

GAP ADDENDUM

GUARANTEED ASSET PROTECTION PROGRAM LENDER AGREEMENT



GAP WAIVER

Lender Name: _____

Address: _____

Phone: () _____

This AGREEMENT is made this _____ day of _____, 20 _____, between WESTERN DIVERSIFIED SERVICES, INC. of 2345 Waukegan Road, Suite 210, Bannockburn, Illinois 60015 (hereinafter referred to as "ADMINISTRATOR"), LYNDON ADMINISTRATIVE SERVICES, INC. of 2345 Waukegan Road, Suite 210, Bannockburn, Illinois 60015 (hereinafter referred to as "ADMINISTRATOR") and the above named Lender/Lessor, and any affiliated stores listed in Schedule A if applicable, who are in the business of financing the purchase of new and used vehicles (hereinafter referred to as "LENDER").

Now, therefore, ADMINISTRATOR and LENDER agree as follows:

I. Definitions:

- A. The term "PROGRAM" refers to the GAP Protection Program designed and administered by ADMINISTRATOR for the benefit of LENDER and its borrowers.
- B. The term "CONTRACT" refers to a Guaranteed Auto Protection Addendum sold by LENDER to its customers and which is administered by ADMINISTRATOR.
- C. The term "DEBTOR" refers to the purchaser of the CONTRACT.

II. The Obligations of ADMINISTRATOR:

- A. **APPOINTMENT:** ADMINISTRATOR is appointed and shall act as LENDER's administrator for CONTRACTS it issues and ADMINISTRATOR is authorized, when requested by LENDER, to perform the services to the extent necessary to meet LENDER's needs and a CONTRACT's obligations.
- B. **PRINTING:** ADMINISTRATOR will print all CONTRACTS.
- C. **EDUCATION:** ADMINISTRATOR is appointed and shall act as LENDER's administrator for CONTRACTS it issues and ADMINISTRATOR is authorized, when requested by LENDER, to perform the services to the extent necessary to meet LENDER's needs and a CONTRACT's obligations. In either case, ADMINISTRATOR shall perform the following services:
 - 1. Help educate, train and advise LENDER or LENDER's representative in the administration and marketing of the PROGRAM.
 - 2. Provide administrative forms, promotional displays, manuals, and unexecuted CONTRACT forms to enable LENDER to sell and issue CONTRACTS and to administer the PROGRAM, to the extent the responsibility for administration has not been delegated to ADMINISTRATOR.
- D. **ASSUMPTION OF RISKS:** ADMINISTRATOR shall be responsible for LENDER's valid and proper claims submitted under the PROGRAM subject to timely reporting of CONTRACTS by LENDER.
- E. **INSURANCE POLICY:** Upon receipt of the premium for each CONTRACT, ADMINISTRATOR shall acquire and maintain an insurance policy which shall fully insure, subject to the carrier's underwriting rules, valid and proper claims of those CONTRACTS administered by ADMINISTRATOR under this AGREEMENT.
- F. **CLAIMS PROCEDURES AND PAYMENTS:** Using claim guidelines and its expertise, ADMINISTRATOR will be responsible for the administration and payment of claims under the CONTRACTS.

- G. **CLAIMS DENIAL:** ADMINISTRATOR shall establish and maintain all forms, documents and procedures necessary to properly deny invalid or improper claims for benefits under CONTRACTS, to notify claimants of such denial and to provide for the proper review of such denied claims.
- H. **CONTESTED CLAIMS:** ADMINISTRATOR is authorized to settle or compromise disputed claims. ADMINISTRATOR agrees that it will attempt to resolve any such dispute amicably and fairly in accordance with the provisions of the CONTRACTS.

III. Lender Obligations:

- A. **NOTIFICATION OF COMPANY PERSONNEL:** LENDER will inform its personnel of its relationship with ADMINISTRATOR, the CONTRACTS to be administered and the procedures to be followed.
- B. **SOLICITATION:** LENDER shall solicit CONTRACTS to DEBTORS, on forms which have been approved by ADMINISTRATOR. Such sales are incidental to and are a natural extension of LENDER's business of selling and financing the purchase or lease of motor vehicles. LENDER acknowledges that the PROGRAM has been developed by ADMINISTRATOR and that LENDER had been licensed to use the PROGRAM's trade names, promotional materials, CONTRACT forms and proprietary procedures associated therewith only during the term of this AGREEMENT. At the termination of this AGREEMENT, LENDER shall return all such material and CONTRACT forms to ADMINISTRATOR and shall not thereafter use the PROGRAM's trade names, forms, or proprietary procedures.
- C. **CONTRACT ISSUE:** LENDER shall issue CONTRACTS to DEBTORS. LENDER shall, as promptly as possible following the sale by LENDER of CONTRACTS but no later than thirty (30) days after each such sale, report and remit to ADMINISTRATOR completed copies of CONTRACTS together with the current rate for such CONTRACTS listed in the applicable current rate schedule, which may be changed upon thirty days notice. Neither ADMINISTRATOR nor the insurance carrier shall have any obligation to LENDER or DEBTOR with respect to any CONTRACT until LENDER shall have timely remitted to ADMINISTRATOR the full amount of the current rate. Any acceptance by ADMINISTRATOR of CONTRACTS not submitted on a timely basis does not constitute waiver of the right of ADMINISTRATOR to reject a CONTRACT not timely submitted and to exclude such CONTRACT from the terms of this AGREEMENT.

