

INSTALLMENT PAYMENT PLAN AMENDMENT TO DEALER AGREEMENT



Dealership Name: _____

Address: _____

Phone: () _____

This Installment Payment Plan Amendment to Dealer Agreement (this "Amendment") is made this _____ day of _____, 20_____, among the Protective company identified at the end of this Amendment of 14755 N. Outer Forty Rd., Suite 400, St. Louis, MO 63017 ("Company"), the above named dealership and any affiliated stores identified in the Agreement (defined below), if applicable (collectively, "Dealer"), and Lyndon Financial Corporation, d/b/a TouchPointe Secure Plans ("TouchPointe").

Preamble

Company and Dealer have heretofore entered into a Dealer Agreement (or similarly titled agreement) (the "Agreement") under which Dealer is authorized to issue service contracts with respect to which Company serves as administrator and/or obligor (the "Service Contracts"). Company and its affiliated installment payment plan provider, TouchPointe, wish to make available to Dealer an installment payment plan to facilitate Dealer's marketing of Service Contracts, and Dealer wishes to avail itself of such plan, all on the terms and conditions set forth herein.

Agreement

Now, therefore, Company and Dealer agree as follows:

I. Usage of Terms; Definitions

- A. None of "include," "including," "included" and any variation of these is ever to be construed as a term of limitation.
- B. Unless otherwise specified, a reference to a "Section" means a section of this Amendment.
- C. Unless otherwise specified, a reference to a "Attachment" means an attachment to this Amendment, each of which constitutes a part of this Amendment and is incorporated herein by reference.
- D. In addition to the terms defined elsewhere in this Amendment, the following words and phrases have the meanings specified in this Section and apply to the singular and plural forms:
 1. "TouchPointe Program" means the installment payment plan program offered by TouchPointe and made available to Dealer under this Amendment
 2. A "Contract Holder" means the purchaser or proper recipient of a Service Contract.
 3. "Payment Contract" means a retail installment contract between a Contract Holder and TouchPointe issued under this Amendment permitting the Contract Holder to purchase a Service Contract through making a Down Payment to Dealer and installment payments to TouchPointe.
 4. "Down Payment" means the amount Dealer has collected from a Contract Holder in conjunction with the Contract Holder's entering into a Payment Contract with TouchPointe.
 5. "Total Sale Price" means the total price, including applicable sales or use taxes, that a Contract Holder pays to purchase a Service Contract.
 6. "Wholesale Price" means the amount that Dealer is required to remit to Company in conjunction with the issuance of a Service Contract.

7. "Amount Financed" means the amount so designated on the Payment Contract, which should be equal to the Total Sale Price less the Down Payment.

