

# **HOW TO COMPLY WITH THE GRAMM-LEACH-BLILEY ACT**

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## **OVERVIEW OF PRIVACY NOTICE AND OPT OUT REQUIREMENTS**

### **I. OVERVIEW**

In November 1999, President Clinton signed into law S. 900, the Financial Services Modernization Act of 1999, more commonly known as the “Gramm-Leach-Bliley Act” (G-L-B Act). Federal Agencies with regulatory authority were empowered to adopt and implement rules setting forth, which business entities are subject to the Act and how to comply with its provisions. The Federal Trade Commission (FTC) is the regulatory agency with enforcement authority over motor vehicle dealers and other members of the motor vehicle industry who are not otherwise regulated by another regulatory agency as set forth in the G-L-B Act. The FTC issued a “Final Rule” implementing the provisions of the G-L-B Act in May 2000. The FTC’s Final Rule became effective on November 13, 2000. Full compliance with the G-L-B Act and the Final Rule are required by July 1, 2001.

The stated purpose of the G-L-B Act and the FTC’s Final Rule is to ensure that financial institutions respect the privacy of their customers and protect the security and confidentiality of “nonpublic personal information.” The definition of a financial institution has been broadly interpreted and will, in most cases, include motor vehicle dealerships. Motor vehicle dealerships that fall under the definition of a financial institution are prohibited from disclosing certain personal information about their customers to third parties unless they satisfy notice and opt-out requirements. Although the G-L-B Act does not prohibit a financial institution from disclosing nonpublic personal information about a consumer to affiliated parties or require a financial institution to provide a consumer with the opportunity to opt-out of such information sharing before doing so, the FTC’s Final Rule, the Fair Credit Reporting Act (FCRA) and some state laws impose additional disclosure requirements and limitations on disclosures of nonpublic information to affiliated companies.

This Overview is intended to explain the G-L-B Act, the FTC’s Final Rule, and the FCRA, as well as provide compliance information. It is not intended to address the specific facts and circumstances of every motor vehicle dealership. Specific application of the G-L-B Act, the FTC’s Final Rule and the FCRA will vary depending upon how a motor vehicle dealership transacts business.

### **II. WHO IS REQUIRED TO COMPLY?**

The G-L-B Act and the FTC’s Final Rule govern “financial institutions” who collect “nonpublic personal information” about individuals who obtain a “financial product or service”. The FTC chose to retain a broad definition of “financial institution”. That definition encompasses retail sellers of goods if they assist consumers in obtaining credit or extend credit themselves. A motor vehicle dealership is also a financial institution if it, in the regular course of its business, leases motor vehicles on a non-operating basis for longer than 90 days.

Like the definition of financial institution, the FTC also adopted broad definitions for “financial products or services” and “nonpublic personal information”. The definition of “financial products and services” includes the financial institution’s evaluation of information collected in connection with an application by a consumer for a financial product or service, even if the application ultimately is rejected or withdrawn. It also includes the distribution of information about a consumer in obtaining a financial product or service. In some cases, the only product or service offered is the funding of the loan, directly or indirectly. In other cases, the product or service is the processing of payments, sending account-related notices and responding to consumer inquiries. For example, if your motor vehicle dealership obtains a credit application from an individual and evaluates the information provided in the application to determine whether or not the individual qualifies for financing, you have provided a financial product or service. A motor vehicle dealership also provides a financial product or service if it provides a copy of the application or the information contained therein to another lending institution.

“Nonpublic Personal Information” means any personally identifiable financial information that is provided by a consumer to a financial institution, results from any transaction with the consumer or any financial service performed for the consumer, or information otherwise obtained by the financial institution. Examples of “nonpublic personal information” include:

- (1) Information a consumer provides on an application to obtain a loan;
- (2) Account balance information, payment history and credit card information;
- (3) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;
- (4) Any information that a consumer provides to you that you or your agent otherwise obtain in connection with collecting on or servicing a credit account;

(5) Any information you collect through an Internet “cookie” (an information collecting device from a web server); and

(6) Information from a consumer report.

“Nonpublic personal information” also includes any list, description, or other grouping of consumers that is obtained in whole or in part using any personally identifiable financial information that is not publicly available. Information is “publicly available” if a financial institution has a “reasonable basis” to believe that the information is lawfully made available to the general public. In order to meet this standard, you must demonstrate that you have taken steps to determine that the information is of the type that is available to the general public and, if an individual can direct that the information not be made available to the general public, you have verified that your consumer has not done so.

Example: You have a reasonable basis to believe that an individual’s telephone number is lawfully made available to the general public if you can locate it in a telephone book. If you compile a list that contains information about individuals, such as their names and addresses, all of which is publicly available, you have not disclosed “nonpublic personal information.” On the other hand, if you compile that same list and indicate that those individuals are or have been your consumer, you fall within the definition of using “nonpublic personal information” because the fact that the individual has or had a relationship with your motor vehicle dealership is personally identifiable financial information that is not available to the public.

***Compliance Tip:***

The only time you are not required to comply with the G-L-B Act and FTC’s Final Rule notice and opt out requirements in connection with the sale or lease of a motor vehicle and/or related products or services from you is if the purchaser/lessee pays the total amount due via a credit card or with cash (provided that you do not sell a motor vehicle service contract or guaranteed automobile protection (GAP) product as explained below).

You are required to comply with the notice and opt out requirements under the G-L-B Act and the FTC’s Final Rule if you:

- (1) Accept a credit application from an individual, even if financing is never extended by either the motor vehicle dealership or a third party;
- (2) Enter into an agreement or understanding with an individual whereby you agree to assist the individual to obtain a loan or credit to purchase or lease a vehicle and/or related goods or services;
- (3) Execute a contract to or extend financing to an individual for the purchase or lease of a motor vehicle and/or related goods or services (including any side agreement to finance a product or service and/or agreement for a deferred down payment);
- (4) Assist an individual to obtain financing for the purchase or lease of a motor vehicle and/or related goods or services, regardless of whether the finance or lease agreement is subsequently assigned to a lender or is directly between the consumer and the lender;
- (5) Insure, guarantee, or indemnify against loss, damage, illness, disability, or death or act as principal, agent, or broker for the sale of insurance designed for any of these purposes. (Although the regulation of privacy in the insurance context is left to state insurance authorities, it is unclear whether motor vehicle dealerships will be deemed to be engaging in a financial activity when they sell motor vehicle service contracts or guaranteed automobile protection (GAP) products which are not regulated as an insurance product. If your motor vehicle dealership is an obligor on such a product or has an affiliated insurance agency in order to sell these products, you may be engaging in a financial activity).

### III. UNDERSTANDING THE DIFFERENCE BETWEEN “CONSUMER” AND “CUSTOMER”

#### A. When Does a Motor Vehicle Dealership Establish a “Customer” Relationship?

Motor Vehicle Dealerships are not required to make the G-L-B Act disclosures to companies or individuals who obtain financial products or services for business, commercial or agricultural purposes, although you may choose to do so as a courtesy to these types of customers. Your obligations under the G-L-B Act begin when you establish a “consumer” or “customer” relationship. Understanding the distinction between these two terms is essential because the type of relationship you establish with an individual will determine your notice and opt out obligations.

“Consumer” is defined as an individual who obtains or has obtained a financial product or service from a financial institution to be used for personal, family or household purposes, including individuals who apply for credit or provide nonpublic personal information to you to find out if they qualify for a loan, even if a loan is never extended. In fact, the FTC stated that the mere evaluation of an application for credit qualifies as a financial product or service. A “customer,” on the other hand means a consumer who has a “customer relationship” with you. A “customer relationship” means that you have a “continuing relationship” with the consumer.

