

## PRODUCER AGREEMENT

This Producer Agreement ("Agreement") is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between Direct Protection Warranty Services, LLC. ("DPWS"), a Delaware domiciled limited liability company, with its principal business address of PO Box 253, Suffern, New York, 07430 and \_\_\_\_\_, a/an \_\_\_\_\_ domiciled an located at \_\_\_\_\_, ("Producer "). DPWS and Producer are also referred to herein individually as "Party" and collectively as "Parties." In consideration of the mutual covenants, conditions, and provisions contained herein, the parties agree as follows:

### 1. DEFINITIONS.

In addition to terms defined elsewhere in this Agreement, the terms below are defined as follows:

- 1.1 "Aggregate Loss Ratio"** means, as of the end of any monthly reporting period, the amount equal to (a) the inception-to-date total amount of claims paid under Contracts as of the end of such calendar month divided by (b) the inception-to-date total amount of earned reserves for the Contracts as of the end of such monthly reporting period. Reserves for the Contracts shall be deemed to be earned in accordance with Schedule A hereto, and in each case calculated in accordance with GAAP.
- 1.2. "Affiliate"** means any entity that, directly or indirectly, majority owns or controls, is majority owned or controlled by, or is under common ownership or control.
- 1.3. "Applicable Laws"** shall refer to any Federal, State, or Local civil and/or criminal statute, act, or law relating to the marketing, sales, issuance, advertising, administering of the Contracts, Authorized Products, motor vehicles, or any other tangible item or service to the general public, including but not limited to: a) the Gramm-Leach-Bliley Act of 1999, (15 U.S.C. §§ 6801 et seq.), b) the Patriot Act (15 USC 272), c) Telephone Consumer Protection Act (47 USC §227), and/or d) any Federal, State, and/or Local law or regulation relating to any consumer protection and record retention as to the marketing, selling, advertising, issuance and administration of the Contracts and the Authorized Products, including the offering of the Contracts and Authorized Products through i) any automated telephone dialing system also known as "robo calling", ii) calling any telephone number that has been listed on the Federal Do Not Call Registry iii) the United States Postal Service, iv) commercial courier, and/or v) any manner of electronic means, such as electronic mail. Also included in the term "Applicable Laws" is any Federal, State, Local or Administrative criminal or civil statute, regulation, administrative code, common law, or any other source of law protecting any individual's privacy rights and/or prohibiting slander, defamation, libel, theft, money laundering, fraudulent conduct, trademark infringement or misappropriation, trade secret infringement or misappropriation, unfair competition, identity theft, and/or unauthorized use of proprietary information, including but not limited to the Lanham Act (15 USC §1051, et. seq), Unfair Competition and False Designation of Origin Act (15 USC §1125, et. seq.), Protection of Trade Secrets Act (18 USC §1831, et. seq.), Computer Fraud and Abuse Act (18 USC §1030, et. seq.), Fraud and False Statements Act (18 USC 1001, et. seq.), including the identity theft provisions set forth in 18 USC 1028 and 18 USC 1028A, any Federal, State, and/or Local Tax law, and/or any State or Federal regulation enacting any Federal or State statutory law.
- 1.4. "Authorized Product(s)"** means any product(s) identified on **Schedule A** of this Agreement for which Producer 's authorization has not expired or been terminated.
- 1.5. "Cardholder Data"** means a credit or debit card account number together with the cardholder's name, card expiration date, or card service code belonging to any individual and/or entity, including but not limited to DPWS, Customer, and/or Contract Holder.
- 1.6. "Contract"** means any Authorized Product(s) or a vehicle service contract issued by DPWS incident to the sale of an Authorized Product by the Producer to a Customer.
- 1.7. "Contract Churning"** means the a) Producer forwarding the same Contract to multiple administrators of after-market insurance products and warranties for motor vehicles or residential homes so that the Producer receives multiple sources of the same funding for the same Contract; b) Producer forwarding the same Contract to different Payment Plan Providers so that the Producer receives multiple sources of the same funding for the same Contract and/or combination of Section 1.7(a) and (b).
- 1.8. "Contract Holder"** means any individual who has purchased a Authorized Product and is entitled to receive a Contract associated with the purchase of an Authorized Product.
- 1.9. "Covered Repair(s)"** means repairs, labor, materials and any other services provided to the Contract Holder under the Contract.
- 1.10. "Customer"** means any existing or prospective customer of Producer that is being offered Authorized Products pursuant to this Agreement, including the Contract Holder.
- 1.11. "Fulfillment Provider"** means the individual, corporation, company and/or entity that will be obligated to fulfill the Contract on behalf of the Producer.
- 1.13. "Independent Agent"** means the Independent Agent, if any, identified in Section 31.
- 1.14. "Insurer" or "Insurers"** means Lyndon Southern Insurance Company, Insurance Company of the South, Lots Solutions, Auto Knight Motor Club, Inc., Fortegra, Inc., any commercial liability insurance policy ("clip") and/or any other current or future appropriately licensed insurance carrier in a State where DPWS or Producer transacts business.
- 1.15. "Nonpublic Personal Information"** shall be any information relating to any individual prevented from being disclosed pursuant to any Applicable Law and shall include any information: (i) that a Customer provides to Producer to obtain a product or service; (ii) about a Customer derived from a transaction with Producer; (iii) otherwise obtained about a Customer in connection with the provision of products or services to that Customer; and (iv) any list, description, or other grouping of Customers (including Publicly Available Information pertaining to those Customers) that is derived using any of the foregoing that is not Publicly Available Information.

**1.16. "PACK"** shall mean an amount added by Producer to the a) Producer Cost and b) Retail Amount (as defined in Section 10.1) of an Authorized Product.

**1.17. "Payment Plan Provider"** means the individual, corporation, company and/or entity providing the funds to the Contract Holder for the purchase of the Authorized Product in which such funds shall be re-paid by the Contract Holder to either the Producer or Payment Plan Provider over the course of time.

**1.18. "PIF"** means that a Contract Holder pays for the Contract in full at the time of sale of the Contract without a Payment Plan Provider.

**1.19. "Personally Identifiable Information"** means Nonpublic Personal Information and, to the extent not included in such term, any information or personal identifier that can be associated with a natural person, including, without limitation, the person's first name or first initial and last name, address, telephone number, social security number, driver's license number or financial account number.

**1.20. "Publicly Available Information"** shall be defined with reference to Privacy Laws and shall mean any information that a Party has a reasonable basis to believe is lawfully made available to the general public from: (i) federal, state or local government records; (ii) widely distributed media; or (iii) disclosures to the general public that are required to be made by federal, state, or local law.

**1.21. "Random Compliance Check"** shall mean DPWS's ability without any notice to Producer and in DPWS's sole discretion, to randomly select, listen, and/or review any pre-recorded, automated, or recorded "live" telephone call made by Producer or any written communication made by Producer to ensure that Producer or the Independent Agent is complying with all Applicable Laws, including the Telephone Consumer Protection Act (47 USC §227).

## **2. AUTHORITY.**

2.1. Producer shall have no authority other than that expressly provided herein. Producer shall market the sale of the Authorized Products identified in the attached **Schedule A**, as may be amended by DPWS from time-to-time, and subject to the terms of this Agreement. Producer may only offer the Authorized Products to its retail Customers as permitted by this Agreement and Applicable Law.

2.2. Producer's authority shall not exceed the coverage and underwriting limits contained in the terms and conditions of the Authorized Products at the time of sale.

2.3. DPWS may temporarily suspend or permanently revoke Producer's authority to offer the Authorized Products immediately upon notice pursuant to Section 3.2.

2.4. Producer acknowledges that DPWS does not a) control the manner or method in which Producer performs its obligations under this Agreement; b) provide Producer with any equipment, tools, instrumentalities, phones, computers and/or any other item to the Producer for the Producer to perform its obligations under this Agreement; and c) DPWS does not regulate the manner in which Producer performs its obligations under this Agreement except requiring that Producer complies with all Applicable Laws.

2.5. Producer acknowledges that it is not an agent and/or employee of DPWS. Producer further acknowledges that its employees are not agents and/or employees of DPWS.

## **3. TERM and TERMINATION.**

**3.1.** Upon execution of this Agreement by the Parties and subject to the terms and conditions set forth herein, the relationship between the Parties under this Agreement shall commence on the date hereof and shall continue in full force and effect until such relationship is terminated as provided herein.

