

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 2384CV00116

In the matter of

HOMETOWN AUTO FRAMINGHAM, INC.

RECEIVED

JAN 17 2023

SUPERIOR COURT-CIVIL

**ASSURANCE OF DISCONTINUANCE PURSUANT TO G.L. c. 93A, § 5**

The Attorney General's Office, by and through its acting Attorney General, Elizabeth N. Dewar, ("AGO") and Hometown Auto Framingham, Inc. ("Hometown") hereby agree to this Assurance of Discontinuance ("Assurance") pursuant to Massachusetts General Laws chapter 93A, § 5.

**I. BACKGROUND**

1. Hometown is a for-profit business that operates two car dealerships in Massachusetts where it offers and sells motor vehicles as well as related products and services, generally called add-on products.
2. In general, add-on products are goods or services that are added to, or relate to, a car that is purchased or leased by a consumer. When referenced in this Assurance, "add-on products" means any non-financing products sold by and/or that may contribute to the commissions paid to Hometown's F&I Managers. Add-on products include, but are not limited to, vehicle service contracts, extended "warranty" products, guaranteed asset protection (GAP) products, paint protection products, dent repair products, tire and wheel protection products, LoJack, key repair/replacement products, and remote starters.

3. Add-on products are typically sold by specific employees within a dealership, who often also arrange and sell financing and/or insurance related products to car purchasers. For purposed of this Assurance, the staff that sell add-on products are referred to as “F&I Managers.”

4. Many auto dealerships make a profit on the sale of add-on products, by selling these products to consumers at a higher price than their cost to the dealership, i.e., the “profit margin.”

5. Pursuant to its authority under G.L. c. 93A, § 6, the AGO commenced an investigation by issuing a civil investigative demand (“CID”) to Hometown in order to review Hometown’s policies on pricing add-on products its sales transaction records for indicia of pricing disparities concerning add-on products.

6. Hometown cooperated during the AGO’s investigation.

## **II. COMMONWEALTH’S ALLEGATIONS**

7. Based on its investigation, the AGO alleges that, similar to many auto dealerships, Hometown granted its F&I Managers broad discretion to modify the profit margins Hometown charged for add-on products and that Hometown’s F&I Managers earned higher commissions by selling add-on products at higher profit margin.

8. The AGO alleges that Hometown’s policies on pricing add-on products have a disparate impact on Black and Latinx consumers, resulting in an increased cost to those consumers, in violation of Chapter 93A, § 2. The AGO further alleges that Hometown did not provide its F&I Managers or other staff with any guidance, training, auditing, or supervision to prevent discriminatory disparities in these consumer transactions.

9. Based on a review of Hometown's sales transaction records for January 1, 2016 through March 31, 2018, the Commonwealth alleges that these unfair pricing practices resulted in Hometown's Black and Latinx consumers paying more, on average, than white consumers when purchasing add-on products.

10. Hometown denies the allegations made by the AGO in paragraphs 7-9, above, disputes the methodology used by the AGO when analyzing Hometown's sales of add-on products, and further denies that it has violated the law. In an effort to avoid the uncertainty of litigation and resolve this investigation, Hometown agrees to enter into and immediately be bound by the terms of this Assurance. Hometown's agreement to this Assurance does not constitute an admission to any of the AGO's allegations.

### **III. HOMETOWN'S ASSURANCES**

11. The injunctive provisions and affirmative obligations of this Assurance are binding upon Hometown, as well as its agents, servants, employees, representatives, attorneys, successors, subsidiaries, and assignees, and any other person acting under its direction and control, including through any corporation, trust, or other device, and shall constitute continuing obligations.

12. The effective date of this Assurance is January 15, 2023 (hereafter, the "Effective Date").

#### **Employee Training**

13. For seven years following the Effective Date of this Assurance, Hometown shall provide mandatory anti-discrimination and anti-bias training to all management staff, sales staff, and finance staff (i.e., F&I Managers), which shall include training on implicit bias and their

duty not to discriminate in the pricing of add-on products or other products or services sold at Hometown's dealerships.

14. Hometown shall provide the required training to all existing management staff, sales staff, and finance staff within sixty (60) days of the Effective Date of this Assurance.

15. Hometown shall provide the required training to all new management staff, sales staff, and finance staff within thirty (30) days of the start of their employment by Hometown or at any of Hometown's dealerships.

16. Hometown shall maintain documentation to demonstrate that each employee has completed the required training.

**Add-on Product Pricing**

17. For three years following the Effective Date of this Assurance, Hometown shall implement and/or maintain a standard retail price or standard margin for its add-on products, and shall only deviate from the standard retail price or standard margin to lower that price or margin in instances where Hometown can substantiate the good faith basis for the deviation. Hometown is prohibited from increasing the price or markup for an add-on product above the standard retail price for three years following the Effective Date of this Assurance. However, for the removal of doubt, nothing herein precludes Hometown from changing its standard retail price for add on products.

18. To comply with paragraph 17, above, Hometown has elected to implement the National Automobile Dealer's Associations' Voluntary Protection Products Model Dealership Policy (the "NADA's Policy"), attached as **Exhibit A** to this Assurance. The AGO has agreed to accept Hometown's usage of the NADA Policy for the sole purpose of its compliance with paragraph 17 of this Assurance.

19. Pursuant to the NADA Policy and this Assurance, Hometown shall only deviate from the standard retail price for add-on products for one of the five reasons offered as exemplars in the NADA Policy, specifically, deviations based on:

- a. a pricing or payment cap imposed by law or by a company providing financing for the purchase;
- b. a customer's stated monthly payment constraint;
- c. a more competitive offer for the same or similar add-on product;
- d. promotional pricing for which the customer qualifies; and/or
- e. employee pricing for which the customer qualifies.

20. Pursuant to the NADA Policy and this Assurance, Hometown shall complete a written deviation certification form, in the format described in Appendix B of the NADA Policy, (the "Certification Form") at the time of each transaction that includes a deviation from the standard retail price for an add-on product.

21. For a period of four years following the Effective Date of this Assurance, Hometown shall retain a copy of each completed Certification Form, along with any/all information evidencing the basis for the deviation, in the deal jacket for that transaction.

**Displayed Pricing Information for Add-on Products**

22. For three years following the Effective Date of this Assurance, Hometown shall clearly and conspicuously display the monthly price (if financed) and total price of each add-on product in close proximity to the add-on product named or displayed, when offered with a specific vehicle.

23. To the extent that Hometown allows consumers to select and build-out a specific vehicle for purchase at a Massachusetts dealership through the use of any online portal, application or website, and displays a list of add-on products available for purchase with the

selected vehicle, for three years following the Effective Date of this Assurance, Hometown shall likewise clearly and conspicuously display the monthly price (if financed) and total price of each add-on product in the online portal, application or website, in close proximity to the add-on product named or displayed.

24. Currently, Hometown fulfills the requirements in paragraphs 22 and 23, above, by displaying the offering prices for add-on products in the finance office of its dealerships and on websites maintained by its dealerships, in a form similar to the exemplar attached as **Exhibit B** to this Assurance. In compliance with paragraphs 22 and 23 of this Assurance, Hometown will continue to use these systems or substantially similar systems to display the same or substantially similar pricing disclosures to customers when offering add-on products.

#### **Record Retention**

25. Commencing on the Effective Date, Hometown shall scan and maintain its deal jackets in electronic form for seven years after the date of completion of each transaction.

26. For a period of four years following the Effective Date of this Assurance, Hometown shall retain information for all transaction that include the purchase of one or more add-on products in an excel spreadsheet (the "Add-on Sales Spreadsheet") in a format that shall include completed fields for the information describe in **Exhibit C** to this Assurance.

#### **IV. COMPLIANCE REPORTING**

27. Annually, for a period of three (3) years, beginning one year after the Effective Date of this Assurance, Hometown shall produce to the AGO a copy of: (a) all Certification Forms and (b) the Add-on Sales Spreadsheet for all transactions during each preceding year that included the sale of one or more add-on products (together, the "Annual Report").

28. After each Annual Report, upon request from the AGO, Hometown will produce electronic copies of deal jackets for up to twenty-five (25) transactions within thirty (30) days of the request.

## **V. MONETARY PAYMENT**

29. Hometown shall pay a total of \$350,000 to the AGO, which may be allocated, at the sole discretion of the Attorney General, in any amount or apportionment, to:

- a. pay the costs of the AGO's investigation of Hometown;
- b. provide payments to consumers as restitution for alleged losses;
- c. fund programs or initiatives to protect consumers;
- d. disburse to the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G; and/or
- e. disburse to the Massachusetts General Fund.

