

# OMNISHIELD DEALER AGREEMENT

This Dealer Agreement (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and among Dealer and the Administrator identified below (each a "Party", and collectively referred to herein as the "Parties"). The Administrator shall be referred to herein as the "Company".

COMPANY: OmniShield Warranty Solutions

DEALER: \_\_\_\_\_

In consideration of the mutual promises, agreements and undertakings herein contemplated, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. **DEFINITIONS.** In addition to other terms defined elsewhere in this Agreement, the terms below are defined as follows:
  - 1.1. "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 with the referenced entity.
  - 1.2. "Authorized Product(s)" means any product(s) identified on Schedule A of this Agreement, as amended from time to time.
  - 1.3. "Cardholder Data" means a credit or debit card account number together with the cardholder's name, card expiration date, or card service code.
  - 1.4. "Customer" means any existing or prospective customer of Dealer that is being offered Authorized Products pursuant to this Agreement, such that in the case of service contract products, the existing or prospective contract holder would be the Customer.
  - 1.5. "Nonpublic Personal Information" shall be defined with reference to the Privacy Laws and shall include the following: any information (i) a Customer provides to Dealer to obtain a product or service; (ii) about a Customer derived from a transaction with Dealer; (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 (and Publicly Available Information pertaining to those Customers) that is derived using any of the foregoing information that is not Publicly Available Information.
  - 1.6. "Personally Identifiable Information" means Nonpublic Personal Information and, to the extent not included in such term, any information that can be associated with a natural person, which may include, without limitation, the person's first name or first initial and last name, address, telephone number, social security number, driver's license number, or account number.
  - 1.7. "Privacy Laws" shall refer to the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. §§ 6801 *et seq.*, and applicable federal and state laws and regulations implementing the act.
  - 1.8. "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.
  - 1.9. "Territory" means the United States of America.
2. **APPOINTMENT.**
  - 2.1. Dealer hereby appoints Company to administer only those Authorized Product(s) identified in the attached Schedule A, as may be amended by Company from time-to-time. Dealer shall have no authority with other than that expressly provided for herein. Dealer may on the terms and conditions set forth herein, on a non-exclusive basis, be authorized to solicit within the Territory, the sale of Authorized Products identified in the attached Schedule A, as may be amended by Company from time-to-time. Dealer may only offer the Authorized Products to its retail Customers in the Territory. Dealer'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.
  - 2.2. **Suspension.** Company may temporarily suspend or permanently revoke Dealer's authority to offer the Authorized Products immediately upon notice.
3. **TERM.** 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. Any Party may terminate this Agreement, for any reason or for no reason at all, by giving each other Party thirty (30) days' prior written notice; provided however, Company may terminate this Agreement immediately and without notice if Dealer fails to comply with any licensing laws or other law or regulation; becomes insolvent, bankrupt, or suffers some other financial impairment that may affect Dealer's performance under this Agreement; improperly handles Company's funds; commits any act of fraud or malfeasance; commits any breach of this Agreement or any other agreement with Company; or commits any act injurious to Company or its contract holders. Upon termination, Dealer shall promptly pay to Company all sums that are due or become due hereunder, and shall promptly deliver to Company all Company 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 Company. In the event of termination of this Agreement, 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 Dealer from continuing liability for refunds and/or cancellations.

#### 4. DUTIES OF COMPANY.

- 4.1. Company shall: promptly and accurately process the business, including enrollments and cancellation of Authorized Products submitted by Dealer from time to time; adjust settle, pay and/or deny benefits requests and/or claims in accordance with applicable law and the terms of the Authorized Products and this Agreement; and perform such other administrative activities as may be agreed between the Parties; provided however, the Company may, at its sole discretion, sub-contract with another entity to perform and/or assume some or all of its rights, duties and/or obligations arising under this Agreement.