II. Certain Rights and Obligations of Dealer

- A. In accordance with the terms and conditions of this Amendment, TouchPointe hereby authorizes Dealer to issue Payment Contracts to Contract Holders on TouchPointe's behalf in relation to the issuance of Service Contracts to such Contract Holders. Dealer shall do so only on forms that TouchPointe provides and only in accordance with policies and procedures that TouchPointe establishes, including those set forth on the Installment Payment Plan Program Details (the "Program Details"), a current version of which is attached as *Attachment A*. Except with TouchPointe's written consent, which may be unreasonably withheld, Dealer shall not use any advertising materials to promote the TouchPointe Program except materials that TouchPointe provides to Dealer. All forms and advertising materials are the property of TouchPointe and shall be returned to TouchPointe upon termination of this Amendment.
- B. Dealer is prohibited under this Amendment from requiring any Contract Holder who enters into a Payment Contract to pay more for the Service Contract than such Contract Holder would have been required to pay for the Service Contract had he/she not entered into a Payment Contract, it being the intent of this prohibition to have the TouchPointe Program made available at no additional cost to Contract Holders.
- C. Whenever Dealer issues a Payment Contract, Dealer is relieved of the obligation to remit the Wholesale Price to Company for the associated Service Contract. Instead, Dealer shall send the documents specified in Section V.
- D. For each Payment Contract that Dealer issues, but subject to Service Contract refund obligations and Dealer's obligation to remit applicable taxes, Dealer shall be permitted to retain the Down Payment collected from the Contract Holder. In no event shall the Down Payment be less than the Minimum Down Payment set forth in the Program Details.
- E. This Amendment in no way diminishes any responsibility Dealer might otherwise have to fulfill any and all obligations imposed upon sellers or other distributors of Service Contracts under applicable law to collect from Contract Holders and remit to the proper taxing authorities all sales, use or any other similar taxes. It is understood and agreed that neither Company nor TouchPointe shall be assuming any such funding or processing obligations.
- F. This Amendment does not relieve Dealer of any obligations Dealer might otherwise have under the Agreement or applicable law to fund and process refunds due as the result of early cancellations of Service Contracts. Dealer shall designate TouchPointe as the lienholder in the registration section of the Service Contract and shall honor TouchPointe's status as lienholder and as attorney-in-fact for the Contract Holder under the Payment Contract. Dealer shall notify TouchPointe of an event giving rise to a Service Contract cancellation, including a Contract Holder's cancellation request, within three days of Dealer's becoming aware of such event.
- G. Dealer shall obtain any and all licenses that may be required of it to issue Payment Contracts as contemplated under this Amendment.
- H. For each Payment Contract that Dealer issues, Dealer shall owe TouchPointe the fee set forth in the Program Details, based on the number of installments in the Payment Contract and the Amount Financed, subject to refund as provided in the Program Details under "Refunds of Fees upon Cancellation." TouchPointe may deduct such fee from amounts otherwise payable to Dealer under this Amendment; otherwise, Dealer shall remit such amounts to TouchPointe as part of the periodic reporting and remittance under this Amendment. For avoidance of doubt, the refund amount shall be based on the number of payments received, meaning that the payment transaction has been processed without reversal due to such matters as insufficient funds or credit card approval; however, if any circumstance not directly related to payment processing (e.g., cancellation of a Service Contract due to ineligibility of the underlying consumer product on which it was issued) requires that any payments be returned to the Contract Holder, such returned payments shall not be deducted so as to increase the refund due. Any fee that TouchPointe is to receive from Dealer under this Amendment is deemed to be fully earned unless subject to a refund as provided in this Section II.H.
- I. For each Payment Contract that Dealer issues, but subject to Service Contract refund obligations, after TouchPointe receives the number of payments set forth in the Program Details under "Disbursement Process," TouchPointe shall release to Dealer as part of the periodic reporting and remittance under this Amendment an amount equal to: (1) the Amount Financed, less (2) the sum of the Wholesale Price and the fee due to TouchPointe.

- J. For a Service Contract to be eligible for the TouchPointe Program, the Amount Financed must be no less than: (1) the Wholesale Price, less (2) the fee due to TouchPointe (without regard to "Refunds of Fees upon Cancellation" as set forth in the Program Details). If Dealer issues a Payment Contract on an ineligible Service Contract, and TouchPointe is unable to rescind the Payment Contract, Dealer shall be responsible to reimburse Company and TouchPointe for any resulting loss.
- K. Dealer shall not enter into any agreement or understanding with a Contract Holder that will give such Contract Holder a right of offset or recoupment as against TouchPointe with respect to TouchPointe's enforcement of the Payment Contract.

III. Certain Rights and Obligations of TouchPointe

- A. TouchPointe shall fulfill all administrative obligations of the TouchPointe Program as pertains to the rights and obligations between the Contract Holder and TouchPointe, and TouchPointe shall make reasonable efforts to facilitate continued payment by the Contract Holder and collect such payments.
- B. TouchPointe shall provide Dealer forms for issuing Payment Contracts and advertising materials for promoting the TouchPointe Program and shall communicate to Dealer the policies and procedures to be followed for issuing Payment Contracts. TouchPointe may modify such forms, policies and procedures, including the Program Details (a current version of what is attached as *Attachment A*) upon 30 days' advance notice to Dealer. Upon termination of this Amendment, Dealer shall return to TouchPointe all unused forms and other supplies no longer required for Dealer to fulfill its remaining obligations under this Amendment.
- C. For each Payment Contract that Dealer issues, but subject to Service Contract refund obligations, TouchPointe shall pay Company as part of the periodic reporting and remittance under this Amendment the Wholesale Price.
- D. For each Payment Contract that Dealer issues, after TouchPointe receives the number of payments set forth in the Program Details under "Disbursement Process," but subject to Service Contract refund obligations, TouchPointe shall pay Dealer as part of the periodic reporting and remittance under this Amendment an amount equal to: (1) the Amount Financed, less (2) the sum of the Wholesale Price and the fee due to TouchPointe. The balance of cancellation refunds that Dealer owes to TouchPointe shall be offset against payments that TouchPointe owes to Dealer under this Section III.D.

