

Standards of Conduct



Revised by:

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VEHICLE PROTECTION ASSOCIATION

STANDARDS OF CONDUCT

Preamble

Sound business practices and redundant standards result in business longevity and a solid reputation. Members of the Vehicle Protection Association (“Association” or “VPA”) subscribe to this principle. Members agree to the Standards of Conduct hereto ensure that a consumer’s experience with a Member is exemplary.

The Standards of Conduct are intended to guide the Association’s Members in the ethical conduct of business with consumers. All Members must conduct business in a manner that supports the Standard’s aims and principles. These Standards acknowledge that industry and consumers are best served when industry enacts self-regulatory measures, and as such, self-regulation is preferable to governmental mandates.

Because dishonest, misleading or offensive communications discredit the entire industry, Members should encourage all industry members to follow these Standards as well. The Association’s goal is to enhance the customer experience by providing training, establishing fair standards, defining quality products and reliable services while establishing an effective self-regulatory mechanism.

Standards

This document serves as the Association’s Standards of Conduct for its members. The Standards now include specific sections for Marketers of Vehicle Service Contracts as well as for Administrators. All Members shall truthfully and accurately answer all inquiries, to the best of their knowledge, made by the Association during an investigation of a potential violation of these Standards.

These Standards create a floor, not a ceiling; therefore, Members may implement policies and procedures that provide greater consumer protections than these Standards. Where there is a conflict between these Standards and any state and/or federal rule governing practices and procedures, the controlling state or federal rule prevails. Whenever a question exists as to the scope of the applicability of any of these Standards, the assumption is that such Standard should be interpreted broadly to protect consumers’ interests to the maximum extent possible.

The VPA is your resource to help you understand your legal obligations and these Standards. Please contact VPA legal counsel Robby H. Birnbaum with any questions at Robby.Birnbaum@gmlaw.com or (954) 343-9659.

Section 1: General Standards for All Members

1. Definitions

- 1.1 “*Administrator*” means a company that is designated to administer the terms and conditions of the service contract.

- 1.2 “*Automatic Telephone Dialing System*” means equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and do dial such numbers. This term includes predictive dialers.
- 1.3 “*De-Certified Company*” means any company that previously qualified as a VPA Certified Company, whose certification has been revoked by the VPA for violation of these Standards or for any other reason.
- 1.4 “*Extended warranty*” or “*Warranty*” means a guarantee given to the purchaser by the seller or manufacturer stating that a product is reliable and free from known defects and that the seller or manufacturer will repair or replace defective parts within a given time limit and under certain conditions. A Vehicle Service Contract is not an “extended warranty”.
- 1.5 “*Fulfillment Company*” means any company responsible for sending a Vehicle Service Contract to a consumer on behalf of the Marketer and/or Administrator following the sale of the service contract.
- 1.6 “*Marketing Methods*” mean the methods used by Marketers to contact consumers and/or induce consumers to contact them for the purpose of selling or offering to sell. Vehicle Service Contracts. Marketing methods include, but are not limited to, direct mail, outbound telemarketing, email and internet marketing.
- 1.7 “*Member*” or “*VPA Member Company*” means any company that has agreed to abide by the rules, regulations and standards set forth by the VPA, has paid the annual dues required for membership and whose membership has not lapsed or been revoked. A Member may also qualify as a Marketer, Administrator, Payment Processor, VPA Certified Company, etc.
- 1.8 “*Non-VPA Member*” means any company that operates in the Vehicle Service Contract industry, which does not qualify as a VPA Certified Company or has chosen not to join the VPA.
- 1.9 “*Payment Plan*” means a plan offered to a consumer that allows the consumer to pay for a Vehicle Service Contract over a certain period of time.
- 1.10 “*Payment Processor*” or “*Payment Processing Company*” means a company that collects payments from consumers who have elected to pay for a Vehicle Service Contract over a certain period of time.
- 1.11 “*Provider*” means a company that is contractually obligated to the service contract holder under the terms of a Vehicle Service Contract.
- 1.12 “*Reimbursement Insurer*” or “*Insurer*” means an insurance company that issues an insurance policy to a Provider under which it agrees, for the benefit of service contract holders, to discharge all of the obligations and liabilities of the Provider

under the terms of the service contract in the event of nonperformance by the Provider.

- 1.13 “*Third Party Telemarketing Vendor*” or “*Vendor*” means a company that conducts outbound or inbound telemarketing campaigns on behalf of a Marketer or Administrator, using the Marketer’s Administrator’s name, rather than its own name, during the telephone solicitations.
- 1.14 “*Vehicle Service Contract*” or “*Service Contract*” means a contract or agreement for a separately stated consideration and for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials or workmanship and sometimes cover normal wear and tear.
- 1.15 “*Vehicle Service Contract Marketer*” or “*Marketer*” means a company that markets, sells or offers to sell Vehicle Service Contracts to consumers, which is not contractually obligated to the service contract holder under the terms of the Vehicle Service Contracts it sells.
- 1.16 “*VPA Call Monitoring Program*” means the program where the VPA randomly selects contracts that were previously sold to consumers by Member and Non-Member Marketers obtains recordings of the sales calls and assesses compliance of such calls with the VPA Standards of Conduct.
- 1.17 “*VPA Certification Program*” means the program where Members apply to the VPA for certification and undergo an independent third party assessment of their business practices against the VPA Standards of Conduct.
- 1.18 “*VPA Certified Company*” or “*Certified Company*” means any Member that has successfully undergone the VPA certification process by an independent auditor, has been approved for certification by the VPA Board of Directors and whose certification has not lapsed or been revoked.
- 1.19 “*VPA Pre-Certified Company*” or “*Pre-Certified Company*” means any Member that has completed the required pre-certification audit forms, paid the retainer fee to the independent VPA audit firm, and scheduled the initial visit to their facility by the VPA audit firm.