#### 5. DUTIES OF DEALER. Dealer shall itself and ensure that its employees and agents:

- 5.1. Solicit and sell the Authorized Products in accordance with any guidelines provided to Dealer by Company;
- 5.2. For each sale of an Authorized Product, remit to Company the Dealer Cost specified in Schedule B;
- 5.3. Disclose to Customers all material 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) approved by Company 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, 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 Company from time to time, such that failure to submit applications as instructed by Company 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 Dealer;
- 5.8. Hold and preserve as property of Company during the term of this Agreement and for a period of four (4) years following the termination or cancellation of this Agreement: (i) records of all locations selling Authorized Products; (ii) records of all persons selling Authorized Products; (iii) records of the dates on which each employee and/or agent begins selling Authorized Products; (iv) records of all sales of Authorized Products; (v) all books of account, documents, receipts, vouchers, files, literature, applications, correspondence and records of any kind, which at any time come into Dealer's possession or under its control relating to transactions involving the Authorized Products; and (vii) any other commercially reasonable records that Company may request in writing that Dealer maintain;
- 5.9. Upon five (5) days' notice, grant access to Company 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. Hold all funds collected for Authorized Products which are payable to Company in a fiduciary capacity;
- 5.11. For each sale of an Authorized Product, timely remit the Dealer Cost and any other amounts due and payable to Company no later than tenth (10<sup>th</sup>) calendar day following the date on which the Authorized Product is sold, together with such completed remittance reports as the Company may require from time to time;
- 5.12. Follow all Company instructions concerning remittance checks and/or electronic payments and in the event that Dealer fails to timely remit, Dealer shall pay Company a late fee of fifteen percent (15.00%) on any late remittances;
- 5.13. Obtain and maintain all applicable licenses in each state in which a license is required to discharge the duties or obligations or exercise rights or authority under this Agreement or offer any Authorized Products;
- 5.14. Immediately inform Company in writing of any change in Dealer's licensing status and immediately cease offering or selling Authorized Products upon the lapse, suspension, or termination of any required license;
- 5.15. Be responsible for any and all costs incurred by Dealer in connection with obtaining any license or status required to offer the Authorized Products in the Territory;
- 5.16. Refund any amounts owed, as calculated by Company in accordance with the Authorized Product terms and conditions and/or state law;
- 5.17. Comply with any instructions, manuals, guidelines, rules, policies, procedures or requirements provided by Company in writing;
- 5.18. Comply with any requirements or limitations relating to Dealer'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;

