

### DECLARATION

Lender Name		Address		City	State	ZIP Code
Lender No.	Financing Contract Date (Month/Day/Year)			Lender Phone Number		
Last Name of Customer/Borrower		First Name		Phone Number		
Street Address		City	State	ZIP Code		
Vehicle Purchase Date (Month/Day/Year)		Vehicle Identification Number (VIN)				
Year		Make		Model		
Term of Financing Contract (Mos)		Amount Financed*		MSRP/NADA		
<b>CHARGE TO CUSTOMER/BORROWER:</b>				Interest Rate		
Maximum Benefit Amount \$50,000				*Finance Benefit Limit 150% of MSRP/NADA		

This Guaranteed Asset Protection (GAP) Addendum (Addendum) amends Your **Financing Contract**. This Addendum is between the **Customer/Borrower** (I, You, Your) and the **Lender** (We, Us, Our), or if assigned with the assignee.

You have voluntarily elected to purchase this Addendum which amends Your **Financing Contract**. **This Addendum is not considered insurance and does not take the place of insurance on the Covered Vehicle.** You are responsible for insurance required by the **Financing Contract** or applicable state law. You are responsible for handling all notifications or insurance claims that are required to be filed with Your **Primary Carrier**.

In the event of a **Constructive Total Loss** to the **Covered Vehicle**, the **GAP Amount** will be **Waived** pursuant to all of the terms and conditions of this Addendum. You will remain responsible for payment of any items not included in the **GAP Amount**.

**ASSIGNMENT:** This Addendum will remain a part of the **Financing Contract** if the **Financing Contract** is assigned, sold or transferred by the **Lender**.

**YOUR RIGHT TO CANCEL** You have the unconditional right to cancel this optional Addendum for a refund/credit of the unearned portion of the charge for this Addendum at any time. If any cancellation occurs within thirty (30) days of the Addendum purchase date, You will receive a full refund/credit of the Addendum cost, so long as no benefits have been provided. If You cancel this Addendum after the first thirty (30) days from the Addendum purchase date, a refund/credit of the Addendum cost will be calculated by the pro rata method, or by the refund method as may be required by state or federal law. All refund amounts will be returned to the Lender, unless proof of total payoff of the Financing Contract is provided by You. If You choose to cancel this Addendum, You must request a refund/credit, from the Dealer/Creditor, in writing, at the address shown above. If You do not receive the refund/credit within sixty (60) days of notice of cancellation/termination, contact the GAP Administrator shown above to assist You in obtaining any refund due. Any refund may be applied by the creditor as a reduction of the amount owed under the Finance Agreement unless the borrower shows that the finance agreement has been paid in full. However, in the event of a Constructive Total Loss and a benefit has been provided, the Addendum will be deemed as fully earned and no refund will be due.

**TERMINATION OF ADDENDUM** This Addendum will terminate on the date Your **Financing Contract** is scheduled to end and no refund will be due. The Addendum will also terminate for the following reasons, including but not limited to: 1. Payment in full of the **Financing Contract**; 2. Expiration of any redemption period following the repossession or surrender of the **Covered Vehicle**; 3. In the event of a **Constructive Total Loss** or theft of the **Covered Vehicle**; or 4. The date the **Financing Contract** is refinanced; and in these events a refund may be due if no benefits have been provided. You must request a refund, in writing, from the **Dealer/Creditor** for any terminating event within ninety (90) days of the occurrence of such event.

YOU MAY PURCHASE THIS ADDENDUM ONLY AT THE TIME THE FINANCING CONTRACT IS ORIGINALLY EXECUTED. BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE AND AGREE THAT YOUR ACCEPTANCE OF THIS GAP ADDENDUM IS VOLUNTARY AND IS NOT REQUIRED IN ORDER FOR YOU TO OBTAIN CREDIT, DOES NOT IMPACT YOUR ABILITY TO OBTAIN ANY PARTICULAR OR MORE FAVORABLE CREDIT TERMS, AND HAS NO EFFECT ON THE TERMS OF THE RELATED SALE OF THIS COVERED VEHICLE. The GAP Amount may decrease over the term of Your Financing Contract and may not extend for the full term of Your Financing Contract. You may wish to consult an alternative source to determine whether similar Benefits may be obtained and at what cost. You acknowledge that this Addendum supersedes any other representations made. If You purchase this Addendum from this Lender, You understand that the Lender may retain all or a portion of the charge paid by You. This Addendum includes a binding arbitration clause. You acknowledge that You have read and understand the entire Addendum and its terms and conditions which may reduce or prevent You from receiving all or part of the Benefits due under this Addendum and that You request coverage.