2. Basic Standards

- 2.1 Compliance with Federal and State Laws. Members shall operate in accordance with laws and regulations of the Federal Trade Commission, the Federal Communications Commission, the Federal Reserve Board, the United States Postal Service and all other applicable federal, state, and local regulations and laws.
 - 2.1.1 *Licensing.* Members shall meet all state licensing and marketing requirements applicable to the industry.

- 2.1.2 *Sample Contracts.* Members shall post a sample copy of all contracts they currently offer online.
 - 2.1.2.1 Members shall direct prospective purchasers, who request to see a sample contract prior to making a purchase, to the web address where these contracts are displayed.
 - 2.1.2.2 If requested, Members shall send a copy of the contract being offered to the consumer via electronic mail or by facsimile.
- 2.2 Adequate Cash Reserves. Members shall ensure that they have adequate cash reserves to: (1) make timely refunds to all consumers entitled to such refunds pursuant to the terms of the Vehicle Service Contract and/or applicable state and federal laws; and (2) to fund claims submitted by Service Contract Holders (if the Member is an Administrator); and 3) reserve and holdback. If the Member is providing refunds directly to consumers, the Member shall be sufficiently reserved between the Administrator and the Marketer to provide the full refund due.
 - 2.2.1 *Customer Service.* Members shall employ an adequate staff to promptly respond to customer service inquiries and telephone calls with an appropriate mechanism in place for escalation to a supervisor who has authority to resolve the issue.
 - 2.2.2 *Compliance Officer.* Members shall appoint a representative of the company to serve as its compliance officer. The compliance officer's duties shall include ensuring that the Member is complying with all state and federal laws and regulations, as well as the guidelines set forth in the Standards of Conduct.
- 2.3 Due Diligence. Members shall conduct due diligence to ensure that companies with whom they do business are also complying with the law. Merely relying on a contract provision requiring the parties to comply with all applicable laws, when the member has reason to believe that a business party is not operating consistent with legal requirements, is not sufficient to meet this standard.
 - 2.3.1 *Financial Stability.* Members shall ensure each business with which they conduct business has adequate cash reserves to issue refunds and/or pay claims.

3. **Refund Policies and Procedures**

- 3.1 Disclosure of Refund Policy. Refund policies, including whether any administrative or cancellation fees will/may apply, shall be clearly and conspicuously disclosed to consumers prior to the sale of any product of service.
- 3.2 Minimum Full Refund Period. Members shall honor all consumer refund requests in full made within thirty days of the date they sold the contract.

- 3.2.1 *Down Payment Refunds.* If the consumer has only paid the initial deposit, Members shall provide the refund within five (5) business days, if made by credit card; and within thirty (30) days if made by check or ACH.
- 3.2.2 *Other Refunds.* If the consumer has also made subsequent payments, the Member shall provide the refund within thirty (30) days from the date they receive the completed notice of cancellation with odometer information.
- 3.3 State Cancellation Laws. Members must be aware of and comply with all applicable state laws governing refunds and/or applicable three (3) day right to cancel laws.
- 3.4 Written Cancellation Fee Calculation. Upon request, Members shall provide a written cancellation fee calculation and state the information upon which they base the calculations.
- 3.5 Cash Reserves. Members shall maintain adequate cash reserves to issue timely refunds to all consumers that are entitled to a refund pursuant to the Member's cancellation policy and/or applicable state and federal laws.

4. **Guidelines for using the term "Warranty"**

- 4.1 Members may keep URLs they have previously used that contain the word warranty so long as the content of the website (including the name used) meets the guidelines below. Newly created websites may not use the word "warranty" in its URL.
- 4.2 Members shall not deceptively refer to any business name known to the consumer that contains the word "warranty", "dealer" or manufacture
- 4.3 Members may use the term "warranty" to refer to the manufacturer's warranty.
- 4.4 Members shall not directly refer to the Vehicle Service Contracts a "warranties" or "extended warranties"
- 4.5 Members may use a term such as "Vehicle Service Contract" coupled with a parenthetical explanation containing the term warranty such a (f/k/a an "extended warranty") or (commonly referred to as an "extended warranty" to describe Vehicle Service Contracts, so long as the disclosure requirements outlined in Standard 4.12 (below) are met. In the context of press releases, articles and/or blogs on a member's website, the required disclosure may be provided clearly and conspicuously in one location rather than on each individual press release, article or blog entry.

- 4.6 Members shall use the required disclosures outlined in Standard 4.12 (below) if they post customer testimonials on their website wherein customers refer to their Vehicle Service Contracts as a “warranty” or “extended warranty”.
- 4.7 Members may use terms such as “warranty” and/or “extended warranty” to educate consumers on the difference between a warranty and Vehicle Service Contract (e.g. see the disclosure in Standard 4.12 below).
- 4.8 Members shall not refer to themselves or any company they conduct business with as a “warranty company” or any similar term that containing the term “warranty”.
- 4.9 Members shall not refer to their employees or the employees of any company they conduct business with as “warranty specialists,” “warranty consultants” or any similar term that contains the term “warranty.”
- 4.10 Members may use previously recorded audio/visual endorsements from public figures that use the word “warranty” so long as the disclosure requirements outlined in Standard 4.12 (below) are met. Newly created audio/visual endorsements shall not use the word “warranty” to describe a Vehicle Service Contract.
- 4.11 For websites, Members may use the terms warranty or “extended warranty” for purposes of search engine marketing (i.e. pay-per-click advertisements), if the content of their website(s) complies with the Standards and the disclosure in Standard 4.12 (below) is prominently displayed on the homepage of the Member’s website.
- 4.12 Required Disclosure. If a member uses the term “warranty” or “extended warranty” in any manner that requires a disclosure pursuant to Standard 4 (above), the following disclosure shall be ***clearly and conspicuously*** placed on all landing pages where the term is used:

A Vehicle Service Contract (VSC) is often referred to as an “extended warranty”, but it is not a warranty. A VSC does, however, provide repair coverage for your vehicle after the manufacturer’s warranty expires. A VSC is a contract between you and a VSC provider or administrator that states what is a covered repair and what is not. If applicable, add: [Company name] is a marketer of VSCs and does not sell warranties. VSCs sold by [Company name] are agreements between consumers and third party VSC providers, not [Company name].

