

SECOND AMENDED AND RESTATED  
LOAN AND SERVICING AGREEMENT

Dated as of November 15, 2013  
among

DT WAREHOUSE II, LLC,  
as Borrower

DT CREDIT COMPANY, LLC,  
as Servicer

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Paying Agent and Securities Intermediary

and

SANTANDER CONSUMER USA INC.,  
as Lender and Backup Servicer

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## **SECOND AMENDED AND RESTATED LOAN AND SERVICING AGREEMENT**

This SECOND AMENDED AND RESTATED LOAN AND SERVICING AGREEMENT, dated as of November 15, 2013 is among DT WAREHOUSE II, LLC, a Delaware limited liability company, as Borrower, DT CREDIT COMPANY, an Arizona limited liability company, as Servicer, WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Paying Agent and Securities Intermediary, and SANTANDER CONSUMER USA INC., as Lender and Backup Servicer. Capitalized terms used herein shall have the meanings specified in Section 1.01.

### **PRELIMINARY STATEMENTS**

WHEREAS, the Borrower, the Servicer, the Lender, the Backup Servicer, the Securities Intermediary and the Paying Agent entered into that certain Amended and Restated Loan and Servicing Agreement dated as of December 31, 2012, as amended by that certain Amendment No. 1, dated February 14, 2013 (collectively, as amended "Loan and Servicing Agreement");

WHEREAS, on May 9, 2011 the Revolving Loan Commitment Termination Date occurred and on December 28, 2011 the Demand Note Guaranty (defined below) was terminated and released;

WHEREAS, as provided herein, the parties hereto have agreed to amend and restate the Loan and Servicing Agreement as described below;

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party agrees as follows:

### **ARTICLE I DEFINITIONS**

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Accepted Servicing Practices" means, with respect to any Contract, the servicing practices of the Servicer described in the Credit and Collection Policy.

"Account Bank" means each of the Depository Account Bank and the Securities Intermediary.

"Accounting Period" means a calendar month.

"Adjusted LIBO Rate" means, for any Interest Period, an interest rate per annum obtained by dividing (i) the LIBO Rate for such Interest Period by (ii) a percentage equal to 100% minus the LIBO Rate Reserve Percentage for such Interest Period.

"Advance Rate (Revolving Loans)" means 70.0%.





“Advance Rate (Term Loans)” means prior to and including the date which is the last calendar day of the month in which the Term Loan Commitment Termination Date occurs, (a) with respect to (or in reference to) any GFC Indirect Contract, the lesser of (i) 95% of the outstanding advance for such GFC Indirect Contract and (ii) 75% of the aggregate principal balance for the Contracts underlying such GFC Indirect Contract, (b) with respect to any Eligible Contract other than a GFC Indirect Contract or GFC Eligible Contract, 75.0%, (c) with respect to any GFC Eligible Contract, the lesser of 75.0% of the Purchase Percentage for such GFC Eligible Contract and 75.0%, and (d) on the Maturity Date, 0.0%.

For purposes of this definition of “Advance Rate (Term Loans)”, the term “Purchase Percentage” means, with respect to any GFC Eligible Contract, the percentage equivalent of a fraction equal to (a) the numerator of which equals the purchase price paid for such GFC Eligible Contract and (b) the denominator of which equals the Principal Balance of such GFC Eligible Contract at the time of acquisition.

“Adverse Claim” means a Lien other than any Permitted Lien.

“Affected Party” means SCUSA, individually and in its capacity as the Lender and the parent company that controls SCUSA.

“Affiliate” means, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” (together with the correlative meanings of “controlled by” and “under common control with”) means possession, directly or indirectly, of the power (a) to vote 30% or more of the securities (on a fully diluted basis) having ordinary voting power for the directors or managing general partners (or their equivalent) of such Person, or (b) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

“Aggregate Commitment” means, at any time, the sum of the Commitment (Revolving Loans) and Commitment (Term Loans).

“Agreement” means this Loan and Servicing Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Alternative Rate” means, with respect to a Revolving Loan on any day, an interest rate per annum equal to the Adjusted LIBO Rate; *provided, however*, during the occurrence and continuance of a LIBOR Disruption Event, the Alternative Rate shall be an interest rate per annum equal to the Base Rate.

“Amount Financed” means, with respect to a Contract, the aggregate amount originally advanced under such Contract toward the purchase price of the Financed Vehicle and any related costs (exclusive of any Optional Contract Debtor Insurance).

“Annual Percentage Rate” or “APR” means, with respect to a Contract, the annual percentage rate of finance charges stated in such Contract.