### **Payment Directed to AGO**

30. Within ten days of the Effective Date of this Assurance, Hometown shall pay \$150,000 by wire transfer or by check made payable to the "Commonwealth of Massachusetts," and delivered to Office of the Attorney General, Attn: Mychii Snape, One Ashburton Place, 18th Floor, Boston, MA 02108.

### **Payment Reserved for Restitution**

31. On or before the Effective Date of this Assurance, Hometown shall allocate and segregate the remaining \$200,000 for the sole purpose of providing restitution payments to consumers identified by the AGO in amounts identified by the AGO in accordance with the Restitution Program described below. At the conclusion of the Restitution Program, described in paragraphs 32-40 of this Assurance, Hometown shall return all remaining funds to the AGO.

## VI. RESTITUTION PROGRAM

32. To assist the AGO in identifying consumers for restitution, within thirty (30) days of the Effective Date of this Assurance, Hometown will provide an excel spreadsheet to the AGO containing the names and last known addresses of all consumers who are natural persons and who purchased add-on products sold by any of Hometown's Massachusetts dealerships between April 1, 2018, and December 1, 2022.

33. Based upon this list and other information provided during the AGO's investigation, the AGO will provide Hometown with a list of consumer names, addresses, and restitution amounts (the "Restitution List").

34. Hometown, directly or through a third-party administrator, and solely at Hometown's expense, shall undertake to update and confirm the information in the Restitution List and issue restitution checks to the listed consumers in accordance with the provisions of this Assurance.

35. Specifically, Hometown and/or any third-party engaged by Hometown shall use good faith, reasonable efforts to identify updated address information for each consumer on the Restitution List before issuing a payment check, including skip tracing for address information and a search of the National Change of Address ("NCOA") database or a similar database.

36. Within ninety (90) days of Hometown's receipt of the Restitution List from the AGO, Hometown shall issue restitution checks to the consumers on the Restitution List in the amounts identified therein. Each check may be accompanied by, and only by, a letter or similar writing in the form attached as **Exhibit D** to this Assurance.

37. For any restitution checks that are returned or uncashed ninety (90) days after issuance, Hometown, directly or through its administrator, shall make a second, good faith



attempt to update available address information and reissue a check to each consumer at the updated address (if an updated address is identified).

38. Ninety (90) days after issuance of the reissued checks, Hometown shall provide a preliminary report to the AGO stating the number of checks cashed in each mailing round, the total amount of money distributed to these consumers, and the identities of the consumers who did or did not cash their restitution checks.

39. Any unallocated funds will be held by Hometown or its administrator for one (1) year from the date of the preliminary report to the AGO, in order to provide payments to any consumers on the Restitution List who come forward to seek payment after the expiration of their checks.

40. Within thirty (30) days of the end of this one-year period, Hometown shall pay all undisbursed funds held for restitution to the AGO by wire transfer or by check made payable to the "Commonwealth of Massachusetts," and delivered to Office of the Attorney General, Attn: Mychii Snape, One Ashburton Place, 18th Floor, Boston, MA 02108. Concurrent with this final payment to the AGO, Hometown shall also provide a final report to the AGO, which shall state the number of checks cashed in each mailing round, the total amount of money distributed to these consumers, the identities of the consumers who did or did not cash their restitution checks, and the amount of funds remaining in the restitution fund prior to the final payment to the AGO.

## **VII. RELEASE**

41. Upon execution of this Assurance, and contingent upon Hometown's compliance with the monetary provisions herein, the AGO releases Hometown from any and all civil causes of action, claims, damages, costs, attorney's fees, or penalties the AGO has asserted or could

have asserted under G.L. c. 93A based on or related to the allegations in paragraphs 7-9 of this Assurance that may have occurred between January 1, 2016 and December 1, 2022.

42. Notwithstanding the preceding paragraph, for the removal of doubt, any and all of the following forms of liability are specifically reserved and excluded from the above release:

- a. private rights of action, including any claims consumers have or may have on an individual or class basis under state consumer protection laws against any person or entity, including Hometown;
- b. tax liability;
- c. criminal liability;
- d. claims alleging violations of state or federal securities laws;
- e. claims alleging violations of state or federal antitrust laws; and/or
- f. claims by any other agency or subdivision of the Commonwealth of Massachusetts.

43. Further, nothing in this Assurance shall be deemed to preclude the AGO's review of conduct that occurs after December 1, 2022, or any claims that may be brought by the AGO to enforce Hometown's compliance with the Assurance.

## VIII. NOTICE

44. Any notice that is made or required under the terms of this Assurance shall be provided via electronic mail and first-class mail to the following:

For Hometown:

Paul Marshall Harris, Esq.  
Sara Judge, Esq.  
Burns & Levinson LLP  
125 High Street  
Boston, MA 02110  
sjudge@burnslev.com  
pharris@burnslev.com

For the Massachusetts Attorney General's Office:

Massachusetts Attorney General's Office  
Consumer Protection Division  
ATTN: Mychii Snape & Schuyler Daum  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
Mychii.Snape@mass.gov  
Schuyler.Daum@mass.gov

## **IX. GENERAL TERMS**

45. This Assurance constitutes the entire agreement between the AGO and Hometown and supersedes any prior communication, agreement, or understanding, whether written or oral, concerning the subject matter of this Assurance. In any action undertaken by the parties, the parties agree that neither prior versions of this Assurance nor prior versions of any of its terms may be introduced in any court proceeding for any purpose whatsoever.

46. Hometown acknowledges that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect. If any provision of this Assurance is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

47. Hometown and the AGO participated in the drafting of this Assurance.

48. Hometown waives all rights to appeal or otherwise challenge or contest the validity of this Assurance.

49. This Assurance shall be governed by and interpreted in accordance with laws of the Commonwealth of Massachusetts, and the Superior Court for Suffolk County shall retain jurisdiction over this Assurance.

50. This Assurance can be amended or supplemented only by a written document signed by all parties or court order. Amendments or supplements may be executed in separate counterparts, with signatures conveyed by mail, facsimile, email, or other electronic means.

51. Nothing in this Assurance shall relieve Hometown of its obligation to comply with applicable federal and state laws, rules, and regulations.

52. Hometown shall not cause or encourage third parties, nor knowingly permit third parties acting as Hometown's agent or under its control or direction, to engage in practices within the Commonwealth of Massachusetts from which Hometown is prohibited by this Assurance.

53. Hometown and its signatory have consulted with counsel in their decision to enter into this Assurance. Hometown's signatory represents and warrants that they have the full legal power, capacity, and authority to bind Hometown in this Assurance.

54. By signing below, Hometown agrees to comply with all of the terms of this Assurance.

HOMETOWN AUTO FRAMINGHAM,  
INC.



Mitch Harris, as Treasurer of  
Hometown Auto Framingham, Inc.

Dated: 01/16/2023

OFFICE OF THE ATTORNEY GENERAL




Mychii Snape  
Assistant Attorney General

Dated: 1/17/2023

Respectfully submitted,

COMMONWEALTH OF  
MASSACHUSETTS

ACTING ATTORNEY GENERAL  
ELIZABETH N. DEWAR



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Mychil Snape (BBO No. 677903)  
Schuyler Daum (BBO No. 703340)  
Assistant Attorneys General  
Consumer Protection Division  
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(617) 727-2200 (Voice)  
(617) 727-5765 (Facsimile)  
[Mychil.Snape@mass.gov](mailto:Mychil.Snape@mass.gov)  
[Schuyler.Daum@mass.gov](mailto:Schuyler.Daum@mass.gov)

Dated: 1/17/2023

## **Exhibit A**

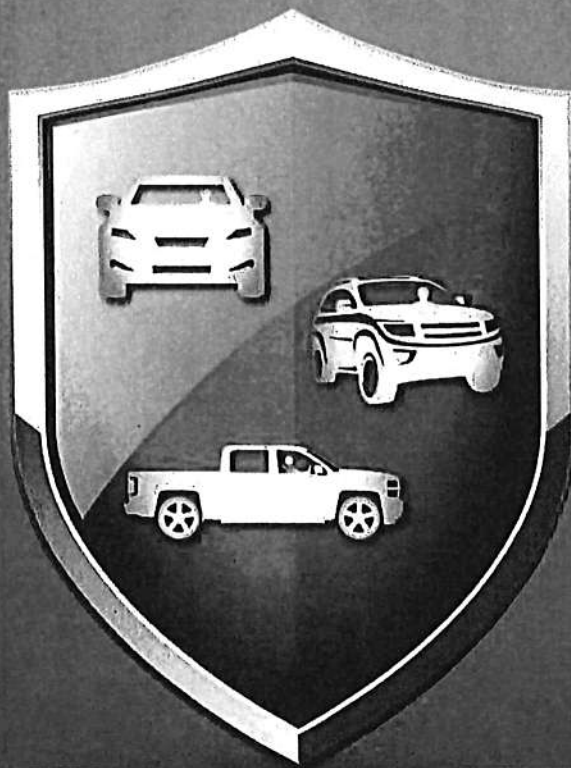
# ***Driven***

NADA MANAGEMENT SERIES

L60

NADA/NAMAD/AIADA

## **Voluntary Protection Products: A Model Dealership Policy**



NATIONAL  
AUTOMOBILE  
DEALERS  
ASSOCIATION

This management guide has been prepared for informational purposes to assist dealerships in presenting their Voluntary Protection Products (VPPs) in a fair, ethical and legally compliant manner. Nothing in this guide, including the appendices, is intended as legal advice. Furthermore, each dealership should consult an attorney who is familiar with federal and state law applicable to VPPs and the dealership's operations before deciding whether and how to adopt this optional VPP policy. The presentation of this information is not intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the price of any good or service.