For purposes of these guideline “clearly and conspicuously placed” means:

- In close proximity to the term that triggers the required disclosure (e.g. warranty). Making disclosures at the bottom of the page with or without the use of a footnote is not sufficient.

- Using a font and color that contrasts from the background on which the disclosure appears.
- Not otherwise obscured by the background, surrounding text, graphics, illustrations, etc.

5. *Security of Customer Information*

- 5.1 *General Requirement.* Members shall adequately protect all nonpublic consumer/customer personal information regardless of whether it is handled or maintained in paper or electronic format.
- 5.2 *Written Information Security Program.* In order to adequately protect this information, Members shall maintain a written information security program (“ISP”). The ISP shall contain administrative, technical and physical safeguards that are appropriate to the size, complexity, nature and scope of the business and the sensitivity of the information and meet the requirements outlined below.
- 5.2.1 *Plan Coordinator.* Members’ ISPs shall designate one or more employees to coordinate, monitor and revise the program.
- 5.2.2 *Identification of Risks.* Members’ ISPs shall identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of the customer information.
- 5.2.3 *Employee Training.* Members’ ISPs shall provide for recurring employee training to ensure the ISP is fully implemented and consumers’ personal information is protected.
- 5.2.4 *Required Systems.* Members’ ISPs shall identify the information systems necessary to detect, prevent and respond to attacks, intrusions and other system failures.
- 5.2.5 *Testing and Monitoring.* Members’ ISPs shall set forth regular testing or monitoring procedures that will be used to evaluate the effectiveness of the program.
- 5.2.6 *Evaluation of Program.* Members’ ISPs shall provide for the evaluation and adjustment of the program as results of the testing and monitoring dictate or other changes such as a business model change, facility change, etc.
- 5.2.7 *Disposal of Information.* Members’ ISPs shall ensure that personal information is adequately and securely disposed of at the end of its useful life.

- 5.2.8 *Social Security Numbers.* Members shall use Social Security Numbers only when necessary and in compliance with all state restrictions on display and use of social security numbers.
- 5.3 Service Providers. Members shall oversee service providers who have access to nonpublic personal information, by taking reasonable steps to select and retain service providers that are capable of maintaining the security standards set forth herein.
 - 5.3.1 Members shall require service providers by contract to implement and maintain the security standards set forth herein.

6. Privacy Policy and Data Collection Practices

- 6.1 Online Privacy Policy. If a Member has a website, the Member shall have a privacy policy and shall clearly and conspicuously post a copy of the policy online.
 - 6.1.1 *Placement.* Members shall include a clear and conspicuous hyperlink to its privacy policy on all offer pages and all landing pages where the consumer personal information is requested.
 - 6.1.2 *Notice Disclosures.* All notice disclosures should appear in or be linked to every consumer data collection site/application and the Member s website
- 6.2 Content of Privacy Policy. Members' privacy policies shall disclose and outline the company's practice of data collection, usage, and sharing ("Data Practices"). Data Practices should be easy to find, easy to read and easy for consumers to act upon.
- 6.3 Sale of Personal Information. Members shall not sell consumers' personal information to other companies for marketing purposes without the consumer s knowledge or choice. Notice in a privacy policy that complies with these Standards shall suffice as such knowledge and choice.
- 6.4 Notification of Privacy Policy Changes. Members shall provide consumers with reasonable and adequate notice of any material privacy policy change.
 - 6.4.1 *Online Notification.* Members shall have a notice on their home page that their privacy policy has been materially updated and should highlight the updates and list the dates the revisions were made at the top of their privacy policy.
 - 6.4.2 *E-mail Notification.* Members should also strongly consider email notification of material changes to all consumers covered by the original privacy policy.

- 6.5 Controls. Members shall have both technical and management controls in place to comply with their respective privacy policy.
- 6.6 Data Collection. Members shall ensure that personal data is gathered in compliance with applicable federal and state laws and regulations, as well as the best practices outlined in these Standards.
- 6.6.1 *DMV Data*. Members shall not use consume personal information obtained from a state department of motor vehicles for any unauthorized use in violation of 18 U.S.C. 2721 *et seq.* or any similar state laws.
- 6.6.2 *Consumer Reports*. Members shall not use information obtained from a consumer credit report unless it is used for a permissible purpose as defined under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*
- 6.7 Evaluation of Policy and Procedures. Members shall conduct a regular, periodic evaluation of their privacy policy and data protection procedures to ensure compliance.

7. Consumer Complaint Process

- 7.1 Written Policy and Procedures. Members shall have a written consumer complaint process in place to address complaints received from consumers, the Better Business Bureau or regulatory agencies.
- 7.2 Handling of Complaints. Members shall address all complaints received in a prompt, courteous and professional manner and shall make a good faith effort to resolve every complaint. Members shall escalate complaint handling to an appropriate supervisor who has the authority to decide issues when consumers request such an action.
- 7.2.1 *Third-Party Complaints*. Members that receive complaints involving a third party (e.g. a Marketer receives a complaint regarding a claim denied by an Administrator) shall share that information within five business days with all parties involved in the complaint including the finance company, administrator, fulfillment company, and the Association..
- 7.2.2 *Better Business Bureau and Regulator Complaints*. Members who receive a complaint from a third party such as the Better Business Bureau or state attorney general shall provide the complaint to the Association within five business days, and shall respond to the complaint within the timeframe that the third party requests.
- 7.3 Identification of Patterns. Members' complaint processes shall be such that patterns of problems or severe problems are identified and addressed.