"Approved Indebtedness" means any Indebtedness of DTAC and/or DTAG that satisfies all of the following criteria:

(i) such Indebtedness is subordinated in right of payment to all senior secured Indebtedness of DTAC and/or DTAG and, if such Indebtedness is secured Indebtedness, the Liens securing such Indebtedness are subordinated to the Liens securing all senior secured Indebtedness of DTAC and/or DTAG; and

(ii) such Indebtedness has a scheduled maturity date no earlier than 18 months following the Term Loan Commitment Termination Date (as set forth in clause (i) of the definition thereof).

"Approved Sub-servicer" means each Person (i) appointed by the Servicer pursuant to Section 6.01(g) to perform certain of the obligations of the Servicer hereunder, (ii) approved by the Borrower, the Servicer and the Lender and (iii) identified on Schedule III hereto, as such, Schedule III may be amended from time to time with the consent of the Borrower, the Servicer and the Lender.

"Available Cash" means, with respect to the DT Entities On A Consolidated Basis at any date, the sum of (i) all cash on the consolidated balance sheets of the DT Entities On A Consolidated Basis on such date and (ii) all Cash Equivalents then held by the Servicer.

"Available Collateral" means, with respect to a Term Borrowing Base Deficiency, Contracts or Residual Interests owned by DTAC and not otherwise restricted from transfer.

"Available Liquidity" means, with respect to the DT Entities On A Consolidated Basis at any date, the aggregate for such date of (i) all cash of the DT Entities On A Consolidated Basis, (ii) all Cash Equivalents then held by the DT Entities On A Consolidated Basis, (iii) the unused portion of borrowing availability as of such date under the Inventory Facility, (iv) the unused portion of borrowing availability as of such date under each Warehouse Facility reviewed and approved by the Lender (such approval not to be unreasonably withheld or delayed), (v) the unused portion of borrowing availability as of such date under any other asset-based credit facility (including, without limitation, a credit facility secured by residual interests in securitization transactions involving Contracts) reviewed and approved by the Lender (such approval not to be unreasonably withheld or delayed), (vi) the unused portion of the amount available to be borrowed as of such date under this Agreement, and (vii) an amount (without duplication) which would be the unused portion of borrowing availability as of such date under any asset-based credit facility (including, without limitation, a credit facility secured by residual interests in securitization transactions involving Contracts) reviewed and approved by the Lender (such approval not to be unreasonably withheld or delayed) if all unencumbered Contracts or Contracts which are available to be released and transferred to the applicable borrower as collateral thereunder (without causing an event of default under any applicable facility) were released and so transferred.

"Backup Servicer" means Santander Consumer USA Inc., in its capacity as Backup Servicer pursuant hereto, or such other Person as may be approved by the Lender.

"Backup Servicing Fee" means, for any Accounting Period, the fees set forth in Section 6.10 hereof.

"Banco Santander" means Banco Santander, S.A., acting through its New York Branch.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. Section 101 et seq., as amended from time to time, or any successor thereto.

"Base Rate" means a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall at all times be equal to the higher of: (A) the Prime Rate, and (B) the Federal Funds Rate plus 0.50%.

"Base Revolving Loan Amount" means, at any time prior to the Revolving Loan Commitment Termination Date, \$100,000,000 and on and after the Revolving Loan Commitment Termination Date, zero.

"Borrower" means DT Warehouse II, LLC, a Delaware limited liability company, in its capacity as Borrower hereunder, together with its successors and permitted assigns.

"Borrower Information" has the meaning specified in Section 10.11(b) hereof.

"Borrower Obligations" means all present and future indebtedness and other liabilities and obligations (howsoever created or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Borrower to the Secured Parties arising under this Agreement or any other Facility Document or the transactions contemplated hereby or thereby, and shall include, without limitation, the repayment of the Outstanding Revolving Loan Amount and/or Outstanding Term Loan Amount, as applicable, and the payment of Interest, Fees and all other amounts due or to become due from the Borrower under the Facility Documents (whether in respect of fees, expenses, indemnifications, breakage costs, increased costs or otherwise), including, without limitation, interest, fees and other obligations that accrue after the commencement of any bankruptcy, insolvency or similar proceeding with respect to any Transaction Party (in each case whether or not allowed as a claim in such proceeding).

"Borrower Representatives" has the meaning specified in Section 10.11(a) hereof.

"Borrowing" means a borrowing of Loans under this Agreement.

"Borrowing Base (Revolving Loans)" means zero.

"Borrowing Base Surplus" means, at any time (i) the excess, if any, of (A) the sum of the Borrowing Base (Term Loans), and the Borrowing Base (Revolving Loans) over (B) the Outstanding Loan Amount, less (ii) all accrued and unpaid Interest and Fees at the time of such distribution, less (iii) any other Borrower Obligations are then due and payable at the time of such distribution.

