Background

1.1 Marsh is in the business of providing credit on hire purchase and other terms to individuals and businesses.

1.2 The Dealer is in the business of buying and selling motor vehicles and providing Proposals for the provision of Vehicles on finance terms to the general public.

1.3 The Dealer shall introduce Applicants to Marsh and will offer an appropriate level of business to Marsh at levels to be agreed between the parties from time to time.

1.4 The Dealer will from time to time offer to supply motor vehicles to Marsh on the terms of this Agreement in contemplation of Marsh entering into Credit Agreements with Customers. Marsh may at its absolute discretion enter into a Credit Agreement with an Applicant on such terms as Marsh may dictate. Marsh is under no obligation to accept any Proposal. Where Marsh accepts any Proposal, the Dealer’s offer shall be deemed to have been accepted by Marsh upon Marsh executing the Credit Agreement, whereupon the property in the Vehicle shall immediately pass to Marsh and the Dealer shall be responsible for immediately delivering the Vehicle to the Customer.

1.5 Proposals as introduced to Marsh by the Dealer will be subject to Marsh’s underwriting procedure as applicable at the relevant time.

1.6 Terms used in this Agreement which begin with a capitalised letter are defined in clause 14 of this Agreement.

1. Warranties and Undertakings

2.1 The Dealer warrants to Marsh that:

(a) as at the date of this Agreement; and

(b) at the time that the Dealer introduces an Applicant to Marsh; and

(c) on each occasion an Applicant enters into a Credit Agreement with Marsh that:

(i) the Dealer is able to pay its debts as they fall due, and that the Dealer is not deemed to be insolvent.

(ii) the Dealer has such authorisation and/or has made all appropriate registrations as may be required by legislation and/or an appropriate regulatory body, including but not limited to, the holding of all relevant permissions from the FCA to conduct any Regulated Activities carried out by the Dealer, and/or registrations for the purpose of Data Protection Law (GDPR) and Anti Money Laundering Law (AML Law).

2.2 The Dealer warrants to Marsh that the Dealer’s operating procedures and all documentation and advertisements in particular but not limited to financial promotions which are used or are offered in connection with any Credit Agreement comply and will comply fully with the CCA and the FCA’s Rules and Guidance, and in particular its rules on financial promotions, and with the Finance and Leasing Association Lending Code.

2.3 The Dealer further warrants that, at the respective times of its offer for sale and the sale of a Vehicle to, and of a customer entering into a Credit Agreement with, Marsh: -

(a) it is the legal owner of that Vehicle, and that the Vehicle is free from any encumbrance, charge, or lien of any nature whatsoever and has not been the subject of any previous transaction with the Customer.

(b) the Vehicle described in each Proposal is in existence and the price quoted in each Proposal is a genuine price and is not above the market value of the Vehicle.

(c) the Vehicle conforms with its description in the Proposal, is of satisfactory quality within the meaning of the applicable legislation and fit for any specific purpose made known to the Dealer by the Customer.

(d) the Vehicle is in a roadworthy condition and complies with the provisions of the Road Traffic Act and, where required, a valid MOT certificate is held.

(e) the mileage details of a Vehicle recorded on a Proposal and/or Credit Agreement are both accurate and correct.

(f) any advance payment shown in the Proposal was received by the Dealer in cash or by a proper and lawful allowance in part exchange.

(g) any other information provided to Marsh in connection with a Proposal, Applicant or Credit Agreement is accurate and correct at the time of the Proposal being presented to Marsh and that, further, the Dealer undertakes that it will notify Marsh immediately both verbally and in writing in the event that such information is found to be incorrect.

(h) no right of action is vested in the Customer in respect of any representation by the Dealer relating to the Vehicle.

2.4 The Dealer undertakes to Marsh:

(a) to perform its obligations hereunder in compliance with all applicable laws, enactments, orders, regulations, and guidance, in particular.

(i) to comply with its obligations under the Data Protection Law to include ensuring that it is registered with the appropriate agency as applicable and to have appropriate processes and procedures in place to ensure full compliance on the use and processing of personal data.

(ii) to comply fully with its obligations under the AML requirements of the FCA’s Senior Management Arrangements, Systems and Controls Sourcebook (SYSC) and to have appropriate AML procedures in place; and

(iii) to comply at all times with the Bribery Act 2010 and ensure that it has appropriate anti-bribery procedures in place.

(b) to use the standard format approved by Marsh when introducing Applicants to Marsh for finance.