- 7.3.1 Senior management, owners and principals shall be kept apprised of all such problems identified by consumer complaints.
- 7.3.2 Members shall create procedures that require the Member to investigate the cause of the problem and to correct the issues identified within a reasonable time period.

Section 2: Standards for Marketers

8. Basic Standards

- 8.1 Business Names. Marketers shall not conduct business in a name known to the consumer that contains the word warranty. Marketers shall register all names with which they conduct business (DBA names) with the appropriate agency(ies) in the states it is required to do so.
 - 8.1.1 Marketers shall not conduct business under any deceptive or misleading DBA name(s), use a DBA name that is registered to another business and/or use any DBA name that is deceptively similar to a DBA name used by another similar business.
 - 8.1.2 Marketers shall not use DBA names that contain words such as “warranty”, “dealer”, “dealership”, “manufacturer” (including actual manufacturer s name; e.g. “Ford”) or any other words that falsely imply that the company is somehow associated with the manufacturer of the motor vehicle.
 - 8.1.3 Marketers shall not use any DBA that contains words such as “insurance”, “surety”, “mutual” or any other words descriptive of the insurance, casualty or surety business, or a name deceptively similar to the name or description of any insurance or surety corporation.
- 8.2 Misrepresentations Prohibited. Marketers shall not misrepresent the nature of the products sold and/or the coverage offered from the perspective of the totality of the circumstances.
 - 8.2.1 *Scope of Coverage.* Marketers shall not misrepresent the scope of Vehicle Service Contracts they sell by stating that they offer “bumper to bumper” coverage or use similar terms to represent or imply that all parts are covered under the contract.
 - 8.2.2 *Warranty References.* Marketers shall not refer to a Vehicle Service Contract as a “warranty” or “extended warranty”. Marketers may use these words to describe the manufacturer’s coverage or as otherwise outlined in Standard 4.
 - 8.2.3 *References to Manufacturers.* Marketers shall not communicate with customers so as to infer that they are agents of the vehicle manufacturer

if such is not the case. If Marketer refers to a manufacturer or dealer in a marketing piece, it must also disclose in the piece in a clear and conspicuous manner that it is not affiliated with those entities or state that it is an independent company selling Vehicle Service Contracts.

- 8.2.4 *Insurance Terms.* Marketers shall not use in their advertisements, sales solicitations or any other description of their products, words such as “insurance”, “surety”, “mutual” any other words descriptive of the insurance, casualty or surety business.
- 8.3 False Sense of Urgency. Marketers shall not create a *false* sense of urgency in their marketing materials. Marketers must be able to substantiate any claim of urgency *before* they distribute a marketing piece. Marketers shall not use language that indicates that a consumer’s warranty is expiring unless they possess information that establishes that the consumer’s current warranty will expire within a reasonable time in the near future.
- 8.4 False Sense of Exclusivity. Marketers shall not make an offer that gives a *false* sense of exclusivity. For example, Marketer shall not claim that an offer is “exclusive” or that the consumer was “preselected” unless that is true and the Marketer only makes the offer to a select number of potential customers.
- 8.5 Limited Time Offers. Marketers shall not indicate that an offer is for “a limited time” or that the offer “will expire” unless Marketer is prepared to change or refuse to honor the original offer after the stated time period ends and be able to substantiate a reasonable limited time for the offer.
- 8.5.1 Marketers may also use this phrase if they have actual knowledge that the consumer’s vehicle is within 7500 miles or 6 months of no longer qualifying for exclusionary coverage or if they have actual knowledge of an impending rate increase.
- 8.6 Voice Confirmations. Marketers shall make a voice confirmation disclosure for all phone sales that includes all of the information contained in Appendix A, including but not limited to, the requirement to obtain express, affirmative consent from the consumer to charge his or her credit or debit card. Appendix A represents the minimum confirmation disclosure requirements. Marketers may include additional disclosures not contained therein.

VOICE CONFIRMATION DISCLOSURE

Congratulations on the purchase of your *Admin, Inc.* protection plan for your vehicle from *XYZ Seller!* You have selected *X Plan Brand* for _____ months or _____ miles, whichever occurs first. During this period you will be provided *Y Coverage Type plan* on your vehicle. Your protection plan has a waiting period, so coverage will commence at the sooner of the passing of _____ days and _____ miles from your current odometer statement. (This should be consistent with the Vehicle Service Contract sold).

You will receive a full contract containing all terms and conditions in the mail shortly. Please contact us at (800) 123-4567 if you do not receive your package. Upon receipt of your contract, please be sure to review the coverage, terms, conditions and exclusions to confirm it meets your needs. You have _____ days from today, (*June 1st*), to review your coverage and are entitled to a full refund during this period. (This should be consistent with the Vehicle Service Contract sold). After 30 days, you are entitled to a pro-rata refund, subject to claims paid and any cancellation fees outlined in the contract.

The contact information we have on file is *Mr. John Q. Customer* located at *123 Main Street, City, State 12345*. Your email address is John.Smith@email.com. You have elected a down payment of \$200 and 12 installment payments of \$150.00 which will be processed by our partner *Payment Processor, Inc.*

Your monthly payment will be charged to your *Visa* credit card account number ending in *1234* on or around the *5th day of each month* starting *July 5, 2009*. At this time, we will need your voice verification of these terms and conditions and to authorize the charges to your account. Do you authorize a charge today of \$200? Do you authorize 12 monthly charges of \$150 beginning on July 5 and each month thereafter until your balance is paid in full? (Need to receive a verbal YES).