“Borrowing Base (Term Loans)” means the excess of:

(i) the product of (a) the applicable Advance Rate (Term Loans) and (b) the sum of (1) the aggregate Principal Balance of all Residual Eligible Contracts, and (2) the aggregate Principal Balance of all Eligible Contracts owned by the Borrower; over

(ii) the excess of (a) the Residual Debt over (b) the sum of (1) any pledged cash with respect to any of the foregoing Residual Debt and (2) all cash and Cash Equivalents in the Collection Account and all other cash and Cash Equivalents of the Borrower to the extent pledged to secure the Borrower Obligations.

“Borrowing Base Certificate” means the certificate and accompanying computer file (in a format acceptable to the Lender) prepared by the Borrower substantially in the form of Exhibit K attached hereto.

“Borrowing Date” has the meaning specified in Section 2.03(a)(i).

“Borrowing Request” has the meaning specified in Section 2.03(a)(i).

“Business Day” means any day other than a Saturday, Sunday or public holiday or the equivalent for banks in New York City, New York, Minneapolis, Minnesota and, if the term “Business Day” is used in connection with the LIBO Rate, any day on which dealings are carried on in the London interbank market.

“Capital Lease Obligations” means, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Capitalized Lease” means a lease of (or other agreement conveying the right to use) real or personal property with respect to which at least a portion of the rent or other amounts thereon constitute Capital Lease Obligations.

“Cash Equivalents” means (a) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) certificates of deposit and eurodollar time deposits with maturities of 90 days or less from the date of acquisition and overnight bank deposits of any commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven days with respect to securities issued or fully guaranteed or insured by the United States Government, (d) commercial paper of a domestic issuer rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's or R-1 (mid) or the equivalent thereof by DBRS and in either case maturing within 90 days after the day of acquisition, (e) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth





or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or DBRS or A2 by Moody's, (f) securities with maturities of 90 days or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (b) of this definition, (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition or (h) investments in money market or common trust funds having a rating from each of DBRS, Moody's and S&P in the highest investment category for short-term unsecured debt obligations or certificates of deposit granted thereby.

"Certificate of Title" means with respect to each Financed Vehicle, the certificate of title (or other evidence of ownership) issued by the department of motor vehicles, or other appropriate governmental body, of the state in which the Financed Vehicle is to be registered showing the Contract Debtor as owner, with a notation of the Originator's, DTCS's or GFC Lending, LLC's first lien or such other status indicated thereon which is necessary to perfect the Originator's, DTCS's or GFC Lending, LLC's security interest in the Financed Vehicle as a first priority security interest, and showing no other actual or possible lien interest in the Financed Vehicle.

"Change of Control" means any of the following: (a) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of outstanding shares of voting stock or membership interests of either Parent Company at any time, if after giving effect to such acquisition, Ernest C. Garcia II or an entity or trust affiliated with such individual, collectively, shall own less than 50% of the voting stock and membership interest of each Parent Company or ceases to have the right to elect a majority of the board of directors of either Parent Company; (b) any transaction or series of transactions whereby any Person or Persons acting in concert (other than the Lender and/or its Affiliates) acquire the right, by contract or otherwise, to direct the management and activities of any DT Entity or its Subsidiaries; or (c) the Originator shall cease to own, directly or indirectly, 100% of the issued and outstanding Equity Interests of the Borrower.

"Charged-Off Contract" means a Contract with respect to which any of the following shall have occurred: (i) all, or any part in excess of 10%, of any Scheduled Payment is one hundred and twenty (120) or more delinquent on the last day of a calendar month; (ii) the related Financed Vehicle has been surrendered or repossessed and the redemption period granted the Contract Debtor or required by applicable law has expired, or is to be repossessed but is unable to be located or is otherwise subject to being repossessed; (iii) which has been settled for less than the Principal Balance; (iv) which has been liquidated by the Servicer through the sale of the Financed Vehicle; (v) for which proceeds have been received which in the Servicer's reasonable judgment, constitute the final amounts recoverable in respect of such Contract; or (vi) which has been charged-off (or should have been charged-off) in accordance with the Credit and Collection Policy.

"Charged-Off Losses Ratio" means, with respect to any Accounting Period with respect to the Managed Portfolio Contracts, the percentage equivalent of a fraction, the numerator of which is the aggregate Principal Balance of the Managed Portfolio Contracts which became Charged-Off





Contracts during such Accounting Period, minus the aggregate of amounts received by the Servicer during such Accounting Period and applied to any such Managed Portfolio Contract which is a Charged-Off Contract as of the end of such Accounting Period, and the denominator of which is the aggregate Principal Balance of all Managed Portfolio Contracts as of the end of such Accounting Period.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning set forth in Section 2.15.