\_\_\_\_\_  
Customer/Borrower's Signature

\_\_\_\_\_  
Date (must be executed on **FINANCE CONTRACT** date)

## REPORT YOUR CONSTRUCTIVE TOTAL LOSS TO THE GAP ADMINISTRATOR:

American Auto Guardian, LLC  
P.O. Box 1157 • Arlington Heights, IL 60006-1157  
(888) 919-3761 (Claims) • (888) 919-3629 (Other Questions)

In the event of a Constructive Total Loss, it is requested that you notify the Administrator as soon as possible, but no later than 90 days after receiving settlement from the Primary Carrier, or if no Primary Carrier coverage is in effect on the Date of Loss, within 90 days of the Date of Loss. An extension of time for notifying the Administrator of a claim will be given if there is a reasonable justification for the extension. Otherwise, your claim may be denied.

You agree to provide the following documentation to the Administrator within 90 days of receiving settlement from the Primary Carrier or if no Primary Carrier coverage is in effect on the Date of Loss, within 90 days of the Date of Loss: (1) Vehicle valuation statement; (2) Estimate of damage; (3) Insurance settlement check; (4) Automobile insurance policy declaration page; (5) Accident/police report; and (6) Fire report (if applicable). Any extension of time for providing these documents will be given if there is a reasonable justification for the extension. Otherwise, your claim may be denied.

The Administrator will seek to obtain the following documents that are necessary to the adjudication of your claim: (1) Original Financing Contract including this Addendum; (2) Payoff from the Lender as of the Date of Loss; (3) Loan history; and (4) any additional reasonable documentation needed by the Administrator to include, but not limited to, a sworn proof of loss, and/or examination under oath. If the Administrator requests additional documentation from You, the time period for obtaining and submitting that documentation will be reasonably extended.

If requested by the Administrator, you agree to reasonably cooperate and assist the Administrator in obtaining the above documents. Any request for your cooperation and assistance will be based upon a reasonable justification provided by the Administrator, including but not limited to, the need for you to authorize the disclosure of the above documents to the Administrator. Failure to reasonably cooperate and assist the Administrator after being provided a reasonable justification for the request by the Administrator may result in your claim being denied.

## TERMS AND CONDITIONS

### DEFINITIONS

■ **Actual Cash Value (ACV):** The retail value of the Covered Vehicle immediately prior to the Date of Loss as established by the Primary Carrier insurance. If there is no Primary Carrier insurance coverage the ACV will be determined to be the retail value of the Covered Vehicle, immediately prior to the Date of Loss, as listed in a national or regional guide, such as National Automobile Dealers Association (NADA) or, at the GAP Administrator's discretion, the GAP Administrator may use an equivalent national or regional guide for the territory in which the Covered Vehicle is principally garaged. For a Covered Vehicle which has no retail value available, or is located in territories where NADA or an equivalent national or regional guide is not customarily used, ACV will be determined using the best information available to the GAP Administrator, which accurately reflects the retail value of the Covered Vehicle and is customarily used as the basis for establishing ACV for Covered Vehicle in the territory of the Covered Vehicle location.

■ **Benefit:** The amount which the Lender is obligated to Waive under the definition of GAP Amount and pursuant to all of the terms and conditions of this Addendum.

■ **Constructive Total Loss:** A direct and accidental loss of or damage to Covered Vehicle, which meets one of these criteria: 1. the total cost to repair the Covered Vehicle is greater than or equal to the ACV of the Covered Vehicle immediately prior to the Date of Loss; or 2. the Covered Vehicle is stolen and is not recovered within thirty (30) days from the date a police report was filed, and an insurance carrier declares the Covered Vehicle a Constructive Total Loss. In the case there is no primary insurance coverage, the Covered Vehicle must be available for the GAP Administrator's inspection or appraisal to determine if the Covered Vehicle is a Constructive Total Loss. You will not be held responsible for any inspection cost. If the Covered Vehicle is not available for inspection or appraisal the GAP Amount will not be Waived except when the Constructive Total Loss is due to unrecovered theft and a police report has been filed. In the event of a theft where the Covered Vehicle is recovered and returned to the Customer/Borrower after thirty (30) days, any GAP Amount that has been Waived shall be returned to the Lender.

■ **Covered Vehicle:** Any four-wheel private passenger automobile, van, or light truck, as described in the Financing Contract, utilized for personal purposes and which is not otherwise excluded from coverage within this Addendum.