**3.2.** Any Party may terminate this Agreement, for any reason or for no reason at all, by giving the other Party thirty (30) days' prior written notice of termination.

**3.3.** Notwithstanding Section 3.2, DPWS, in its sole discretion, may terminate this Agreement immediately and without notice if : a) Producer becomes insolvent, bankrupt, or suffers some other financial impairment that may affect Producer's performance under this Agreement; b) Producer improperly or unlawfully handles DPWS's funds; c) Producer commits any act of fraud or malfeasance as to its obligations under this Agreement; d) Producer commits any breach of this Agreement or any other agreement it may have with DPWS; e) Producer violates any Applicable Law, f) the Producer Representative is no longer employed and/or holds the same capacity as identified in Section 30 and/or g) Producer commits any act injurious to DPWS or its Contract Holders.

**3.4.** Upon termination, whether pursuant to Section 3.2 or 3.3, Producer shall promptly pay to DPWS all sums that are due or become due hereunder as of the termination date and shall promptly deliver to DPWS all DPWS materials provided or obtained in connection with this Agreement. Such materials include, but are not limited to, forms, rate cards, computer software, general supplies or any and all other indications of agency provided by DPWS. Producer shall also be liable for any payments to DPWS, Contract Holders, and/or any third-party as set forth in any Section of this Agreement if there is a termination of this Agreement.

**3.5.** In the event of termination of this Agreement, whether under Section 3.2 or 3.3, all obligations incurred under this Agreement and the attached schedules shall continue until the expiration of all Authorized Products issued prior to the effective date of termination. It is expressly agreed that termination of this Agreement does not release Producer from continuing liability for refunds to Contract Holders and/or cancellations.

**3.6.** Upon termination, whether pursuant to Section 3.2 or 3.3, Producer shall not use the Authorized Products, Confidential Information as defined in Section 13, and/or DPWS's trade name, documents, forms or proprietary procedures thereafter. Producer shall return all marketing materials, including but not limited to, all brochures and pre-prepared form customer contracts to DPWS. Producer shall also remit to DPWS within 30 days of the termination of this Agreement all pending and outstanding Contracts or Products sold to its customers.

**3.7.** Upon termination, whether pursuant to Section 3.2 or 3.3., any consents provided pursuant to Section 6.9 as reflected in **Schedule C** shall immediately and automatically be revoked.

**3.8.** If the basis for the termination of this Agreement is as a result of Producer's violation of Section 6.8, and notwithstanding any term to the contrary set forth in this Agreement, Producer shall not receive any outstanding monies that DPWS may otherwise owe Producer pursuant to this Agreement arising before the termination and all such amounts shall be retained by DPWS as DPWS's sole property for DPWS's sole use and benefit. Nothing in this Section 3.8 limits the remedies that DPWS may have under this Agreement and/or under any source of law in the event Producer violates this Agreement.

#### **4. DUTIES OF DPWS. DPWS shall:**

- 4.1.** i) promptly and accurately process all business, including enrollments and cancellations of Authorized Products; ii) adjust, settle, pay and/or deny benefits requests and claims in accordance with applicable law and the terms and conditions of the Authorized Products; and iii) perform such other administrative activities as agreed by the Parties.
- 4.2.** i) offer and issue or arrange for the offering and issuance of Authorized Products by qualified entities, pursuant to the terms hereof and any applicable Authorized Product terms and conditions; ii) provide any necessary forms in the quantities needed by Producer, including applications, transmittal forms, product guidelines, and rate cards; iii) and provide Producer with instructions on sales and claims procedures.
- 4.3.** Be able, at its sole discretion and without any notice to Producer, to sub-contract with another entity to perform and/or assume some or all of its rights, duties and/or obligations arising under this Agreement. DPWS may also at any time revise, in its sole discretion, the Authorized Products' policies, manuals, rules, regulations, rates, and fees.
- 4.4.** Provide good faith efforts to assist Producer in obtaining any license that Producer is required to possess pursuant to Section 5.13 upon Producer's written request.

#### **5. DUTIES OF PRODUCER. Producer shall:**

- 5.1.** Solicit for sale and sell Authorized Products in accordance with a) the guidelines provided to Producer by DPWS and b) all Applicable Laws;
- 5.2.** For each sale of an Authorized Product, remit the Producer Cost specified in **Schedule A**;
- 5.3.** Disclose to Customers all terms for each Authorized Product offered, including, but not limited to, administration fees, deductibles, coverage periods, and exclusions, as well as any other material terms;
- 5.4.** Provide to each Customer the requisite form(s) provided by DPWS for each Authorized Product offered;
- 5.5.** Inform Customers that the purchase of any Authorized Product is voluntary and that such purchase is not a condition to the sale of any other product, service, or any extension of credit or interest rate available, if applicable;
- 5.6.** Transmit all completed application data electronically (unless otherwise agreed upon) at the time the application is taken and follow any and all written instructions provided by DPWS from time to time, such that failure to submit applications as instructed by DPWS may result in denial of coverage;
- 5.7.** Be responsible for any resulting liability or claims arising out of or relating to denial of coverage, including, but not limited to, the obligation to refund any amounts collected by Producer;
- 5.8.** Hold and preserve as property of DPWS during the term of this Agreement and for a period of seven (7) years following the termination or cancellation of this Agreement: (a) records of all Producer locations selling Authorized Products; (b) all persons selling Authorized Products; (c) the dates on which each employee and/or agent begins selling Authorized Products; (d) all sales of Authorized Products; (e) all Accept/Decline documents related to the sales of Authorized Products; (f) all books of account, documents, receipts, vouchers, files, literature, applications, correspondence and records of any kind, which at any time come into Producer's possession or under its control relating to transactions involving the Authorized Products; and (g) Producer shall provide to DPWS any other commercially reasonable records that DPWS may request in writing within a reasonable time period;
- 5.9.** Upon three (3) business days' notice, grant access to DPWS during normal business hours and facilitate the inspection, copying and auditing of such books and records specified in Section 5.8 above, at any and all locations where said books and records may be found;
- 5.10.** Notify DPWS in writing within three (3) Business Days after receiving any request by a governmental authority to conduct an audit or examination of Producer's books and records related to any Authorized Product or Contract;
- 5.11.** Hold all funds collected for Authorized Products that are payable to DPWS in a fiduciary capacity;
- 5.12.** For each sale of an Authorized Product on a month-to-month basis not using a Payment Plan Provider, the Producer must remit the Producer Cost and any other amounts due for the Contract to DPWS no later than seven (7) calendar days of the following such sale of the Authorized Product.
- 5.13.** Obtain within ninety (90) days of the execution of this Agreement, and maintain, all applicable licenses in each state in which a license is required to a) discharge the duties or obligations or exercise rights or authority under this Agreement or b) offer, market or sell any Authorized Products or any Contract. Producer shall provide evidence of such license(s) to DPWS upon DPWS's request.
- 5.14.** Be responsible for any and all costs incurred by Producer in connection with obtaining any license or status required to offer the Authorized Products;
- 5.15.** Refund any amounts owed, as calculated by DPWS, in accordance with the Authorized Product terms and conditions and any state law;
- 5.16.** Comply with any instructions, manuals, guidelines, rules, policies, procedures or requirements provided by DPWS in writing;
- 5.17.** Comply with any requirements or limitations relating to Producer's solicitation and sale of the Authorized Products, which are contained in the Authorized Product documents, including, without limitation, any eligibility, disclosure, completion or delivery requirements;
- 5.18.** Comply with all Applicable Laws.

**5.19.** Shall, within five (5) business days of the execution of this Agreement, attach as **Schedule B** to this Agreement all criminal proceedings, civil lawsuits and/or administrative complaints in which Producer, Independent Agent, and/or any of their respective officers, directors, members, owners, or employees is a defendant or respondent that is currently pending in a) any Federal, State, Administrative, arbitration, and/or any other court of competent jurisdiction and/or b) any Federal or State administrative agency ("Court Proceeding(s)"). The Parties agree that upon Producer's disclosure of any Court Proceedings, DPWS, in its sole discretion, is permitted to terminate this Agreement immediately pursuant to Section 3.3. In the event that during the term of this Agreement, the Producer, Independent Agent and/or any of their respective officers, directors, members, owners, or employees becomes a defendant or respondent in any Court Proceeding, Producer shall within five (5) business days provide DPWS with written notice of such Court Proceeding and provide DPWS all documents relating to the Court Proceedings. Upon DPWS being notified of any future Court Proceedings, DPWS, in its sole discretion, is permitted to terminate this Agreement immediately pursuant to Section 3.3. In the event that there are no current Court Proceedings, Producer shall insert the word "none" onto **Schedule B** and execute such page separately. If the Producer does not disclose the Court Proceedings pursuant to this Section 5.19, Producer hereby represents and warrants that there are no Court Proceedings.

