

**VOLUNTARY COMPLIANCE AGREEMENT**

Pursuant to section 80 of *The Consumer Protection and Business Practices Act* (the "Act")

BETWEEN:

DEPUTY DIRECTOR, CONSUMER PROTECTION,  
as appointed by section 77 of the Act

the "Deputy Director"

-AND-

MACNEIL MOTORS INC., LICENCE # 323540

the "Licensee"

**Whereas:**

1. The Licensee is a "registered vehicle dealer" as defined under the Act.
2. Jeffery MacNeil is listed as a director of the Licensee and operates as a "salesperson" as defined under the Act.
3. The Deputy Director has been appointed by the Minister of Justice pursuant to subsection 77(1) of the Act and therefore is responsible for the administration of the Act and *The Consumer Protection and Business Practices Regulations* (the "Regulations").
4. The Deputy Director has reasonable grounds to believe that the Licensee has not complied with the Act and the Regulations, as admitted by the Licensee and as set out herein.

5. The Deputy Director has invited the Licensee to enter into this Voluntary Compliance Agreement (the "Agreement").
6. The Licensee, by signing the Agreement, has agreed to enter into the Agreement.
7. The Licensee agrees that the facts set out herein are truthful and accurate.
8. The Licensee agrees that while entering into this Agreement is voluntary, once entered into, it binds the Licensee to the obligations herein and that failure to comply may result in the Deputy Director taking further action pursuant to the Act.
9. The Licensee further agrees that, by choosing to accept the Deputy Director's invitation to enter into this Agreement, the Licensee agrees to waive any opportunity to be heard pursuant to section 71 of the Act that it may have been entitled to in relation to the matters addressed in this Agreement.

**Agreed Statement of Facts:**

*Inaccurate Recordings of Odometer Readings*

10. On March 22, 2016, the Licensee signed a purchase contract for the purchase of a 2016 Hyundai Sonata (the "Sonata"). This purchase contract indicated that the odometer reading of the Sonata was 12,323 kilometers.
11. On March 29, 2016, the Licensee sold the Sonata to a consumer. The vehicle contract for the sale of the Sonata to the consumer indicated that the odometer reading of the Sonata was 2,166 kilometers at the time of the sale.
12. The Licensee admits that, contrary to clause 5-25(2)(f) of the Regulations, it did not accurately record the odometer reading of the Sonata in the vehicle contract when it sold the Sonata to the consumer on March 29, 2016.

13. On June 3, 2016, the Licensee signed a purchase contract for the purchase of a 2015 Dodge Durango (the "Durango"). This purchase contract indicated that the odometer reading on the Durango was 29,466 kilometers.
14. On June 25, 2016, the Licensee sold the Durango to a consumer. The vehicle contract for the sale of the Durango to the consumer indicated that the odometer reading of the Durango was 14,451 kilometers at the time of the sale.
15. The Licensee admits that, contrary to clause 5-25(2)(f) of the Regulations, it did not accurately record the odometer reading of the Durango in the vehicle contract when it sold the Durango to the consumer on June 25, 2016.

*Failure to Provide Required Disclosure*

16. The Licensee admits that, on or about July 20, 2016, it sold a 2014 Jeep Cherokee (the "Cherokee") to a consumer without first providing the consumer with a VIN search result provided by Saskatchewan Government Insurance, contrary to subclause 5-22(1)(b)(i) and clause 5-22(2)(a) of the Regulations.
17. The Licensee further admits that:
  - a. the Cherokee had, before the sale to the consumer, been involved in an accident which resulted in an insurance claim of \$16,549.01;
  - b. had the consumer received the VIN search result provided by Saskatchewan Government Insurance prior to the purchase of the Cherokee, the consumer would have been aware of the previous insurance claim; and
  - c. this information may have impacted the consumer's decision to purchase the Cherokee.
18. The Licensee admits that, on or about July 22, 2016, it sold a 2014 Ford Focus (the "2014 Focus") to a consumer without first disclosing in writing to the consumer that the 2014 Focus had been used as a rental vehicle within the previous 24 months, contrary to clauses 5-22(1)(b) and 5-22(2)(a) of the Regulations.