(c) to provide such information to Marsh as may be requested from time to time within such a Proposal.

(d) to ensure that a copy of the SECCI was given to the Customer in good time before the Credit Agreement was signed.

(e) to provide Marsh with certified copies of the Applicant’s identification before the Credit Agreement is executed and that it will assist and procure in such additional documentation as may be requested by Marsh as part of their underwriting procedure.

(f) to provide to Marsh any information gathered by the Dealer on the Applicant which may affect the assessment made by Marsh as to the Applicant’s affordability pursuant to CONC, such information to be provided to Marsh prior to execution of the Credit Agreement and pay out for the Vehicle to be made by Marsh to the Dealer.

(g) not to propose business which is introduced to the Dealer from either another dealer or another intermediary/broker.

(h) not to render any charge or fee to the Customer for arranging the Credit Agreement with Marsh.

(i) to notify the Applicant in writing before execution of the Credit Agreement and pay out for the Vehicle that a commission will be paid by Marsh to the Dealer for arranging the Credit Agreement.

(j) not to make any warranty or representation in relation to Marsh’s business.

(k) to accept that the Credit Agreement as presented to the Dealer by Marsh are the definitive terms upon which Marsh offers finance to an Applicant and not to alter or amend the terms of such a Credit Agreement in any way.

(l) to notify Marsh immediately if it appears to the Dealer (acting reasonably) that the Applicant does not appear to understand the Adequate Explanation, Pre-Contract Information, or proposed Credit Agreement, and to notify Marsh in the event that the Applicant requests additional information or seeks further explanations from the Dealer in relation to any aspect of the credit terms as set out in the Credit Agreement and/or the Proposal including but not limited to commission disclosure.

(m) to provide Marsh all reasonable assistance as requested by Marsh in the event of any dispute with or in connection to a Credit Agreement or in relation to the sale of any Vehicle which is subject to a Credit Agreement.

(n) to notify Marsh immediately if the Dealer’s circumstances change, in particular, if there is a change in control(shareholders) or directors.

(o) to ensure that with regard to any Applicant who is refused credit, notification of that decline is passed onto the Applicant in a manner and with such information as presented to the Dealer by Marsh.

(p) to permit Marsh and its authorised representatives to audit/review all books and records of the Dealer (in whatever form they may be kept, whether written, electronic, or other) relating or pertaining to this Agreement.

(q) to permit Marsh, and or its appointed representatives to enter into the Dealer’s premises after giving them 48 hours prior written notice; access will only be available during the parties’ normal working hours i.e., 9 am to 5.00 pm.

(r) to meet with Marsh at regular intervals on an informal basis to review this agreement and the Dealer’s performance generally.

1. Indemnities

3.1 The Dealer agrees to indemnify Marsh and keep Marsh indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Marsh or any third party [that provides funding directly or indirectly to Marsh or any Customer from time to time] arising out of or in connection with:

(a) any breach of this Agreement by the Dealer or any breach or non-fulfilment of any representation or warranty given by the Dealer hereunder or any failure by the Dealer to observe any relevant legislation, regulatory requirement, rule, or guidance.

(b) any misrepresentation or statement made by the Dealer or any of its servants or agents to any Customer, Applicant, guarantor or surety or Supplying Dealer under, or in relation to, a Credit Agreement, or Proposal.

(c) any act, omission, fraud, breach of contract, misrepresentation and/or breach of statutory duty by the Supplying Dealer in connection with or in relation to a Credit Agreement or Proposal or in relation to the sale to Marsh, or any other third party, of a Vehicle; and

(d) any loss suffered by Marsh, or any third party, in connection with a complaint made by a customer which is referred to the Financial Ombudsman Service in relation to or in connection with a Credit Agreement or Proposal.

1. Commission

4.1 Pursuant to and subject to the provisions of this Agreement, where Marsh has entered into a Credit Agreement with a Customer, Marsh shall pay to the Dealer commission calculated by the formula as set out in Schedule 2.

4.2 In the following circumstances, Marsh shall have the right to seek repayment of all of the commission paid to the Dealer (the Commission Clawback) under clause 4.1 or alternatively to set off the Commission Clawback as against future commissions payable by Marsh to the Dealer:

(a) the Customer withdraws from the Credit Agreement pursuant to section 66A of the CCA or exercises a right of cancellation under the CCA.

(b) the Credit Agreement is subsequently terminated by Marsh due to default by Customer before 6 full monthly contractual repayments have been received.

