



# **DEALER AGREEMENT**

**Administered by:  
American Guardian Warranty Services, Inc.**

**DEALER AGREEMENT**

THIS DEALER AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ by and between the following parties:

AMERICAN GUARDIAN WARRANTY SERVICES, INC. an Illinois corporation, with its principal place of business at 800 Roosevelt Rd., Glen Ellyn, IL (hereinafter referred to as "AGWS")  
And

\_\_\_\_\_ a \_\_\_\_\_  
[sole proprietorship, partnership, corporation]  
with its principal place of business at: \_\_\_\_\_ (hereinafter referred to as "Dealer") Federal Tax I.D # \_\_\_\_\_ or S.S.# \_\_\_\_\_.

**RECITALS**

- I. Dealer desires to offer to its new and used vehicle purchasers a vehicle service contract covering mechanical breakdown or failure, and the repairs thereof, according to the terms and provisions of the Vehicle Service Contract or Mechanical Breakdown Insurance Policy (hereinafter referred to as the "Contract").
- II. AGWS has developed a proprietary program which enables automobile dealers to provide such Contracts to the purchasers of new and used motor vehicles (hereinafter referred to as the "Extended Service Contract Program" or the "Program").
- III. It is the desire of Dealer to utilize, and the desire of AGWS to provide to Dealer, the Extended Service Contract Program.

**NOW, THEREFORE, AGWS AND DEALER AGREE AS FOLLOWS:**

**AGREEMENT**

**IV. OBLIGATIONS OF DEALER**

- 1. **Marketing of Program.** Dealer agrees to use its best efforts to market and sell Contracts in accordance with the terms of the Extended Service Contract Program. Dealer shall offer to its customers Contracts only on a form approved by AGWS. Each approved Contract shall be sold only with respect to a qualifying vehicle, and only in accordance with and subject to AGWS' Extended Service Contract Program policies, manuals, rules, regulations, and fees in effect at the time such Contract is sold. AGWS may at any time revise its Extended Service Contract Program, policies, manuals, rules, regulations and fees. In the event, Dealer does not follow AGWS policies, manuals, rules, regulations, fees or use AGWS forms, AGWS shall not be obligated to perform administrative services and Dealer shall be required to indemnify and hold AGWS harmless from any and all claims against AGWS, its agents or representatives. The Dealer shall have no authority to alter, modify, waive, or discharge any terms or conditions of the Contract or the Program.
- 2. **Proprietary Program.** Dealer acknowledges that the Extended Service Contract Program, including but not limited to, all trade names, promotional materials, contracts, forms and procedures associated therewith, has been developed at great effort and expense by AGWS, and constitutes proprietary property of AGWS. Dealer agrees that it shall use the Program and all materials associated therewith only during the time this Dealer Agreement is in effect, and only for the purposes of this Program. At the termination of the Dealer Agreement, Dealer shall return all program materials to AGWS, and shall not engage in any extended service contract vehicle business using the proprietary Program or its trade names, procedures and materials developed by AGWS in connection therewith.