“Collateral Default Option” has the meaning specified in Section 5.01(q).

“Collection Account” has the meaning set forth in Section 2.20.

“Collections” means, all Contract Collections and all Residual Collections.

“Commitment (Revolving Loans)” means zero.

“Commitment (Revolving Loans) Increase” has the meaning specified in Section 2.04(b).

“Commitment (Term Loans)” means \$50,000,000 as such amount in this clause (ii) may be reduced or increased pursuant to Section 2.04.

“Commonly Controlled Entity” means a Person under “common control” (as defined in Section 4001(a)(14) of ERISA) with any DT Entity or their Affiliates.

“Continued Errors” has the meaning specified in Section 6.14.

“Contract” means a retail installment or conditional sale contract, with any Modifications, originated by DriveTime at any time pursuant to which a Contract Debtor has (i) purchased a new or used Motor Vehicle, (ii) granted a security interest in the Motor Vehicle to secure the Contract Debtor’s payment obligations, and (iii) agreed to pay the unpaid purchase price and a finance charge in periodic installments no less frequently than monthly.

“Contract Collateral” has the meaning specified in Section 2.15(a)(i)(j) hereof.

“Contract Collections” means, (i) with respect to any Contract, any and all cash collections and other cash proceeds of such Contract, all Scheduled Payments or other payments or distributions of principal, interest, finance charges, fees, late charges or other amounts collected in respect of such Contract, all Insurance Proceeds, all payments from Contract Rights Payors, all Net Liquidation Proceeds, any Purchase Amounts paid by the Originator to the Borrower in connection with a repurchase of Contracts pursuant to the terms of the Purchase Agreement and any other amounts received by or on behalf of any DT Entity in respect of such Contract and (ii) all Hedge Receipts.

“Contract Debtor” means, with respect to a Contract, the Person that has executed the Contract as a purchaser, and any guarantor, co-signer or other Person obligated to make payments under the Contract.



“Contract Debtor Documents” means, with respect to a Contract, those documents that are identified on Schedule IV attached hereto and made a part hereof.

“Contract Debtor Information” has the meaning specified in Section 10.11(c) hereof.

“Contract Delivery Documents” means, with respect to a Contract, the original Certificate of Title (or, to the extent provided in Section 2.03 of the Custodial Agreement, evidence of application for a Certificate of Title) and the original executed Contract with original Contract Debtor signatures.

“Contract Disposition Transaction” means (i) any sale of Contracts in connection with a Securitization Transaction, a whole loan sale transaction or any other similar transaction or (ii) the distribution of cash or property in respect of the membership interests of the Borrower of Collateral.

“Contract Rights” means, with respect to a Contract, all rights and interests of the Originator (at the time they arise, and before giving effect to any transfer or conveyance under the Purchase Agreement) or the Borrower (after giving effect to the transfers thereunder) in or with respect to (i) such Contract, (ii) the related Financed Vehicle, including any repossessed Financed Vehicle, and in and to any other collateral securing such Contract, including any security deposit; (iii) any Optional Contract Debtor Insurance and any other policies of fire, theft or comprehensive insurance, collision insurance, public liability insurance or property damage insurance maintained with respect to the Financed Vehicle, the Contract, or the Contract Debtor; (iv) all Contract Collections with respect to such Contract, and (v) the originals of all Records relating to the Contracts, including, but not limited to, Contract Debtor Documents, financial statements of Contract Debtors, and all payment reports or records relating to the Contracts.

“Contract Rights Payors” means Persons, other than Contract Debtors, against whom Contract Rights may be asserted.

“Contract Selection Methodology” has the meaning set forth in the Purchase Agreement.

“Contractual Obligation” means as to any Person, any material provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound or any material provision of any security issued by such Person.

“Control Agreement” means an agreement among the Borrower, the Servicer, the Lender and an Account Bank, in such form as the Lender may approve, which provides for the Lender to have “control” (within the meaning of Section 9-102 of any applicable enactment of the UCC) of any account identified therein. The Master Agency Agreement shall be a Control Agreement for purposes of this Agreement.

“Cram Down Loss” means, with respect to a Contract, if a court of appropriate jurisdiction in an insolvency proceeding shall have issued an order reducing the amount owed on a Contract or otherwise modifying or restructuring Scheduled Payments to be made under such Contract, an amount equal to such reduction in Principal Balance of such Contract or the reduction in the net present value (using as the discount rate the lower of the contract rate or the rate of interest specified