■ **Customer/Borrower:** The person(s) named in the Financing Contract receiving a Financing Contract from the Lender.

■ **Date of Loss:** The date on which the Covered Vehicle is stolen or incurs physical damage that is severe enough to constitute a Constructive Total Loss.

■ **Delinquent Payment:** Any payment which is paid after the due date stated in the Financing Contract. The Delinquent Payment will be determined as of and limited to amounts past due on the Date of Loss.

■ **Finance Benefit Limit:** The Manufacturer's Suggested Retail Price (MSRP) for new vehicles or the NADA retail value for used vehicles multiplied by the Finance Benefit Limit percentage as stated in this Addendum.

■ **Financing Contract:** Means the financing agreement between the Borrower and the Lender for the purchase of the Covered Vehicle.

■ **GAP Administrator:** The entity designated by the Lender to perform administrative services for this Addendum.

■ **GAP Amount:** The GAP Amount is the difference between the Net Payoff on the Date of Loss and the Primary Carrier settlement but not to exceed \$50,000. The GAP Amount includes the amount of Your physical damage deductible on the Primary Carrier's policy up to \$1,000. In the event there is no Primary Carrier coverage in effect on the Date of Loss, or the Primary Carrier denies coverage or is declared insolvent, or if the Primary Carrier policy limits are less than the Actual Cash Value of the Covered Vehicle, the Lender will only Waive the difference between the Net Payoff as of the Date of Loss and the Actual Cash Value.

■ **Lender:** Entity that originates the Financing Contract.

■ **Net Payoff:** The amount, as of the Date of Loss, as represented by the portion of the Customer/Borrower's unpaid balance according to the original payment schedule of the Financing Contract that is secured by collateral pursuant to all of the terms and conditions of this Addendum.

- The amount does not include any unearned finance charges; Financing Contract charges; late charges; any Delinquent Payments; deferred payments; uncollected service charges; refundable prepaid taxes and fees; disposition fees; termination fees; penalty fees; the recoverable portion of financed insurance charges; or the recoverable portion of financed amounts for unearned insurance premiums or refundable charges (including, but not limited to credit life, and vehicle service contracts/warranties charges) that are owed by the Customer/Borrower on the Date of Loss; and amounts that are added to the Financing Contract balance after the inception date of the Financing Contract.
- On a Financing Contract that does not have Uniform Monthly Payment terms for the full period of the Financing Contract, the Net Payoff amount will be determined as if all payments were distributed evenly on a monthly basis, over the full term of the Financing Contract, and using the original amount financed, interest rate and monthly payment.
- In the event the amount financed exceeds the Finance Benefit Limit at inception date of the Addendum, the Net Payoff will be reduced by the percentage the original amount financed exceeds the Finance Benefit Limit.
- If the Financing Contract exceeds 84 months, the Net Payoff will be calculated using the maximum term of GAP of 84 months.

■ **Primary Carrier:** The insurance company that is selected by the **Customer/Borrower** to provide physical damage coverage on the **Covered Vehicle**; or provides liability coverage to any individual who has caused Your vehicle to incur a **Constructive Total Loss**. For the purposes of this Addendum, insurance that is forced placed, after the **Date of Loss**, is not considered a **Primary Carrier**.

■ **Settlement Date:** The date the insurance carrier issues payment for the **Customer/Borrower's Covered Vehicle** for the **Constructive Total Loss**.

■ **Uniform Monthly Payment:** Installment payments that are equal in amount, except first and final payment, and are due at equal monthly intervals.

■ **Waive:** The cancelling of a debt due on **Customer/Borrower's Financing Contract** pursuant to all of the terms and conditions of this Addendum.