**5.20.** In the event that DPWS files for bankruptcy, dissolves, winds up, or ceases doing business, pay directly to the applicable Insurer all amounts collected by Producer for the Authorized Products upon written notice from Insurer.

**5.21.** Maintain security measures designed to protect against reasonably anticipated threats or hazards to the security and integrity of any data files, electronic or otherwise, relating to the Authorized Products or Contracts and shall reasonably protect against unauthorized access to or use of such data that could result in reasonably foreseeable harm to any Contract Holders or to the Insurers or DPWS.

**5.22.** Upon DPWS's request, and at Producer's sole expense, cooperate with DPWS, DPWS's legal counsel, any Insurer, any Customer, any Contract Holder, any Federal or State agency or department and/ or any third-party in relation to any federal, state, or local regulatory investigation, complaint, inquiry or proceeding to the extent that they are related to the Authorized Products, Contracts, and/or this Agreement.

**5.23.** Follow the underwriting and claims guidelines issued by any Insurer, DPWS, and/or any claims department acting on DPWS's behalf, as outlined in the Contracts.

**5.24.** If the Producer is sold pending the term of any Contract, all payments and monies due DPWS from the Producer as to each Contract, including any Late Fees (as defined in Section 25.11), shall be remitted to DPWS on or before the Producer closes on any transaction conveying/transferring any of the Producer's assets to a third-party.

**5.25.** If Producer engages any sales representative on its behalf to assist Producer to carry out any duties under this Agreement, including the Independent Agent, Producer shall be solely liable a) for any compensation due such representative; b) to ensure that such representative as all regulatory licenses and/or any other license or approval from any governing entity to assist Producer; and c) ensuring compliance with all Applicable Laws. DPWS reserves the right to approve any Independent Agent, sales representative or other agent used by Producer to assist Producer with the obligations pursuant to this Agreement.

**5.26.** Be responsible for the remittance of all Federal, State, and Local taxes charged to the Contract Holder.

## **6. PROHIBITIONS.**

Producer shall not:

**6.1.** Omit, add to, waive, discharge, extend, amend, or otherwise modify any terms, conditions or provisions of any Authorized Product or an application or agreement subject thereto;

**6.2.** Pay any rebate on any Authorized Product fee to a Customer;

**6.3.** Bind or attempt to bind DPWS to any contract, agreement, debt, obligation or legal proceeding.

**6.4.** Represent itself to any third-party as a) being DPWS or an affiliate of DPWS; b) an agent of DPWS; c) an employee of DPWS; and/or d) marketing and/or selling any Authorized Product on behalf of DPWS.

**6.5.** Give or offer to give, on DPWS's behalf, any advice or opinion regarding taxation regarding the purchase of an Authorized Product;

**6.6.** Directly or indirectly attempt to induce a Customer to relinquish, surrender, replace or lapse any existing coverage under any Authorized Product;

**6.7.** Make any determination, settlement or agreement regarding claims related to an Authorized Product;

**6.8.** Offer or sell Authorized Products by a) making or initiating any out-bound i) telephone call, including "robo calling," ii) text message; iii) electronic mail; iv) facsimile and/or v) any form of electronic or digital form of communication; and/or b) in any manner that violates any Applicable Law;

**6.9.** Use DPWS's or Insurers' respective names, trademarks, service marks, logos, website, phone numbers, addresses, Federal or State approvals and licenses, or other intellectual property owned by, licensed to, or used by DPWS or Insurers for any purpose, without the express written permission of DPWS or Insurers, which permission shall be granted in DPWS's or the respective Insurers' sole unilateral discretion. If DPWS or any Insurer grants such permission, the scope and usage of same shall be attached as **Schedule C** to this Agreement and such permission shall automatically terminate upon the termination of this Agreement;

**6.10.** Publish, reproduce, circulate, copy or display advertisements, circulars, handouts, or other promotional materials related to DPWS or any Affiliate of DPWS, or their corporate names, products or logos, including but not limited to Authorized Products, unless the content has been reviewed by DPWS and Producer has obtained prior written approval from DPWS, such approval to only be given in DPWS's sole discretion;

**6.11.** Take any action beyond the scope of authority granted under this Agreement.

**6.12.** Market and advertise the Authorized Products using materials without the pre-approval by the Insurer and DPWS. Producer shall be prohibited from making any changes to any marketing and advertising materials, whether by deletion, addition or otherwise, without the express written consent of Insurer and/or DPWS.

**6.13.** Make any representations about an Authorized Product(s) or a Contract issued by DPWS.

**6.14.** Post, disseminate, publish, market, solicit, cyber link or otherwise reference or advertise the name, logo or otherwise of DPWS, Insurer or any of their Affiliates on a website, the Internet or any other communication system without the prior written approval of Insurer and DPWS.

**6.15.** Use in any way, including displaying on its website, any promotional materials, images, sales, tools, rate charts or other information created by DPWS or Insured to provide information about the Authorized Products or Contracts sold through the Producer without first obtaining specific written approval of DPWS and Insured.

**6.16.** Extend any form of credit to any Customer or third-party on behalf of DPWS.

**6.17.** Enter into any verbal agreements with any Customer or third-party in relation to any Authorized Product.

**6.18.** Enter into any agreement with any Customer or third-party in relation to any Authorized Product under any alternative name from the name identified on the first page of this Agreement.

**6.19.** Engage in any form of Contract Churning as to any Authorized Product, Contract, and/or Contract Holder.

**6.20.** If Producer is selling motor vehicle Contracts in California, Producer cannot sell vehicle service contracts and must only sell motor club based Authorized Products.

## **7. REPRESENTATIONS AND WARRANTIES.**

Producer hereby represents and warrants that: (a) it has the requisite authority and has secured all necessary approvals to enter into this Agreement and that by doing so, it is not in violation of any agreement prohibiting it from entering into and performing its duties and obligations or exercising its rights under this Agreement; (b) it is and will remain duly organized, validly existing and in good standing in the jurisdiction of its organization; (c) it is and will remain qualified and is in good standing in every jurisdiction where such qualification is required to perform under this Agreement; (d) the execution of this Agreement by its representative whose signature is set forth below has been duly authorized by all necessary action of Producer; (e) when executed and delivered by each of DPWS and Producer, this Agreement will constitute the legal, valid and binding obligation of Producer, enforceable against Producer in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally or the effect of general principles of equity (regardless of whether considered in a proceeding at law or in equity); (f) to its knowledge, its employees, officers and directors have not been convicted of any criminal violation involving dishonesty or breach of trust; (g) Producer will not knowingly conduct business with Customers who provide suspicious identities or who, upon request, fail to provide confirming evidence of their identities by means of state-issued identification or a passport; (h) comply with all timeframes under applicable law for its services and acts hereunder and for the service even if those timeframes are more stringent than the specific service levels or times frames required herein or by the Program Agreement; (i) it shall market and sell the Authorized Products and Contracts in a nondiscriminatory manner, in compliance with Applicable Laws, and only to consumers who are eligible for the Authorized Products and Contracts; (j) it acknowledges that the Authorized Products has been developed by DPWS and that the Producer has been licensed to use the Authorized Products' trade names, promotional materials, Contract forms, and proprietary procedures associated therewith only during the term of this Agreement, and only in a manner approved in writing by DPWS; and (k) unless disclosed on **Schedule B**, Producer, the Independent Agent, and/or any of Producer's or Independent Agent's respective officers, directors, shareholders, owners, members, and/or employees are not a party to any Court Proceeding.

## **8. INDEPENDENT CONTRACTOR RELATIONSHIP.**

8.1. The relationship between the Parties is that of independent contractors and nothing contained herein shall be construed to create a relationship of joint venture, partnership, ownership, employment, and/or agent-principal relationship between the Parties.

8.2. Producer is an independent contractor, and as such Producer agrees to be responsible for any and all taxes relating to itself and its sales activities, including sales and/or use taxes related to the Authorized Products and any Contract.