IV. Certain Rights and Obligations of Company

- A. Company shall forward to TouchPointe Payment Contracts that Dealer has remitted to Company.
- B. Company shall honor TouchPointe's status as lienholder and as attorney-in-fact for the Contract Holder under the Payment Contract. Company shall notify TouchPointe of an event giving rise to a Service Contract cancellation, including a Contract Holder's cancellation request, within three days of Company's becoming aware of such event.
- C. Company shall facilitate the transmittal of documents and other information between TouchPointe and Dealer and shall serve as TouchPointe's agent in this respect.

V. Report and Remittance

- A. Dealer shall fulfill all periodic reporting and remittance requirements under the Agreement except to the extent such requirements are modified under this Amendment. Within seven days of the issuance of a Payment Contract, Dealer shall provide TouchPointe with the original of the Payment Contract and a copy of the Service Contract declarations page. TouchPointe may, at its discretion, permit Dealer to retain such physical documents so long as Dealer provides this information in an electronic format, including file format, and such physical documents remain available for delivery to TouchPointe upon its request.
- B. On a monthly basis, TouchPointe shall provide Company and Dealer with a new business report showing all Payment Contracts received within the month.
- C. On a monthly basis, TouchPointe shall provide Company with a detailed disbursement report accompanied by payment of the Wholesale Price for all Payment Contracts for which TouchPointe has received the agreed upon number of monthly payments as set forth by the Program Details, net of any amount due from Company to TouchPointe.

- D. On a monthly basis, Company shall provide TouchPointe with a detailed cancellation report accompanied by Company's share of any refund due for Service Contracts canceled within the prior month that are subject to a Payment Contract. TouchPointe shall apply monies paid by Company to determine whether there will be a credit to Dealer or a balance owed by Dealer.
- E. On a monthly basis, TouchPointe shall provide Dealer with a detailed disbursement report accompanied by payment of the amount specified in Section III.D for all Payment Contracts for which TouchPointe has received the agreed upon number of monthly payments as set forth by the Program Details, but subject to adjustment for any other amounts owed by or to Dealer, including for Service Contract cancellations.

VI. Hold Harmless and Indemnification; Third-Party Actions and Complaints; Remedies

- A. TouchPointe agrees to hold Dealer harmless from any and all expenses, costs, causes of action, damages, judgments, attorney fees, penalties or fines (collectively "Indemnified Losses") arising out of or caused by the alleged negligence, willful and wanton misconduct, fraud, dishonesty, forgery, embezzlement, misappropriation or theft (collectively, "Wrongful Conduct") of TouchPointe or of its officers, agents or employees in connection with or arising from TouchPointe's performance or non-performance of obligations required under this Amendment. For purposes of this paragraph, none of the acts, omissions or representations of Dealer or its affiliates, employees or other representatives shall be regarded as those of TouchPointe. No action or inaction on the part of TouchPointe shall be found to constitute Wrongful Conduct to the extent the legal standard used to measure TouchPointe's conduct had not been made reasonably clear prior to the time of TouchPointe's action or inaction.
- B. Except to the extent that TouchPointe has indemnified Dealer herein, Dealer agrees to indemnify and hold TouchPointe harmless from and against any and all Indemnified Losses relating in any way to any transaction contemplated by or relating to this Amendment or any prior agreement covering the same subject matter. Without limiting the foregoing, Dealer agrees to assume sole responsibility for Dealer's alleged negligent or wrongful acts. Negligent acts include allegations of or claims of the following: requiring any Contract Holder who enters into a Payment Contract to pay more for a Service Contract than such Contract Holder would have been required to pay for the Service Contract had he/she not entered into the Payment Contract; issuance of a Payment Contract contrary to the TouchPointe Program policies and procedures; physical loss of Payment Contracts; failure to submit Payment Contracts promptly; failure to remit payment promptly; failure to make refunds promptly; and failure to maintain appropriate licenses.
- C. Each party shall immediately notify the other upon receipt or notice of a lawsuit in which the other is named as a defendant or that relates to performance under this Amendment. The parties shall share information and cooperate with one another as may be reasonably required for each party to protect its interest in any such lawsuit.
- D. Each party shall immediately notify the other upon receipt of any written complaint relating to performance under this Amendment, regardless of whether the complaint is from a consumer, attorney, regulatory agency or any other source. The parties shall share information and cooperate with one another as may be reasonably required for any party to respond to the complaint.
- E. If any legal action or other proceeding is brought for the enforcement of this Amendment, the successful or substantially prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in addition to any other relief to which it may be entitled.
- F. All obligations of any party to this Amendment or its affiliates (as such, an "Obligated Party") to the other parties to this Amendment or any of their affiliates (as such, an "Owed Party"), now or hereafter owing from time to time, whether direct, indirect, contingent, absolute, fixed, conditional or unconditional, including those arising from obligations of the Obligated Party to third parties for which any Owed Party may be secondarily responsible, may be enforced against the Obligated Party by any of the Owed Parties, each for its own benefit or for the benefit of the other. In addition to such other remedies as may be available to them, including the right of setoff, any of the Owed Parties may recoup any obligations of any of the Obligated Parties from any sums now or hereafter owing by any of the Owed Parties to the Obligated Parties from time to time, whether direct, indirect, contingent, absolute, fixed, conditional or unconditional.