*Breach of Statutory Warranties*

19. On or about October 24, 2016, a consumer purchased a 2015 Ford Focus (the “2015 Focus”) from the Licensee. On or about November 8, 2016, the 2015 Focus was involved in an accident and deemed by Saskatchewan Government Insurance to be a total loss. When the consumer submitted her claim to Saskatchewan Government Insurance, she was informed there were two liens registered against the 2015 Focus. The consumer had actual knowledge of only one of the two liens registered against the vehicle. The lien of which the consumer had actual knowledge was registered against the 2015 Focus at the time that the consumer purchased the 2015 as part of her financing arrangements.
20. The Licensee admits that the lien of which the consumer did not have actual knowledge (the “Undisclosed Lien”) had been registered on the 2015 Focus prior to its sale to the consumer.
21. The Licensee admits that it failed to discharge the Undisclosed Lien prior to the sale of the 2015 Focus to the consumer.
22. The Licensee further admits that it failed to explicitly disclose the existence of the Undisclosed Lien and its existence was not actually known to the consumer at the time of the purchase of the 2015 Focus by the consumer from the Licensee.
23. The Licensee admits that, by failing to discharge or to explicitly disclose the existence of the Undischarged Lien, the Licensee breached the consumer’s statutory warranties pursuant to subclause 19(b)(i) of the Act.

*Failure to Immediately Provide Vehicle Contract*

24. On or about August 15, 2016, the Licensee sold a 2013 Ford Mustang (the “Mustang”) to a consumer.
25. The Licensee admits that, contrary to clause 5-25(7)(b) of the Regulations, the Licensee failed to provide a copy of the contract to the consumer following the signing of the contract for the purchase of the Mustang.

### *Misleading Advertising Practices*

26. The Licensee admits that in or around August of 2016, it published advertisements through Facebook which contravene the Act and the Regulations in the following ways:
- a. using a font that due to its size and other visual characteristics was likely to materially impair the legibility or clarity of the dealer's name on the advertisement, contrary to clause 5-21(2)(c) of the Regulations;
  - b. listing an address in Yorkton, but not listing the name of the dealer in a clear and legible way or listing the address of the dealership premises so as to indicate that the dealership was not located in Yorkton, which might reasonably deceive or mislead a consumer, contrary to clause 6(a) of the Act;
  - c. falsely claiming that there were 350 cars at the sale described in the advertisement, when only approximately 44 cars were present at the sale, contrary to clause 6(b) of the Act; and
  - d. representing that the Licensee has a sponsorship, approval, status or affiliation or connection to Yorkton Exhibition through use of the Yorkton Exhibition's logo when the Licensee did not have such sponsorship, approval, status or affiliation or connection, contrary to clauses 6(d) and 7(b).

### *Failure to File Annual Returns*

27. The Licensee admits that it did not provide an annual return pursuant to the Regulations in a complete and accepted form until March 28, 2018, contrary to section 5-5 of the Regulations.

### *Filing False Annual Returns and Failing to Notify the Director of a Prescribed Change*

28. The Licensee admits that Jeffery MacNeil had a criminal record since at least 2004 and that, in its application for a licence, filed on October 15, 2009, the Licensee falsely declared that none of its principals has a criminal record.
29. The Licensee further admits that, contrary to section 70 of the Act and clause 5-2(h)

of the Regulations, it failed to notify the Deputy Director in writing of the institution of proceedings against, and conviction of, Jeffery MacNeil with respect to a criminal offence following October 15, 2009.