NADA/NAMAD/AIADA

# Voluntary Protection Products: A Model Dealership Policy



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NADA/NAMAD/AIADA

## Voluntary Protection Products: A Model Dealership Policy

### Introduction

Among the many products and services that automobile and truck dealerships offer their customers are voluntary products designed to protect their customers' investment in the vehicles they purchase or lease.

When offered, sold, and administered in a professional and consumer-friendly manner, these voluntary protection products (VPPs) can offer customers valuable protection against an unexpected and potentially costly event such as a flood, hail damage, theft, vandalism, vehicle accident, mechanical breakdown or the customer's death, disability, or unemployment. In addition to the economic protection they provide, VPPs also can offer customers—particularly those who live paycheck to paycheck or who otherwise cannot self-insure—peace of mind knowing that the occurrence of such an unexpected event will not prevent them from keeping current on their financial obligations.<sup>1</sup>

Conversely, to the extent VPPs are not offered, sold, and administered in a professional manner, they can

fail to provide these valuable protections, confuse and create a false sense of security for customers, result in litigation and/or administrative enforcement actions against the dealership, and undermine the goodwill of the dealership in the community.

Consequently, it is essential that dealerships strive to develop an approach toward VPPs that ensures they are offered, sold, and administered in an ethical, lawful, transparent, professional, and consumer-friendly manner. This requires that dealerships engage in several proactive steps such as conducting product research, employee training, and sales oversight, and executing their post-sale responsibilities. However, this process all begins with articulating a clear, straightforward VPP policy that provides a framework for the dealership's VPP activities. The *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy*<sup>2</sup> provides an optional policy template that is intended to assist a dealership with this process.

### ESSENTIAL STATE LAW CONSIDERATIONS

Several states impose VPP requirements that address one or more components of this optional policy template. Some of these requirements could make portions of the policy template inapplicable to—or not prudent to adopt for—dealerships operating in those states. It is essential that dealerships review communications from their state dealer associations concerning such requirements and consult with legal counsel to determine whether—and to what extent—they should adopt the policy template.

<sup>1</sup> In April 2017, AAA cited a new study indicating that "64 million American drivers would not be able to pay for an unexpected vehicle repair without going into debt" and noted that "the average repair bill is between \$500 and \$600."

<sup>2</sup> For ease of reference, this title will be used to refer to *NADA/NAMAD/AIADA Voluntary Protection Products: A Model Dealership Policy*.

## Instructions for Completing the VPP Policy Template

### GENERAL INSTRUCTIONS AND DISCLAIMERS

#### Coverage and Approach

The *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* template applies to optional products that a dealership offers to its customers to protect their investment in vehicles being purchased or leased.

The policy template is structured to:

- i. have the dealership provide upfront a prominent poster informing customers of the optional nature of VPPs and the dealership's commitment to providing information about each VPP before a customer decides to purchase it;
- ii. state the dealership's commitment to legal compliance, training, and interdepartment coordination to effectively carry out the dealership's VPP policy; and
- iii. provide a sequential list of duties the dealership will execute throughout the life cycle of VPPs, from their selection to their pricing, advertisement, presentation, sale, and, if applicable, cancellation and any customer complaints pertaining to them.

#### Relationship to *NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program*

The *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* template is separate from—but entirely consistent with—the *NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program* template.

The *NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program* provides an optional template for developing a policy—and a detailed program to implement that policy—to promote compliance with the Equal Credit Opportunity Act (ECOA). It primarily focuses on one item (dealer participation, which is the portion of the finance charge that a dealership retains for originating a finance contract), one element of that item (pricing), and one of several statutes governing that item (ECOA), and is modeled on a consent order that the Department of Justice (DOJ) entered into with two automobile dealerships in 2007 to resolve allegations of ECOA violations.

Conversely, the *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* template focuses on multiple products (service contracts, GAP coverage,

and other VPPs), multiple elements of those products (selection, pricing, advertisement, presentation, sale, cancellation, and customer complaints), multiple statutes governing those products (ECOA, the federal prohibition on unfair and deceptive acts or practices—UDAP—and other federal laws), and is not modeled on a government consent order with automobile dealerships.

These differences suggest that policy template documents for these items (dealer participation and VPPs) may need to differ. Accordingly, the *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* template is (i) broader in coverage than its fair credit counterpart (applying to the vast array of products and product elements mentioned above), and (ii) not as deep as its fair credit counterpart (as a detailed approach to compliance in a nationwide template would be difficult given the widespread differences in the state regulatory regimes and provider contractual requirements that govern these products). The *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* template therefore is more general in nature and is designed to give a dealership that chooses to adopt it a general framework for VPPs without including an extensive series of detailed requirements that may be inapplicable in a dealership's state and/or that may not fit a dealership's product offerings.

Notwithstanding the different approaches to the fair credit and VPP policy templates, they are designed so that both may be adopted by a dealership, and a dealership that chooses to adopt both may conclude that its Fair Credit Compliance Program Coordinator should also oversee the development and implementation of its VPP Policy. In addition, both templates adopt a standardized approach to pricing with a dealership that chooses to adopt the VPP policy establishing a standard retail price for its VPPs (to the extent it has discretion to do so) and only deviating from its standard retail price for pre-established, legitimate business reasons. Additionally, a dealership may conclude that it should adopt other aspects of the fair credit policy and program template that are not included in the VPP policy template, such as having the dealership's board of directors or other governing officer formally approve the policy and having the person who is responsible for executing the policy conduct periodic compliance audits and submit annual compliance reports to the board of directors or other governing officer.

#### Disclaimers

The *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* is an optional template that is not mandated by federal law and has not been adopted by any federal agency as a means of satisfying the requirements of federal law. In addition, as noted above, as a template that is being made available to dealerships across the country whose operations and state laws vary significantly, portions of the template may not be applicable to—or prudent to adopt by—an individual dealership. For these reasons, it is essential that each dealership consult with legal counsel who is familiar with its operations to determine whether—and to what extent—it should adopt the *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* template.

#### SPECIFIC INSTRUCTIONS FOR USING THE VPP POLICY TEMPLATE

##### Overview

This paragraph generally describes the purpose and scope of the VPP Policy.

It also contains a footnote stating that the policy does not confer any rights, benefits, or remedies to any person, except that it may be used by the dealership to discipline employees who do not comply with its terms. This is intended to forestall a third party from bringing a legal action against the dealership for a violation of the policy.





### **Section I. Policy Statement**

This section states that the dealership will prominently display to customers a poster stating that (i) VPPs offered by the dealership are optional and are not required to purchase or lease a vehicle or obtain warranty coverage, financing, financing on particular terms, or any other product or service offered by the dealership, and (ii) the dealership is fully committed to providing customers with the price, terms, and conditions of each VPP before they decide to purchase it. The sample poster at Appendix A is available for this purpose.

The dealership should consult with its counsel concerning whether the poster should be adopted and, if so, the language it should contain. For example, if the dealership already displays a poster with similar or related language, the creation of an additional poster could be distracting or otherwise create confusion. However, it is essential that customers understand that the VPPs offered to them are completely optional.

### **Section II. Legal Compliance, Training, Coordination, and Document Retention**

Section II.a states the dealership's commitment to complying with all applicable legal requirements,



including governing statutes, regulations, and contracts with third parties. This applies to both:

- i. requirements applicable to customers, such as (a) ECOA's prohibition against discrimination on a prohibited basis, (b) the Truth in Lending Act's disclosure requirements applicable to VPPs, (c) federal and state prohibitions on unfair and deceptive acts or practices; and (d) state requirements applicable to retail installment sales and leases, VPPs that are insurance products under state law, and licensing and other requirements applicable to VPPs; and
- ii. requirements applicable to other businesses, such as contractual obligations to VPP providers pertaining to remitting premiums, registering contracts, and verifying the payment of refunds.

