

## 1. DEFINITIONS

The Information Page contains boxes with capitalized terms. When any of these terms appear in the GAP Addendum they refer to the specific vehicle, person, date, item or information entered in the associated box on the Information Page. In addition, the following definitions shall apply:

**Actual Cash Value** means the average retail value on the Date Of Loss prior to its physical damage or theft determined utilizing the applicable J.D. Power Marine Appraisal Guide, adjusted for mileage and equipment, or, if no J.D. Power value is available, using other available industry information. Actual Cash Value shall only be used to calculate the GAP Benefit if no Primary Carrier exists, the Primary Carrier has been declared insolvent, or the Primary Carrier's Constructive Total Loss settlement was reduced due to Limited Coverage.

**Actual Payoff Balance** means the payoff balance provided by the Dealer/Creditor or assigned Financial Institution as of the Date Of Loss, will not include all unearned finance charges, late charges, Delinquent Payment(s), any amount added to the balance owing under the Financing Agreement after the effective date of the Financing Agreement and the retail price of any accessories not attached to the Vehicle.

**APR** means Annual Percentage Rate.

**Branded Title** means any certificate of ownership that is or has been declared defective. This may include, but is not limited to, notations of salvage, rebuilt, flood, or lemon law buyback.

**Cancellable Products** means products you purchased that may be cancelled including, but not limited to, products such as credit insurance, vehicle service contracts, or pre-paid maintenance agreements.

**Commercial Use** means the use of the Vehicle to transport persons or property for hire, compensation, or profit or in the furtherance of a business purpose or enterprise.

**Constructive Total Loss** means the direct and accidental loss of or damage to the Vehicle: (a) resulting in the inability to repair the Vehicle due to the severity of the damage, as determined by the Primary Carrier or, if no Primary Carrier insures the Vehicle, the cost to repair the Vehicle exceeds 70% of the Vehicle's Actual Cash Value; or (b) due to an Unrecovered Theft as determined by the Primary Carrier if a Primary Carrier insures the Vehicle.

**Date Of Loss** means the exact day on which the Vehicle is reported stolen or incurs physical damage that is severe enough to be deemed a Constructive Total Loss.

**Debt-To-Value** means the percentage determined by dividing the Amount Financed, less the purchase price paid for any financed Cancellable Products, by (a) the Manufacturer's Suggested Retail Price (MSRP) if the Vehicle is new, or (b) the applicable J.D. Power Marine Appraisal Guide average retail value, as of the GAP Effective Date, if the Vehicle is preowned.

**Delinquent Payment(s)** means any payment including payments deferred by the Dealer/Creditor or Financial Institution) as described in the Financing Agreement, which remains unpaid for a period of more than 15 days after the due date stated in the Financing Agreement and remain unpaid as of the date of loss.

**Family Member** means a person related to you by blood, marriage or adoption, including a step child, ward child, foster child, or other dependent or a member of the same household.

**Financing Agreement** means the contract that represents the written understanding between the Dealer/Creditor and you for the purchase of the Vehicle and which contains the terms, conditions, effective date, and expiration date of the contract.

**GAP Benefit** means the amount that may be waived under the terms of this GAP Addendum if the Vehicle is deemed a Constructive Total Loss.

**Limited Coverage** means the physical damage or theft coverage in place by the Primary Carrier and/or any other insurer that provides reduced benefit limits and/or claim payments resulting in settlements that are less than the full value of the Vehicle (without regard to the deductible) on the Date Of Loss.

**Primary Carrier** means the insurance company providing the physical damage and theft coverage on the Vehicle (including Limited Coverage) or the insurance carrier liable for the Constructive Total Loss of the Vehicle.

**Scheduled Payoff Balance** means the total amount outstanding determined by an amortization schedule as of the Date Of Loss less retail price of any accessories not attached to the Vehicle based on the original terms of the Financing Agreement and assuming all payments were made on the due date. The amortization schedule will assume all payments were made on the due date indicated in the original Financing Agreement.