3. **Relationship of Dealer to AGWS.** Nothing in this agreement shall be construed to constitute AGWS as the partner, employee or agent of the Dealer, or the Dealer as partner, employee, or agent of AGWS, it being intended that AGWS is an independent contractor responsible only for its own actions. The Dealer shall in no manner obligate AGWS, or incur any expense or liability on behalf of AGWS without AGWS consent. In no event shall AGWS be responsible for any negligent or wrongful actions of the Dealer or its employees, including but not limited to, misrepresentations concerning the terms or conditions of the Contract.
4. **Net Dealer Cost.**
  - a) The Dealer shall, following the sale by Dealer of each Contract, retain as its fee the purchase price of the Contract less the "Net Dealer Cost" as set forth in the rate charge cards provided to the Dealer by AGWS, and shall remit to AGWS the full amount of the "Net Dealer Cost". For such Contracts by the 15<sup>th</sup> day of the month for service agreements sold the preceding month. Neither AGWS or Insurance Company shall have any obligation to Dealer with respect to any Contract until Dealer shall have remitted to AGWS the full amount of the "Net Dealer Cost" as provided in this paragraph, and unless the contract is approved by AGWS in accordance with the terms of the Extended Service Contract Program and this Agreement.
  - b) In the event any portion of the Contract is financed by AGWS, then the amount and retention of the Dealer's fee and the amount of, and time for, remittance of the purchase price for the Contract shall be as set forth in the Financing Agreement between Dealer and AGWS. Neither AGWS nor Insurance Company shall have any obligation to Dealer with respect to any such financed Contract unless the Contract and financing thereof is approved by AGWS in accordance with the terms of the Extended Service Contract Program and this Agreement.
5. **Fiduciary.** Until the Net Dealer Cost is delivered to AGWS, the Dealer shall hold the proceeds of each Contract sale in a fiduciary capacity as trustee for AGWS and the Insurance Company, and under conditions satisfactory to AGWS and the Insurance Company.
6. **Extention of Credit.** An extension of credit by the Dealer for the payment of any Contract sold by the Dealer shall be at the risk of the Dealer, and shall not relieve the Dealer from remitting to AGWS the applicable Net Dealer Cost and Contract when due.
7. **Accounting.** The Dealer agrees to account to AGWS for all contracts, documents, and property received from AGWS and to return them to AGWS upon request, and to provide all assistance necessary to enable AGWS to prepare accurate books and records of account for transactions under the Program, including but not limited to, records of Contracts sold, payments received and remitted by Dealer, and claims made. Dealer agrees to maintain accurate books and records documenting transactions under the Program.
8. **Repairs.**
  - a) The Dealer shall provide repair services on vehicles covered by Contracts administered by AGWS, whether or not such Contracts are sold by the Dealer. Prior to commencing repairs, the Dealer shall diagnose the nature and cause of the mechanical breakdown or failure to determine if it is covered by the Contract, and furnish AGWS with an accurate estimate of the cost of parts and labor to repair the failed parts. Dealer shall contact AGWS to receive authorization prior to proceeding with any repairs. Repairs made without such authority, as evidenced by an authorization number from AGWS, shall be considered uncovered and unauthorized, and Dealer shall not be reimbursed for such repairs.

- b) All repairs shall be made in a good and workmanlike manner. The Dealer agrees to unconditionally guarantee any repair provided under the Contract against defects in workmanship and materials for a period of at least 90 days after the date of such services.
9. **Claims.** The Dealer shall submit to AGWS previously approved claims for payment within 60 days after the completion of the repairs. Failure to timely remit claims shall result in denial of the claim. No such claim shall be submitted for an amount greater than that approved by AGWS. The Dealer further agrees not to submit to AGWS for payment any claims for: (a) repairs or expenses of components or parts not covered by the Contract; (b) repairs or expenses resulting from the failure of the Dealer to perform repairs in a good and workmanlike manner; (c) repairs or expenses for replacements of parts or components to correct conditions which the Dealer knew existed, or reasonably should have known existed, at the time the covered vehicle was sold; and (d) repairs or expenses which are covered by a manufacturer's warranty or a dealer's or repairer's warranty or guarantee. The Dealer agrees that any improper submission of claims may be rejected by AGWS, and will result in denial of the claim. Dealer further agrees that if the incurred loss ratio calculated by American Guardian for contracts sold exceeds 100% for any calendar years, American Guardian has the right to limit reimbursement amounts to factory flat rates manual for labor and manufacturer's suggested retail price less 20% for parts reimbursement.
10. **Inspection of Books and Records.** Dealer agrees that it shall make available to AGWS at times mutually convenient to Dealer and AGWS, for purposes of inspection and copying, any books, records or other documents relating to the Program.
11. **Indemnification.** Dealer agrees to indemnify and hold AGWS harmless from any and all claims, demands, expenses, causes of actions, losses or damages of whatsoever kind or nature, including attorney's fees, court costs and punitive or exemplary damages, arising from acts or omissions of the Dealer or its employees or agents including but not limited to, negligent acts, intentionally wrongful acts, and claims of misrepresentation, fraud, or made pursuant to a consumer protection statute.
12. **Internet and Direct Mail Sales.** Dealer agrees not to solicit extended service agreements in those states which prohibit the sale of extended service agreements to consumers other than those sales and service customers of the dealer . Nothing in the above shall restrict a dealer from selling extended service agreements to his/her customers directly or through a marketing arrangement empowering a third party to solicit extended service agreements on behalf of the dealer. When authorized \_\_\_\_\_ is hereby appointed as sales agent on behalf of the dealer.