Sections II.b and II.c state that the dealership will (i) conduct initial and periodic training of—and oversee—its employees involved in the VPP sales process, and (ii) coordinate within its departments as necessary to ensure its VPP Policy is properly carried out. An element of the oversight process could include periodically spot-checking or reviewing a sample of vehicle sales or leases entered into with customers to ensure the dealership's transactions comport with this policy. Training, oversight, and coordination are essential as the development of a policy document—by itself—will not give effect to the policy. Rather, this can only occur if the dealership takes the necessary steps to implement and maintain it.

Section II.d states that the dealership will retain records used to demonstrate compliance with this policy for an appropriate period. This should include the VPP Certification Form referenced below as well as other records documenting the completion of the various elements of this policy. The dealership should consider retaining such documents for the greater of (i) any records retention period under federal and state law for the VPPs it offers,<sup>3</sup> and (ii) the statute of limitations under federal and state law for violations involving those products.<sup>4</sup> The dealership should consult with counsel concerning the appropriate records retention period for these documents.

<sup>3</sup> The federal records retention requirements applicable to documents retained by automobile and truck dealerships are set forth in NADA's *A Dealer Guide to Federal Records Retention and Reporting*. Consult your state automobile dealers association concerning any applicable state records retention requirements.

<sup>4</sup> Among the federal laws that are most likely to apply to the sale of a VPP (e.g., ECOA, Truth in Lending Act, Federal Consumer Leasing Act, and Section 5 of the Federal Trade Commission Act), ECOA has the longest statute of limitations which generally is five years after the occurrence of a violation. See 15 U.S.C. § 1691e(f). Consult your state dealer association concerning applicable statutes of limitations under state law.

### Section III. Product Selection

This section sets forth criteria for determining whether a particular product will be included in the dealership's VPP offerings to customers. In making this determination, the dealership should only engage reputable VPP providers, and the dealership should have confidence in the value that the product offers to customers. While a dealership may determine that additional or other criteria should be used, the following criteria in the policy template should assist the dealership with this analysis:

- a. *Cost, coverage, limitations, and other terms and conditions.* The dealership should understand how a product's features offer protection of the customer's investment and whether its coverage is already provided by another product being purchased by the customer.
- b. *Claims payment process.* The dealership similarly should understand the ease with which customers can file claims and receive the product benefits when a triggering event occurs. It is essential that customers have a clearly defined path to receiving such benefits. The same applies to the customer's ability to cancel and obtain any available refund for a product.
- c. *Financial ability to provide product benefits.* The dealership should also consider the financial ability of the VPP provider to provide the product benefits. While this may be self-evident for many VPP providers, with others it may be prudent to inquire into their ability to pay claims.

Of course, other factors such as known reputational concerns stemming from customer complaints or litigation should not be ignored.

The analysis the dealership conducts is not intended to validate or guarantee the services provided by its VPP providers. Rather, as with vendors that dealerships retain, it is prudent to review the quality of the company, the products and services it provides, and the terms and conditions of the provider-dealer contract as part of the VPP selection process.

#### Section IV. Product Pricing

This section establishes the manner in which the dealership will determine the retail price for each VPP it offers to customers for which pricing discretion exists. For example, pricing discretion does not exist for—and this section therefore does not apply to—a VPP that is defined as an insurance product under state law and that must be offered to customers at an amount that has been established by the state insurance commissioner. Pricing discretion also may not exist as a result of—or may be limited by—other provisions of state law or policies of the VPP provider.

Where pricing discretion does exist, Section IV.a states that the dealership will establish a standard retail price (SRP) for each VPP and each bundle of VPPs it offers to customers. The dealership should sell the VPP or VPP bundle at its SRP unless one of the reasons set forth in Section IV.b for discounting that price is present in the transaction. (Section IV.c clarifies that the limitation on discounts in Section IV.b does not preclude the dealership from establishing an SRP for a bundle of VPPs that is less than the combined sum of the SRP of each individual VPP in the bundle.)

Section IV.b identifies five good-faith, competitive reasons unrelated to the customer's background that, if present, allow the dealership to sell a VPP or VPP bundle at a price that is lower than its SRP for that product or bundle. These reasons (which are set forth and described below) are among the allowable reasons for discounting a standard dealer participation rate

in credit offers to customers that were (i) included in 2007 consent orders that DOJ entered into with two dealerships to resolve allegations of credit pricing discrimination, and (ii) incorporated into the *NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program* as allowable reasons for discounting a standard dealer participation rate in credit offers to customers. Dealerships should be able to identify additional or different pre-established reasons for discounting the SRP it has established for a VPP or VPP bundle provided they are limited to good-faith, competitive factors that are completely unrelated to the customer's background. However, as explained in the *NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program*, dealerships should proceed cautiously in allowing discounts that differ from those listed in the DOJ consent orders.

Section IV.d states that the dealership will establish procedures for recording, reviewing for corrective action, and retaining determinations that a pre-established, legitimate business reason supported a decision to discount the SRP the dealership has established for a VPP (or VPP bundle), and that the dealership will utilize the Voluntary Protection Products Certification Form at Appendix B for this purpose. (As noted below, if the dealership has another mechanism to record such discounting decisions, it would not need to adopt the VPP Certification Form at Appendix B to carry out this policy.) In order to implement these requirements, the dealership should consider adopting the following:

#### PRICE NEGOTIATIONS

Nothing in the model policy or these instructions is intended to foreclose price negotiations that can result in lower prices to customers for VPPs if a dealership chooses to allow them. Rather, as noted in the Introduction, the model policy and instructions are intended to promote the offering, sale, and administration of VPPs in an ethical, lawful, transparent, professional, and consumer-friendly manner. As part of this process, a dealership could allow price negotiations for VPPs while adopting and implementing appropriate procedures to ensure those negotiations are conducted in a fair and non-discriminatory manner. Alternatively, the dealership could adopt an approach that does not involve price negotiations such as the approach discussed in this section.