### *Misleading Cosigners Regarding Their Obligations*

30. The Licensee admits that, on at least two occasions, it misled individuals who intended to act as cosigners for purchasers in vehicle contracts by:
- a. preparing the vehicle contract in such a way that the individual intending to act as cosigner became the purchaser of the vehicle;
  - b. advising intended cosigners that they could revoke their obligation as cosigner at some point in the future before the financing contract associated with the vehicle contract was fulfilled, contrary to the terms of the financing contract.
31. The Licensee acknowledges that the actions described in paragraph 30 of this Agreement amount to unfair practices as described in clauses 6(a), (b), 7(b), (k) and (m) of the Act.

### **Undertakings by the Licensee:**

32. In this Agreement, "prohibited activities" includes the following:
- a. failing to accurately record the odometer reading of a vehicle in the vehicle contract for the sale of that vehicle, contrary to clause 5-25(2)(f) of the Regulations;
  - b. failing to provide consumers with a VIN search result provided by Saskatchewan Government Insurance before the contract for sale or lease is entered into by the purchaser or lessee, contrary to subclause 5-22(2)(i) of the Regulations;
  - c. failing to disclose in writing before the contract for sale or lease is entered into by the purchaser or lessee that a vehicle has been used as a rental vehicle within the previous 24 months, contrary to clause 5-22(1)(b) of the Regulations;
  - d. failing to disclose in writing to the prospective purchaser before the contract for sale or lease is entered into by the purchaser or lessee all material facts, as known by the dealer or that the dealer should reasonably be expected to know at the time

- the vehicle contract is entered into, contrary to clause 5-22(2)(a) of the Regulations;
- e. failing to ensure that a vehicle is and will remain free from any security interest, lien, charge or encumbrance not expressly disclosed to the prospective purchaser before the sale is made contrary to subclause 19(b)(i) of the Act;
  - f. failing to provide a copy of the vehicle contract to the consumer immediately following the signing of the vehicle contract, contrary to clause 5-25(7)(b) of the Regulations;
  - g. using a font in advertisements that due to its size or other visual characteristics is likely to materially impair the legibility or clarity of the advertisement, contrary to clause 5-21(2)(c) of the Regulations;
  - h. misleading or deceiving consumers through advertisements, contrary to clauses 6(a), (b), (d) of the Act and clauses 5-21(2)(c) of the Regulations;
  - i. failing to file accurate annual returns with the Deputy Director prior to the deadline for the filing in accordance with section 5-5 of the Regulations;
  - j. failing to notify the Deputy Director within 5 days of the instituting of proceedings against, or conviction of, the applicant or licensee or any director, officer or partner of the applicant or licensee with respect to a criminal offence, contrary to section 70 of the Act and clause 5-2(h) of the Regulations;
  - k. misleading intended cosigners by making inaccurate statements in relation to the intended cosigners' rights and obligations under the financing contract upon signing the contract, contrary to clauses 6(a), (b), (d) 7(k), and (m) of the Act;
  - l. misleading intended purchasers and cosigners by listing the intended cosigners as the purchasers on the vehicle contracts, contrary to 6(a) of the Act.

33. The Licensee hereby undertakes to:

- a. refrain from engaging in the prohibited activities;
- b. accurately complete the vehicle contract in each sale conducted on behalf of the Licensee;
- c. in every transaction involving a cosigner, provide to the cosigner prior to the sale, written information which advises the cosigner of the following:
  - i. the cosigner is not the legal owner of the vehicle following the sale;
  - ii. the cosigner may be responsible for the entire amount owing on the loan in the event of default by the consumer;
  - iii. the cosigner may not be able to revoke his or her consent to the cosigning obligations until the entire amount owing is repaid;
  - iv. if the cosigner requires more information before acting as a cosigner, he or she should consult independent legal counsel.
- d. refrain from giving a cosigner or a consumer any information other than that set out in paragraph 33(c) of this Agreement regarding the cosigning of loans and