Many motor vehicle dealership representatives may think they fall under the category of having an isolated transaction with an individual, or a “consumer” relationship. A motor vehicle dealership often merely assists the consumer to obtain financing for a motor vehicle purchase or lease from a lender, whether it be via the assignment of a retail installment contract or lease agreement to the lender (subprime transaction) or via an agreement directly between the consumer and the lender (traditional financing), and the relationship ends. The FTC has a different interpretation. In fact, based upon the FTC’s analysis, most motor vehicle sales and lease transactions fall within the category of establishing a “customer” relationship.

In the “Section by Section Analysis” of the FTC’s Final Rule, the FTC clarified that a one-time transaction may be sufficient to establish a customer relationship if the consumer receives some measure of service resulting in more significant contact between the consumer and the financial institution. Services that the FTC considers significant enough to establish a customer relationship include: providing information or advice about financing options; actively assisting a consumer in contacting potential financing sources; analyzing financial information, performing credit checks; and negotiating with financial institutions on a consumer’s behalf or assisting with loan paperwork. Another consideration is whether a written contract exists between the consumer and the financial institution. In those instances when an individual receives some measure of service and/or has a written contract with the financial institution, the FTC has determined that the nature of the relationship indicates that it is not an isolated transaction, even though it may be short in duration.

#### ***Compliance Tip:***

The FTC’s Final Rule provides, in relevant part, that a consumer has a “continuing relationship with you” and “establishes a customer relationship” when he or she:

- (1) Obtains a loan from you;
- (2) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan or credit to purchase a vehicle, for a consumer;
- (3) Enters into a lease of personal property on a non-operating basis with you;
- (4) Has a loan for which you own servicing rights;
- (5) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;
- (6) Originates a loan with you for personal, family, or household purposes;
- (7) Executes a contract to obtain credit from you or purchases insurance from you; or
- (8) Executes a lease for personal property with you.

In other words, the FTC has taken the position that an entity or business that assists a consumer to obtain credit

including financing to purchase a motor vehicle, providing services for a consumer appropriate to consider the business to be a financial institution that establishes a customer relationship. Virtually every motor vehicle dealership that sells or leases a vehicle or related products and services and any entity that finances a motor vehicle purchase and/or lease transaction are deemed to have established a “customer” relationship. Arguably, the only time you are not deemed to have established a customer relationship in connection with the sale or lease of a motor vehicle and/or related products or services is if the purchaser/lessee pays the total amount due via a credit card or with cash (provided that you do not sell a motor vehicle service contract or guaranteed automobile protection (GAP) product as explained below).

#### **IV. WHEN ARE YOU REQUIRED TO PROVIDE PRIVACY NOTICES?**

##### **A. The Initial Privacy Notice**

It is clear that Congress intended to provide additional protection for anyone who establishes a relationship of a more lasting nature than an isolated transaction with a financial institution. A financial institution is required to give a “consumer” a copy of its privacy notice and opt out notice only if the institution intends to disclose nonpublic personal information about the consumer to a third party for purposes other than those that are permitted under the law (See “Exceptions to Certain Notice and Opt Out Requirements” in Section VII below). As explained above, few motor vehicle dealerships will fall within this category. By contrast, a financial institution is required to give each “customer” a copy of the institution’s initial privacy notice at the time a customer relationship is established.

The primary issue, therefore, is when a motor vehicle dealership is deemed to have established a customer relationship. Since the FTC has stated that such a relationship commences when a consumer typically would receive some measure of financial service (i.e. providing information or advice about financing options, actively assisting the consumer in contacting potential financing sources, analyzing financial information, performing credit checks, and negotiating with financial institutions on the consumer’s behalf or assisting with loan paperwork), motor vehicle dealerships should provide a copy of the initial privacy notice when it accepts the customer’s credit application. The latest the initial privacy notice should be provided is when other disclosures required by law, such as those required pursuant to the Truth in Lending and Truth in Leasing Acts, are provided to the customer.

##### ***Compliance Tip:***

The G-L-B Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances:

- (1) For customers, the initial privacy notice must be provided at the time of establishing a customer relationship.
- (2) For consumers who are not customers, the initial privacy notice must be provided prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

As a practical matter, motor vehicle dealerships should provide the initial privacy notice to the customer at the dealership. The notice should be provided when the dealership accepts the customer’s credit application. The latest the initial privacy notice should be provided is when other disclosures required by law, such as those required pursuant to the Truth in Lending and Truth in Leasing Acts, are provided to the customer.

##### **B. Annual Privacy Notice to Customers**

The G-L-B Act and the FTC’s Final Rule require financial institutions to provide copies of their privacy policies and practices at least annually to customers during the continuation of a customer relationship. The FTC has stated that it is appropriate to consider a loan transaction as giving rise to only one customer relationship, with the recognition that this customer relationship may be transferred with a sale of part or all of a loan. A financial institution that makes a loan, retains it in its portfolio and provides servicing for the loan clearly would have a customer relationship with the borrower. The continuing relationship or “customer relationship” ends when the customer pays the loan in full, the loan is charged off, or the consumer loan is sold and/or the servicing rights to that loan are transferred to another financial institution. If the financial institution never extended the loan to the customer, but provided financial services such as assisting an individual to obtain financing for a purchase or lease, then the customer relationship ends when the financial institution is no longer required to provide any statements or notices to the customer concerning that relationship or the customer has ceased using the financial institution’s services for

such purposes. Note that a communication that merely informs a person about or seeks to encourage the use of financial products or services is not the type of communication that signifies an ongoing relationship. In other words, the distribution of promotional materials will not prolong a customer relationship.

Once the financial institution sells or transfers a loan, or ceases assisting the individual to obtain credit, it will no longer have an obligation to provide the individual with a copy of the privacy policy annually. The financial institution does, however, continue to have some obligations with respect to the nonpublic information it obtained from that individual once the customer relationship ends. The individual is still deemed to be a “consumer” of the financial institution that sells the loan or transfers the servicing rights, as well as a consumer of any other entity that holds an interest in the loan.

If you are required to provide an annual notice, you have the flexibility to select a calendar year as the 12 month period within which the annual notices will be provided and provide the first annual notice at any point in the calendar year following the year in which the customer relationship was established. The FTC’s Final Rule also requires that the financial institution apply the same 12 month cycle on a consistent basis. Financial institutions are not permitted to provide a short form disclosure, as discussed below, for the annual privacy notice, but rather must provide a full notice that reflects the current and anticipated privacy policies and practices for the upcoming 12 month period. All of the disclosures that must be included in the initial privacy notice apply to the annual notice.

***Compliance Tip:***

You are not required to provide an annual privacy notice if:

- (1) You sell, assign, or transfer all of the servicing rights in a loan or lease to another entity;
- (2) If you extend the loan to the customer and the customer pays the loan/lease in full or it is charged off;
- (3) Financing is not extended to the customer by any entity and you cease assisting the individual to obtain financing;
- (4) You assist the customer to obtain financing directly from another financial entity and you are no longer required to provide any statements or notices to the customer concerning that relationship.

The annual notice must be provided at least once within each 12-month period and it must be a full notice that reflects your current and anticipated privacy policies and practices for the next 12-month period. When the customer relationship ends, you still have a “consumer” relationship with the individual and must comply with the notice and opt out requirements with respect to that relationship.