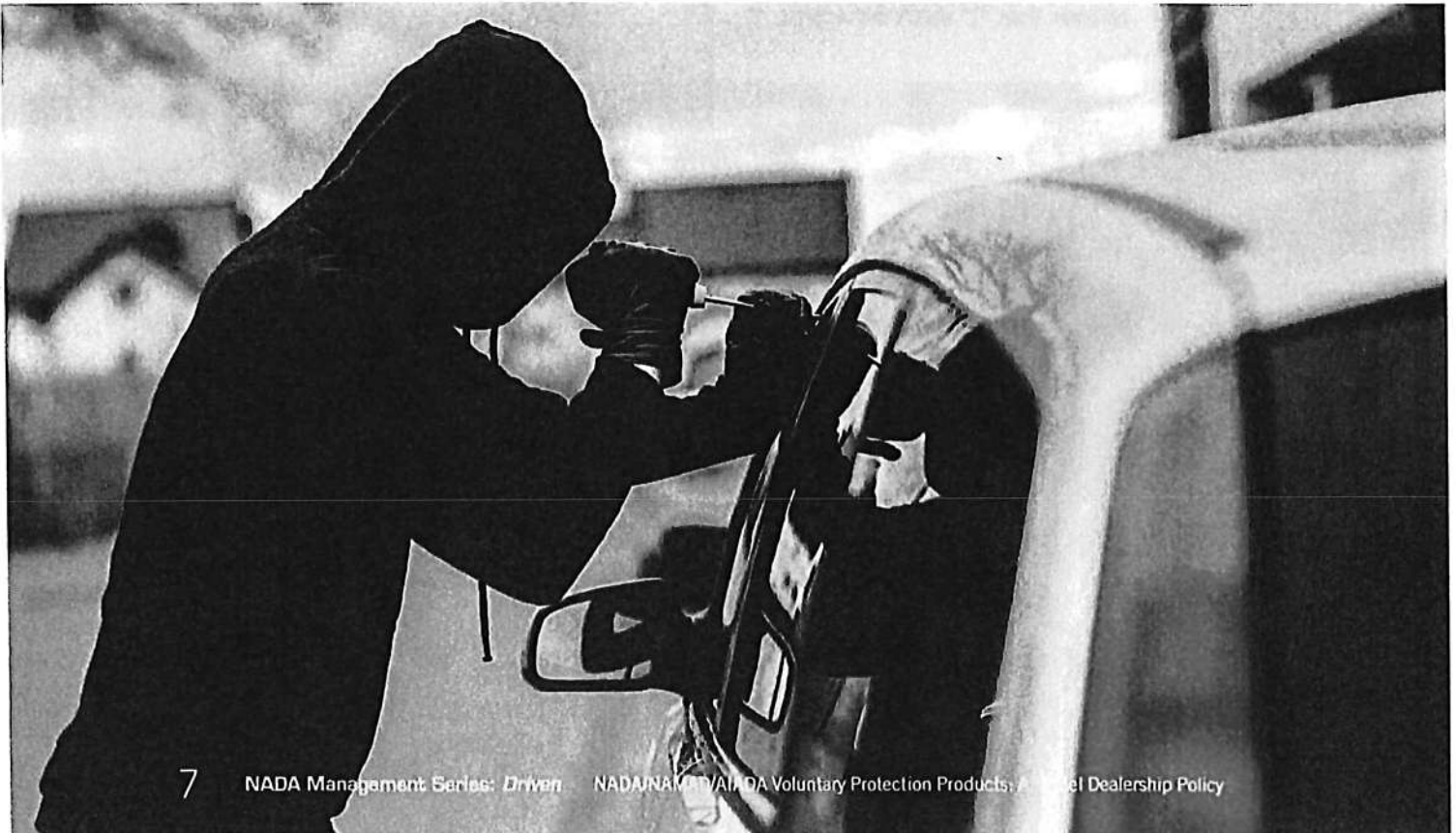


- a. **VPP Certification Form.** The dealership should use the VPP Certification Form to record VPP discounting decisions. If the dealership does not discount any VPP or VPP bundle (i.e., if the customer pays the SRP for each VPP or VPP bundle that he or she selects), it is not necessary to execute the VPP Certification Form. The dealership should modify the VPP Certification Form template at Appendix B to reflect the dealership's specific circumstances and it may be possible, in consultation with a menu and/or software provider, to forgo the use of the VPP Certification Form by incorporating the information it contains into the menu described in Section VI.c of this policy. However, it is important to note that while the menu is presented to customers, the VPP Certification Form is intended solely as an internal dealership document to record the legitimate business reason for a VPP or VPP bundle discount.

Because the customer may choose to purchase more than one VPP and it could be unwieldy to complete a separate certification form for each VPP that the customer purchases, the VPP Certification Form at Appendix B includes a table that allows a dealership to record on a single form the pricing determination applicable to the sale of one or more VPPs to a customer.

The VPP Certification Form at Appendix B is structured in the following manner:

1. **Buyer/Lessee Information.** The top section of the form identifies the buyer(s) or lessee(s) and other transaction-specific information such as the date of the VPP sale and the VIN of the vehicle being purchased or leased. The dealership should replace or add to these data fields as necessary to reflect the information it uses to identify a vehicle delivery (such as by adding the stock number or deal number).
2. **Pricing Determination Table.** A table appears below the Buyer/Lessee Information that includes the following columns:
  - A. **Name of VPP.** This column should include a preprinted listing of all VPPs or VPP bundles offered by the dealership (with the information in the columns to the right only filled in for VPPs purchased by the customer) or, alternatively, a listing of only those VPPs or VPP bundles purchased by the customer.
  - B. **Standard Retail Price.** This column states the SRP for each listed VPP and VPP bundle.



For many VPPs or VPP bundles, it may be possible to preprint this price.

For others, such as an extended service contract where a dealership has established standard pricing but the SRP differs based on the deductible amount, length of coverage, or other selections made by the customer, the SRP may need to be entered after the customer has made the necessary selections. The dealership should consult with software vendors to determine how it may enter an SRP when such variables are present.

- C. *Selling Price.* This is the price the customer paid for the VPP or VPP bundle. As noted above, it is only necessary to use the VPP Certification Form when the Selling Price for a VPP or VPP bundle is less than the SRP.
- D. *Number of Allowable Discount.* After entering a Selling Price that is less than the SRP, the Number of the Allowable Discount from the list of Allowable Discounts that appears below the table should be entered. For example, if the Selling Price had to be discounted due to a payment cap imposed by the finance source that took assignment of the credit contract, then "1" should be entered.

E. *Discount 2.* If the SRP was discounted because the customer stated a monthly payment constraint in a fixed dollar amount that would preclude the customer from accepting a VPP or VPP bundle at the SRP, then the amount of the monthly payment constraint stated by the customer should be entered in this column. Otherwise, nothing should appear in this column.

F. *Discount 3.* If the SRP was discounted because the customer stated that he or she had access to a lower price for the same or similar VPP, then the name of the entity that offered the competing product and the price of the product stated by the customer should be entered in this column. Otherwise, nothing should appear in this column.

- 3. *List of Allowable Discounts.* Below the Pricing Determination Table is a list that contains the number and identification of each of the five allowable discounts (discussed in greater detail below) under the *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy*. As noted above, an adopting dealership may determine that fewer or additional pre-established discounts are allowed for good-faith, competitive reasons that are unrelated to the customer's background, but such



dealerships should consult with counsel before adding to the list of allowable discounts.

4. ***Selling Employee's Certification.*** Below the list of Allowable Discounts is a certification that should be signed and dated by the dealership employee who arranged the sale of the VPP(s) to the customer.
  5. ***Reviewer Certification.*** A Reviewer's Certification is set forth in a separate box on the VPP Certification Form. Within two business days of—or another specified time period shortly after—the transaction, a senior manager who was not involved in the transaction should review the VPP Certification Form completed by the Selling Employee and any other required substantiating documentation to ensure that each VPP or VPP bundle sold to the customer was priced in accordance with this policy. (As noted above, a dealership that has also adopted the *NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program* should consider designating its Program Coordinator under that program as the reviewer of its VPP Certification Forms.) If the reviewer determines that this policy was not followed, the reviewer should initiate appropriate corrective action as it relates to the customer, the employee who arranged the VPP sale, or otherwise, and record such action on the VPP Certification Form. The reviewer should then sign, date, and retain the document.
- b. ***Supporting Information & Document Retention.*** For each allowable discount from the SRP, the dealership should clearly state the prerequisites that must be present in order to apply that discount and retain in the deal jacket or other specified location the VPP Certification Form and, if applicable, other supporting documentation. At a minimum, the documentation should include:
1. ***Pricing or Payment Cap.*** For the first discount, a pricing cap imposed by state law or a payment cap imposed by the company providing financing for the purchase serves as an allowable basis to discount the SRP to the pricing cap level. Documentation of—or reference to—the applicable pricing or payment cap serves as documentation for this discount.
  2. ***Monthly Payment Constraint.*** For the second discount, a monthly payment constraint in a fixed dollar amount stated by the customer that precludes the dealership from selling a VPP or VPP bundle at its SRP serves as an allowable basis to discount the SRP to the level that allows the customer to purchase the VPP or VPP bundle. The VPP Certification Form records this information and therefore serves as appropriate documentation for this discount.
  3. ***More Competitive Offer.*** For the third discount, a more competitive offer for the same or similar VPP to which the customer states that he or she has access serves as an allowable basis for the dealership to discount the SRP to the level necessary to either meet the competing offer or beat the competing offer by a certain set amount. (In order to promote consistent discounting decisions, the dealership should determine, as a matter of policy, whether it will offer to meet competing offers or beat competing offers by a set amount.) The VPP Certification Form records this information (the name of the VPP provider and the price of the VPP) and therefore serves as appropriate documentation for this discount. **As part of this process, the dealership should not seek to verify the existence of a more competitive offer by contacting the competitor.**
  4. ***Promotional Pricing.*** For the fourth discount, a promotional program that allows all customers to receive a VPP or VPP bundle at a discounted price serves as an allowable basis to discount the SRP pursuant to the terms of the promotional program. The dealership advertisement or other communication identifying the terms of the promotional program serves as appropriate documentation for this discount.
  5. ***Employee Pricing.*** For the fifth discount, a dealership employee incentive program that allows employees to receive a VPP or VPP bundle at a discounted price serves as an allowable basis to discount the VPP or VPP bundle pursuant to the terms of the program. The dealership employee incentive program or reference to it serves as appropriate documentation for this discount.