VII. Term and Termination

- A. This Amendment shall commence as of the Effective Date, and shall continue for an indefinite period until terminated in the manner prescribed in this Section VII.

- B. This Amendment shall terminate automatically upon the termination of the Agreement.
- C. Any party may terminate this Amendment without cause by giving at least 30 days' prior written notice to the other parties.
- D. Any party may terminate this Amendment if one of the other parties materially breaches this Amendment, provided that the non-breaching party has first given the breaching party no less than fifteen days' prior notice of the specific circumstances constituting the material breach and the breach has not been cured within such fifteen-day period. A breach or violation shall not be deemed cured if it is part of a pattern of similar, recurring breaches or violations and no corrective action has been taken to end the recurrence. Notwithstanding any provision of this Amendment to the contrary, during the fifteen-day period: (i) the non-breaching party may seek to obtain equitable relief from a court of competent jurisdiction to mitigate damages caused by any such breach, and (ii) performance under this Amendment shall be suspended to the extent the breach is of such a nature that a continuation of such performance would cause a party to be in violation of the law.
- E. Following termination, no new Payment Contracts shall become subject to this Amendment. Termination, however, shall have no effect on the application of this Amendment to Payment Contracts that have already been issued, nor shall it limit the continued application of provisions of this Amendment governing the rights and obligations of the parties as reasonably related to the continued administration of the Payment Contracts previously issued, including those provisions addressing payments and indemnification.

VIII. Miscellaneous

- A. The provisions under the headings "Confidential Information" and "Miscellaneous" and other general provisions of the Agreement shall apply to TouchPointe and to the rights and obligations of TouchPointe vis-à-vis the other parties to this Amendment as if TouchPointe were a party thereto.
- B. Except as explicitly modified by this Amendment, all terms and conditions of the Agreement and any other amendments thereto shall remain unchanged.

Intending to be legally bound, Dealer, Company and TouchPointe have each caused this Amendment to be signed by a duly authorized officer as of the date set forth below.

[signature page to follow]

Dealer

By: _____

Printed Name

Title

Date

**Lyndon Financial Corporation, d/b/a
TouchPointe Secure Plans**

By: _____

Printed Name

Title

Date

Company

- Protective Administrative Services, Inc.
- Western Diversified Services, Inc.
- The Advantage Warranty Corp.
- Western General Dealer Services, Inc.
- WG Dealer Services
- Western General Warranty Corporation

By: _____

Printed Name

Title

Date

Attachment A to Installment Payment Plan Amendment to Dealer Agreement

(See attached Installment Payment Plan Program Details.)



TouchPointe Secure Plans

14755 North Outer 40 Dr. Chesterfield, MO 63017

Installment Payment Plan Program Details

Installment Payment Plan Terms	0-18 Months
Payment Types	Credit Card ACH
Downpayment Minimum	10%
Minimum Contract Term	Contract term must be at least double the installment term. For example, 12 month installments = 24 month service contract or 18 month installments = 36 month service contract
Cancel Rule	Account cancels 30 days after missed payment
Reinstatement Rule	Reinstatement must be within 15 days of cancellation date
Disbursement Process	Funds issued to administrator and seller after the 1 st or 2 nd monthly installment is received from the customer
Internet Access	Unlimited # of users can have access to online system
Reports	Reports available online or can be automatically scheduled

TouchPointe Fee Schedule

Amount Financed	# of Installments	
	0-12	13-18
\$0-\$1500	110	130
\$1501-\$2500	150	170
\$2501-\$3000	190	210
\$3001 >	7% of Amount Financed	8% of Amount Financed

Refund of Fees upon Cancellation

# of Installments Received	Percent of Fee Refund
No Pmts Rec'd	100%
1 Payment	85%
2 Payments	75%
3 Payments	50%
4 Payments	25%
5 Payments	15%
6 Payments	10%