V. **OBLIGATIONS OF AGWS**

1. **Insurance Company.** For the Vehicle Service Contracts, AGWS shall secure on behalf of the Dealer, or where AGWS is the obligor under the Contract, on behalf of AGWS, a policy of insurance issued by a state approved insurance company (the "Insurance Company") indemnifying the Dealer or AGWS, according to the terms and provisions of said insurance policy, against all sums which Dealer or AGWS shall become obligated to pay for repairs according to the terms of the Contract sold by Dealer.
2. **Promotional Materials.** AGWS shall provide Dealer with promotional materials, marketing materials, sale materials, and other support materials associated with its Program in order to assist Dealer in selling Contracts. AGWS shall further supply Dealer with contract forms, rate cards, administrative forms and manuals necessary to administer and operate the Program.

3. **Claims Administration.**
- a) AGWS shall investigate, administer, and approve payment of all claims under Contracts sold by the Dealer in accordance with the terms of the Program, provided that such claims are properly presented and processed by the Dealer.
  - b) AGWS shall establish with the Dealer a claims payment and control system. AGWS shall establish a reimbursement payment schedule to be adhered to by Dealer for repairs covered by Contracts sold by Dealer based on the current retail labor rate of \$ \_\_\_\_\_, and Dealer's retail cost of replacement parts of like kind and quality. The basis for computing such reimbursement schedule may be changed by AGWS on not less than 30 days prior written notice to the Dealer, provided no such change shall apply to any work commenced or completed under the terms of this Agreement prior to the effective date of such change.
  - c) AGWS shall file for, and administer, reimbursement to the Dealer (or the repairing facility if other than the Dealer) from the Dealer's or AGWS' Insurance Company for the cost of valid repairs or replacements, rental car expense, towing expense, and other covered expenses arising under Contracts sold by Dealer in accordance with this Agreement, subject to all terms, conditions, limitations and exclusions of the Contract to which such reimbursement relates.
  - d) AGWS shall make available a telephone number so that the Dealer's customers may contact AGWS directly in connection with claims under approved Contracts.
  - e) In the event Dealer is no longer in business or becomes insolvent, AGWS shall administer any claim properly presented by the purchaser under a Contract sold by the Dealer in accordance with this Agreement. However, AGWS shall retain all rights to dispute its responsibility to administer said claims based upon the provisions of this agreement.
4. **Reports.** AGWS shall prepare and submit to dealer a report of all Contracts sold by the Dealer and reported to AGWS during the preceding month.
5. **Cancellation.** Except as otherwise provided in paragraphs (a) through (d) below, in the event of cancellation of a Contract, all applicable fees received by AGWS and Dealer in connection with such Contract shall be refunded pro rata, as determined by AGWS, to the purchaser of the Contract. Dealer agrees that it will add any refund of the Net Dealer Cost received from AGWS to the pro rata refund of the Dealer's fee, and refund the total amount to Purchaser. Dealer agrees to hold any such refunds from AGWS in trust and in fiduciary capacity, and to use said refunds only for the purpose set forth herein.
- a) Unless otherwise provided by law or the terms of the Contract, in the event of cancellation of the Contract by the Purchaser within 30 days from the effective date of the Contract, and provided no repair work covered by the Contract has been performed. AGWS will refund to the Dealer the full amount of the Net Dealer Cost paid to AGWS for the canceled Contract, less a \$35 cancellation fee, which shall be added to the amount of the Dealer's fee, and the total amount refunded to the Purchaser by the Dealer.
  - b) Unless otherwise provided by law or the terms of the Contract, in the event of cancellation of the Contract by the purchaser after 30 days from the effective date of the Contract, or if repair work was performed or commenced within the first 30 days from the effective date of the Contract, AGWS will retain an amount of the Net Dealer Cost paid to AGWS calculated pro rata, based on the months or mileage elapsed since the effective date of the Contract, whichever is less, and shall refund the balance to the Dealer, minus the cost of any repair work completed or commenced, and a \$35 cancellation fee.

- c) said refund shall be added to the pro rata amount of the Dealer's fee, and the total amount refunded to Purchaser by the Dealer.
- d) In the event a Contract is canceled due to legal repossession of the vehicle outside any recourse period stipulated in the Dealer's finance agreement with the lending institution which financed the purchase of such Contract. AGWS may refund the Net Dealer Cost, as provided above, directly to such lending institution.

**VI. TERMINATION**

Either dealer or AGWS may terminate this agreement:

- a) With or without cause, upon 30 days prior written notice of termination;
- b) At any time by mutual agreement;
- c) Immediately, where either party has ceased doing business, declared insolvency, filed for bankruptcy, or made an assignment for the benefit of creditors; or
- d) Immediately, where any fraud has been committed to this agreement.