## **V. INFORMATION TO BE INCLUDED IN THE INITIAL AND ANNUAL PRIVACY NOTICES**

### **A. The Initial Privacy Notice**

Neither the G-L-B Act nor the FTC’s Final Rule require a financial institution to publish lengthy notices. Instead, the FTC has concluded that the notices should provide individuals with a general description of the affiliated and nonaffiliated third parties with whom you may share nonpublic personal information, the types of information you disclose, and other pertinent information about the your privacy policies and practices. In most cases, the appropriate disclosures can be satisfied in a tri-fold brochure.

**The following is a list of the information a financial institution is required to provide in the initial and annual privacy notices:**

1. **The categories of nonpublic personal information you collect.** You satisfy this requirement if you list the following categories, as applicable: (a) Information from the consumer; (b) Information about the consumer’s transactions with you or your affiliates; (c) Information about the consumer’s transactions with nonaffiliated third parties; and (d) Information from a consumer reporting agency. Examples include: the name, address, telephone numbers, e-mail addresses, social security number, income and employment information obtained from a credit application; credit scores or credit histories obtained from consumer credit reports; representations made to the dealership regarding account balances, payment histories and references; and the customer’s requests for products or services from you.

2. **The categories of nonpublic personal information that you disclose.** You can satisfy this requirement by listing the categories of nonpublic personal information you collect which you intend to disclose and a few examples to illustrate the types of information in each category. Examples include the information listed in Number 1 above. If you wish to reserve the right to disclose all of the information you collect, you can simply state that fact without describing the categories or examples of the information you disclose.

3. **The categories of affiliated and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those to whom information is disclosed pursuant to an exception under the G-L-B Act and FTC Final Rule (as explained below).** *Affiliate* is defined as any company that controls, is controlled by, or is under common control with another company. “Control” means one of three things: (1) That the company has ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons; (2) Control in any manner over the election of the majority of the company’s directors, trustees, general partners or other individuals with similar functions; or (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company. A *nonaffiliated third party* is any person or entity that is not an affiliate.

You can satisfy this requirement by listing the affiliated and nonaffiliated third parties using the following categories, as applicable, and a few examples to illustrate the parties covered in each category:

(a) Financial service providers, followed by illustrative examples such as motor vehicle lenders or lessors, mortgage brokers, insurance agencies and providers of after-market products such as guaranteed automobile protection (GAP) products and service contracts (depending upon how your state regulates the sale of these products).

(b) Non-financial service providers, followed by illustrative examples such as retailers, automobile manufacturers, providers of after-market products such as guaranteed automobile protection (GAP) products, warranties, and service contracts (depending upon how your state regulates the sale of these products), magazine publishers, and direct marketers.

(c) Others, followed by illustrative examples such as trade associations and nonprofit organizations.

4. **Your policies with respect to sharing information about former customers, other than those parties to whom you disclose information under an exception set forth in the G-L-B Act and FTC Final Rule.** See “Exceptions to Certain Notice and Opt Out Requirements” in Section VII below.

5. **A separate statement of the categories of information you disclose pursuant to agreements with third party service providers and joint marketers and the categories of third parties with whom you have contracted.** If you disclose nonpublic personal information under the exception for service providers and joint marketers, you satisfy this disclosure requirement if you: (a) list the categories of nonpublic personal information you disclose using the same categories and examples described in Number 2 above, as applicable; and (b) state whether the third party is a service provider that performs marketing services on your behalf or a financial institution with whom you have a joint marketing agreement. Examples may include the manufacturer of a motor vehicle, other suppliers of goods and services, advertisers, marketers, and individuals or companies hired to make customer satisfaction inquiries on your behalf. See “Opt Out Notice Exceptions for Service Providers and Joint Marketers” in Section VII (A) below.

6. **An explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time.** See “How to Comply with the Opt Out Notice Requirements” in Section VI below.

7. **Any disclosures regarding affiliate information sharing you are providing under the Fair Credit Reporting Act (FCRA) and notices regarding the ability to opt out of disclosures of information among affiliates.** The FTC has taken the position that the G-L-B Act requires financial institutions to include their policies and practices with respect to sharing information with affiliates in the initial and annual notices. The FTC further requires a financial institution to provide consumers with the ability to opt out of affiliate information sharing that is not otherwise permitted by law. These disclosures can be made in the same manner as the disclosures required when a financial institution intends to share, or reserves the right to share, nonpublic personal information with nonaffiliated third parties. Even if the FTC had not interpreted the Act in this manner, financial institutions would be required to make these disclosures under the Fair Credit Reporting Act.

Since 1997, the Fair Credit Reporting Act (FCRA) has permitted an institution to disclose certain consumer information to its affiliates without incurring the obligations of consumer reporting agencies if it first provides the consumer with a notice regarding the disclosure and an opportunity to opt out. After the enactment of the G-L-B Act, Federal Regulatory Agencies with enforcement responsibilities under the FCRA published for comment proposed regulations to clarify a financial institution's notice and opt out responsibilities with respect to affiliate information sharing under the FCRA. In sum, a financial institution must include a FCRA notice, if applicable, in its initial and annual privacy notices and must process opt-out elections in the same manner as required under the G-L-B Act before sharing certain information with affiliated companies. The final FCRA rule will not apply to notices provided prior to January 1, 2002, or prior to the effective date of the final FCRA rule, whichever is later. However, including the required disclosures in the notice required by July 1, 2001 will eliminate the need to revise the notice and/or send a subsequent notice in order to comply with the FCRA.

**8. Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.** You should describe in general terms who is authorized to access the information and whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use, but whatever policies and practices you state you will maintain in your privacy policy must be maintained and you must take appropriate measures to adhere to the stated policies and practices.

**9. Optional Information.** You may also include, if you wish, categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose, as well as those affiliates and/or nonaffiliated third parties to whom you reserve the right in the future to disclose nonpublic personal information.

Remember, your privacy notice only has to include the above listed items that apply to your dealership's activities with respect to the collection and distribution of nonpublic personal information. For example, if you do not disclose nonpublic personal information, you may simply omit any reference to the categories of affiliated and nonaffiliated third parties to whom nonpublic personal information is disclosed and state that you do not disclose such information and do not wish to reserve the right to disclose it. In addition, if you disclose nonpublic personal information to third parties, as authorized under an exception, you are not required to list those exceptions in either the initial or the annual privacy notice. You can simply state that you make disclosures to your affiliates and other nonaffiliated third parties as permitted by law. These exceptions and the disclosures permitted by law are discussed in more detail below.

The notices must always be "clear and conspicuous". Clear and conspicuous means that the notice must be easy to understand and designed to call attention to the nature and significance of the information contained therein. Neither the G-L-B Act nor the FTC Final Rule mandate the use of any particular technique for making the notices clear and conspicuous, but they provide examples. For instance, information should be presented in clear, concise sentences, paragraphs and sections, and you should use "everyday" words. The type size and style should be easy to read and boldface or italics should be used for key words.

***Compliance Tip:***

The following is a list of the information a financial institution is required to provide in the initial and annual privacy notices:

1. The categories of nonpublic personal information you collect.
2. The categories of nonpublic personal information that you disclose.
3. The categories of affiliated and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those to whom information is disclosed pursuant to an exception under the G-L-B Act and FTC Final Rule
4. Your policies with respect to sharing information about former customers, other than those parties to whom you disclose information under an exception set forth in the G-L-B Act and FTC Final Rule.
5. A separate statement of the categories of information you disclose pursuant to agreements with third party service providers and joint marketers and the categories of third parties with whom you have contracted.
6. An explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to

nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time.