Any refund made by LENDER to DEBTOR as provided for in the CONTRACT shall be paid by LENDER as described in CONTRACT. ADMINISTRATOR shall be responsible to refund to LENDER any unearned fees in accordance with the same terms as the refund provision allowed in the CONTRACT. Any cancellation fee provided for in the CONTRACT shall be retained by ADMINISTRATOR. LENDER acknowledges that a lending institution which may take assignment of the CONTRACT may have specific refund requirements. LENDER and ADMINISTRATOR agree that if refund requirements of such lending institution differ from the CONTRACT, its requirements shall apply.

- D. **COMPENSATION:** As full and complete payment of services authorized and rendered herein, LENDER shall pay ADMINISTRATOR the amounts which are listed and shown in the applicable current rate card.
- E. **CONFORMANCE TO PROCEDURES:** LENDER agrees to follow the procedures and to use only the forms of CONTRACTS provided and approved by ADMINISTRATOR, to be administered under this AGREEMENT. LENDER further agrees to return any void or spoiled CONTRACTS to ADMINISTRATOR.
- F. **LEGAL AND REGULATORY MATTERS:** LENDER will upon receipt of any summons, writ, pleading or other notice of suit wherein ADMINISTRATOR or any of its affiliate is named a party in any manner, forward to ADMINISTRATOR a copy of the same by express or overnight mail.

Upon receipt by LENDER, of a regulatory inquiry or complaint relating to the services provided and/or business conducted under this AGREEMENT or PROGRAM, a copy of the same shall be forwarded to ADMINISTRATOR by express mail or overnight mail.

IV. Arbitration

- A. The parties agree that the transactions contemplated by this Agreement substantially affect interstate commerce. All disputes and differences between the parties that cannot be resolved through good-faith negotiations are to be decided by arbitration. Punitive damages shall not be awarded in, under, or as a part of any such proceeding, but either party is entitled to reimbursement for punitive damages paid to a third party if the facts establish a right of indemnification. The arbiters are empowered to fully interpret this Agreement and the obligations upon the parties created thereunder but shall regard this Agreement from the standpoint of practical business and equity rather than from that of strict law.

- B. The Court of Arbiters, which is to be held in the City of Deerfield, Illinois, shall consist of three persons familiar with the insurance business and/or the marketing of property and casualty products sold through lenders. Each party may appoint one arbiter. The third arbiter is to be selected by the two appointed arbiters before the beginning of the arbitration. Should one of the parties decline to appoint an arbiter or should the two arbiters be unable to agree upon the choice of a third, the appointment shall be subject to the Commercial Arbitration Rules of the American Arbitration Association. The arbiters are not bound by any rules of law or evidence. They shall decide by a majority vote and from their written decision there can be no appeal. The final arbiters' decision shall be rendered within sixty days after notice of a dispute is received by either party. The cost of arbitration, including the fees of the arbiters, shall be borne by the losing party unless the arbiters shall otherwise decide.

V. Hold Harmless - Indemnification:

ADMINISTRATOR agrees to hold LENDER harmless from any and all expenses, costs, causes of action, damages, judgments, attorney fees, penalties or fines (collectively "Indemnified Losses") arising out of or caused by the alleged negligence, willful and wanton misconduct, fraud, dishonesty, forgery, embezzlement, misappropriation or theft (collectively "Wrongful Conduct") of ADMINISTRATOR or of its officers, agents or employees in connection with or arising from ADMINISTRATOR's performance or non-performance of obligations required under this AGREEMENT. For purposes of this paragraph, none of the acts, omissions or representations of LENDER or its affiliates, employees or other representatives shall be regarded as those of ADMINISTRATOR. No action or inaction on the part of ADMINISTRATOR shall be found to constitute Wrongful Conduct to the extent the legal standard used to measure ADMINISTRATOR's conduct had not been made reasonably clear prior to the time of ADMINISTRATOR's action or inaction.