X Plan Brand = Administrator s Brand Name

Y Coverage Type Options: Exclusionary, Named Component, Power train

- 8.7 Call Recording. Marketers shall record all phone calls from start to finish, including but not limited to, the voice confirmation disclosure and corresponding consumer consent.
- 8.7.1 *Availability of Recordings*. Recordings shall be made available on demand to the Administrator, Payment Processing Company and the Association.
- 8.7.2 *PCI Compliance*. The equipment used for the recording must be PCI compliant so that the consumer's credit card number or ACH information are protected.
- 8.7.3 *Disclosure of Recording to Consumers*. The fact that the call is being recorded shall be disclosed to the consumer at the beginning of the call.
- 8.7.4 *Pausing*. Customer and/or sales representatives shall not have the ability to pause the recording other than to avoid recording credit card information.
- 8.8 Contracts. Marketers shall provide the purchaser with a copy of the contract electronically or mail the contract to the consumer within three (3) business days of when the consumer agrees to purchase the contract. Upon request, Marketers shall make contracts available to the VPA
- 8.8.1 *Evidence of Shipment*. Marketers or their Fulfillment Companies shall maintain evidence that they sent the consumer their contract and when it was sent.
- 8.9 Opt-out Requests. Marketers shall permit and honor a consumer's request to opt out of receiving future marketing pieces and/or telephone solicitations.
- 8.10 Duplicative Coverage. Marketers shall not knowingly sell a consumer duplicative coverage of a warranty or service contract that the consumer already possesses.
- 8.11 Criminal Background Checks. Marketers shall conduct criminal background checks on all newly hired sales staff.
- 8.12 Audits. Marketers shall provide the Association with reasonable access to its facilities, policies, procedures and Marketing Methods for purposes of assessing the Marketer's compliance with these Standards in connection with certification, certification renewal and/or Association investigations.
- 8.12.1 *Call Monitoring*. Live call monitoring shall be made available to the Association and/or its auditor(s) for purposes of such audits and/or investigations.
- 8.12.2 *Mailers/Advertisements*. Upon request, Marketers shall provide the Association with copies of all mail pieces, general media advertisements

and/or lead generation materials, including URL addresses, they have used within the previous two (2) years.

9. Advertising

- 9.1 Substantiation. Marketers must possess adequate substantiation, prior to making claims or offers. Marketers should have advertising materials reviewed by an attorney experienced in these laws or by the Marketer's compliance officer.
- 9.2 Use of the Term "Free". When using the term "free" or "complimentary" or other similar terms, Marketers shall ensure proper disclosures are made in proximity to the term, if some form of action is required of the consumer to receive the offer.
- 9.3 Material Terms of Offer. If a Marketer makes a specific offer in a marketing piece, it must clearly and conspicuously disclose all the material terms and limitations of the offer. These terms shall not be contradicted by other statements, representations or disclaimers.
- 9.4 Informational Marketing Pieces. If a Marketer's marketing piece contains informational material, such as the fact that a recall exists for the consumer's auto, the Marketer must clearly and conspicuously disclose that if the consumer calls the Marketer for information, the Marketer will be offering for sale a Vehicle Service Contract.
- 9.5 Mailing Lists and Lead Generation Materials. Marketers shall conduct sufficient due diligence to have reasonable certainty that mailing lists they purchase contain legally obtained consumer information and that all leads are generated in a lawful manner. Reasonable due diligence includes contractually requiring consumer data to be obtained in a lawful manner and obtaining executed affidavits or other documentation from list providers and/or lead generators indicating that the consumer data being provided was obtained in a lawful manner. Marketers must ensure that a third party vendor who sends them transfer calls or leads obtained through outbound telemarketing complies with all of the VPA Standards for telemarketing found in Section 11.
- 9.6 Financing Terms Prohibited. Since service contracts are not financed, Marketers shall not represent that the contracts are financed and shall make no reference to interest rates or charges.
 - 9.6.1 *No Fee Payment Plan*. For contracts sold that are not paid in full at the time of purchase, Marketers shall describe the payment as a "no fee payment plan" or another similar non-financing term.
- 9.7 Vehicle Identification Numbers. Unless an existing business relationship (EBR) exists, Marketers shall not use full vehicle identification numbers (VINs) in their promotional materials. If a VIN is used in promotional materials without an EBR, it shall be limited to the first 12 digits.

9.8 Knowledge of Noncompliant Marketing Materials. Marketers with specific knowledge regarding other Members and/or Non-VPA Members that are using marketing materials that do not comply with these Standards and/or federal or state laws shall report such noncompliance to the VPA.

10. Offers

10.1 General Requirements.

10.1.1 All offers shall be disclosed to a prospective customer in a clear, honest, and complete manner.

10.1.2 The service contracts that Marketers sell shall be consistent with the product that they represent to the consumer.

10.2 Disclosure of Material Terms and Conditions. Marketers shall clearly and conspicuously disclose the material terms and conditions of the offer before obtaining the consumer's consent, including:

10.2.1 *The Seller's Identities and Contact Information.* The identity of the Marketer and Administrator and contact information for service or cancellation for both.

10.2.2 *A Description of the Goods or Services Being Offered.* The description of the goods or services being offered shall include the following information:

- The type of coverage;
- The number of miles and/or years that the contract covers;
- The deductible, if any;
- If a waiting period exists before the consumer can make a claim under the contract and how that period is determined;
- Whether the contract is transferable to a subsequent purchaser;
- Whether the contract is refundable and if so, the time frame within which the consumer cancel for a full refund;
- Whether the consumer must perform mandatory maintenance;
- Any dollar limitation on the total amount of claims; and
- Whether repairs must be pre-approved by the claims administrator.

10.2.3 *Payment and Billing Information.* Payment and billing information disclosed to consumers shall include the following information:

- The price or the range of prices of products or services purchased by the consumer, including whether there are any additional charges including a deposit;
- Whether the consumer will be billed or automatically charged;
- When and how frequently the consumer will be billed or charged; and
- The entity that will process the consumer's payments.

10.2.4 *Cancellation and Refund Information.* Cancellation and billing information disclosed to consumers shall include the following:

- The fact that the consumer must take affirmative action to cancel in order to avoid future billing or charges;
- The specific and easy steps that consumers should follow to cancel the plan and avoid the charges;
- The time period, if any, within which the consumer must cancel; and
- The fact that a cancellation fee will or may apply if the consumer cancels after the mandatory 30 day full refund period.