7. Any disclosures regarding affiliate information sharing you are providing under the Fair Credit Reporting Act (FCRA) and notices regarding the ability to opt out of disclosures of information among affiliates.

8. Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

9. You may also include, if you wish, categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose, as well as those affiliates and/or nonaffiliated third parties to whom you reserve the right in the future to disclose nonpublic personal information.

#### **B. Short Form Initial Notice When There is no Customer Relationship**

A financial institution may provide a “short-form” initial privacy policy notice when it delivers its opt out notice to a “consumer” who is not a customer. Again, given the FTC’s interpretation of when a “customer” relationship is established, very few dealerships will be able to comply with the G-L-B Act or the FTC Final Rule by providing a short-form notice. If you do fall within the exception to the general rule, the short-form initial notice must clearly and conspicuously inform the consumer that your privacy notice is available upon request and you must provide one or more reasonable means for the consumer to obtain a copy of the notice (i.e. providing a toll-free telephone number that the consumer may call to request the notice or keeping copies of the notice available to hand deliver to consumers who conduct business in person at your dealership). Providing a short form notice is of little benefit to motor vehicle dealerships since they still have to print a full privacy notice and have it available to provide to the consumer. In fact, you will have to establish an additional system to ensure that consumers who request the full privacy notice receive it as required.

#### **C. Joint Notice with Other Affiliates or Financial Institutions**

You may provide a joint notice from you and one or more of your affiliates or another financial institution. If you choose to do so, the notice must identify by name each of the affiliates and other financial institutions and the disclosures must be accurate for all of the parties. In addition, each of the affiliates and financial institutions must be capable of keeping track of whether a consumer has opted out in order to ensure that disclosures are made in accordance with whatever opt out instructions a consumer provides after having received the joint notice.

#### **D. Providing Privacy Notices to Consumers or Customers Who Jointly Obtain a Service or Product**

If two or more individuals jointly obtain a financial product or service from you, you may provide a single initial, annual, and revised notice to those individuals jointly, unless one or more of those individuals request to receive separate notices, then you must honor that request.

#### **E. Revised Privacy Notices**

If you have a continuing customer relationship or a consumer relationship with an individual, you do not need to provide a new privacy notice each time an individual obtains a new product or service from you. You do not need to provide a copy of the privacy notice if the initial notice or the last notice you provided to the individual is accurate with respect to your privacy policies and procedures. If your initial, revised, or annual notice does not accurately describe your policies and procedures, you cannot disclose any nonpublic personal information about that individual until you provide: 1) a revised notice that accurately describes your policies and practices and new opt out notice and 2) the individual does not opt out after he or she is given a reasonable opportunity to do so.

#### **F. Acceptable Delivery Methods For Privacy Notices**

The initial and annual privacy notices and the opt out notices (discussed below), should be delivered in the same manner. The general rule requires that notices be provided in a manner so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically. In other words, the notices may not be provided orally, by merely posting the policy at your place of business or by publishing advertisements that contain your privacy policies. In the case of “customers,” the initial notice, the annual notice and any revised notice must be provided in a form so that the customer can retain a copy or obtain another copy later in writing or, if the customer agrees, electronically. Examples of acceptable delivery methods include:

(1) **Hand delivering** a printed copy of the notice;

(2) **Mailing** a printed copy of the notice to the last known address of the individual; or

(3) **Electronically** if the transaction is conducted electronically and the customer agrees to receive the notice at the web site. The current privacy notice must be clearly and conspicuously posted on your web site (i.e. on a screen that consumers frequently access, such as the page on which transactions are conducted, using a dialogue box that pops up to provide the disclosure before a consumer provides information, locating it near the top of the page or near the dealership's logo, and/or directing the customer to the privacy disclosures on a separate web page). Note: Posting the notices on a web site or via electronic mail is not reasonable if the consumer does not obtain a financial product or service from you electronically and/or does not conduct the transaction almost entirely at the web site.

## VI. HOW TO COMPLY WITH THE OPT OUT NOTICE REQUIREMENTS

### A. When you Must Provide the Opt Out Notice

Unless you are otherwise permitted by law to disclose nonpublic personal information, you may not, directly or through any affiliate, disclose any nonpublic personal information unless you have provided the initial privacy notice and a clear and conspicuous opt out notice that accurately explains the right to opt out and the individual does not opt out after you have given him or her a reasonable opportunity to do so. The opt out notice may be provided together with or on the same written form as the initial privacy notice you provide to the customer. If you choose to provide the opt out notice at some later time, you must also include a copy of your privacy notice with the opt out notice. Hence, to simplify this process, many dealerships are combining the initial privacy notice and opt out notice into a single form.

### B. The Opt Out Notice

You provide an adequate opt out notice if you:

- (1) **Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose.** If the opt out notice is part of the initial or annual notice which identifies these categories of information, then you are not required to restate the same information in the opt out notice.
- (2) **Identify all of the categories of affiliates and nonaffiliated third parties to whom you disclose or reserve the right to disclose the information.** If the opt out notice is part of the initial or annual notice which identifies the affiliated and nonaffiliated third parties to which information may be disclosed, then you are not required to restate the same information in the opt out notice.
- (3) **State that the consumer can opt out of the disclosure of that information,** unless the disclosure is permitted by an exception in the G-L-B Act, the FCRA, or the FTC's Final Rule, or is otherwise permitted by law, as described below.
- (4) **Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out decision applies;** and
- (5) **Provide a reasonable means by which the consumer may exercise the opt out right.** You may allow a consumer to select certain nonpublic personal information or certain affiliated or nonaffiliated third parties with respect to the consumer's opt out choices. You provide a reasonable means to exercise the opt out right if you:
  - (a) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;
  - (b) Include a reply form to be completed and mailed that includes the address to which the form should be mailed;
  - (c) Provide an electronic means to opt out if the consumer consents to the electronic delivery of information;  
or
  - (d) Provide a toll-free telephone number that consumers may call to opt out.

If you offer one or more of these opt out means, or a means of opting out that is comparably convenient, you may require the individual to opt out in accordance with those means and may choose not to honor opt out elections communicated through an alternative means. Note, however, that you may not require an individual to write his or her own letter in order to opt out, nor can you rely upon a check-off box that is provided with an initial notice, but not with a subsequent notice.

**Compliance Tip:**

You provide an adequate opt out notice if you:

- (1) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose.
- (2) Identify all of the categories of affiliates and nonaffiliated third parties to whom you disclose or reserve the right to disclose the information.
- (3) State that the consumer can opt out of the disclosure of that information, unless the disclosure is permitted by an exception in the G-L-B Act, the FCRA, or the FTC's Final Rule, or is otherwise permitted by law.
- (4) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out decision applies; and
- (5) Provide a reasonable means by which the consumer may exercise the opt out right.

**C. Providing Opt Out Notices to Consumers or Customers Who Jointly Obtain a Service or Product**

If two or more individuals jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of the individuals request a separate opt out notice. You must explain how you will treat an opt out decision by a joint consumer. You may either treat an opt out decision by one individual as applying to all of the individuals or permit each individual to opt out separately. If you permit each individual to opt out separately, you must permit one of the individuals to opt out on behalf of all of the other individuals. You may not require them all to opt out before you honor any opt out decision.