8.3. Producer shall exercise its discretion, subject to Applicable Laws, as to the Customers, persons or accounts to be solicited, and the time, place and manner of such solicitation.

8.4. Producer will bear all costs incurred by Producer in the performance of its obligations under this Agreement unless expressly stated otherwise herein.

8.5. Producer acknowledges that DPWS does not a) control the manner or method in which Producer performs its obligations under this Agreement; b) provide Producer with any equipment, tools, instrumentalities, phones, computers and/or any other item to the Producer for the Producer to perform its obligations under this Agreement; and/or c) regulate the manner in which Producer performs its obligations under this Agreement except requiring that Producer complies with all Applicable Laws.

8.6. Producer acknowledges that there is no agent-principal relationship between the Parties.

8.7. Neither Producer nor Producer's employees, contractors, or agents are an employee of DPWS.

## **9. ASSIGNMENT.**

Except as otherwise permitted by Section 4.3, neither this Agreement nor any rights or interests arising therefrom may be transferred or assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld in the event of a sale of all or substantially all of a Party's business.

## **10. COMPENSATION.**

**10.1** In consideration of the services rendered by Producer, DPWS agrees to allow Producer to charge the Contract Holder an amount above and beyond the Producer Cost ("Retail Amount").

**10.2.** In addition to the Retail Amount, Producer may charge, as part of the Contracts, a PACK. Producer agrees that DPWS shall pre-approve in writing any PACK that Producer desires to charge a Contract Holder. Producer shall remit the PACK collected by Producer from the Contract Holder at the same time Producer Remits the Contracts and Producer Cost to DPWS. DPWS, in DPWS's sole discretion, shall retain a portion of the PACK to a) pay any refunds or cancellation fees in the event that a Contract Holder cancels the Contract and/or b) satisfy any Damages (as defined in Section 12) pursuant to Section 11 of this Agreement (collectively, "Retained PACK Portion"). DPWS shall remit non-Retained PACK Portion back to the Producer as part of the Producer's compensation under this Agreement. At the time of the execution of this Agreement, DPWS shall advise the Producer of the Retained PACK Portion amount, which DPWS, in DPWS's sole discretion, has the right to change in the future upon thirty (30) calendar days' notice to Producer. If, at any point, in DPWS's sole discretion the Retained PACK Portion is not sufficient to pay any refunds or cancellation fees in the event that a Contract Holder cancels a Contract, Producer shall be solely liable for any refund or cancellation fee that may be due as a result of a Contract cancellation.

**10.3.** As set forth in Section 3.8, if the basis for the termination of this Agreement is as a result of Producer's violation of Section 6.8, and notwithstanding any term to the contrary set forth in this Agreement, Producer shall not receive any outstanding monies/compensation that DPWS may otherwise owe Producer pursuant to this Agreement arising before the termination, including PACK, and all such amounts shall be retained by DPWS as DPWS's sole property for DPWS's sole use and benefit. Nothing in this Section 10.3 limits the remedies that DPWS may have under this Agreement and/or under any source of law in the event Producer violates this Agreement.

**10.4.** Producer is solely responsible for payment of compensation to employees and agents used by Producer in its performance under this Agreement. Producer's compensation shall not exceed any compensation limits imposed by any Applicable Law. Producer will not be entitled to any compensation on any Authorized Product unless such Product was issued and Producer Cost received by DPWS pursuant to the terms of this Agreement. Producer will not be entitled to any other compensation of any nature for services rendered other than the compensation described herein.

**10.5.** Producer shall be responsible for its own expenses, including but not limited to, expenses such as salaries, wages, commissions, rentals, transportation, marketing, solicitation, office facilities, clerical help, attorney's fees, postage, advertising, licensing fees, taxes levied by any tax authority, collection of sales tax if applies to a particular State, printing, inventory, distribution costs, the instrumentalities to market the Authorized Products, and/or any other expenses of whatever kind incurred to perform the terms and conditions of this Agreement.

## **11. DPWS PERMITTED TO SETOFF/OFFSET/LIEN.**

**11.1.** As to any amounts due DPWS from Producer arising under this Agreement, including Damages (defined in Section 12), DPWS, in DPWS's sole discretion, may offset those amounts against any compensation, commission, PACK money, or other funds payable by DPWS to the Producer a) under this Agreement; b) under any other prior, current or future agreement between Producer and DPWS; and/or c) any existing or future indebtedness owed by DPWS to Producer.

**11.2.** a) Producer agrees to pay DPWS any existing or future indebtedness due DPWS from Producer's parent, subsidiary, affiliate, sister company and/or company under common control with the Producer, including any Damages sustained by DPWS under Section 12 of this Agreement; b) DPWS, in DPWS's sole discretion, may elect that any payment from Producer pursuant to Section 11.2(a) be offset against any compensation, commission, PACK money or other funds payable by DPWS to the Producer i) under this Agreement; ii) under any other prior, current, or future agreement between Producer and DPWS; and/or iii) any existing or future indebtedness owed by the Producer to DPWS, including any Damages sustained by DPWS under Section 12 of this Agreement.

**11.3.** As to any amounts that may be due to Producer from DPWS arising under this Agreement, Producer shall be prohibited from offsetting those amounts from any amount that Producer owes to DPWS.

**11.4.** DPWS shall have a first lien against any such compensation, commissions, PACK money or funds due to the Producer, and may hold such funds as security for existing or future indebtedness

## **12. INDEMNIFICATION.**

a) Except as otherwise specifically stated in this Agreement, Producer agrees unconditionally to indemnify, defend and hold harmless in full DPWS, DPWS's affiliates and DPWS's owners, employees, agents, shareholders, members, officers, directors, subsidiaries, attorneys, Insurers and DPWS's reinsurers or underwriters ("DPWS Indemnified Parties") from and against any and all liabilities, obligations, claims, causes of action, regulatory proceedings, investigations, debts, demands, damages, including, without limitation, punitive, special, incidental, indirect, consequential damages or any source or category of damage that any plaintiff or petitioner may be permitted or entitled to under any Applicable Law, losses, penalties, fines assessed by any Federal, State, or Local agency costs and expenses, including attorneys' fees, court costs, settlement costs, and costs of investigation (collectively, "Damages"), whether absolute or contingent, known or unknown, that the DPWS Indemnified Parties may incur, directly or indirectly, to the extent arising from, or based upon, any a) actual or alleged misconduct, misrepresentation, error, negligent act or omission; b) intentional or bad faith act or omission by Producer or one of its employees or agents; c) any breach of this Agreement by Producer; and/or d) any other unauthorized act or omission under this Agreement by Producer or one of its employees or agents, including Contract Churning (collectively, "Indemnified Claim"). Producer agrees that the term Indemnified Claim shall also include, but is not limited to, all actions and claims arising from or related to: any claims suits, actions, and/or proceeding arising under or relating to i) any Applicable Law; ii) any misrepresentation or nondisclosure of any Contract or Authorized Product terms and conditions; iii) unlawful, misleading, deceiving, unconscionable or unethical selling or advertising practices; iv) Producer's failure to satisfy its obligations under this Agreement; v) the failure of the Producer to comply with any Federal, State or Local Tax obligation as to the marketing and selling of the Authorized Products; vi) any settlement and/or judgment entered against Producer and/or Producer's employees, owners, directors, agents, or officers in any Court Proceeding and/ or vii) any legitimate claim denial by DPWS or any Insurer.

b) Producer agrees that in the event that any of the DPWS Indemnified Parties are sued by any third-party or Producer for any Indemnified Claim or that it is necessary, in the DPWS Indemnified Parties' sole discretion, to file suit or intervene in any action or proceeding to assert a claim for Damages, the DPWS Indemnified Parties have the right to choose their own legal counsel in such proceeding or action.

c) i) To satisfy Producer's obligations to indemnify DPWS for all Damages, Producer agrees that, in addition to DPWS's right under Section 11, Producer hereby authorizes the Payment Plan Provider (defined in Section 32) to pay DPWS any monies that would otherwise be due to the Producer under any agreement between Producer and the Payment Plan Provider. Unless expressly required by the Payment Plan Provider, there shall be no other document required to be executed by the Producer to effectuate the payments to be made by the Payment Plan Provider to DPWS pursuant to this Section 12(c); ii) If the Payment Plan Provider requires separate written consent of the Producer, the Producer shall execute and forward same to the Payment Plan Provider within 48 hours of such request providing a copy of the consent to DPWS. If Producer does not provide the consent required by Section 12(c)(ii), Producer hereby agrees that DPWS shall be permitted to file an immediate injunctive application in a Court of law pursuant to Section 39.3 and Producer hereby consents to the entry of a Court order ordering the Producer to execute whatever document(s) may be required by the Payment Plan Provider to allow the Payment Plan Provider to pay any monies to DPWS that would otherwise be due to Producer.

d) Producer agrees that DPWS assumes no obligation for the workmanship, quality of repairs or replacement parts, nor for any bodily injury or property damage caused directly or indirectly by mechanical failure or malfunction of a vehicle or any part thereof sold and/or made by Producer or any other authorized repair facility.

e) This Section 12 shall survive termination of this Agreement.