- 5.19. Comply with all federal and state laws and regulations, including but not limited to Privacy Laws, the Federal Crime Control Act, the U.S. PATRIOT Act, as well as all service contract, consumer protection, and record retention laws and regulations; and
- 5.20. Promptly notify the Company if Dealer becomes aware of any felony conviction of one of its officers, directors, employees and/or agents.
6. **PROHIBITIONS.** Dealer is without authority and expressly agrees not to perform any of the following acts:
- 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. Attempt, in the name of Company, to incur any debt or liability, to make a contract or to act in any legal proceeding;
- 6.4. Hold itself out as an employee of Company;
- 6.5. Give or offer to give, on Company's behalf, any advice or opinion regarding taxation in connection with the purchase of an Authorized Product;
- 6.6. Directly or indirectly attempt to induce a Customer to relinquish, surrender, replace or lapse an 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 online or over the phone;
- 6.9. Use any other Parties' copyrighted and/or trademarked material for any purpose, including but not limited to, the promotion of the other Parties or Dealer, without the express written permission of the affected Parties;
- 6.10. Publish, reproduce, circulate, copy or display advertisements, circulars, handouts, or other promotional materials related to Company or any Affiliate of Company, or their corporate names, products or logos, including but not limited to Authorized Products, unless the content has been reviewed by Company and Dealer has obtained prior written approval from Company;
- 6.11. Take any action with regard to any Authorized Products that is outside of the scope of authority granted to Dealer under this Agreement.
7. **REPRESENTATIONS AND WARRANTIES.** Dealer 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 licensed to do business and in good standing in every jurisdiction where such qualification and licensing 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 Dealer; and (e) when executed and delivered by each of Company and Dealer, this Agreement will constitute the legal, valid and binding obligation of Dealer, enforceable against Dealer 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). Dealer further represents and warrants that to its knowledge, its employees, officers and directors have not been convicted of any criminal felony involving dishonesty or breach of trust and that Dealer 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.
8. **INDEPENDENT CONTRACTOR RELATIONSHIP.** 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, or employment between the Parties. Dealer is an independent contractor, and as such Dealer 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. Dealer shall exercise its discretion as to the Customers, persons or accounts to be solicited, and the time, place and manner of such solicitation. Dealer will bear all costs incurred by Dealer in the performance of its obligations under this Agreement unless expressly stated otherwise herein.
9. **ASSIGNMENT.** Neither this Agreement nor any rights or interests arising therefrom may be transferred or assigned by Dealer without the prior written consent of Company.
10. **COMPENSATION.** In consideration of the services rendered by Company, Dealer shall pay Company the Dealer Cost as set forth in Schedule B for all Authorized Products sold and all other amounts payable to Company pursuant to this Agreement. Dealer is solely responsible for payment of compensation to employees and agents used by Dealer in its performance under this Agreement.
11. **SETOFF.** Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other right or remedy it has or may have, Company may, without notice to Dealer, offset, set-off or recoup any liability Company owes to Dealer against any liability for which Company

determines in good faith Dealer is liable to Company or its Affiliates, whether either liability is matured or unmatured or is liquidated or unliquidated or arises under this Agreement. Dealer shall be prohibited from offsetting any amount due to Company.

12. **BINDING ARBITRATION.** Any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Any such arbitration shall be held in location. One arbitrator shall be selected by Company and within Palm Beach County, Florida, unless the parties mutually agree on a different ten (10) days of Dealer having received notice of said selection, Dealer shall notify Company of its selection for the second arbitrator. A third arbitrator shall be selected by the arbitrators named by the aforementioned Parties. Each Party shall be responsible for its own costs and expenses, but the costs and expenses of the third arbitrator shall be shared by the Parties. The Parties understand and agree that this Agreement and the transactions contemplated hereby will have a material connection to interstate commerce and intend that the Federal Arbitration Act apply hereto. This Section shall survive the termination of this Agreement.
13. **INDEMNIFICATION.** Except as otherwise specifically stated in this Agreement, Dealer agrees unconditionally to indemnify, defend and hold harmless in full Company from and against any and all liabilities, obligations, claims, causes of action, regulatory proceedings and investigations, debts, demands, damages (including, without limitation, punitive, special, incidental, indirect or consequential damages), losses, penalties, fines, costs and expenses (including, without limitation, attorneys' fees, court costs, settlement costs, and costs of investigation), whether absolute or contingent, known or unknown (collectively, "Damages"), that Company may incur, directly or indirectly, to the extent arising from, or based upon, any actual or alleged misconduct, misrepresentation, error, negligent act or omission, or intentional or bad faith act or omission by Dealer or one of its employees or agents, or any breach of this Agreement, or any other unauthorized act or omission under this Agreement by Dealer or one of its employees or agents. Dealer acknowledges that its obligations to indemnify and hold harmless include, but are not limited to, all actions and claims arising from or related to: misrepresentation; nondisclosure of Authorized Product terms and conditions; misleading, deceiving or unethical selling practices; Dealer's failure to meet its obligations under this Agreement; or any legitimate claim denial by Company. Further, Dealer acknowledges that Company 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. If a contract holder should make a claim for repair within thirty (30) days after the sale of the Authorized Product, which Company determines was a condition pre-existing the date of sale, and if Company elects to honor such claim notwithstanding such pre-existing condition, then Dealer shall promptly reimburse Company for all amounts paid on such claim. This Section shall survive termination of this Agreement.
14. **CONFIDENTIAL INFORMATION.** From time to time during the term of this Agreement, the Parties may disclose or make available to each other Party information about its business affairs, financial condition, products/services, confidential intellectual property, 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 issued by a court or governmental agency of competent jurisdiction. The receiving Party shall, subject to applicable state and federal laws, including Privacy 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. 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 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) 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. This Section shall survive the termination of this Agreement.