10.3 Consumer's Affirmative Consent Required. In order to obtain the consumer's consent, Marketers must receive an affirmative response that the consumer accepts the material terms and conditions of the offer as described above. It is appropriate to group these disclosures together and obtain affirmative consent in that manner.

11. Outbound Telemarketing

11.1 Federal and State Do Not Call Laws. Marketers shall follow all state and federal Do Not Call (DNC) laws and regulations.

11.1.1 *Federal DNC Regulations.* Marketers shall not conduct any outbound telemarketing unless they have obtained a Subscription Account Number (SAN) by registering with the Federal Trade Commission and scrub all outbound telemarketing calls against the National DNC Registry or they are exempt from these requirements.

11.1.1.1 Under federal regulations, Marketers that only make outbound telemarketing calls to consumers who have provided express written consent to be contacted and/or consumers with whom they have established business relationships are exempt from the requirements to purchase a SAN and scrub against the National DNC Registry.

- 11.1.1.2 If a Marketer believes that it is exempt from a law, the burden is on the Marketer to prove that the exemption applies to their company.
- 11.1.2 *State DNC Laws.* Marketers shall not conduct any outbound telemarketing unless they have policies and procedures in place to comply with state DNC laws and regulations, which may require telemarketers to scrub non-exempt outbound telemarketing calls against the National DNC Registry or against a DNC list maintained by the state.
- 11.1.2.1 Marketers recognize that several states have DNC laws that are more restrictive (i.e. fewer exemptions apply) than provided under federal regulations and shall comply with all such state laws.
- 11.1.2.2 Marketers recognize that state DNC laws that are more restrictive than federal regulations apply even where the list used by the state is the National DNC Registry. As such, a Marketer may be exempt from scrubbing against the National DNC Registry under federal regulations but required to scrub against the Registry pursuant to state law.
- 11.1.2.3 If a Marketer believes that it is exempt from a law, the burden is on the Marketer to prove that the exemption applies to their company.
- 11.1.3 *Internal DNC List.* Marketers shall maintain a company-specific internal DNC list and scrub all outbound telemarketing calls against this list.
- 11.1.3.1 Internal DNC requests apply to the telephone number provided during the request, not the specific person making the request.
- 11.1.3.2 Marketers shall ensure that all internal DNC requests are honored, regardless of whether outbound telemarketing calls are placed by the Marketer or a Third Party Telemarketing Vendor.
- 11.2 Disclosures. When telemarketing, Marketers shall immediately disclose the following information:
- The identity of the seller providing the goods or services for sale;
 - That the purpose of the call is to sell goods or services; and
 - The nature of the goods or services being offered.

- 11.3 Caller ID. Marketers shall always display an accurate caller ID number when calling consumers. Marketers shall not “spoof” their caller ID with a number or name that does not belong to them.
- 11.4 Calling Time and/or Day Restrictions. Marketers that make outbound telemarketing calls shall comply with all federal and state restrictions limiting the times and/or days on which such calls may be made.
- 11.4.1 *Calling Time Restrictions*. Marketers shall not make outbound telemarketing calls to consumers before 8:00 AM or after 9:00 PM local time at the called party’s location or in violation of state laws or regulations that impose more restrictive calling time limitations.
- 11.4.2 *Calling Day Restrictions*. Marketers shall comply with all state laws and/or regulations that prohibit outbound telemarketing calls on Sundays, official state holidays and/or during a state of emergency.
- 11.5 Automatic Telephone Dialing Systems. Marketers using an automatic telephone dialing system (“ATDS”) to place outbound calls shall do so in accordance with all applicable federal and state laws and regulations.
- 11.5.1 *Cellular Telephones*. Marketers shall not use an ATDS to place calls to cellular telephones or any other number for which the called party is charged without obtaining the consumer’s prior written express consent to be contacted at that number.
- 11.5.1.1 Marketers shall scrub their calling lists against a wireless number list unless the calling list only includes wireless numbers where the consumer has given their express consent to receive sales calls
- 11.5.2 *Other Prohibited Numbers*. Marketers shall not use an ATDS to place outbound calls to any emergency telephone number or to a telephone number assigned to any guest or patient room at a hospital or healthcare facility.
- 11.5.3 *Calls to Multi-line Businesses*. An ATDS shall not be used in such a way as to engage two or more telephone lines of a multi-line business simultaneously.
- 11.5.4 *Abandoned Calls*. Marketers shall comply with federal and state laws and regulations that prohibit outbound calls from being abandoned.
- 11.5.4.1 For purposes of these Standards, a call is abandoned if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.

- 11.5.4.2 Marketers shall not abandon more than three percent (3%) of outbound telephone calls answered by a person, measured over each successive thirty (30) day period.
- 11.5.4.3 If a sale representative is not available to speak with the person answering the call within two (2) seconds, that person must receive a prerecorded identification message that states *only* the name and telephone number of the business, entity or individual on whose behalf the call was placed and that the call was for “telemarketing purpose”. The telephone number provided must permit any individual to make a DNC request during regular business hours for the duration of the telemarketing campaign.
- 11.5.4.4 Unanswered telemarketing calls may not be disconnected prior to at least fifteen (15) seconds or four (4) rings.
- 11.5.5 Marketers shall not dial a telephone number for the purpose of determining whether the line is a facsimile or voice line or has an answering machine
- 11.5.6 *Affidavits.* Marketers using an ATDS shall sign an affidavit stating that the VPA s Outbound Telemarketing Standards will be followed.
- 11.6 Prerecorded Messages. Marketers shall not use prerecorded sales messages at any point during the sales process.
 - 11.6.1 Pursuant to Standard 5.5.4.3, Marketers are permitted and shall leave an informational prerecorded message when outbound telemarketing calls are abandoned. The content of this message shall be limited to the information listed in Standard 5.5.4.3.
- 11.7 Association DNC List. If the VPA establishes an Association-wide DNC list, all Marketers shall scrub their outbound call lists against this list according to the procedures established by the VPA Board. Marketers who receive DNC requests shall provide those numbers to the VPA for inclusion in the Association-wide DNC list according to the procedures established by the Board
- 11.8 Third Party Telemarketing Vendors. If a Marketer uses a Third Party Telemarketing Vendor, even if the Vendor is not located in the United States, the Marketer shall require the Vendor to follow these Standards and all applicable laws and regulations of the Federal Trade Commission, the Federal Communications Commission, the Federal Reserve Board, the United States Postal Service and all other applicable federal, state, and local regulations and laws.
 - 11.8.1 *Do Not Call Laws.* Marketers shall ensure Third Party Telemarketing Vendors comply with all federal and state DNC laws and regulations,