(c) if it transpires that any misrepresentation has been made by the Customer, or the Dealer in connection with the Credit Agreement.

(d) the Customer exercises its right to voluntary terminate the Credit Agreement, before 6 full Monthly contractual repayments have been received, pursuant to and in accordance with sections 99 and 100 of the CCA.

(e) if it transpires that the Customer or Dealer has made any fraudulent statement or action in relation to the Customer, Vehicle or Credit Agreement or if the recorded mileage of a Vehicle as represented to Marsh is inaccurate for any reason or if the Vehicle sold to Marsh is subject to a prior encumbrance or charge; or

(f) if it is transpiring that the Vehicle is not of satisfactory quality or not fit for the purpose for which it was sold, such as it is reasonable to expect having regard to the Vehicle’s price and any description applied to the Vehicle.

4.3 Marsh will seek repayment of a pro-rata amount of the commission paid to the Dealer (the Commission Claw back) under clause 4.1 or alternatively to set off the Commission Claw back as against future commissions payable by Marsh to the Dealer if the Credit Agreement is settled early before 6 full contractual repayments, either partially or fully pursuant to the CCA. In this event the Commission Claw back will be on a pro rata basis calculated as at the date of the occurrence of the said event.

4.4 in the event of an occurrence as set out at clause 4.2(f) Marsh shall be entitled to recover from the Dealer all advances and all other sums paid in relation to the Customer Vehicle, or Credit Agreement in full as well as the Commission Clawback as set out at clause 4.

1. Data Protection

5.1 Each party shall at all times comply with all applicable requirements of the Data Protection Law (as data controller or data processor, as applicable). This Clause 5 is in addition to, and does not relieve, remove, or replace, a party’s obligations under the Data Protection Law. Neither party shall through its acts or omissions place the other party in breach of any Data Protection Law.

**The parties acting as data controllers.**

5.2 The Dealer will be required to collect certain personal data relating to Applicants using the standard form provided by Marsh (**Shared Personal Data**) and to share such Shared Personal Data with Marsh for the purposes of the Proposal and Marsh shall be required to process such Shared Personal Data for the purposes of considering each Proposal for the purposes of this Agreement (together the **“Agreed Purposes”).** The parties acknowledge and agree that they shall each act as a data controller in respect of their processing of the Shared Personal Data for the Agreed Purposes.

5.3 Without prejudice to the generality of Clause 5.1, the Dealer shall:

(a) ensure that it has an appropriate legal basis and all necessary appropriate consents and notices in place to enable lawful transfer of the Shared Personal Data to Marsh for the duration and purposes of this Agreement; and

(b) give full information to any Applicant whose personal data may be processed under this Agreement of the nature such processing.

5.4 Without prejudice to the generality of Clause 5.1, the parties shall:

(a) process the Shared Personal Data only for the Agreed Purposes.

(b) not disclose or allow access to the Shared Personal Data to anyone other than the other party to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement (“Permitted Recipients”).

(c) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement; and

(d) assist the other party in complying with all applicable requirements of the Data Protection Law in relation to the Shared Personal Data. In particular, each party shall:

(i) promptly inform the other party about the receipt of any data subject access request relating to the Shared Personal Data.

(ii) provide the other party with reasonable assistance in complying with any such data subject access request; and

(iii) notify the other party without undue delay and in any event within 24 hours on becoming aware of any breach of the Data Protection Law involving the Shared Personal Data.

**The Dealer acting as Marsh’s data processor.**

5.5 Once Marsh has determined that it may wish to enter into a Credit Agreement with an Applicant, Marsh may request that the Dealer will collect and supply certain identification documents and other verification personal data in relation to the relevant Applicant (Verification Personal Data). The parties acknowledge that for the purposes of the Data Protection Law, Marsh is the data controller, and the Dealer is the data processor in respect of the Verification Personal Data. Schedule 1 sets out the scope, nature, and purpose of processing of the Verification Personal Data by the Dealer, the duration of the processing and the types of personal data and categories of data subject.

5.6 Without prejudice to the generality of Clause 5.1, the Dealer shall, in relation to any Verification Personal Data processed in connection with the performance by the Dealer of its obligations under this Agreement:

(a) process that personal data only on the written instructions of Marsh unless the Dealer is required to process such Verification Personal Data otherwise by the laws of any member of the European Union or by the laws of the European Union applicable to the Dealer (“Applicable Laws”). Where the Dealer is relying on Applicable Laws as the basis for processing the Verification Personal Data, the Dealer shall promptly notify Marsh of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Dealer from so notifying Marsh.