**D. Effective Duration of an Opt Out Decision**

An individual may exercise the right to opt out at any time. A "consumer's" opt out decision is effective until the consumer revokes it in writing. When a "customer relationship" terminates, the customer's opt out decision continues to apply to the nonpublic personal information that you collected during or in connection with the customer relationship. However, if the individual establishes a new customer relationship with you, the opt out decision no longer applies to the new relationship. You would be required to provide the customer with a copy of your privacy notice and any applicable opt out notice when you establish the new customer relationship.

**E. Acceptable Methods of Delivery for the Opt Out Notice**

The opt out notice should be delivered in the same manner as you deliver the initial and annual privacy notices. The amount of time an individual has to opt out depends upon the form of delivery. The FTC did not establish a set time frame during which an individual shall have the right to opt out. Instead, the FTC's Final Rule provides that the individual must be given a "reasonable opportunity" to opt out and then provides a few illustrative examples of what the FTC considers reasonable, including:

- (1) **In Person:** You may provide the opt out notice at the time of the transaction and request that the individual decide whether to opt out. However, since the FTC Final Rule indicates that most motor vehicle dealerships will establish a "customer relationship", not an "isolated transaction", you may also want to provide an alternative method for opting out which allows the customer additional time, at least 30 days, to make a decision.
- (2) **By Mail:** You may mail the opt out notice to the consumer and allow the consumer to opt out by mailing a form back to you, calling a toll-free number, or any other reasonable means, within 30 days from the date you mailed the notice; or
- (2) **By Electronic Means:** It does not appear likely that motor vehicle dealerships will provide notices by electronic means, given that most motor vehicle purchase and lease transactions are conducted in large part at the dealership's physical location and not electronically. In the event that a transaction does otherwise meet the requirements of the FTC's Final Rule for electronic delivery of notices, the customer should be allowed to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices electronically.

## VII. EXCEPTIONS TO CERTAIN NOTICE AND OPT OUT REQUIREMENTS

There are some exceptions in the FTC's Final Rule with respect to the requirement to provide an initial privacy notice and/or the opt out notice. The biggest caveat is that there appear to be very few instances when a motor vehicle dealership will fall within the exception that eliminates the obligation to provide the initial privacy notice because, in most cases, motor vehicle dealerships will be deemed to have entered into a "customer" relationship. The exception that eliminates the obligation to provide an initial privacy notice only applies with respect to "consumer" relationships. The exceptions may apply, however, to limit your obligation to provide the opt out notices.

### A. Opt Out Notice Exception for Service Providers and Joint Marketers

A financial institution may provide nonpublic personal information to a third party without having to provide the opt out notice if the third party qualifies as a "service provider" or "joint marketer". A service provider or joint marketer is a person or entity that you utilize to perform services for or on your behalf. The types of services a third party may provide under this exception include companies who market your products or services or market products or services offered, endorsed, or sponsored pursuant to a joint agreement between you and one or more financial institutions. Specific examples of "service providers" and "joint marketers" include: companies that mail holiday cards, sales/lease flyers, customer satisfaction inquiries and service reminders; automobile manufacturers; and other providers of related goods and services.

In order to qualify under the exception, the financial institution must provide the initial privacy notice to the consumer and it must enter into a contractual agreement with the third party service provider/joint marketer which mandates that the third party keep the information confidential and prohibits the third party from disclosing or using the information other than to carry out the purposes for which the information was disclosed. Any servicing or marketing agreement you enter into on or before July 1, 2000, will be deemed to be in compliance with the FTC Final Rule until July 1, 2002. By July 1, 2002, however, you are required to sign new contracts that contain the appropriate disclosures.

**IMPORTANT REMINDER:** This exception only applies to the initial opt out notice, it does not alleviate your obligation to provide an initial privacy notice to a consumer or customer. Your privacy notice should reference this category of disclosure and include specific examples of the types of service providers and marketers to whom you provide information.

### B. Notice and Opt Out Exceptions for Processing and Servicing Transactions

The notice and opt out exceptions for processing and servicing transactions only apply with respect to your obligations to provide:

- (1) An initial privacy notice to a "consumer" before you disclose any nonpublic personal information about the "consumer" to a third party. Please note that there is no exception to your obligation to provide a "customer" with an initial privacy notice when you establish a "customer relationship";
- (2) An opt out notice before you disclose any nonpublic personal information; and
- (3) The disclosure in your initial privacy notice stating the categories of and specific examples of the types of service providers and marketers to whom you provide information before you disclose nonpublic personal information to the service provider/marketer.

There are two ways to qualify under the exceptions for processing and servicing transactions. One way you qualify is if you are disclosing nonpublic personal information "necessary to effect, administer, or enforce a transaction" that an individual requests or authorizes. "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:

- (1) Required or is one of the lawful or appropriate methods to enforce your rights or the rights of others who are carrying out the financial transaction or providing the product or service; and/or
- (2) Required or is a usual, appropriate or acceptable method to carry out the transaction; administer or service claims relating to the transaction or product; provide a confirmation, statement, or other record of the transaction or information on the value of the service or product to the consumer; recognize incentives or bonuses associated with the transaction that are provided by you or another party; to report, investigate, prevent fraud or material misrepresentations, process premium payments or claims related to an individual's insurance; or in connection with processing payments, transferring receivables, accounts, or interests therein, or the audit of credit or other payment information.

A second way you qualify is if you are disclosing the nonpublic personal information in connection with:

- (1) Servicing or processing a financial product or service that an individual requests or authorizes;

(2) Maintaining or servicing an account with you or with another entity as part of an extension of credit on behalf of such entity; and/or

(3) A proposed or actual secondary market sale (including sales of servicing rights), or a similar transaction.

Specific examples of the types of disclosures that may qualify under this exception include: sending a credit application to a bank or finance company, provided that the individual has authorized you to do so; assigning a finance or lease contract to a bank or finance company; selling part or all of a portfolio; confirming information provided by the individual such as whether he or she has proper insurance coverage; sending information in to a state motor vehicle agency or department of motor vehicles for title and registration purposes; and sending information to a motor vehicle manufacturer or other provider of products and services that the individual requests to purchase/lease.

### **C. Other Legal Exceptions to Notice and Opt Out Requirements**

Other exceptions exist with respect to your obligation to provide: (1) the initial privacy notice to a “consumer” before you disclose any nonpublic personal information about the “consumer” to a nonaffiliated third party; (2) to provide an opt out notice before you disclose any nonpublic personal information; and/or (3) to provide the disclosure in your initial privacy notice stating the categories of and specific examples of the types of service providers and marketers to whom you provide information before you disclose nonpublic personal information to the service provider/marketer.

You are not required to comply with these notice requirements when you disclose nonpublic personal information:

(a) With the consent of or at the direction of the consumer (provided that the consumer has not revoked the consent or direction);

(b) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(c) To protect against or prevent actual or potential fraud, unauthorized transactions claims or other liability; for required risk control or for resolving consumer disputes or inquires;

(d) To persons that are assessing your compliance with industry standards, and your attorneys, accountants and auditors;

(e) To the extent required under other provisions of law, to law enforcement agencies, a state insurance authority, or for an investigation on a matter related to public safety;

(f) To a consumer reporting agency in accordance with the Fair Credit Reporting Act;

(g) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business if the disclosure concerns solely consumer of such business;

(h) To comply with Federal, State, or Local laws, rules and other applicable legal requirements, regulatory investigations, subpoenas or summons by Federal, State or Local authorities; or

(i) To respond to judicial process or government regulatory authorities having jurisdiction for compliance purposes.

**IMPORTANT REMINDER:** Please note that there is no exception to your obligation to provide a “customer” with an initial privacy notice when you establish a “customer relationship”. This exception only applies to your obligation to provide an initial privacy notice in connection with a “consumer” relationship. This also applies to your obligation to provide an opt out notice.