including the requirements to scrub all non-exempt calls against applicable DNC lists and against the Marketer's internal DNC list.

- 11.8.2 *Transfer Calls.* Before a Marketer accepts a transfer call from anyone, the Marketer must conduct reasonable due diligence to ensure that the transfers were obtained legally. A Marketer shall not accept a transfer-call if it is known, or reasonably could have been determined, that the transferred call originated with an illegal prerecorded message
- 11.8.3 *Certification of Third Party Telemarketing Vendors.* Marketers shall not use Third Party Telemarketing Vendors to make outbound telephone calls on its behalf unless the Vendor is certified by the VPA or an independent third-party organization approved by the VPA, such as the Professional Association for Customer Engagement. The application for such certification must be done immediately and an aggressive timeframe for certification must be set and scheduled.
- 11.8.4 *Affidavits.* Marketers using Third Party Telemarketing Vendors shall sign an affidavit stating that the VPA's Outbound Telemarketing Standards will be followed.
- 11.9 Negative Option Requirements. Many other telemarketing laws apply if a Marketer's offer contains a negative option or a free to pay conversion. If a Marketer is using these offers, the Marketer shall ensure that it is complying with all applicable laws.

Section 3: Standards for Administrators

12. Basic Standards

- 12.1 Contracts. Administrator or their 3rd party fulfillment provider shall provide the purchaser with a copy of the contract electronically or mail the contract to the consumer within three (3) business days of when the consumer agrees to purchase the contract.
 - 12.1.1 *Fulfillment and Evidence of Shipment.* Fulfillment Companies shall work in partnership with each Administrator to establish specific times for when and how fulfillment packages, including service contracts, are sent to consumers. Fulfillment Companies shall maintain evidence that they sent the consumer their contract and when it was sent.
 - 12.1.2 *General Requirements.* The contract shall be dated, clearly written in understandable language and printed or typed in easy to read type.
 - 12.1.3 *Contract Provisions.* Vehicle Service Contracts shall contain the following information and any additional information required by applicable state and/or federal laws and regulations:

- The purchase price;
- The terms of the contract and coverage dates;
- A description of the merchandise covered and the services to be provided, including any limitations, exceptions or exclusions from coverage;
- The terms, restrictions and/or conditions governing cancellations;
- Deductible amount;
- The conditions and procedures for filing a claim, including the telephone number to be called and whether claims must be preauthorized;
- All of the obligations and duties of the contract holder;
- Any applicable renewal provisions of the contract;
- Any restrictions on transferability; and
- Any state mandated disclosures.

12.1.4 *Filing Contracts with States.* Where required, Administrators shall have their contracts approved by or filed with the appropriate state.

12.2 Customer Service. Administrators shall employ an adequate staff to promptly respond to customer service inquiries and telephone calls.

12.3 Duplicative Coverage. Administrators shall not knowingly sell a consumer duplicative coverage of a warranty or service contract that the consumer already possesses.

12.4 Payment Plans. Once a payment plan has been submitted to a Payment Processor and the information related to the Vehicle Service Contract and payment plan has been sent to the Service Contract Holder by the Fulfillment Company or the Marketer, Administrators shall not rewrite or submit the payment plan to a different Payment Processor without the express written consent of the original Provider and/or Administrator and the original Payment Processor.

12.5 Funding Disputes. Providers, Administrators, Payment Processors and/or Marketers shall resolve all disputes related to the funding of a service contract and/or refund without bringing the contract holder into the dispute.

12.6 Compliance Officer. Administrators shall appoint a representative of the company to serve as its compliance officer. The compliance officer's duties shall include ensuring that the Administrator is complying with all state and federal

laws and regulations, as well as the guidelines set forth in the Standards of Conduct.

- 12.7 Criminal Background Checks. Administrators shall conduct criminal background checks on newly hired employees involved with claims and financial processes and officers and senior managers
- 12.8 Audits. Administrators shall provide the Association and/or its auditor(s) with reasonable access to its facilities, policies and procedures for purposes of assessing the Administrator s compliance with these Standards in connection with certification, certification renewal and/or Association investigations.
- 12.8.1 Administrators may, at their own expense, have an independent third party firm audit each Marketer with which they conduct business to ensure that they are complying with these Standards and their contractual terms.
- 12.8.2 Administrators may also choose to conduct audits themselves of Marketers with which they conduct business to ensure that they are complying with these Standards and their contractual terms.
- 12.8.3 In the event the Marketer refuses to timely and reasonably provide access for the audit, the Administrator shall inform the Association. The Association may refer the matter to the Administrator s Council and/or the Board of Directors for a determination if further action is warranted.
- 12.9 Financial Audits. Administrators and Finance Companies shall possess audited financial statements on an annual basis. This Standard does not compel the entity to share the statements with the VPA or any other entity.