### **13. CONFIDENTIAL INFORMATION.**

From time to time during the term of this Agreement, the Parties may disclose or make available to the other Party information about its business affairs, financial condition, products/services, financial account information (including the information in Section 36.2), compensation and compensation calculations, confidential intellectual property (including trademarks, copyrights and patents), trade secrets, third-party confidential information, Cardholder Data, Personally Identifiable Information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of any breach of this Section by the receiving Party or any of its representatives; (ii) is or becomes available to the receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the receiving Party or its representatives prior to being disclosed by or on behalf of the disclosing Party; (iv) was or is independently developed by the receiving Party without reference to or use of, in whole or in part, any of the disclosing Party's Confidential Information; or (v) is required to be disclosed pursuant to applicable federal, state or local law, regulation or a valid order/subpoena issued by a court or governmental agency of competent jurisdiction. The receiving Party shall, subject to applicable state and federal laws, including Applicable Laws: (A) protect and safeguard the confidentiality of the disclosing Party's Confidential Information with at least the same degree of care as the receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to the receiving Party's representatives who need to know the Confidential Information to assist the receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The receiving Party shall be responsible for any breach of this Section caused by any of its agents, employees, or representatives, including the payment of the attorney's fees and costs incurred by the non-breaching Party to enforce its rights under this Agreement. The Parties' rights and obligations under this Section shall survive for a period of four (4) years following the expiration or termination of this Agreement. On the expiration or termination of the Agreement or upon the disclosing Party's written request, the receiving Party and its representatives shall promptly return to the disclosing Party all copies, whether in written, electronic or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed, except that the Parties shall not be required to destroy such information maintained in a company backup or archive so long as such information is never used except for regulatory, commercial or legal purposes and so long as such information is destroyed in accordance with the Party's record retention policy. The disclosing Party may seek equitable relief (including injunctive relief) pursuant to Section 39.3 against the receiving Party and its representatives to prevent the breach or threatened breach of this Section and to secure its enforcement, in addition to all other remedies available at law, to which the receiving Party hereby consents. This Section shall survive the termination of this Agreement.

### **14. LEGAL ACTIONS AND MEDIA INQUIRIES.**

In the event that Producer receives a media or press inquiry involving DPWS or in any way related to this Agreement, or receives a notice of the commencement of any legal proceeding involving DPWS, or any communication from any state insurance department or other administrative or regulatory agency calling a hearing, investigating a practice, or identifying a complaint, Producer shall, within two (2) business days of receipt by Producer, forward to DPWS such inquiry and any information and documents necessary to respond to same, unless prohibited by law. This Section shall survive the termination of this Agreement.

## **15. NOTICES.**

Unless otherwise stated herein, all notices, demands, consents or requests (collectively "Communications") sent by a Party hereto must be sent via electronic mail to the respective e-mail address, as identified on the signature page of this Agreement, with the phrase "Contract Notification" in the subject line. Communications sent via electronic mail shall also include a copy of this Agreement as an attachment. Communications sent via electronic mail are deemed effective: (i) if received before 4:00 PM Eastern Standard Time, upon confirmation of receipt; or (ii) if received after 4:00 PM Eastern, the next business day following confirmation of receipt.

## **16. GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any conflict of law rule or provision thereof that would result in the application of laws of any other jurisdiction.

## **17. ENTIRE AGREEMENT.**

This Agreement, inclusive of all schedules and exhibits (as amended from time-to-time), constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereto, and terminates and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the Parties respecting the subject matter of this Agreement. Any previous producer agreement, or other agreement between the Parties, including addendums, is hereby superseded by this Agreement.

## **18. AMENDMENTS/MODIFICATIONS.**

No modification, amendment, or supplement to this Agreement or any of its provisions shall be binding upon the Parties unless made in writing and signed by an authorized agent of each of the Parties; provided however, DPWS may, immediately upon notice to Producer, amend Schedule A. Any such unilateral revisions to **Schedule A** shall only pertain to Authorized Products issued on or after the effective date of the revision, or as otherwise required by law or agreed to by the Parties.

## **19. JOINT DRAFTING/ ATTORNEY ADVICE.**

Both Parties had the opportunity to participate in the drafting and preparation of this Agreement. As a result, in making any determination regarding the construction of this Agreement, the same shall not be construed against either Party on the basis that the Party was the drafter. In entering into this Agreement, the Parties represent that they have: a) relied upon the advice of their respective chosen attorneys, including but not limited to the definition of Applicable Laws and what actions may or may not be permitted under the Applicable Laws; b) had the opportunity to read this Agreement with their respective chosen attorneys; and c) that they understand the terms of this Agreement to their satisfaction.

## **20. SEVERABILITY.**

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application and to this end the provisions of this Agreement are declared to be severable.

## **21. HEADINGS.**

The headings contained in this Agreement are inserted only as a matter of convenience and in no way define, govern, limit, modify or construe the scope or extent of the provisions of this Agreement. Such headings are not part of this Agreement and shall not be given any legal effect.

## **22. BINDING EFFECT.**

The parties are hereby bound to the terms of this Agreement. Those who succeed to the Parties' rights and responsibilities such as heirs, executors of an estate, or legal representatives are also bound. This Agreement is made for the benefit of the Parties and all who succeed to their rights and responsibilities, such as any successors and/or assigns.

## **23. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

## **24. WAIVER.**

No waiver of any provision of this Agreement or any rights or obligations of DPWS hereunder shall be effective, except pursuant to a written instrument expressly waiving compliance, signed by DPWS. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in the written instrument. Failure of DPWS to enforce or insist upon the provisions of this Agreement in any instance(s) shall not be construed as waiver of its right to enforce such provision(s) either currently or in the future.



## **25. ISSUANCE OF CONTRACTS.**

**25.1.** Producer shall only issue Contracts that have been preapproved by the Insurer and DPWS on forms provided by Insurer and DPWS and in compliance with all Applicable Laws. DPWS shall not be obligated to perform administrative services with respect to any Contract sold by the Producer on form which has not been approved by DPWS, or the use of which has been discontinued by DPWS, or otherwise sold in violation of this Agreement and/or Applicable Law.

**25.2.** Producer shall only market, offer and sell Authorized Products and issue Contracts through Producer's platform, as approved by DPWS, and at any other location which is approved in writing by DPWS. Solicitation by the Producer by telephone for the Authorized Products are expressly prohibited unless otherwise a) approved by DPWS in writing and b) permitted by Applicable Laws.

**25.3.** Seller shall not market, offer or sell Authorized Products or issue such Contracts in any approved State until DPWS has received the approval of the applicable Governmental authority of the form and rates charged for such Contract, if any.

**25.4.** Seller shall not market, offer or sell Authorized Products or issue a Contract in a State until DPWS has obtained any necessary vehicle protection product provider license or Producer license, as applicable in that State.

**25.5.** Producer shall issue Contracts only in accordance with the terms and conditions of the applicable Contracts. Each Contract shall be sold only with respect to a qualifying vehicle, and only in accordance with and subject to the Authorized Product's policies, manuals, rules, regulations, rates, and fees in effect at the time such Contract is sold.

**25.6.** Producer shall not omit, add to, waive, discharge, extend, amend or otherwise modify any terms, conditions or provisions of any Authorized Product or Contract.

**25.7.** Producer shall not make any representations about a Contract's terms and conditions not expressly set forth in such Contract.

**25.8.** Producer shall offer Contracts through marketing methods reasonably preapproved by DPWS or the Insurer and as allowed by Applicable Law.