## Section V. Product Advertisement

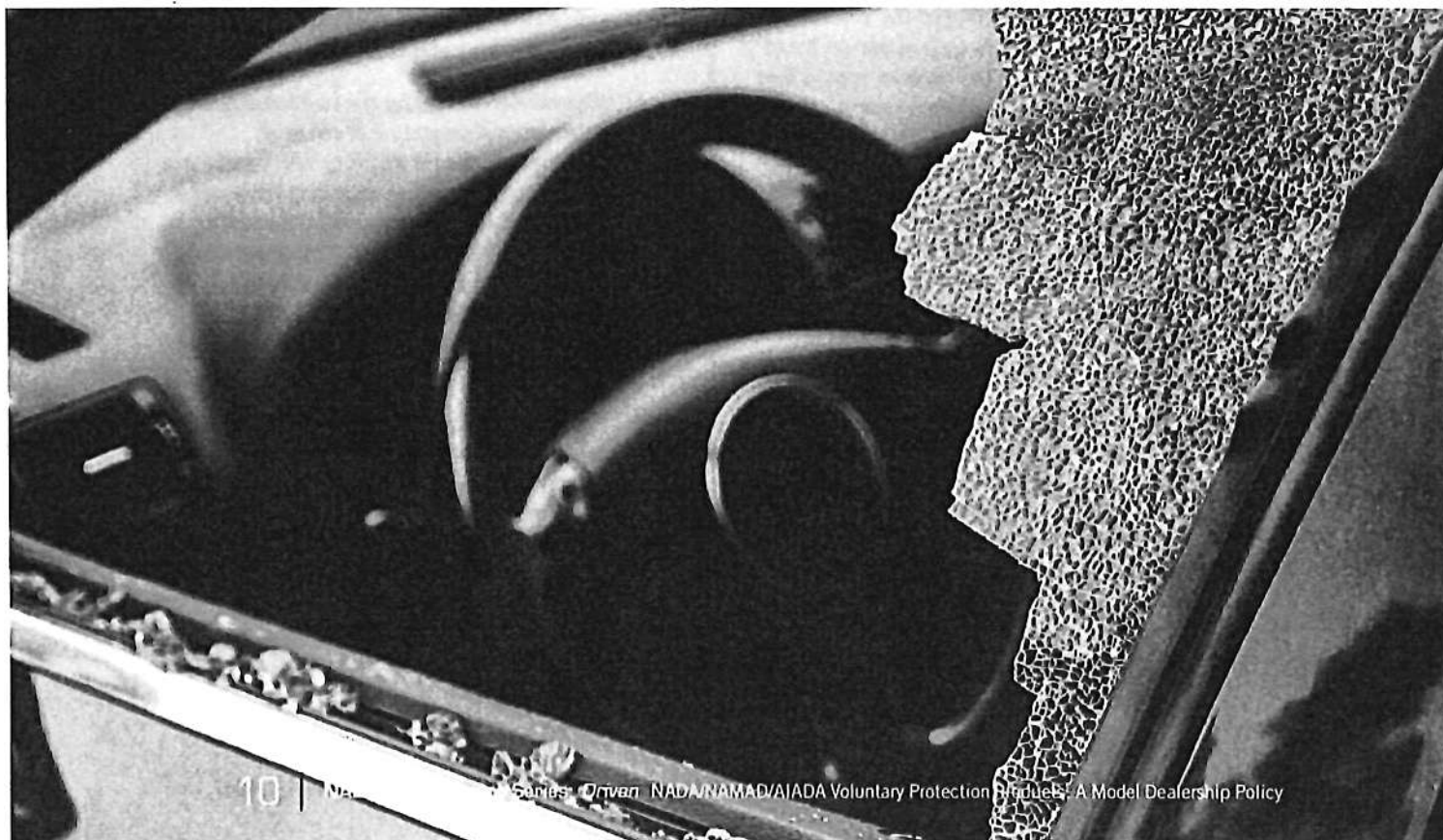
This section states that the dealership will not advertise, solicit, or otherwise market VPPs in a manner that is deceptive, misleading, confusing, or otherwise inconsistent with their terms and conditions. While all areas addressed by the *NADA/NAMAD/AIADA Model Dealership Voluntary Protection Products Policy* can invite scrutiny by regulators, this area in particular has witnessed several recent enforcement actions by federal agencies alleging that finance sources, VPP providers, and dealers have deceptively marketed VPPs to consumers.<sup>5</sup> It is essential that the dealership have a process in place to review all forms of marketing (e.g., newspaper and internet ads, YouTube videos, emails, text messages, social media, signage at the dealership, etc.) to ensure its marketing materials comport with this section.

## Section VI. Product Presentation and Sale

This section establishes a process for ensuring that customers are fully informed about the features, optional nature, and price of VPPs before deciding to purchase them.

- a. Section VI.a states that the dealership will (i) ensure its employees who offer VPPs to customers fully understand their benefits, limitations, and other terms and conditions before offering them to customers; and (ii) not offer products to customers for which they are ineligible or would derive no value. As with the other elements of this section, information about dealer product offerings should be a component of the VPP training that such employees receive, and customers should not be offered products

<sup>5</sup> Recent examples include (i) a consent order the Consumer Financial Protection Bureau (Bureau) entered into with a bank engaged in indirect vehicle financing to resolve allegations that the bank overstated to consumers the extent of coverage provided by its optional Guaranteed Asset Protection (GAP) product (*Santander Consumer USA, Inc.*, BCFP File No. 2018-BCFP-0008 (Nov. 20, 2018)); (ii) consent orders the Bureau entered into with a bank engaged in indirect vehicle financing and its non-bank partner company to resolve allegations that the respondents understated to service members the costs of optional vehicle service contracts and GAP coverage (*U.S. Bank Nat'l Ass'n*, BCFP File No. 2013-CFPB-0003 (Jun. 26, 2013) and *Dealers' Fin. Serv., LLC*, BCFP File No. 2013-CFPB-0004 (Jun. 25, 2013)); and (iii) consent orders that the Federal Trade Commission entered into with the provider of an optional bi-weekly payment product and an automobile dealership group that sold the product to resolve allegations that the respondents failed to disclose to consumers the total amount of the fees associated with the product and that those fees could offset any savings to consumers who purchased the product (*Nat'l Payment Network, Inc.*, FTC Docket No. C-4521 (May 4, 2015) and *Matt Blatt, Inc.*, FTC Docket No. C-4532 (Jul. 2, 2015)).



that would not provide value based on the circumstances of the customer's transaction (such as being offered an extended service contract on a leased vehicle whose protection is covered by the manufacturer's warranty during the lease term). During this training, employees should be reminded that while knowledge of the product and the elements of the customer's transaction are essential, dealer employees are not—and should not present themselves as—agents of the customer who are working on the customer's behalf.

- b. Section VI.b states that the dealership will inform customers orally that the VPPs it offers are optional, and that the dealership will not contradict this disclosure in any way such as by stating or implying that the purchase of a VPP is required as a condition of purchasing or leasing the vehicle, obtaining warranty coverage, qualifying for financing or obtaining particular financing terms, or executing any other part of the transaction. Because this involves an oral disclosure that cannot be monitored solely through a document review, the dealership should have a process in place to monitor periodically product presentations by its employees to ensure they adhere to this requirement, and the dealership should take immediate corrective action if it learns that an employee has deviated from it.
- c. Section VI.c states that the dealership will present VPPs to customers in a standard, simple menu format that, at a minimum, prominently discloses:
  - 1. that the purchase of any listed product is optional;
  - 2. that any listed product may be purchased separately;
  - 3. that the purchase of any listed product is not required to purchase or lease a vehicle, obtain warranty coverage, qualify for financing, or receive financing on particular terms;
  - 4. that the listed products or the protections they provide may be available from other sources;
  - 5. that the dealer may retain a portion of the sale price of the listed products;
  - 6. the price of—and monthly payment for—the vehicle without the purchase of a VPP;
  - 7. the price of—and monthly payment for—each product if purchased separately; and

- 8. the price of—and monthly payment for—each product bundle if products are purchased as a bundle.

By making these disclosures prominently, dealers provide useful information that facilitates the customer's understanding of the price, optional nature, and potential availability from other sources of—and the dealer's economic interest in—the VPPs being offered.

- d. Section VI.d states that the dealership will present VPPs in a manner that is designed to assist customers in making informed purchasing decisions by presenting information on the VPP's price, deductible, limitations, benefits, eligibility, requirements for maintaining coverage, claims process, cancellation and refund rights and procedures, and other important terms and conditions. Section VI.e further states that prior to the sale of a VPP, the dealership will provide the customer with a copy of—and an opportunity to review—each purchased VPP's terms and conditions as well as other required disclosures and request the customer's acknowledgement that he or she has received the menu disclosures and elected to (i) purchase each selected VPP or VPP bundle, or (ii) decline purchasing any VPP or VPP bundle.