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Marsh, to protect against unauthorised or unlawful processing of Verification Personal Data and against accidental loss or destruction of, or damage to, Verification Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Verification Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that all personnel (including, without limitation, employees) who have access to and/or process the Verification Personal Data are legally obliged to keep the Verification Personal Data confidential.

(d) not transfer the Verification Personal Data outside of the European Economic Area unless the prior written consent of Marsh and the customer has been obtained and the following conditions are fulfilled:

(i) Marsh or the Dealer has provided appropriate safeguards in relation to the transfer.

(ii) the data subject has enforceable rights and effective legal remedies.

(iii) the Dealer complies with its obligations under the Data Protection Law by providing an adequate level of protection to the Verification Personal Data that is transferred; and

(iv) the Dealer complies with reasonable instructions notified to it in advance by Marsh with respect to the processing of the Verification Personal Data.

(e) assist Marsh in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and otherwise, to comply with Marsh’s obligations under the Data Protection Law to respond to requests from data subjects or exercise of the rights of data subjects or information mandated to be provided to data subjects.

(f) notify Marsh without undue delay and in any event within 24 hours of the point at which the Dealer becomes aware of any breach or other security incident affecting or relating to the Verification Personal Data.

(g) at the written direction of Marsh, delete or return the Verification Personal Data and all copies thereof to Marsh on termination of the Agreement or at any other time unless required by Applicable Law to store the Verification Personal Data.

(h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 5 and relevant provisions of the Data Protection Law and allow for and cooperate with audits including, without limitation, inspections by Marsh or Marsh’s designated auditor; and

(i) not appoint any third-party processor of the Verification Personal Data under this Agreement without first obtaining Marsh’s prior written consent and entering into an appropriate written agreement with such third party.

(j) Notify Marsh Finance should any of the mutual customer data is stored out with the EEA.

(k) Customer data is only retained and stored within the requirements of the GDPR and is safety and securely disposed of at the end of its retention period.

1. Agency

The Dealer is not and shall not represent or hold itself to be an agent or representative of Marsh or have any power or authority to bind Marsh.

1. Termination

7.1 Either party may terminate this Agreement immediately by giving one month’s written notice.

7.2 Marsh may terminate this Agreement forthwith on the happening of the following events:

(a) The Dealer has breached any of the terms of this Agreement (including the warranty given in clause 2.1).

(b) the Dealer enters any form of insolvency procedure, including but not limited to administration, receivership, liquidation, bankruptcy or voluntary arrangement, or other form of composition or arrangement with creditors, whether formal or informal, or gives notice of their intention to do so.

(c) the Dealer is unable to pay its debts, or any procedure is commenced by any creditor or enforcement officer to levy execution, distress, commercial rent arrears recovery or any form of enforcement procedure against the Dealer or the Dealer’s assets.

(d) the Dealer ceases to be authorised by the FCA, or any enforcement action is taken against the Dealer by the FCA or any regulatory or public authority.

7.3 Termination of this Agreement shall not affect:

(a) the rights and remedies of either the Dealer or Marsh which have accrued up to the date of termination; or

(b) the Dealer’s obligation to fulfil its duties in respect of Credit Agreements which shall continue until the outstanding balance under the Credit Agreement has been repaid in full to Marsh.

(c) the operation of the Clawback provisions of this Agreement (clause 4.2 and 4.3), along with Marsh’s rights under clause 4.4 which shall survive termination of this Agreement in relation to any Credit Agreement entered into pursuant to the terms of this Agreement prior to such termination.

7.4 Following termination Marsh shall not be obliged to enter into any Credit Agreement with Applicants already introduced to Marsh by the Dealer and no commission shall be payable or due to the Dealer with regards to such Credit Agreements executed after the date of termination.

1. Set-off

The Dealer hereby acknowledges and agrees that Marsh shall have the right to set off any and all sums owing, whether actually, contingently, prospectively, or unliquidated by Marsh to the Dealer under this Agreement against any sum due or owing whether actually, contingently, prospectively, liquidated, or unliquidated to Marsh by the Dealer.

1. General

9.1 This Agreement supersedes and replaces all prior agreements, negotiations, and discussions between the parties.

9.2 This Agreement can only be amended by an addendum in writing signed by an authorised representative of each party.

9.3 Marsh may assign or transfer all or any part of this Agreement to any third party. The Dealer shall not assign or transfer any of its rights and obligations under this Agreement without the prior written consent of Marsh who may exercise its absolute unhindered discretion to decline a request to assign this Agreement.