#### **EXCLUSIONS**

##### **A) Benefits shall not be provided upon the occurrence of a Constructive Total Loss:**

1. when a date of loss is prior to the date of the Addendum.
2. for any amounts deducted from the insurance carrier's settlement due to wear and tear, prior damage, unpaid insurance premiums, salvage, towing and storage and other condition adjustments.
3. to a vehicle used for commercial purposes provided that the Dealer did not know or could not have known that the vehicle would be used for commercial purposes at the time of the purchase of this GAP Addendum. Commercial purposes includes, but is not limited to transportation of persons or property for hire, compensation, profit, or in the furtherance of a commercial enterprise which includes but is not limited to one or more of the following: 1. a business name is permanently displayed on the vehicle; 2. vehicle is declared or deducted on federal income tax as a business vehicle; and 3. the primary insurance for the vehicle is a Business Auto Policy or Commercial Vehicle Policy. Share-the-expense car pools are not considered a commercial purpose.
4. when a **Constructive Total Loss** occurs during or after confiscation of **Covered Vehicle** by a government body or public official.
5. when a **Constructive Total Loss** is caused by theft, where an accident/police report has not been filed.
6. when a **Constructive Total Loss** is a result of being operated, used, or maintained in any race, speed contest, or other contest.
7. when a **Constructive Total Loss** occurs during or after the **Covered Vehicle** has been repossessed by a **Lender** or placed in the **Lender's** or its employee's or agent's possession.
8. when a **Constructive Total Loss** results directly or indirectly from any fraudulent, deceptive, illegal, intentional or criminal act by You, whether acting alone or in collusion with others.
9. when a **Constructive Total Loss** results from intentional, grossly negligent, or criminal acts of a **Customer/Borrower** or their permissive user, including but not limited to DUI/DWI, or while seeking to elude lawful apprehension or arrest by a law enforcement official. No **GAP Amount** will be **Waived** until the charge has been dismissed or adjudicated not guilty.
10. unless a **Constructive Total Loss** occurs within: 1. the United States of America, its territories or possessions; 2. Canada; or 3. being transported between any of the previously stated.

##### **B) Benefits shall not be provided for the following items:**

1. when the **Customer/Borrower** purchased coverage after the effective date of the **Financing Contract**.
2. to special carpeting, furniture, bars, audio, video, or data equipment, cooking and sleeping facilities, customized paint, or any equipment installed to overcome a physical handicap, trailers, special commercial usage optional equipment, accessories and body components. This exclusion does not include: factory approved conversion packages and dealer installed options usually included in used car value guidebooks or attributable to standard or optional equipment available from the manufacturer of the **Covered Vehicle**.
3. a **Financing Contract** that requires the first payment to be made more than one hundred twenty (120) days from the date of the **Financing Contract**.

#### **ARBITRATION**

**READ THE FOLLOWING ARBITRATION PROVISION CAREFULLY. IT LIMITS CERTAIN RIGHTS, INCLUDING YOUR RIGHT TO OBTAIN RELIEF OR DAMAGES THROUGH COURT ACTION.**

1. Any and all claims, disputes, or controversies of any nature whatsoever arising out of, relating to, or in connection with (1) this Addendum and the purchase thereof; and (2) the validity, scope, interpretation, or enforceability of this provision or of the entire Addendum, shall be subject to final and binding arbitration.
2. To begin arbitration, either you or we must make a written demand to the other party for arbitration. The arbitration will take place before a single arbitrator. It will be administered in keeping with the Consumer Arbitration Rules ("Rules") of the American Arbitration Association ("AAA") in effect when the claim is filed. You may get a copy of these AAA's Rules by contacting AAA at 1633 Broadway, 10th Floor, New York, NY 10019, or by visiting [www.adr.org](http://www.adr.org). Unless you and we otherwise agree, the arbitration will take place in the county and state where you live. The Federal Arbitration Act, 9 U.S.C. § 1, et seq., will govern, and no state, local or other arbitration law will apply.
3. You agree and understand that this arbitration provision means that you give up your right to go to court on any claim covered by this provision. You also agree that any arbitration proceeding will only consider your claims. Claims by, or on behalf of, other individuals, including class actions, will not be arbitrated in any proceeding that is considering your claims. Please refer to the special state disclosures section of this Contract for any added requirements in your state. In the event this arbitration provision is not approved by the appropriate state regulatory agency, and/or is stricken, severed, or otherwise deemed unenforceable by a court of competent jurisdiction, YOU AND WE SPECIFICALLY AGREE TO WAIVE AND FOREVER GIVE UP THE RIGHT TO A TRIAL BY JURY. Instead, in the event any litigation arises between you and us, any such lawsuit will be tried before a judge, and a jury will not be impaneled.

**FRAUD AND MISREPRESENTATION** This Addendum is issued in reliance upon the truth of all representations made by You. A **GAP Amount** will not be **Waived** as to any **Financing Contract** where **You**: 1. Intentionally concealed or misrepresented any material fact; 2. Engaged in fraudulent conduct; or 3. Made a false statement relating to submitting a **Benefit** request.

If **You** have concealed or misrepresented any material fact(s) concerning this coverage, or in case of fraud, attempted fraud, or the false swearing by affecting any matter relating to this coverage, whether before or after the **Benefit** request, this Addendum may be voided and all charges will be returned.