**Single Payment Contract(s)** means a Financing Agreement under which either: (a) the entire cash price of the Vehicle and all other charges are due in a single payment; or (b) the entire cash price of the Vehicle, any itemized charges, and any accrued/earned finance charges are due in a single payment.

**Unrecovered Theft** means the Vehicle is stolen and not recovered within 30 days after the Date Of Loss.

**Vehicle** means the vehicle described on the Information Page of this GAP Addendum.

**You or your** means the Customer listed on the Information Page of this GAP Addendum.

## 2. GAP BENEFIT PROCEDURE

To obtain a GAP Benefit, you must make a request for a GAP Benefit to the Program Administrator at the mailing address, email address, website, phone or fax number listed below.

A REQUEST FOR A GAP BENEFIT MUST BE MADE WITHIN 90 DAYS OF THE LATER TO OCCUR OF: (A) THE DATE OF THE PRIMARY CARRIER'S CONSTRUCTIVE TOTAL LOSS SETTLEMENT CHECK; OR (B) THE DATE OF LOSS.

Within 90 days after you make a request for a GAP Benefit, you must submit the following to the Program Administrator at the mailing address, email address, website or fax number listed below:

- A. Your copy of this GAP Addendum.
- B. If applicable, a copy of the following from the Primary Carrier: the settlement statement, settlement check, insurance valuation report, worksheet explaining how the settlement amount was calculated, the Date Of Loss and your Primary Carrier insurance deductible.
- C. A copy of the police report in the event of a Constructive Total Loss and no primary carrier exists.
- D. A copy of the Financing Agreement.
- E. A statement from the Dealer/Creditor or if assigned, the Financial Institution showing the amount owing under the Financing Agreement and a complete payment history as of the Date Of Loss, which includes the beginning balance, monthly balances, amount of each payment applied to principal and amount of each payment applied to finance charges.
- F. If applicable, a copy of the documents indicating the refund amounts for financed Cancellable Products.

- G. A completed GAP Addendum Benefit Form obtained from the Program Administrator.
- H. Documentation evidencing the outcome of legal proceedings, to determine whether a Constructive Total Loss of your Vehicle resulted directly or indirectly from any criminal or illegal act committed by you, a Family Member, employee, agent or anyone acting with your consent.

You will not be required to provide documents that are not listed.

ALL DOCUMENTS LISTED ABOVE MUST BE RECEIVED WITHIN 90 DAYS FROM THE DATE YOU MAKE A REQUEST FOR A GAP BENEFIT. THE PROGRAM ADMINISTRATOR WILL NOT OBTAIN THIS DOCUMENTATION FOR YOU. IF IT IS NOT POSSIBLE TO OBTAIN ANY REQUIRED DOCUMENTS WITHIN THE 90 DAY PERIOD, YOU MUST SUBMIT SUCH DOCUMENTS AS SOON AS REASONABLY PRACTICABLE AFTER THEY BECOME AVAILABLE. FAILURE TO SUBMIT ALL DOCUMENTS IN A TIMELY MANNER WILL RESULT IN DENIAL OF THE GAP BENEFIT.

You may make a request for a GAP Benefit and submit required documentation to the Program Administrator at any of the following:

Mail: GAP Benefits  
PO BOX 830633  
Birmingham AL 35283-0633

Email: GAP.Claims@protective.com

Website: www.protective411.com

Phone: 800-432-4566

Fax: 866-638-8722

Any questions can be directed to the Program Administrator at 800-432-4566.