15. **LEGAL ACTIONS AND MEDIA INQUIRIES.** In the event that Dealer receives a media or press inquiry involving Company or in any way arising out of or related to this Agreement, or receives a notice of the commencement of any legal proceeding involving Company, or any communication from any state insurance department or other administrative or regulatory agency calling a hearing, investigating a practice, or identifying a complaint, Dealer shall, within two (2) days of receipt by Dealer, forward to Company 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.
16. **NOTICES.** Unless otherwise stated herein, all notices, demands, consents or requests (collectively "Communications") sent by a Party hereto must be in writing and sent via one of the following methods:
  - 16.1. **Electronic Mail.** Communications may be sent via electronic mail to Dealer's e-mail address, as identified on the signature page of this Agreement, with a copy sent to [admin@omnishieldwarranty.com](mailto:admin@omnishieldwarranty.com), and include 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, upon confirmation of receipt; or (ii) if received after 4:00 PM Eastern, the next business day following confirmation of receipt.
  - 16.2. **Tracked Service.** Communications may be sent via a third party, nationally recognized tracked express mail service, postage prepaid, addressed to Dealer's mailing address, as identified on the first page of this Agreement, or to Company at OmniShield Warranty Services, 1182 East Newport Center Drive, Deerfield Beach, FL 33442; provided however, Communications sent via tracked service shall, at a minimum, include a hard copy of any contractual provisions contained within this Agreement (inclusive of all exhibits and schedules) that are cited or referenced in said Communications. Communications sent via tracked service will be deemed effective upon receipt.
17. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to any conflict of law rule or provision thereof that would result in the application of laws of any other jurisdiction. Each Party hereby submits to the exclusive jurisdiction of the courts of the federal and state courts located in Palm Beach County, Florida, and waives any objection to venue with respect to actions brought in such courts. This provision shall not be construed to conflict with the provisions of the Section entitled "Binding Arbitration."

18. **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.
19. **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 officer of each of the Parties; provided however, Company may, immediately upon notice to Dealer, amend the Schedules hereto. Any such unilateral revisions to the Schedules hereto 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.
20. **INTERPRETATION OF AGREEMENT.** To the extent that this Agreement may be in conflict with any applicable law or regulation, this Agreement shall be construed in a manner not inconsistent with such law or regulation. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or otherwise unenforceable, the same shall not invalidate the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly preserving to the fullest permissible extent the intent of the Parties set forth herein. 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.
21. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.
22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, including by way of facsimile or other electronically transmitted signatures, 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.
23. **WAIVER.** No waiver of any provision of this Agreement or any rights or obligations of Company hereunder shall be effective, except pursuant to a written instrument expressly waiving compliance, signed by Company. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in the written instrument. Failure of Company 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 or insist upon such provision(s) either currently or in the future.
24. **FORCE MAJEURE.** Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, or boycott, provided that the Party relying upon this Section (i) shall have given the other Party prompt written notice thereof and, (ii) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based.

Agent of Record : \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

\_\_\_\_\_  
(Dealership Name)

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Printed)

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

Dealer E-Mail: \_\_\_\_\_

OmniShield Warranty Solutions, LLC (Company)

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

Name: \_\_\_\_\_

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

Schedule A  
AUTHORIZED PRODUCT(S)

**AUTHORIZED PRODUCT(S).** The Parties agree that this Agreement is entered into with respect to the following Product(s):

Schedule B  
DEALER COST