**25.9.** (a) If a sale of an Authorized Product is transacted without the use of a Payment Plan Provider, by no later than the twentieth (20<sup>th</sup>) day of the month following the month in which the Contract was sold the Producer shall remit the Contract and any other related information to DPWS by electronic format, or any other format as directed by DPWS, together with the net Producer cost for the Contract as identified in the most recent Producer rate schedule provided to the Producer by DPWS; (b) If a Payment Plan Provider is used for the sale of an Authorized Product, Producer shall not interfere or object to the Payment Plan Provider transmitting the appropriate files and required amounts to DPWS in accordance with the Payment Plan Provider's normal course of business as outlined in the agreement between DPWS and the Payment Plan Provider.

**25.10.** Producer shall not incur any debts or liabilities on behalf of DPWS other than under the Contracts sold by Producer.

**25.11.** If DPWS does not receive new Contracts, including PIF Contracts, within sixty (60) days of the Contract inception date, Producer shall, in the sole discretion of DPWS, be subject to a \$75.00 fee ("Late Fee") payable to DPWS upon receipt of notice of such fee. If DPWS does not receive the Late Fee and appropriate monies, inclusive of Late Fee, by ninety (90) days after the Contract inception date, DPWS has the right to decline coverage under the Contract and shall order Producer to return all monies received by Producer back to Contract Holder. Any claims made by the Contract Holder on the subject Contract shall be rejected by DPWS and shall be the sole liability of the Producer.

## **26. LOSS EXPERIENCE/PROGRAM MODIFICATIONS.**

Producer understands that in the event that the Aggregate Loss Ratio exceeds, or is reasonably likely to exceed, as of any month end, eighty-five percent (85%), the Insurer shall have the right, upon not less than ninety (90) days advance written notice to DPWS, to direct DPWS either to (i) modify the Contract coverage or plan as permitted under applicable law or otherwise implement similar reasonable remedial modifications as permitted under applicable law (collectively, "Program Modifications") so that an Aggregate Loss Ratio of not more than eighty-five percent (85%) can reasonably be achieved, or (ii) if DPWS is unwilling to implement the Program Modifications, Insurer shall have the right to unilaterally amend the Authorized Products being sold to DPWS or increase the rate or appropriate claims reserve for such type of Contract for the Authorized Product. Producer agrees that such Program Modifications, are permissible under this Agreement, and Producer shall and Producer shall abide by the Program Modification(s) or discontinue the issuance of such type of Contract if it is no longer available to DPWS by the Insurer.

## **27. CLAIMS BY CONTRACT HOLDERS AND REPAIRS**

**27.1.** Producer shall notify DPWS in writing of any claims made by Contract Holders and must receive written authorization from DPWS prior to proceeding with any repairs. Producer agrees that any repairs made without such written authorization from DPWS, as evidenced by an authorization number from DPWS, shall not be covered and the Producer shall not be reimbursed for such repairs by DPWS or applicable Insurer. In Wisconsin, repairs made without authority are covered unless DPWS is prejudiced thereby.

**27.2.** Producer shall unconditionally warrant all Covered Repairs for a period of not less than six (6) months or six thousand (6,000) miles.

**27.3.** Producer shall be reimbursed for Covered Repairs based on its retail labor rate and the flat labor rate manual and the Producer's retail cost of replacement parts approved by DPWS, which DPWS in its sole discretion may designate to be new, remanufactured or used. Retail cost shall be the manufacturer's suggested list price.

**27.4.** Notwithstanding Section 27.3, if the loss experience of the Producer is excessive, as determined by DPWS, in its sole discretion, subject to thirty (30) days advance written notice, retail cost shall be determined at the lower of one hundred forty percent (140%) of the actual cost (cost multiplied by 1.4) or list price and labor rate shall be determined based on factory warranty labor reimbursement.

**27.5.** Except for repairs under Limited Warranty Contracts, Producer agrees that any Covered Repairs occurring within the first thirty (30) days after the Contract's effective date shall be reimbursed at seventy-five percent (75%) of the amount determined in Section 27.4.

**27.6.** Producer agrees that all claims not submitted to DPWS within seven (7) business days from the date of repair shall not be paid by DPWS or Insured and neither DPWS nor the Insured shall have any obligation or liability with respect to such claims.

## **28. CANCELLATIONS BY CONTRACT HOLDERS AND REFUNDS DUE CONTRACT HOLDERS**

**28.1.** Producer must follow the instructions and procedures detailed in the applicable Contracts in respect of refunds due to Contract Holders for their proper cancellations of Contracts, as set forth in this Section 28, and such other instructions and procedures related to the sale and administration of the Contracts as may be provided in writing by the Insurer to DPWS from time to time and then provided to the Producer.

**28.2.** As set forth in this Section 28, Producer shall properly report and remit amounts collected by Producer for its issuance of Contracts to DPWS and properly pay refunds due Contract Holders for their proper cancellations of Contracts in a timely manner pursuant to the time frames set forth in the Contract.

**28.3.** The Producer shall keep adequate documentation establishing that the refund has been made timely made and received, including but not limited to, front and back of cashed checks, bank statements showing the check was cashed, or lender documentation showing application of the refund to the contract holder's account.

**28.4.** Producer shall pay and liable to DPWS for any costs, penalties, or damages arising out of Producer's failure to timely pay or credit the cancellation refund in addition to any other damages sustained by DPWS pursuant to Sections 12 and 29.

**28.5.** For all Contracts properly cancelled pursuant to the Contract terms: a) DPWS shall, if the Contract is a Payment Plan Provider funded Contract, refund the applicable Payment Plan Provider within ten (10) business days of receipt of the written notification of cancellation; or b) DPWS shall, if the Contract is a PIF Contract, and if the Contract Holder so requests, issue any refund directly to the Contract Holder within ten (10) business days of DPWS's receipt requesting the cancellation; or c) if the Contract is a PIF Contract and the Contract Holder does not request that any refund due be sent directly to the Contract Holder, DPWS shall remit such refund to the Producer within ten (10) business days of DPWS's written request for the cancellation and then Producer shall forward such refund to the Contract Holder within ten (10) business days of its receipt from DPWS.

**28.6.** DPWS shall be entitled to the entire cancellation or transfer fee, if any, provided in the Contract and all refunds as a result of any cancellation that are due pursuant to Section 28.5 shall be less any applicable cancellation or transfer fees.

**28.7.** If during the term of any Contract, a) the Producer's assets are sold or transferred to a bona-fide third-party; b) the Producer files for bankruptcy protection under any Federal statute; and/or c) the Producer dissolves or ceases operations (collectively, a "Triggering Event" for the purposes of Section 28.7), the Producer hereby agrees to do one of the following: (i) To hold an agreed upon monetary amount calculated as follows: Average retail price to consumer per Authorized Product multiplied by the average cancellation percentage by Producer ("Agreed Amount"). The Agreed Amount shall be deposited in escrow within 14 calendar days of a Triggering Event and held in escrow by DPWS in a non-interest bearing financial account specifically opened by DPWS to hold the Agreed Amount. The Agreed Amount shall be held in such account until the expiration of all Contracts ("Time Period"). DPWS and Producer hereby agree that DPWS shall satisfy any approved claim made by a Contract Holder during the Time Period and any unused portion of the Agreement Amount at the end of the Time Period shall be returned to Producer; or ii. If the Triggering Event is a sale/transfer of 100% of the Producer's assets to a bona-fide third-party, and if DPWS permits, in its sole discretion, the Producer shall be able to pay DPWS at the closing of the sale an amount equal to 125% of the average cancellation percentage from all Contracts remitted from the Producer to DPWS from the execution of this Agreement to the closing date but not to exceed 48 months. DPWS shall assume all responsibility for Contract cancellations commencing the first day immediately following the closing date for the sale/transfer of all of the Producer's assets to a bona-fide third-party; or if the owner(s) or member(s) or shareholder(s) of the Producer ("Original Producer" for purposes of this Section) also own another automobile Producer ship in which he/she/they own a majority of the outstanding ownership interest ("Sister Producer ship" for the purposes of this Agreement), the Producer may, at DPWS's sole discretion, agree if a Contract cancellation occurs post a Triggering Event, all liability for any Contract cancellations shall be transferred by the Original Producer to the Sister Producer ship. The Sister Producer ship must execute an amendment to this Agreement agreeing to be bound by this Agreement's terms, including, Section 30. In the event that the Original Producer and DPWS agree that this 28.7 (iii) shall be the remedy for any Triggering Event, then if the Sister Producer ship experiences a Triggering Event, the Sister Producer ship shall specifically comply with this Section 28.7 as to any Contract cancellations.