- where further information is requested by an intended cosigner or consumer, advise the intended cosigner that it would be reasonable to seek legal advice;
- e. maintain in its records, a signed declaration by every cosigner indicating that the cosigner has received and understands the written information described in paragraph 33(c) of this Agreement;
  - f. within 30 days of this Agreement, develop and file with the office of the Deputy Director, internal written policies and procedures to the satisfaction of the Deputy Director which, if followed, will ensure that accurate odometer readings are recorded in vehicle contracts in accordance with clause 5-25(1)(f) of the Regulations;
  - g. within 30 days of this Agreement, develop and file with the office of the Deputy Director, internal written policies and procedures to the satisfaction of the Deputy Director which, if followed, will ensure that:
    - i. all security interests, liens, charges and encumbrances are properly discharged prior to the sale of the vehicle unless a valid reason exists for the security interest, lien, charge or encumbrance to remain registered against the vehicle;
    - ii. where a security interest, lien, charge or encumbrance remains registered against the vehicle, its existence is explicitly disclosed to the consumer prior to the sale in accordance with subclause 19(b)(i) of the Act and the consumer has explicitly consented to its continued registration following the sale;
    - iii. such disclosure as described above is provided in a manner which allows the Licensee to retain documentation which confirms that the consumer actually knew of the registered security interest, lien, or encumbrance prior to the sale of the vehicle to the consumer and consented to its continued registration following the sale;
  - h. adhere to the policies and procedures developed pursuant to paragraphs 33(f) and (g) of this Agreement upon filing the same with the office of the Deputy Director;
  - i. pursuant to clause 80(3)(b) of the Act, reimburse the Deputy Director for the Deputy Director's costs in part in the amount of \$ 3,002.41 by no later than July 16, 2018.

(hereinafter collectively referred to as the "Undertakings")



### **Implementation and Enforcement of Undertakings**

34. The parties acknowledge and agree that the Undertakings are binding on the Licensee until such time as they are either terminated or varied in writing by the Deputy Director or terminated or varied by order of a court with jurisdiction.
35. The Deputy Director may, upon breach of any part of this Agreement by the Licensee, institute such proceedings and take such action under the Act or the Regulations as considered necessary.
36. Nothing in this Agreement shall prevent or otherwise limit the Deputy Director from exercising or performing any of his powers and duties under the Act, including his power to inspect, audit or examine the business and activities of the Licensee pursuant to section 78 of the Act.
37. Failure by the Deputy Director to enforce this Agreement or any part of it, with regard to any deadline or any other provision of this Agreement, shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.

### **General**

38. The Licensee acknowledges this Agreement is a public document and will be maintained in the public record by Deputy Director pursuant to subclause 77(6)(b)(iii) of the Act.
39. The Licensee acknowledges that it has had the opportunity to be represented by counsel and to obtain legal advice with respect to this Agreement.
40. This Agreement is not intended to certify or signify that the Licensee is now or with the actions taken pursuant to this Agreement will be in full compliance with the Act or any other applicable legislation.
41. This Agreement is does not constitute a finding by the Deputy Director that the Licensee is now, or will be in full compliance with the Act or any other applicable legislation.

42. Nothing in this Agreement shall be construed as relieving the Licensee of any liability arising from transactions previously carried out or carried out during the term hereof.
43. Nothing in this Agreement shall be construed to relieve the Licensee of its continued obligation to comply with all applicable requirements under the Act and Regulations, notwithstanding that certain requirements may not be expressly referred to herein.
44. Nothing in this Agreement derogates from the rights and remedies available under the Act to any other person arising from the conduct described in this Agreement or arising from future conduct.
45. This Agreement comes into effect when it has been signed by both parties.

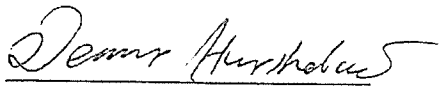
**DATED** at Regina, Saskatchewan, this 31 day of May 2018.

**MacNeil Motors Inc.**

**Per:** \_\_\_\_\_

**Name:** Jeffrey MacNeil

**Title:** Director



**Denny Huyghebaert**

**Deputy Director, Consumer Protection Division**