1. Notices

The parties acknowledge and agree that any communication either in the day-to-day running of the Agreement and/or regarding the operation of the Agreement may be conducted by email to the email address notified by each party to the other for that purpose or in any other way the parties deem appropriate.

1. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the courts of England and Wales.

1. Contracts (Rights of Third Parties) Act 1999

The parties to this Agreement do not intend that any terms of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

1. Waiver

No failure to exercise nor delay in exercising, on the part of Marsh of any right, remedy, power or privilege under this Agreement or any agreement which may be made pursuant thereto or in connection herewith shall operate as a waiver thereof. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by law.

1. Definition and Interpretations

|  |  |
| --- | --- |
| **Adequate Explanations:** | means the adequate explanations that are required to be provided to Applicants for credit under Section 55A CCA and/or CONC 2.5 and/or CONC 4.2; |
| **Anti Money Laundering (AML) Law****Applicant:** | means any and all applicable legislation and/or guidance relating to the identification and/or prevention of money laundering, terrorist and other criminal activities, including but not limited to FCA’s SYSC Sourcebook, the FCA’s Guidance on Financial Crime and guidance issued by the Joint Money Laundering Steering Group;means a legal person who wishes to obtain finance with Marsh through the Dealer; |
| **CCA:****CONC** | means the Consumer Credit Act 1974 as amended and all regulations made under it, the Consumer Credit Act 2006 and all other applicable UK legislation and statutory instruments relating to consumer credit;means the FCA’s Consumer Credit Source Book; |
| **Credit Agreement:** | means an executed agreement for the provision of credit entered into by Marsh and the Customer; |
| **Customer:** | means an Applicant whom the Dealer has introduced to Marsh and with whom Marsh enters into a Credit Agreement; |
| **Data Protection Law:** | means: (i) the General Data Protection Regulation ((EU) 2016/679) (GDPR); (ii) any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK; (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law; and (iv) any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time). The terms **controller**, **data controller**, **processor**, **data processor**, **data subject**, **personal data**, **processing** and **appropriate technical and organisational measures** shall all have the meanings set out in the Data Protection Law in force at the time; |
| **EEA** | European Economic Area |
| **FCA** | means the Financial Conduct Authority; |
| **Proposal:** | means a proposal for credit submitted in accordance with the Agreement which shall include details of the proposed deal as presented to Marsh by the Dealer; |
| **Regulated Activities** | means any activity carried on by the Dealer in respect of which regulatory permission from the FCA is required, including but not limited to credit-related regulated activities; |
| **Pre-Contract Information** **Vehicle:** | means the pre-contract information document setting out key terms of the Credit Agreement as required to be supplied to an Applicant pursuant to the CCA;means a vehicle sold to Marsh by the Supplying Dealer and which then becomes the subject matter of a Credit Agreement. |

1. Signature

Signed for an on behalf of: **…………………………………**

Signature……………………………………………………..

Name………………………………………………………….

Date……………………………………………………………

Signed for and on behalf of **MARSH FINANCE LIMITED and MARSH FM LLP**

Signature………………………………………………………

Name…………………………………………………………..

Date…………………………………………………………….

1. SCHEDULE 1

**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. **DESCRIPTION OF THE PROCESSING TO BE UNDERTAKEN BY THE BROKER**

**SCOPE:** *Processing of personal data relating to Applicants for the purposes of Marsh considering a Proposal pursuant to this Agreement.*

**NATURE:** *Any operation in respect of the Applicant personal data such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means)*

**PURPOSE OF PROCESSING:** *For the purpose of allowing Marsh to consider a Proposal pursuant to this Agreement*

**DURATION OF THE PROCESSING:** *For the duration of this Agreement*

1. **TYPES OF PERSONAL DATA TO BE PROCESSED BY THE BROKER**

*This may include: Applicant’s name, address, telephone number, email address, passport, driving license, proof of identification and address documents, bank statements, tax returns, payslips and P60 forms.*

1. **TYPES OF SPECIAL CATEGORIES OF PERSONAL DATA (OR SENSITIVE PERSONAL DATA) TO BE PROCESSED BY THE BROKER**

 *Sensitive Personal Data will not be provided to the Broker pursuant to this Agreement.*

1. **CATEGORIES OF DATA SUBJECT**

*Applicants.*