### 3. GAP BENEFIT CALCULATION

The GAP Benefit waives all or a portion of the amount owing under the Financing Agreement and, subject to the remaining provisions of this GAP Addendum, is the lesser of the Scheduled Payoff Balance or the Actual Payoff Balance on the Date Of Loss minus:

- A. Any refunds available on financed Cancellable Products;
- B. The amount of your Primary Carrier insurance deductible that exceeds \$1,000, if applicable;
- C. The amount of the Constructive Total Loss settlement made by the Primary Carrier or, if no Primary Carrier exists, the Primary Carrier has been declared insolvent, or the Primary Carrier's Constructive Total Loss settlement was reduced due to Limited Coverage, the Actual Cash Value;
- D. Any amount by which the Constructive Total Loss settlement made by the Primary Carrier has been decreased because of prior damage remaining unrepaired at the time of a Constructive Total Loss, the value of owner retained salvage, towing fees, inspection fees, storage charges or any other deductions; and
- E. The amount, if any, by which the Debt-To-Value on the GAP Effective Date exceeded 120%.

The maximum GAP Benefit shall not exceed \$35,000 for vehicles with an Amount Financed of \$75,000 or less and \$75,000 benefit for vehicles with an Amount Financed of over \$75,000. The GAP Benefit will only apply one time for the Vehicle. Only one Vehicle per Financing Agreement.

### 4. OTHER EXCLUSIONS AND RESTRICTIONS

This GAP Addendum will not provide a GAP Benefit for:

- A. Losses that occurred prior to the GAP Effective Date,

including prior losses resulting in a Branded Title.

- B. Losses involving an act where you, a Family Member, employee, agent or anyone acting with your consent intentionally damage the Vehicle causing a Constructive Total Loss.
- C. A request for a GAP Benefit involving or arising from material misrepresentation of facts made by you, falsification of documents, fraudulent or dishonest act(s), repossession, or legal confiscation of the Vehicle by a public official.
- D. Losses resulting directly or indirectly from any criminal or illegal act committed by you, a Family Member, employee, agent or anyone acting with your consent.
- E. Losses resulting from you being under the influence of alcohol or drugs as established by the police/coast guard report, official blood test or breathalyzer test.
- F. Losses to the Vehicle resulting from Commercial Use, including losses occurring while the Vehicle is being operated for Commercial Use, regardless of whether the Vehicle is titled in the name of a business or individual.
- G. A request for a GAP Benefit in the absence of a Constructive Total Loss.
- H. Losses resulting from any repair, restoration, alterations, modification, or remodeling process.
- I. Losses occurring outside of the United States or Canada and their territories or possessions.
- J. Losses resulting from the Vehicle being operated, used, or maintained in any race, speed contest, competitive driving or other contest.
- K. Losses to your personal property.
- L. Losses resulting from wear and tear, freezing, mechanical or electrical breakdown or failure.
- M. Losses resulting from the Vehicle being operated by any person not appropriately licensed/certified to operate the Vehicle or, if no license/certification is required, person under age 16.
- N. Losses resulting from Vehicle purchased on multiple credit cards.
- O. Losses resulting from Vehicle that was purchased with more than one comparable asset on one Financing Agreement.
- P. Losses occurring to any customized Vehicle or any Vehicle that does not appear in the J.D. Power Marine Appraisal Guide.

Assignment of the Financing Agreement by the Dealer/Creditor shall not in any way affect the amendment of the Financing Agreement provided for in this GAP Addendum. This GAP Addendum is transferable if there is a transfer of equity.

If there is any other coverage for the Vehicle, this GAP Addendum shall be considered excess and will not apply or contribute to all or any portion of the amount owing under the Financing Agreement until all benefits under the other coverages have been exhausted.

### 5. EARLY TERMINATION AND REFUND

If a GAP Benefit has not been provided under this GAP Addendum, you may voluntarily terminate this GAP Addendum early and will receive a refund, as detailed below. The termination will be effective as of the date the Program Administrator receives your written termination notice.

If you voluntarily terminate this GAP Addendum in accordance with the provisions herein within 30 days after the GAP Effective Date, you will receive a full refund of the GAP Addendum Purchase Price. In all other situations where there is a voluntary termination, you will receive a partial refund determined by the

pro-rata method, less a \$35 processing fee.