Termination of this agreement shall not relieve either party of their responsibilities and obligations with regard to the Contracts issued prior to the effective date of termination.

**VII. MISCELLANEOUS PROVISIONS**

1. **Governing Law and Jurisdiction.** This Agreement shall in all respects be deemed to be made, interpreted, enforced and governed by the laws of the State of Illinois, without reference to its conflict of laws. In the event of any dispute concerning this Agreement. Dealer hereby consents and submits to personal jurisdiction of any state court having its situs in DuPage County.
2. **Notices.** All notices required to be given hereunder shall be deemed to have been duly given by: (i) personally delivering such notice in writing; or (ii) by mailing the notice by certified mail, return receipt requested, with postage prepaid. Notice is deemed to be served and effective when received. Any party may change the address to which notices and other communications hereunder are to be sent to such party by giving the other party written notice thereof in accordance with this provision. Notices shall be given as follows:

If to Dealer: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If to AGWS: American Guardian Warranty Services, Inc.  
 800 Roosevelt Road, E-300  
 Glen Ellyn, IL 60137

3. **Binding Effect.** This Agreement shall be binding upon the parties hereto, and their respective successors, heirs and assigns. Neither party may assign any of its rights or obligations under this Agreement without prior written consent of the other.

4. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.
5. **Entire Agreement.** This Agreement is the entire Agreement between the Parties, and supersedes any and all previous agreements, negotiations or understandings, written or oral, between the parties.
6. **Modification.** This Agreement may only be modified, amended or supplemented by a writing executed by all parties.
7. **No Waiver.** No terms or provision of this Agreement shall be deemed waived, and no breach or default shall be deemed excused, unless such waiver, consent or excuse is in writing, and signed by the parties hereto. A waiver by a party hereto of any breach or default by the other party to this Agreement shall not constitute a continuing waiver, or a waiver of any subsequent breach or default hereunder by the other party.
8. **Headings.** The headings and captions herein are inserted for convenience of reference only, and shall not serve to limit, expand or interpret the paragraphs to which they apply, and shall not be deemed part of this Agreement.
9. **Severability.** In case any one or more of the provisions in this Agreement should be declared by a Court, arbitrator(s) or governmental agency or department to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
10. **Effective Date.** This Agreement is effective as of the day and date set forth above, provided that this Agreement has been duly executed by the designated officer of AGWS.

IN WITNESS WHEREOF, the Dealer and AGWS have executed this Agreement as of the day and date set forth above.

**DEALER**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**American Guardian Warranty Services, Inc.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

# American Guardian Warranty Services, Inc.

## New Account Data Sheet



Dealer Start Date \_\_\_\_\_

Dealership Name (Group Name, if applicable) \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Sales Contact \_\_\_\_\_ Office Manager \_\_\_\_\_

Mail Address (if Different than street address) \_\_\_\_\_

Dealer Group Name \_\_\_\_\_

Franchise: Y / N (if yes, list) \_\_\_\_\_

Other dealer names submitting business under this account (attach separate sheet if Necessary)

AGWS Rate Card Installed: \_\_\_\_\_

Dealer Over Remit: Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \$ \_\_\_\_\_

Recipient #1 \_\_\_\_\_ SS# \_\_\_\_\_ Amount per Contract \$ \_\_\_\_\_

Address \_\_\_\_\_

Recipient #2 \_\_\_\_\_ SS# \_\_\_\_\_ Amount per Contract \$ \_\_\_\_\_

Address \_\_\_\_\_

Recipient #3 \_\_\_\_\_ SS# \_\_\_\_\_ Amount per Contract \$ \_\_\_\_\_

Address \_\_\_\_\_

Special Arrangements or Requests \_\_\_\_\_

### Service Department

Reimbursement Manual(Please Circle all that apply) Motors Mitchell Alldata Chilton/Motors

Hourly Labor Rate \_\_\_\_\_ Tax % \_\_\_\_\_

Service Contact \_\_\_\_\_ Phone Number \_\_\_\_\_

Repair Facility owned by the Dealer (yes/no)? If not please provide name \_\_\_\_\_

Dealer Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Dealer Name \_\_\_\_\_

AGWS Representative Print \_\_\_\_\_

AGWS Representative Company Name \_\_\_\_\_

Return New Account Data and Dealer Agreement to: American Guardian Warranty Services, Inc.,  
800 Roosevelt Rd, Ste E-300; Glen Ellyn, IL 60137