## **VIII. SUBSEQUENT DISCLOSURES AND USE OF INFORMATION**

### **A. Subsequent Disclosures and Use of Information Provided or Received by You Under an Exception**

If you receive nonpublic personal information from a third party or a party receives nonpublic personal information from you under an exception “*for processing and servicing transactions at a ‘consumers’ request*” and/or one of the “*other exceptions to notice and opt out requirements*,” explained in Section VII A-C, the disclosure and use of that information is limited. You step into the shoes of the financial institution that provided the information and vice versa. In other words, you may disclose the information: (a) to the affiliates of the financial institution from which you received the information; (b) to your affiliates, who may in turn disclose and use the information only to the extent that you may disclose and use the information; and (c) in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

For example, if a related finance company receives a customer account from a nonaffiliated financial institution in order to provide servicing on a loan, the related finance company may disclose information in the ordinary course of business “*for processing and servicing transactions at a “consumers” request*” and/or pursuant to one of the “*other exceptions to notice and opt out requirements*” in order to provide those services. The related finance company cannot, however, disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

**B. Subsequent Disclosures and Use of Information You Receive or Provide Other than Under an Exception**

If you receive nonpublic personal information from a third party other than under an exception, you may disclose the information only: (a) to the affiliates of the financial institution from which you received the information; (b) to your affiliates, who may in turn disclose and use the information only to the extent that you may disclose and use the information; and (c) to any other person if the disclosure would be lawful if made directly to that person by the financial institution from which you receive the information. For example, you could use a list provided to you that contains nonpublic personal information for your own purposes and you could disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each individual. Any nonaffiliated third party to whom you disclose the nonpublic personal information could then disclose the information only to: (a) your affiliates; (b) its affiliates, who may disclose the information only to the extent the third party could disclose the information; and (c) to any other person if the disclosure would be lawful if you made it directly to that person.

**IX. WHAT DOES FULL COMPLIANCE BY JULY 1, 2001 MEAN?**

Full Compliance by July 1, 2001, means that you have established a system for providing an initial notice to all new customers, have mailed the initial notices to any of your existing customers with whom you have a continuing relationship, and have afforded them the opportunity to opt out of any disclosures which are not otherwise permitted by law. In addition to providing initial privacy and opt out notices to all new and existing customers, you must be capable of keeping track of whether an individual has opted out of a disclosure and ensuring that disclosures are made in accordance with whatever opt out instructions an individual provides after having received the notices. You must also have procedures and policies in place to ensure that nonpublic personal information is safeguarded and kept in a confidential manner.

The fact that you do not have a continuing relationship with a customer does not eliminate all of your disclosure obligations. Any of your previous customers remain consumers pursuant to the G-L-B Act and the FTC’s Rules. If you intend to disclose nonpublic personal information about your previous customers to third parties, other than as permitted by the exceptions explained in Section VII above, you must first provide the consumer with a notice and opportunity to opt out of the disclosure.

**X. RELATIONSHIP BETWEEN FEDERAL AND STATE PRIVACY LAWS**

Neither the G-L-B Act nor the FTC’s Final Rule pre-empt or alter any State statute, regulation or order, except to the extent the State interpretation is inconsistent with the Federal Law and implementing Rules, even if it affords a consumer greater protection than is provided under the Federal Act or Rule. Therefore, you should be sure to consult with your legal counsel to determine if your state privacy requirements afford more protection to individuals in your state and whether additional disclosures are required.

# COMPLETING THE INITIAL PRIVACY POLICY AND OPT OUT FORM

## • INTRODUCTION

A motor vehicle dealership will be required to provide an initial privacy notice in virtually every transaction involving the sale or lease of a motor vehicle. The appropriate notice for your Dealership will depend upon a number of factors, such as the types of financing you offer, the information you collect from individuals, the information you disclose to third parties, and whether the third parties are affiliated or nonaffiliated third parties. Before you begin drafting your Privacy Policy, please carefully review the following guidelines and the “Overview of Privacy Notice and Opt Out Requirements.” In order to complete your Privacy Policy, you will have to be familiar with the information contained in both documents.

The “Initial Privacy Policy and Opt Out Template” contains examples of the types of information motor vehicle dealerships may collect and/or disclose to third parties. The examples are set forth in brackets and, in some sections, are printed in italicized text. You may collect and share information that is not addressed in the Template and/or disclose information to affiliated or nonaffiliated third parties that are not listed in the Template. You will need to customize the Privacy Policy (and the Opt Out Form, if applicable) by adding, deleting and editing the categories of information, the categories of third parties, and the opt out methods and options to include information that pertains to your Dealership. When your Privacy Policy and, if applicable, Opt Out Form are complete, you should not have any brackets nor any italicized text left. Please read the information in the Template carefully to ensure that you are including appropriate examples. You do not need to include the optional headings, but may do so if you wish.

It is important that your Dealership only include those privacy policies and practices that are feasible for your Dealership to maintain. The information contained in the “Overview of Privacy Notice and Opt Out Requirements,” the “Initial Privacy Policy and Opt Out Template,” and this document are for general information purposes only and should not be considered as legal advice. You should consult with your Dealership’s legal counsel to ensure that your privacy policies and practices are appropriate for your Dealership and that they comply with applicable federal and state laws, rules and regulations. Third parties affiliated with the Dealership may use the same Privacy Policy if the names of the affiliated third parties appear on the Privacy Policy and the information set forth in the Policy is accurate for each entity listed.

## • GUIDELINES

1. If all of your Dealership’s disclosures to third parties fall under the exceptions for processing and servicing transactions and the miscellaneous legal exceptions (See Overview Section VII), you should consider using the following Sections of the Template:
  - SECTION 1: TITLE
  - SECTION 2: INTRODUCTORY CLAUSE
  - SECTION 3: GENERAL INFORMATION ABOUT THE PRIVACY POLICY
    - OPTION A
  - SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT (See Overview Section V(A)(1))
  - SECTION 5: SIMPLIFIED INITIAL PRIVACY NOTICE
    - OPTION B
  - SECTION 11: LIST OF AFFILIATED THIRD PARTIES (IF APPLICABLE)
  - SECTION 12: CLOSING/ACKNOWLEDGEMENT
2. If all of your Dealership’s disclosures to third parties fall under the exceptions for processing and servicing transactions; and the miscellaneous legal exceptions (See Overview Section VII); and you disclose nonpublic personal information to third party service providers and joint marketers (See Overview Sections V (A)(2) and (5) and Section VII (A), you should consider using the following Sections of the Template:

- SECTION 1: TITLE
- SECTION 2: INTRODUCTORY CLAUSE
- SECTION 3: GENERAL INFORMATION ABOUT THE PRIVACY POLICY
  - OPTION B
- SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT (See Overview Section V(A)(1))
- SECTION 5: SIMPLIFIED INITIAL PRIVACY NOTICE
  - OPTION A
- SECTION 8: DISCLOSURES PERTAINING TO MARKETING SERVICE PROVIDERS AND JOINT MARKETING AGREEMENTS
  - Use OPTION A if you do not disclose, and do not wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT. Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose and/or wish to reserve the right to disclose to marketing service providers and joint marketers.
  - Use OPTION B if you disclose, or wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT to marketing service providers and joint marketers.
- SECTION 9: HOW YOU PROTECT THE INFORMATION YOU COLLECT AND SHARE (See Overview Section V(A)(8))
- SECTION 11: LIST OF AFFILIATED THIRD PARTIES (IF APPLICABLE)
- SECTION 12: CLOSING/ACKNOWLEDGEMENT

3. If your Dealership makes any disclosures that are not covered by the exceptions for service providers and joint marketers; for processing and servicing transactions; or the miscellaneous legal exceptions (See Overview Section VII); and/or you wish to reserve the right to make such disclosures in the future, you should consider using the following Sections of the Template:

- SECTION 1: TITLE
- SECTION 2: INTRODUCTORY CLAUSE
- SECTION 3: GENERAL INFORMATION ABOUT THE PRIVACY POLICY
  - OPTION B
- SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT (See Overview Section V(A)(1))
- SECTION 5: SIMPLIFIED INITIAL PRIVACY NOTICE
  - OPTION A
- SECTION 6: TYPES OF INFORMATION YOU MAY DISCLOSE TO AFFILIATED AND NONAFFILIATED THIRD PARTIES
  - Use OPTION A if: (a) you disclose the same types of information to affiliated and nonaffiliated third parties; and (b) you do not disclose, and do not wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT.

Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose and/or wish to reserve the right to disclose to affiliated and nonaffiliated third parties.

- Use OPTION B (1) if (a) you only disclose information to affiliated third parties; and (b) you do not disclose, and do not wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT; or

(2) if all of the following apply: (a) you disclose information to affiliated third parties and nonaffiliated third parties; (b) you do not disclose, and do not wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT to affiliated third parties; and (c) the information you disclose, or wish to reserve the right to disclose, to affiliated third parties is different than that which you may disclose to nonaffiliated third parties.

For example: If you may disclose all of the information listed in SECTION 4 to nonaffiliated third parties, but only disclose some of the information listed in SECTION 4 to affiliated third parties, you could use OPTION D to describe the information you may disclose to nonaffiliated third parties and Option B to describe the information you may disclose to affiliated third parties.

Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose and/or wish to reserve the right to disclose to affiliated third parties.

- Use OPTION C if: (a) you only disclose information to nonaffiliated third parties; and (b) you do not disclose, and do not wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT; or

(2) if all of the following apply: (a) you disclose information to nonaffiliated third parties and affiliated third parties; (b) you do not disclose, and do not wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT to nonaffiliated third parties; and (c) the information you disclose, or wish to reserve the right to disclose, to nonaffiliated third parties is different than that which you may disclose to affiliated third parties.

For example: If you may disclose all of the information listed in SECTION 4 to affiliated third parties, but only disclose some of the information listed in SECTION 4 to nonaffiliated third parties, you could use OPTION D to describe the information you may disclose to affiliated third parties and Option C to describe the information you may disclose to nonaffiliated third parties.

Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose, and/or wish to reserve the right to disclose, to nonaffiliated third parties.

- Use OPTION D if you disclose, or wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT to affiliated third parties *or* nonaffiliated third parties *or* affiliated and nonaffiliated third parties, as applicable.

- SECTION 7: CATEGORIES OF PARTIES TO WHOM YOU DISCLOSE INFORMATION (See Overview Section V (A)(3) and (7))

- Use OPTION A if you disclose the nonpublic personal information to the same types of affiliated and nonaffiliated third parties. Add to, edit or delete categories and/or illustrative examples as may be appropriate.

- Use OPTION B if (1) you disclose the nonpublic personal information only to affiliated third parties; or

(2) If you disclose the nonpublic personal information to affiliated third parties and nonaffiliated third parties, but the categories of affiliated and nonaffiliated third parties to whom you disclose information are not the same.

Add to, edit or delete categories and/or illustrative examples as may be appropriate.

- Use OPTION C if (1) you disclose the nonpublic personal information only to nonaffiliated third parties; or

(2) If you disclose the nonpublic personal information to nonaffiliated third parties and affiliated third parties, but the categories of nonaffiliated and affiliated third parties to whom you disclose information are not the same.

Add to, edit or delete categories and/or illustrative examples as may be appropriate.

- SECTION 8: DISCLOSURES PERTAINING TO MARKETING SERVICE PROVIDERS AND JOINT MARKETING AGREEMENTS (IF APPLICABLE) (See Overview Sections V(A)(5) and VII(A))

- Use OPTION A if you do not disclose, or wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT. Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose, or wish to reserve the right to disclose, to marketing service providers and joint marketers.

- Use OPTION B if you disclose, or wish to reserve the right to disclose, all of the information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT to marketing service providers and joint marketers.

- SECTION 9: HOW YOU PROTECT THE INFORMATION YOU COLLECT AND SHARE (See Overview Section V (A)(8))

- SECTION 10: EXPLANATION OF OPT OUT RIGHT (See Overview Section VI(A)-(E))

You may use this Section, as applicable, to provide an explanation of the individual's right to opt out of the disclosure of nonpublic personal information to affiliated and/or nonaffiliated third parties, including the method(s) by which the individual may exercise that right. Remember, if you allow the person to opt out in person, you should give an alternative means of opting out when your Dealership establishes a "customer relationship." (See Overview Section VI(E)).

- SECTION 11: LIST OF AFFILIATED THIRD PARTIES (IF APPLICABLE)

- SECTION 12: CLOSING/ACKNOWLEDGEMENT

- SECTION 13: SAMPLE OPT OUT FORM (See Overview Section VI(A)-(E))

- Use OPTION A if you disclose nonpublic personal information to affiliated third parties that is not otherwise permitted by law.

- Use OPTION B if: (a) you disclose nonpublic personal information to affiliated third parties that is not otherwise permitted by law; and (b) you wish to give individual(s) the right to opt out of having information disclosed to selected categories of affiliated third parties. If you include this Option, you must have policies and procedures in place to track the individual's decision to allow disclosures to certain affiliated third parties and not others. The categories listed in Option D should mirror the categories of affiliated third parties you list in accordance with Section 7 of the Template.

- Use OPTION C if you disclose nonpublic personal information to nonaffiliated third parties that is not otherwise permitted by law.

- Use OPTION D if: (a) you disclose nonpublic personal information to nonaffiliated third parties that is not otherwise permitted by law; and (b) you wish to give individual(s) the right to opt out of

having information disclosed to selected categories of nonaffiliated third parties. If you include this Option, you must have policies and procedures in place to track the individual's decision to allow disclosures to certain nonaffiliated third parties and not others. The categories listed in Option B should mirror the categories of nonaffiliated third parties you list in accordance with Section 7 of the Template.

# **INITIAL PRIVACY POLICY AND OPT OUT TEMPLATE**

## **SECTION 1: TITLE**

**[Insert Dealership Name] PRIVACY POLICY**

## **SECTION 2: INTRODUCTORY CLAUSE**

The protection of your nonpublic personal information is important to our Dealership, *[insert if applicable: and our affiliated third parties listed below]*. It is common for companies like ours to share your nonpublic personal information with affiliated third parties (a company that is related by common ownership or corporate control) and, in some cases, with nonaffiliated third parties. Because we recognize that keeping your nonpublic personal information private is important to you, we would like to take this opportunity to explain our Privacy Policy.