**28.8.** In the event that Payment Plan Provider is either unable, or otherwise fails, to provide the required refund to the Contract Holder from the reserves the Payment Plan Provider holds as to the cancellation of any Contract, Producer shall be solely liable for any refunds due the Contract Holder and Producer shall indemnify the DPWS Indemnified Parties pursuant to section 12 of this Agreement as to any refunds due a Contract Holder as to a cancellation of a Contract. Any action or proceeding filed by a Contract Holder against any DPWS Indemnified Party shall be considered an Indemnified Claim pursuant to Section 12.

## **29. REMEDIES FOR BREACH OF THIS AGREEMENT.**

**29.1.** The parties agree that any breach of any obligations under this Agreement shall cause (i) immediate and irreparable harm to the nonbreaching party, thereby entitling the non-breaching party to a Court Order of injunctive relief pursuant to Section 39.3, which is hereby consented to by the Parties to this Agreement; (ii) cause the breaching party to be liable for all reasonable attorney's fees and costs incurred by the non-breaching party, including arbitrator fees, associated with bringing any action to enforce the non-breaching party's respective rights under this Agreement if such a breach is determined to have occurred pursuant to an arbitration set forth in Section 39; and (iii) the breaching party to be liable for any actual damage incurred by the non-breaching party as a result of the breach.

**29.2.** If Producer breaches Section 6.19 as to Contract Churning, in addition to all other available remedies to DPWS, Producer shall be solely liable for all costs paid by the Contract Holder for the Contract in the event that the Contract Holder cancels the Contract and Producer shall refund the Contract Holder if the sale was a PIF or the applicable Payment Plan Provider(s) in the event a Payment Plan Provider(s) was used as to the sale of the Contract. In the event that Producer breaches Section 6.19, any claim by any Contract

Holder, any Payment Plan Provider and/or any third-party against the DPWS Indemnified Parties shall be an Indemnified Claim pursuant to Section 12 entitling the DPWS Indemnified Parties to all Damages as set forth in Section 12.

**29.3.** The remedies of this Section 29 shall be in addition to any other remedies provided to a non-breaching party as may be set forth in this Agreement.

**29.4.** As set forth in Section 3.8, if the basis for the termination of this Agreement is as a result of Producer's violation of Section 6.8, and notwithstanding any term to the contrary set forth in this Agreement, Producer shall not receive any outstanding monies/compensation that DPWS may otherwise owe Producer pursuant to this Agreement arising before the termination and all such amounts shall be retained by DPWS as DPWS's sole property for DPWS's sole use and benefit. Nothing in this Section 29.4 limits the remedies that DPWS may have under this Agreement and/or under any source of law in the event Producer violates this Agreement.

### **30. UNCONDITIONAL GUARANTEE.**

All Producer obligations arising under this Agreement shall be personally and individually guaranteed by the individual executing this Agreement on behalf of Producer ("Producer Representative"). The Producer Representative and Producer recognize and agree they shall be jointly and severally liable for all of Producer's obligations, whether monetary or non-monetary, arising under this Agreement and that he/she has the legal authority and capacity to bind the Producer to the obligations set forth in this Agreement. Upon DPWS's request, Producer and Producer Representative shall provide DPWS with any corporate formation document, corporate resolution, and/or any other document reflecting the Producer Representative's ownership interest in Producer and the Producer Representative's authority to sign this Agreement and guarantee the obligations set forth herein. The Producer Representative must be an owner, member, and/or shareholder of Producer.

### **31. AGENT RECOGNITION.**

Producer shall assign: \_\_\_\_\_ as its Independent Agent. Independent Agent shall represent Producer unless and until DPWS approves, in its sole discretion, in writing a change of the Independent Agent.

### **32. PAYMENT PLAN PROVIDER**

Producer shall assign: \_\_\_\_\_ as its Payment Plan Provider as to the obligations set forth in this Agreement. The Producer shall use the Payment Plan Provider identified in this Section 32 unless and until DPWS approves, in its sole discretion, in writing a change of the Payment Plan Provider.

### **33. FULFILLMENT PROVIDER**

Producer shall assign: \_\_\_\_\_ as the Fulfillment Provider as to the obligations set forth in this Agreement. The Producer shall use the Fulfillment Provider identified in this Section 33 unless and until DPWS approves, in its sole discretion, in writing a change of the Fulfillment Provider. Producer hereby agrees that it shall be solely liable for any fees charged by the Fulfillment Provider unless otherwise agreed to in writing by DPWS in DPWS's sole discretion.

### **34. LENGTH OF BUSINESS OPERATIONS.**

Producer hereby represents and warrants that Producer has been engaged in the marketing, selling, advertising, and/or offering of after-market insurance and warranty products similar to that of the Authorized Products since \_\_\_\_\_.

### **35. PRIVATE LABEL OFFERING/ LOGO ON ALL CONTRACTS.**

**35.1.** Unless otherwise agreed to in writing between the Parties pursuant to this Section, the Parties agree that Producer shall place its logo on the Contracts. The logo to be used by the Producer shall be identified on **Schedule D** ("Producer Approved Logo"). Producer agrees that with the sole and limited exception of simply asserting Producer's Approved Logo on the Contracts, Producer shall not make any other changes, modifications, revisions, amendments or addendums to the Contracts without the express written permission of DPWS, which such permission shall only be granted in DPWS's sole discretion.

**35.2.** Producer hereby agrees that a) DPWS maintains sole and exclusive ownership, rights, title and interest as to the Contracts (and any authorized revisions) and b) upon the termination of this Agreement, Producer shall immediately i) remove Producer's Approved Logo from the Contracts; ii) Producer will stop distributing the Contracts to third-parties and stop marketing and selling the Authorized Products, either directly or through any producers or any other third-party, iii) return all Contracts in its possession or control to DPWS; and iv) DPWS is authorized to remove Producer's Approved Logo from any of the Contracts.

**35.3** The logo that will be used on all Contracts and/or any other document relating to the marketing and selling of the Authorized Products is identified on Schedule D to this Agreement ("Contract-Used Logo"). If the Producer Approved Logo, as defined in Section 35.1, shall appear on the Contracts, then the Producer Approved Logo shall be considered the Contract-Used Logo. If DPWS's logo shall appear on the Contracts, then the DPWS logo, as identified on **Schedule D**, shall be the Contract-Used Logo.

**35.4** Marketing Material and Fulfilment must be approved in writing by DPWS prior to implementation and/or use by Producer. Failure to have approval before marketing will result in Producer instantly being notified and Contracts will not be accepted by DPWS until Producer receives approval for the same. Additionally any changes in marketing or fulfilment needs to be reapproved by DPWS prior to implementation and/or use.

**35.5.** In the event that the Parties agreed that DPWS's logo is the Contract-Used Logo that is used on the Contracts and/or to market the Approved Products, Producer hereby agrees and acknowledges that a) DPWS retains all exclusive ownership rights, title, interest as to DPWS's trademarks and other proprietary information, including the Contract-Used Logo, and all rights and protections under any Applicable Law; and b) Producer is prohibited from marketing, advertising and/or representing itself to any Customer, Contract Holder, and/or any third-person as i) having any ownership interest in DPWS; ii) being an Affiliate of DPWS; iii) being employed by DPWS; and/or iv) having any authority to bind DPWS into any agreement or contract with any person or entity as to anything, any service, and/or any sale of any item, including but not limited to the Authorized Products or any other product that may be relating to any insurance or vehicle service contract in the motor vehicle or home warranty industry.

### **36. PIF CONTRACT SALES.**

**36.1.** If the sale of a Contract to a Contract Holder is a PIF, Producer shall provide the following information in writing to DPWS within five (5) business days of the Contract sale:

- a. Contract Holder Name;
- b. Contract Holder Address;
- c. Contract Holder Phone Number;
- d. Contract Purchase Date;
- e. Contract Cost;
- f. Producer Cost to be paid via bank wire to DPWS pursuant to 36.2;
- g. As to the motor vehicle subject to the Contract:
  - i. Vehicle Identification Number;
  - ii. Make;
  - iii. Model;
  - iv. Year; and
  - v. Mileage identified on the odometer.
- h. Any and all other documents that may be required by DPWS, in DPWS's sole discretion, to be submitted to DPWS by either the Producer or the Contract Holder.

**36.2.** For the Producer Cost identified in Section 36.1(f), such amount shall be remitted by wire transfer as follows:

- a. Chase Bank;
- b. Routing Number: 021202337;
- c. Account Number 298180636.