13. Business Relationships with Marketers

- 13.1 Due Diligence. Pursuant to Standard 2.1.1, Administrators shall conduct due diligence on all companies with which they conduct business. Best practices for conducting due diligence on Marketers include, but are not limited to, the following:
- 13.1.1 *Detailed Application*. Requiring Marketers to complete a detailed application and provide relevant information regarding the Marketer and its principals, including articles of incorporation or organization and proof of applicable state registrations;
- 13.1.2 *Background Checks*. Completing background checks and credit reports on the principals of the Marketer (owners and executive officers) to ensure that any adverse information is appropriately considered in the approval process;

- 13.1.3 *Financial Statements.* Review and consideration of the Marketer's financial statements;
 - 13.1.4 *Initial Review of Business Practices.* Conducting an initial review of the Marketer's proposed business practices and marketing methods;
 - 13.1.5 *Ongoing Review of Business Practices.* Conducting periodic ongoing reviews of the Marketer's business practices and marketing methods, including, but not limited to, use of the VPA Certification Program to conduct an annual audit of the Marketer; and
 - 13.1.6 *Training.* Providing ongoing compliance and product training to Marketers and/or requiring Marketers to participate in ongoing compliance training provided by the VPA.
- 13.2 Compliance Attestation. Administrators shall require the Marketers with which they conduct business to attest, in writing, that they will adhere to the VPA Standards of Conduct, regardless of whether the Marketer is a current VPA Member.
- 13.3 Required Participation in the VPA Call Monitoring Program. Administrators shall require the Marketers with which they conduct business to participate in the VPA's Call Monitoring Program, regardless of whether the Marketer is a current VPA Member.
- 13.4 State Authorization Forms. Providers and/or Administrators shall provide each Marketer with which it conducts business a form that lists the states in which the Marketer can sell and the Provider's name, Insurer's name and insurance arrangement by state.

14. Claims Handling

- 14.1 In General. Providers and/or Administrators shall uphold the contractual provisions of the service contracts they issue and/or administer and shall process claims in a prompt manner. Providers and Administrators may establish their own policies and procedures regarding how claims will be handled so long as such policies and procedures comport with the terms of the service contract, these Standards and applicable state and federal law.
- 14.2 Denial of Claim Based Solely on Non-Payment. Providers and/or Administrators shall not deny a claim solely because the contract holder is late making a payment unless the contract has been cancelled for non-payment in accordance with the provisions of the contract and applicable laws. The Provider and/or Administrator may request payment to be made prior to processing the claim. This Standard does not apply to month-to month contracts.

14.3 Sharing of Claims Information. Providers and/or Administrators shall provide the Marketer that sold the service contract with timely access to claims information in order to facilitate better customer service for service contract holders.

15. **Refund Policies and Procedures**

15.1 Minimum Full Refund Period. Administrators shall honor all consumer refund requests made within thirty (30) days of the date they sold the contract in full or longer if the contract so states.

15.1.1 *Other Refunds.* If the consumer has also made subsequent payments, the Administrator shall provide or ensure that the Marketer makes the refund within thirty (30) days from the date they receive the completed notice of cancellation with odometer information or pursuant to a applicable state requirements. Regardless of the refund process, the Administrator is responsible for the refunds made to consumers.

15.2 Written Refund Policies and Procedures. All Providers and Administrators shall have written policies and procedures in place to ensure that consumer refunds are made in a timely manner and in accordance with applicable laws.

15.2.1 *Applicability to Marketers.* Refund policies and procedures implemented by Providers and/or Administrators shall incorporate the obligations of the Marketers that solicit on their behalf. Administrators are responsible for refunding both its own and out-of-business marketers' share of the refund.

15.2.2 *Tracking Refunds.* Refund policies and procedures implemented by Providers and/or Administrators shall include a method for tracking and documenting refunds.

15.3 State Cancellation Laws. Administrators must be aware of and comply with all applicable state laws governing refunds and/or applicable three (3) day right to cancel laws. Refunds must be processed in the manner most advantageous to the customer based on the contract provisions or the state cancellation laws in effect on the contract issuance date.

15.4 Written Cancellation Fee Calculation. Upon request, Administrators shall provide a written cancellation fee calculation and state the information upon which they based the calculation.

15.5 Cash Reserves. Administrators shall maintain adequate cash reserves to timely issue the entirety of the refund to all consumers that are entitled to a refund pursuant to the Administrator's cancellation policy and applicable state and federal laws.

APPENDIX A:

VSC VOICE CONFIRMATION DISCLOSURE

Congratulations on the purchase of your *Admin, Inc.* protection plan for your vehicle from XYZ Seller! You have selected *X Plan Brand* for _____ months or _____ miles, whichever occurs first. During this period you will be provided *Y Coverage Type plan* on your vehicle. Your protection plan has a waiting period, so coverage will commence at the sooner of the passing of _____ days and _____ miles from your current odometer statement. (This should be consistent with the Vehicle Service Contract sold).

You will receive a full contract containing all terms and conditions in the mail shortly. Please contact us at (800) 123-4567 if you do not receive your package. Upon receipt of your contract, please be sure to review the coverage, terms, conditions and exclusions to confirm it meets your needs. You have _____ days from today, (*June 1st*), to review your coverage and are entitled to a full refund during this period. (This should be consistent with the Vehicle Service Contract sold). After 30 days, you are entitled to a pro-rata refund, subject to claims paid and any cancellation fees outlined in the contract.

The contact information we have on file is *Mr. John Q. Customer* located at *123 Main Street, City, State 12345*. Your email address is *John.Smith@email.com*. You have elected a down payment of \$200 and 12 installment payments of \$150.00 which will be processed by our partner *Payment Processor, Inc.*

Your monthly payment will be charged to your *Visa* credit card account number ending in *1234* on or around the *5th day of each month* starting *July 5, 2009*. At this time, we will need your voice verification of these terms and conditions and to authorize the charges to your account. Do you authorize a charge today of \$200? Do you authorize 12 monthly charges of \$150 beginning on July 5 and each month thereafter until your balance is paid in full? (Need to receive a verbal YES).

X Plan Brand = Administrator s Brand Name

Y Coverage Type Options: Exclusionary, Named Component, Power train