In the event of a voluntary termination, the Dealer/Creditor has no responsibility to process a refund until the Dealer/Creditor or Program Administrator receives written notice from you. Your written notice should include your name, address and the Addendum Number. If you have any questions about how to provide written notice, contact the Dealer/Creditor or call the Program Administrator at 800-432-4566.

This GAP Addendum will also terminate, and you will receive a refund, upon the earliest to occur of:

- A. Prepayment in full of the Financing Agreement;
- B. A demand from the Dealer/Creditor or, if assigned, the Financial Institution for payment in full of the unpaid balance due under, or acceleration of, the Financing Agreement;
- C. A total denial of a request for a GAP Benefit because: the Financing Agreement was for a Single Payment Contract; if the Amount Financed exceeds \$500,000 or, if the Financing Agreement Term exceeds 240 months or if the GAP Addendum Term exceeds 120 months; if the Vehicle has a Branded Title; the Vehicle is leased; or a Constructive Total Loss occurred prior to the GAP Effective Date; or
- D. A total denial of a request for a GAP Benefit based on an exclusion or due to a reason not listed in item C, except for a request for a GAP Benefit in the absence of a Constructive Total Loss.

If this GAP Addendum is terminated within 30 days after the GAP Effective Date for any reason, including as a result of an event described in A, B, C or D above, you will receive a full refund of the GAP Addendum Purchase Price. If this GAP Addendum is terminated after 30 days as a result of an event described in A or B above, you will receive a partial refund determined by the pro-rata method, less a \$35 processing fee. The termination date will be the date of the event that caused the termination.

If this GAP Addendum is terminated after 30 days for one of the reasons listed in C above or any other condition known at the time of sale, you will receive a full refund of the GAP Addendum Purchase Price.

If this GAP Addendum is terminated after 30 days as a result of a total denial due to a reason described in D above, you will receive a partial refund determined by the pro-rata method, based on the date of total denial. If the GAP Addendum is terminated after 30 days as a result of total denial due to a condition known at the time of sale, you will receive a full refund.

In the event of a termination due to early termination of the Financing Agreement, the refund will be made within 60 days of termination.

Any refund will be applied to the Financing Agreement if there is an amount still outstanding or, if there is no amount outstanding, any refund will be paid to you by the Program Administrator the Dealer/Creditor or, if assigned, the Financial Institution.

If the Vehicle is repossessed, the Dealer/Creditor or, if assigned, the Financial Institution on the Information Page is authorized to initiate a termination and receive the refund, as the sole payee.

## **6. APPEAL PROCESS**

You may appeal a denial of a GAP Benefit by submitting a written request for an appeal describing the basis of your appeal by email or US mail within 20 business days after the Program Administrator

notifies you of its determination. Upon receipt of your appeal request, the Program Administrator will assign a representative to provide you with information about the appeal process.

A panel of three persons with experience in GAP claims processing, but who were not responsible for adjudicating your GAP claim, will review your appeal within 20 business days after receipt of your written request for an appeal. The Program Administrator will send written notification by mail or email of its appeal determination within 20 business days after the review of your appeal.

Email Address: gap.claims@protective.com

Mailing Address: PO BOX 830633  
Birmingham, AL 35283-0633  
Attn: GAP Claims Department

## **7. ARBITRATION; JURY WAIVER**

It is understood and agreed that this GAP Addendum incorporates by reference and is subject to the arbitration provision, and jury waiver provision, if any, of the Financing Agreement, and that the Program Administrator is an intended beneficiary of any such arbitration provision and jury waiver provision.

## **8. RECORDS AVAILABILITY**

Upon the request of the Texas Office of Consumer Credit Commissioner, the Program Administrator will make its records relating to the creation, processing, and resolution of the GAP Addendum available to the Texas Office of Consumer Credit Commissioner.

## **9. COMPLAINTS**

You may file a complaint with the Office of Consumer Credit Commissioner at 2601 N. Lamar Blvd., Austin, TX 78705, 800-538-1579, [occc.texas.gov](http://occc.texas.gov).