Except to the extent that ADMINISTRATOR has indemnified LENDER herein, LENDER agrees to indemnify and hold ADMINISTRATOR harmless from and against any and all Indemnified Losses relating in any way to any transaction contemplated by or relating to this AGREEMENT or any prior agreement covering the same subject matter. Without limiting the foregoing, LENDER agrees to assume sole responsibility for LENDER's alleged negligent or wrongful acts. Negligent acts include but are not limited to allegations of or claims of the following: issuance of CONTRACTS not in conformance with underwriting guidelines; physical loss of CONTRACTS; failure to promptly submit CONTRACTS; failure to promptly remit premium; failure to promptly make refunds; failure to notify ADMINISTRATOR of early loan terminations; failure to promptly process rejected risks; failure to promptly notify ADMINISTRATOR of claims; failure to maintain appropriate licenses; or failure to maintain a separate trust account when required by law, regulation or agreement.

LENDER and ADMINISTRATOR shall be bound by the terms of this Article V notwithstanding termination of this AGREEMENT.

VI. Duration of AGREEMENT:

- A. This AGREEMENT shall be effective on date first written above and shall continue in force until terminated by either party giving to the other not less than thirty (30) days prior written notice of such termination. Either party may terminate this AGREEMENT immediately upon the discovery of fraud or material breach of the AGREEMENT by the other party, its agents or employees. Termination for fraud or material breach shall be effective upon receipt of written notice by the non-terminating party. However, this AGREEMENT only covers CONTRACTS issued on and after the effective date of the insurance policy described in Article II Section E above. Termination of this AGREEMENT shall not affect the responsibilities of either party on CONTRACTS issued prior to the effective date of termination.
- B. This AGREEMENT shall terminate automatically without written notice from ADMINISTRATOR if a petition of bankruptcy is filed by or against LENDER, or if LENDER shall have made an assignment for the benefit of creditors, or shall have been voluntarily adjudicated a bankruptcy and any court of competent jurisdiction or if a petition of reorganization of LENDER or if any arrangement with creditors is filed by or against LENDER or if receiver shall have been appointed for all or a substantial part of LENDER's business.

VII. Confidential Information:

The parties agree that this Agreement shall be treated as a joint agreement under Title V (Privacy) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*) and regulations promulgated pursuant thereto. No party shall disclose or use nonpublic personal information about consumers or customers that it receives from the other party except to carry out the purposes for which the disclosing party disclosed such information, which may include disclosures on the part of the receiving party pursuant to an exception to the notice and opt-out requirements established under the laws cited in this paragraph. Each party shall apply the protections of an appropriate and effective information security program to such information as may be required by law in light of the relationship described in this paragraph.

VIII. Miscellaneous:

- A. This AGREEMENT contains the entire AGREEMENT between the parties and supersedes all prior AGREEMENTs either oral or written, between LENDER and ADMINISTRATOR, and may not be amended except in writing signed by both parties.
- B. The LENDER shall have no authority to make, alter, modify, waive, or discharge any terms or conditions of any ADMINISTRATOR administered PROGRAM or CONTRACT, or any performance thereunder, or to waive any forfeiture, or to incur any liability on behalf of ADMINISTRATOR or the insurance carrier.
- C. ADMINISTRATOR may examine, during the term of this AGREEMENT and for one (1) year after the expiration of any CONTRACT issued pursuant hereto, at all reasonable times at the office of the LENDER, the books, records, and any and all such other information of the LENDER pertaining to the PROGRAM. ADMINISTRATOR agrees not to use any information so acquired for any purpose other than as contemplated herein.
- D. This AGREEMENT is not assignable without the written consent of ADMINISTRATOR and shall not be construed to make LENDER an agent, expressed or implied, or an employee of ADMINISTRATOR.
- E. The validity, interpretation and performance of the AGREEMENT shall be controlled by and construed under the laws of the State of Illinois.
- F. All notices, demands, or communications regarding this AGREEMENT shall be in writing, signed by the party serving the same, and deposited, postage prepaid in the United States Postal Service as certified or registered mail or delivered by facsimile to the appropriate address.
- G. If any provision of this AGREEMENT is held invalid under the law or regulations of any state where used, such provision shall be deemed not to be part of this AGREEMENT in such state, but shall not invalidate any other provisions of this AGREEMENT.

LENDER: _____
 (See Schedule A, if applicable)

ADMINISTRATOR: Western Diversified Services, Inc.
 Lyndon Administrative Services, Inc.

Lender Representative: _____
Signature

Administrator Representative: _____
Signature

Title: _____
 (Corporate Officer or Partner)

Title: _____
 (Corporate Officer)

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____