DPWS shall have the right to change any of the information set forth in this Section 36.2 and if any changes, DPWS shall provide notice to Producer.

**36.3.** The information identified in Section 36.2 shall be treated by Producer as Confidential Information pursuant to Section 13 and, notwithstanding any permitted disclosure of Confidential Information set forth in Section 13 or in any other Section of this Agreement, Producer shall not disclose any of the information identified in Section 36.2 to any third-party at any time for any purposed. In the event that there is dispute between DPWS and Producer as to any receipt of any payment due under this Agreement and Producer desires to provide proof of such payment, Producer shall redact entirely the information identified in Section 36.2.

**36.4.** For all PIF Contracts, the information set forth in Section 36.1 and the Producer Cost due DPWS must be remitted to DPWS within sixty (60) calendar days from the date of sale of the Contract to the Contract Holder ("PIF Requirements"). In addition to any other remedies available to DPWS because of a breach of this Agreement, in the event that Producer does not timely remit the PIF Requirements, Producer shall be liable to DPWS for a late fee of \$75.00 in addition to the Producer Cost due DPWS. Producer agrees that the \$75.00 late fee is reasonable to compensate DPWS for any administrative cost DPWS may incur because of Producer's failure to timely remit the PIF Requirements.

**36.5.** In the event that the PIF Requirements are not remitted to DPWS within ninety (90) calendar days from the date of the sale of the Contract to the Contract Holder, and in addition to the terms set forth in Section 36.4 and all other remedies available to DPWS identified in this Agreement, DPWS has the right to reject the Contract and not honor or cover any claims made by the Contract Holder under the Contract ("PIF Rejected Contract"). In the event that any Contract Holder shall make a claim under a PIF Rejected Contract, such claim shall be considered an Indemnified Claim pursuant to Section 12 of this Agreement and, in addition to any other remedy available to DPWS under Section 12, Section 29 and/or any other Section of this Agreement, Producer shall be solely liable to the Contract Holder for paying and/or satisfying the Indemnified Claim.

**37. RANDOM COMPLIANCE CHECK/VIOLATION OF ANY APPLICABLE LAW BY PRODUCER.**

**37.1.** In the event that DPWS chooses to perform a Random Compliance Check, DPWS shall randomly select between ten (10) to twenty (20) telephone calls or written communications made by Producer, or any individual or entity on the Producer’s behalf, to any potential Customer or Contract Holder during a thirty (30) day period.

**37.2.** In the event that DPWS determines, in its sole discretion, that Producer, or any individual or entity on the Producer’s behalf, has violated any Applicable Law during a Random Compliance Check or any time during the term of this Agreement, DPWS shall have the right, in its sole discretion, to immediately terminate this Agreement pursuant to Section 3.3.

**37.3.** In addition to any other available remedies to DPWS identified in this Agreement, if DPWS determines that Producer, or any individual or entity on the Producer’s behalf, violated any Applicable Law as to a Contract Holder, Producer shall refund the Contract Holder all amounts paid by the Contract Holder for the Contract, including the Producer Cost (as provided in Section 5.2). Producer shall not receive any reimbursement by DPWS of the Producer Cost and the refund of all amounts paid by the Contract Holder shall be the Producer’s sole liability. Producer acknowledges that the Contract shall remain active after Producer refunds the Contract Holder all amounts paid by the Contract Holder for the Contract.

**37.4.** Producer agrees that any claim made or filed against any DPWS Indemnified Party made by any Contract Holder or Customer, whether or not that Customer becomes a Contract Holder, shall be an Indemnified Claim pursuant to Section 12.

**37.5.** In the event that DPWS determines that there has been a violation of any Applicable Law by the Producer, or any individual or entity on the Producer’s behalf, and reserving all other rights under Section 3.3 and Section 37.2, DPWS, in DPWS’s sole discretion, shall be entitled to randomly select any amount of additional telephone calls or written communications made by Producer, or any individual or entity on the Producer’s behalf, to any potential Customer or Contract Holder during any time period whatsoever as a further Random Compliance Check.









**37.6.** Notwithstanding any term set forth in this Section 37, if Producer disputes that there has been a violation of any Applicable Law, Producer shall set forth its written reasoning to DPWS that there has not been a violation of an Applicable Law within five (5) calendar days upon receiving notice of DPWS’s termination of this Agreement pursuant to Section 37.5. DPWS, in DPWS’s sole discretion, will then determine if there has been an violation of any Applicable Law reserving and maintaining all rights to terminate this Agreement as set forth in Section 3.3 and Section 37.2.

**37.7.** Producer acknowledges that DPWS shall be permitted to disclose the entire contents of any telephone call or written communication received by DPWS, including Personally Identifiable Information and Nonpublic Personal Information, during a Random Compliance Check or during the term of this Agreement a) pursuant to any Applicable Law; b) as part of any Court, Arbitration, or other administrative or agency proceeding in which Producer or DPWS is alleged to have violated any Applicable Law pursuant to a protective order specifying the terms and manner of production; c) to any Customer or the Contract Holder that DPWS, in DPWS’s sole discretion, believes Producer violated an Applicable Law upon the written request of any such Customer or Contract Holder.

**37.8.** Producer shall maintain all “opt-ins” and all other documents or electronically stored information reflecting that any consumer/individual consented to be contacted by telephone as to the solicitation and marketing of any of the Authorized Products. Producer shall provide the information subject to this Section 37.8 to DPWS within 3 days of DPWS’s request for this information.

**38. SCHEDULES**

By the Parties initials immediately adjacent to the identified Schedule in this Section 38, the Parties each agree to have received, reviewed, and agreed to each Schedule:

<u>Schedule</u>	<u>Description</u>	<u>DPWS Initials</u>	<u>Producer Initials</u>
Schedule A:	Authorized Products and Producer Costs		
Schedule B:	Court Proceedings		
Schedule C:	Consents for use of DPWS or Insured property		
Schedule D:	Contract-Used Logo		

**39. ARBITRATION**

**39.1. The Parties agree that any disputes arising under, or related to, this Producer Agreement, including any claim arising under breach of contract, tort, statute and/or equity, shall be decided in binding arbitration. The Parties, unless otherwise determined by the arbitrator pursuant to Section 29, shall equally share all costs for the arbitration, including the arbitrator’s fees and costs. The Parties expressly waive any right to file a lawsuit in a court of law, except for any immediate injunctive relief application permitted by Section 39.3, and waive any right to a judge or jury trial. Any questions as to whether any claim is subject to arbitration shall be decided by the arbitrator. The Parties each understand that by agreeing to arbitrate any disputes arising under this Agreement that the Parties are aware they each waiving their right to have such dispute decided by a judge or jury in a court of law, except as may be narrowly provided in Section 39.3.**

**39.2. The arbitration shall be conducted in Bergen County, New Jersey before a retired Judge of the New Jersey Superior Court or United States District Court, District of New Jersey and shall be conducted in accordance with N.J.S.A. 2A:24-1, et. seq. Any action to confirm the arbitration award shall be made to the Superior Court of New Jersey, Bergen County Vicinage.**

**39.3. In the event that either Party seeks immediate injunctive relief in a court of law, such filing must be done in the New Jersey Superior Court, Bergen County Vicinage or in the United States District Court, District of New Jersey located in Newark, New Jersey. Once the Court disposes of the injunctive relief application, if any other issues remain between the Parties, those issues shall be decided by arbitration pursuant to Sections 39.1 and 39.2.**

**39.4. The Parties acknowledge that they are both sophisticated business entities who understand the arbitration process and have consulted with legal counsel of their own choosing as to this arbitration provision.**

**39.5. Each Party: 1) hereby submits to the exclusive jurisdiction of the courts of the federal and state courts located in New Jersey (as to any application pursuant to Section 39.3 and/or any arbitration proceeding taking place in Bergen County, New Jersey pursuant to Article 39.2; b) waives any objection to venue with respect to actions brought in such courts or in such arbitration location; and c) agrees that such venue is convenient for each Party hereto to adjudicate any dispute.**

Producer

Direct Protection Warranty Services, LLC

By:

By: Richard Benevento  
Vice President  
Email: [Rich@thedpws.com](mailto:Rich@thedpws.com)

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Producer Representative and Guarantor Pursuant to Section 30

\_\_\_\_\_  
By \_\_\_\_\_