While it typically is not practical to present orally to customers all of the information about a VPP that is contained in the VPP policy document(s), dealership employees should explain to customers (i) basic product information that may inform their purchasing decision, and (ii) that the full terms and conditions applicable to the VPP are contained in the written VPP policy document(s), which the dealership employee should provide the customer—and ensure the customer has an opportunity to review—prior to the sale of the VPP. The customer should then acknowledge in writing that he or she has received the menu disclosures and elected to purchase the VPP.

- e. Section VI.f states that the dealership will provide to customers all required post-sale forms. The dealership should consult with counsel to ensure that any requirement to provide such forms under state law or pursuant to the dealer's agreements with the finance or lease source and VPP provider is fulfilled.

### **Section VII. Product Cancellation**

This section generally establishes that the dealership will facilitate both customer requests to cancel VPPs customers have purchased from the dealership and the customer's receipt of any refunds due.

Section VII.a states that the dealership will ensure customers have a simple and clear method to exercise any cancellation rights applicable to VPPs they have purchased. While state law and/or VPP provider policy documents typically specify how VPP cancellations and refunds will be administered, the dealership, as noted above, should consider the ease with which customers can exercise these rights when deciding whether to offer particular VPPs. This process should not be convoluted or unnecessarily burdensome to the customer.

Section VII.b states that the dealership will take no action to delay, prevent, or otherwise frustrate customers' exercise of such rights. This is another area that should be particularly emphasized during the employee training to carry out this policy.

Section VII.c states that the dealership will promptly and courteously process customer cancellation requests and issue, or facilitate the issuance of, refunds due to customers or to the finance or lease source, as required. If the dealership is responsible for providing such refunds, then the dealership should have a process in place to process the refund request without delay. If the dealership is not responsible for providing such refunds but the dealership nonetheless receives a cancellation request from a customer, the dealership should provide information to the customer on how to exercise his or her cancellation right.

Section VII.d states that the dealership will maintain, or send to the VPP provider, verification that the refund was provided to the customer or to the finance or lease source, as required, if the dealership issues the refund. Because multiple parties may be involved in the sale, financing, and administration of VPPs to customers, it is incumbent on all parties (the dealership, the finance or lease source, and the VPP provider) to communicate with one another to ensure customer cancellation requests have been honored. The dealership should





review state law as well as its contract with the finance or lease source and VPP provider to ensure it is fulfilling any obligations in this regard.

#### **Section VIII. Customer Complaints**

This section states that the dealership will promptly and courteously respond to customer complaints regarding VPPs purchased from the dealership. While robust training, transparency, clear communications, responsiveness, and oversight should greatly diminish the likelihood of customer complaints regarding VPPs, the dealership should nonetheless be prepared to handle customer complaints that may arise (both as a complaint applies to the individual transaction involved and any systemic problems that the complaint may reveal). Developing the following procedures is one way to assist the dealership in addressing customer complaints:

- a. Assign an appropriate dealership manager with responsibility for overseeing the dealership's customer complaints process;
- b. Ensure customers are provided with the name and

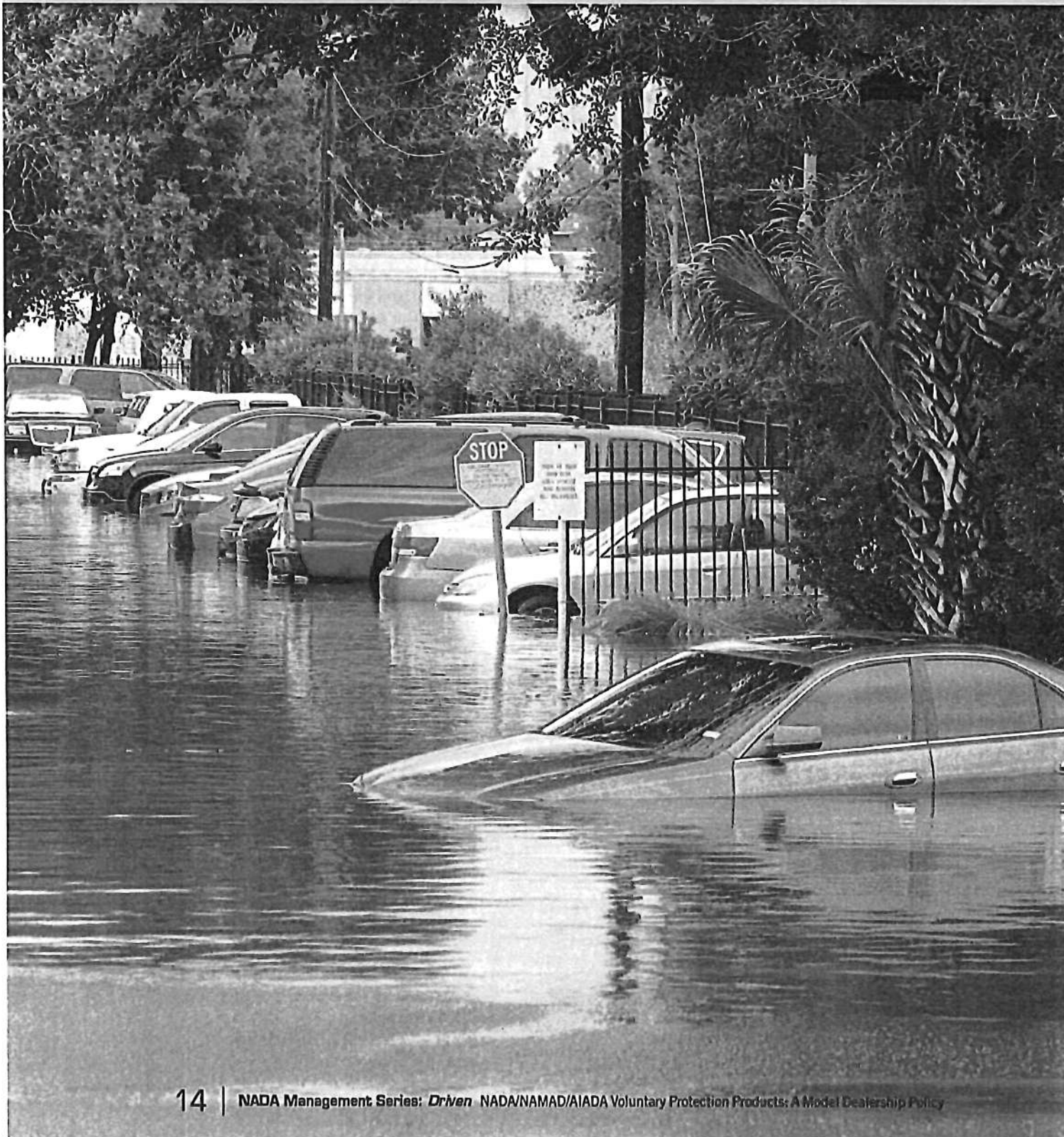
phone number of the dealership manager to contact if they have a complaint;

- c. Establish a process for logging in customer complaints;
- d. Direct the manager with oversight responsibility to handle the customer complaint or refer it to another dealership employee to (i) determine how the complaint can be resolved, and (ii) attempt to resolve the complaint; and
- e. Record (i) the resolution of the complaint and whether the customer is satisfied with the resolution, or (ii) the reason it cannot be resolved.

As with other aspects of this policy, the development of a customer complaint process should be tailored to the dealership's circumstances. However, if the dealership develops an effective customer complaint process (which should be in place for all of the dealership's departments), it will help the dealership address customer concerns in their early stages, enhance its business processes, and further demonstrate its commitment to a fair, ethical, and legally compliant VPP sales process.



# Templates





## **[Name of Dealership] Voluntary Protection Products Policy**

### **OVERVIEW**

Among the many products and services that the Dealership offers its customers are voluntary products that are designed to protect the customers' investment in the vehicles they purchase or lease. These voluntary protection products (VPPs) can provide great value to customers when they are offered in a fair and transparent manner and customers fully understand their costs, benefits, and limitations. In order to facilitate a compliant, professional, and consumer-friendly VPP sales process, the Dealership adopts the following Policy:<sup>1</sup>

#### **I. POLICY STATEMENT**

The Dealership will prominently display the poster at Appendix A, within clear view of prospective customers, stating that (i) VPPs offered by the Dealership are completely optional and are not required to purchase or lease a vehicle or to obtain warranty coverage, financing, financing on particular terms, or any other product or service offered by the Dealership, and (ii) the Dealership is fully committed to providing customers with the price, terms, and conditions of each VPP before they decide to purchase it.

#### **II. LEGAL COMPLIANCE, TRAINING, OVERSIGHT, COORDINATION, AND RECORDS RETENTION**

- a. The Dealership will fully comply with federal, state, and local law (including applicable licensing and insurance requirements and the prohibition against discrimination on a prohibited basis) as well as contractual obligations the Dealership has entered into with VPP providers, finance and lease sources, and other third parties.
- b. The Dealership will conduct initial and periodic training on this Policy for—and oversee—Dealership employees involved in VPP selection, pricing, advertisement, presentation, sales, cancellation, and customer complaints.
- c. The Dealership will coordinate the efforts of its departments to ensure a consistent and harmonized approach toward the proper execution of this Policy.

- d. The Dealership will retain records used to document compliance with this Policy for an appropriate period.

#### **III. PRODUCT SELECTION**

The Dealership will only offer to customers VPPs that offer value. At a minimum, to the extent it is available, the Dealership will consider:

- a. the product's cost, coverage, limitations, and other terms and conditions;
- b. the product's claims payment and cancellation process; and
- c. the product provider's financial ability to provide the product benefits.

#### **IV. PRODUCT PRICING**

- a. The Dealership will establish a Standard Retail Price (SRP) for each VPP and each bundle of VPPs it offers for which pricing discretion exists.
- b. The Dealership will only discount the SRP for the following pre-established, legitimate business reasons:
  1. a pricing or payment cap imposed by law or by the company providing financing for the purchase;
  2. a customer's stated monthly payment constraint;
  3. a more competitive offer for the same or similar VPP;
  4. promotional pricing for which the customer qualifies; and
  5. employee pricing for which the customer qualifies.
- c. The limitation on discounts in Section IV.b of this Policy does not preclude the Dealership from establishing an SRP for a bundle of VPPs that is less than the combined sum of the SRP of each individual VPP in the bundle.
- d. The Dealership will establish procedures, including the utilization of the VPP

<sup>1</sup> Nothing in this policy, express or implied, is intended to or shall confer upon any person any right, benefit, or other remedy of any nature whatsoever under or by reason of these standards or any federal, state, or local law. However, any violation of this Policy by a Dealership employee can be the basis for disciplinary action, including termination of employment and/or the agency or independent contractor relationship.

Certification Form at Appendix B, to record, review for corrective action, and retain determinations that a pre-established, legitimate business reason supported a decision to discount the SRP.

## V. PRODUCT ADVERTISEMENT

The Dealership will not advertise, solicit, or otherwise market VPPs in a manner that is deceptive, misleading, confusing, or otherwise inconsistent with their terms and conditions.

## VI. PRODUCT PRESENTATION AND SALE

- a. The Dealership will ensure its employees who offer VPPs to customers fully understand their benefits, limitations, and other terms and conditions before offering them to customers. The Dealership will not offer products to customers for which they are ineligible or would derive no value.
- b. The Dealership will inform customers orally that the VPPs it offers are *optional*. The Dealership will not contradict this disclosure in any way, including by stating or implying that the purchase of a VPP is required as a condition of purchasing or leasing a vehicle, obtaining warranty coverage, qualifying for financing or obtaining particular financing terms, or executing any other part of the transaction.
- c. The Dealership will present VPPs to customers in a standard, simple menu format that, at a minimum, prominently discloses:
  1. that the purchase of any listed VPP is optional;
  2. that any listed VPP may be purchased separately;
  3. that the purchase of any listed VPP is not required to purchase or lease a vehicle or to obtain warranty coverage, qualify for financing, or receive financing on particular terms;
  4. that the listed VPPs or the protections they provide may be available from other sources;
  5. that the dealer may retain a portion of the sale price of the listed VPPs;
  6. the price of—and monthly payment for—the vehicle without the purchase of a VPP;
  7. the price of—and monthly payment for—each VPP if purchased separately; and

8. the price of—and monthly payment for—each product bundle if VPPs are purchased as a bundle.
- d. The Dealership will present VPPs in a manner that is designed to assist customers in making informed purchasing decisions. This includes presenting to the customer information about the VPPs' price, deductibles, limitations, benefits, eligibility, requirements for maintaining coverage, claims process, cancellation and refund rights and procedures, and other important terms and conditions.
- e. Prior to the sale of a VPP, the Dealership will:
  1. provide the customer with a copy of—and an opportunity to review—each selected VPP's terms and conditions as well as any other required disclosures; and
  2. request the customer's acknowledgement of the menu disclosures and election to:
    - A. purchase each selected VPP or VPP bundle, or
    - B. decline purchasing any VPP or VPP bundle.
- f. Following the sale of a VPP, the Dealership will provide to customers all required post-sale forms.

## VII. PRODUCT CANCELLATION

The Dealership will:

- a. ensure customers have a simple and clear method to exercise any cancellation rights applicable to VPPs they have purchased;
- b. take no action to delay, prevent, or otherwise frustrate customers' exercise of such rights;
- c. promptly and courteously process customer cancellation requests and issue, or facilitate the issuance of, refunds due to customers or to the finance or lease source, as required; and
- d. maintain, or send to the VPP provider, verification that the refund was provided to the customer or to the finance or lease source, as required, if the Dealership issues the refund.

## VIII. CUSTOMER COMPLAINTS

The Dealership will promptly and courteously respond to customer complaints regarding VPPs purchased from the Dealership.

**[Name of Dealership]**  
**Voluntary Protection Products Policy**

[Name of Dealership] offers vehicle service contracts and other voluntary products that are designed to protect your investment in a vehicle you purchase or lease from us. The purchase of any of these voluntary protection products is completely **optional** and is **not** required to purchase or lease a vehicle or obtain warranty coverage, financing, financing on particular terms or any other product or service offered by the dealership. [Name of Dealership] is fully committed to providing you the price, terms and conditions of each voluntary protection product before you decide to purchase it.

# Appendix B

## Voluntary Protection Products Certification Form

Buyer(s)/Lessee(s) Name(s) \_\_\_\_\_ Date \_\_\_\_\_ VIN \_\_\_\_\_

Name of VPP (or VPP Bundle)	Standard Retail Price	Selling Price	If Selling Price is less than Retail Price, enter the Number of the Allowable Discount from the list below.	If Discount 2 is selected, enter the Amount of the Monthly Payment Constraint.	If Discount 3 is selected, enter the Name of the Competing Offeror and the Price of the Competing Offer.

### Allowable Discounts

- Discount 1 VPP limited by pricing or payment cap
- Discount 2 Customer stated monthly payment constraint
- Discount 3 Customer stated competing offer
- Discount 4 Customer qualified for Dealership Promotional VPP Campaign
- Discount 5 Customer qualified for Dealership Employee Incentive Program

I certify that the information above is true and correct to the best of my knowledge and that any discount from the Standard Retail Price was made in good faith and in a manner that is consistent with the requirements of the [Name of Dealership] Voluntary Protection Products Policy.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

### Reviewer Certification

I have reviewed the above information and supporting documentation and:

- ☐ certify that the Selling Price complies with the [Name of Dealership] Voluntary Protection Products Policy, or
- ☐ certify that I have initiated the corrective action noted below.
  - Reduced the customer's Selling Price for \_\_\_\_\_ to \$\_\_\_\_\_ or provided a refund to the customer in the amount of \$\_\_\_\_\_.
  - Taken the following employee corrective action (describe): \_\_\_\_\_
  - Other (describe): \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

## Exhibit B

<input type="checkbox"/>	\$25,028.81	<i>Amount Financed</i>
<input type="checkbox"/>	\$5,000.00	<i>Cash Down</i>
<input type="checkbox"/>	72 Months	<i>Term</i>

Help Protect Your Investment For Only

**\$8.73**

per month

### **Coverage Details**

Chemical

<input type="checkbox"/>	\$491.00	<i>Price</i>
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## **Exhibit C**

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	Date of Purchase	Customer First Name	Customer Last Name	Customer Street Address	Customer Municipality	Customer State	Add-on Product(s) Purchased	Product Standard Retail Price	Deviation Y/N	Deviation Reason Code 1-5	Sale Price	Product Cost	Profit
2	10/28/2022	First Name 1	Last Name 1	1 High St.	Boston	MA	Windshield protection	\$--	N				\$
3	10/28/2022	First Name 1	Last Name 1	1 High St.	Boston	MA	Extended Warranty	\$--	Y	1			\$
4	10/29/2022	First Name 2	Last Name 2	1 Maple Rd., Apt. A	Cambridge	MA	KeyCare	\$--	N				\$





## **Exhibit D**

*Dear [Customer],*

*It has come to our attention that an error was made in your recent transaction(s) with our dealership on [date of transaction(s)]. Enclosed is payment in the amount of [\$ ] to remedy that error.*

*We appreciate your business.*

*Sincerely,*

*[Dealership]*

4854-5797-5882.1