## **SECTION 3: GENERAL INFORMATION ABOUT THE PRIVACY POLICY**

- **About our Privacy Policy** *[Optional Heading]*

### *Option A*

Our Privacy Policy applies to those persons who obtain from us financial products or services to be used for personal, family or household purposes. *[Optional: We are not required to make these disclosures to companies or individuals who obtain financial products or services for business, commercial or agricultural purposes. While we are not required to maintain privacy policies with respect to our business, commercial or agricultural customers, they are also very important to us and we take steps to protect their nonpublic personal information as well.]*

### *Option B*

Our Privacy Policy applies to those persons who obtain from us financial products or services to be used for personal, family or household purposes. *[Optional: We are not required to make these disclosures to companies or individuals who obtain financial products or services for business, commercial or agricultural purposes. While we are not required to maintain privacy policies with respect to our business, commercial or agricultural customers, they are also very important to us and we take steps to protect their nonpublic personal information, as well.]* Our goal is to respond to your inquiries, to provide better customer service, and to provide products, services and other promotional information we believe may help meet your needs or be of interest to you. This Privacy Policy explains:

*[Add to, edit or delete information as may be appropriate]*

- The types of information we may collect about you
- The types of information we may disclose to third parties
- The types of third parties to whom we may disclose information
- How we protect the nonpublic personal information we collect about you
- How you may instruct us not to disclose certain information about you which we are not otherwise permitted to disclose by law

## **SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT**

- **The types of information we may collect about you** *[Optional Heading]*

We may collect nonpublic personal information about you from the following sources:

*[Add to, edit or delete information as may be appropriate]*

- Information we receive from you on applications or other forms, such as *[provide appropriate illustrative examples, such as “your name, address, telephone numbers, e-mail addresses, birth date, social security number, income and employment history”]*.
- Information about your transactions with us, our affiliated third parties, or others, such as *[provide illustrative examples, such as “your account balance, payment history, and your creditworthiness”]*.

- Information we receive from your consumer credit reports or a consumer reporting agency, such as [*provide appropriate illustrative examples, such as “your credit worthiness, credit score or credit history”*].
- Representations made by you to us, such as [*provide appropriate illustrative examples, such as “your employment history, your account balances and payment histories, and your relationships with other persons or entities whom you have listed as a reference”*].
- Information we collect or that you provide to us when you visit our website, such as [*provide appropriate illustrative examples, such as “your name, address, telephone numbers, e-mail addresses”*] [*Optional: If you request e-mail contact from us or send us e-mail, we may retain your e-mail address and the messages themselves.*]

*and, if appropriate,*

We do not utilize “cookies” in connection with our website. A “cookie” is an online device used to determine when a visit to the site has occurred and to track your activity within the site. Cookies are often used online and do not harm your computer. You have the option of programming your computer to prevent a cookie from being accepted. Your visit to our website is completely anonymous, unless you choose to identify yourself by transmitting an inquiry or information to us.

*or, if you do utilize cookies, substitute*

We also utilize “cookies” in connection with our website. A “cookie” is an online device used to determine when a visit to the site has occurred and to track your activity within the site. A cookie does not identify you by name or address unless you have provided the information or set up your computer to do so. Cookies are used to determine traffic patterns and usage and to provide you with more customized service by identifying you as a user, which may prevent you from having to enter information repeatedly. Cookies are often used online and do not harm your computer. You have the option of programming your computer to prevent a cookie from being accepted.

#### ***SECTION 5: SIMPLIFIED PRIVACY NOTICE***

##### *Option A*

We may disclose all of the information we collect about you as permitted by law.

##### *Option B*

We do not disclose, nor do we reserve the right to disclose, any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We also restrict access to your nonpublic personal information to our employees and those third parties who need the information to provide our products and services to you. We explain the importance of protecting your nonpublic personal information to our employees and take appropriate measures to enforce employee responsibilities regarding our Privacy Policy. We also maintain physical, electronic and procedural safeguards to protect the confidentiality and security of the information we collect. We require any third party who receives information about you from us to agree to keep that information confidential and to use the information only for the purposes for which it was disclosed.

#### **SECTION 6: TYPES OF INFORMATION YOU MAY DISCLOSE TO AFFILIATED AND NONAFFILIATED THIRD PARTIES**

- **The types of information we may disclose** [*Optional Heading*]

##### *Option A*

Of the nonpublic personal information we collect, we may disclose the following types of information about you to affiliated and nonaffiliated third parties:

*[Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose, and/or wish to reserve the right to disclose, to affiliated and nonaffiliated third parties. Add to, edit or delete information as may be appropriate.]*

- Information we receive from you on applications or other forms, such as [*provide appropriate illustrative examples, such as “your name, address, telephone numbers, e-mail addresses, birth date, social security number, income and employment history”*].

- Information about your transactions with us, third parties affiliated with us, or others, such as *[provide illustrative examples, such as ‘your account balance, payment history, and your creditworthiness’]*.
- Information we receive from your consumer credit reports or a consumer reporting agency, such as *[provide appropriate illustrative examples, such as ‘your credit worthiness, credit score or credit history’]*.
- Representations made by you to us, such as *[provide appropriate illustrative examples, such as ‘your employment history, your account balances and payment histories, and your relationships with other persons or entities whom you have listed as a reference’]*.
- Information we collect or that you provide to us when you visit our website, such as *[provide appropriate illustrative examples, such as ‘your name, address, telephone numbers, e-mail addresses, e-mail messages, and information collected from cookies utilized in connection without website’]*.

*Option B*

Of the nonpublic personal information we collect, we may disclose the following types of information about you to affiliated third parties:

*[Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose, and/or wish to reserve the right to disclose, to affiliated third parties. Add to, edit or delete information as may be appropriate.]*

- Information we receive from you on applications or other forms, such as *[provide appropriate illustrative examples, such as ‘your name, address, telephone numbers, e-mail addresses, birth date, social security number, income and employment history’]*.
- Information about your transactions with us, third parties affiliated with us, or others, such as *[provide illustrative examples, such as ‘your account balance, payment history, and your creditworthiness’]*.
- Information we receive from your consumer credit reports or a consumer reporting agency, such as *[provide appropriate illustrative examples, such as ‘your credit worthiness, credit score or credit history’]*.
- Representations made by you to us, such as *[provide appropriate illustrative examples, such as ‘your employment history, your account balances and payment histories, and your relationships with other persons or entities whom you have listed as a reference’]*.
- Information we collect or that you provide to us when you visit our website, such as *[provide appropriate illustrative examples, such as ‘your name, address, telephone numbers, e-mail addresses, e-mail messages, and information collected from cookies utilized in connection without website’]*.

*Option C*

Of the nonpublic personal information we collect, we may disclose the following types of information about you to nonaffiliated third parties:

*[Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose, and/or wish to reserve the right to disclose, to affiliated third parties. Add to, edit or delete information as may be appropriate.]*

- Information we receive from you on applications or other forms, such as *[provide appropriate illustrative examples, such as ‘your name, address, telephone numbers, e-mail addresses, birth date, social security number, income and employment history’]*.
- Information about your transactions with us, third parties affiliated with us, or others, such as *[provide illustrative examples, such as ‘your account balance, payment history, and your creditworthiness’]*.
- Information we receive from your consumer credit reports or a consumer reporting agency, such as *[provide appropriate illustrative examples, such as ‘your credit worthiness, credit score or credit history’]*.

- Representations made by you to us, such as *[provide appropriate illustrative examples, such as “your employment history, your account balances and payment histories, and your relationships with other persons or entities whom you have listed as a reference”]*.
- Information we collect or that you provide to us when you visit our website, such as *[provide appropriate illustrative examples, such as “your name, address, telephone numbers, e-mail addresses, e-mail messages, and information collected from cookies utilized in connection without website”]*.

*Option D*

We may disclose all of the nonpublic personal information that we collect about you, as described *[describe location in the notice, such as “above” or “below”]* to *[insert as appropriate: affiliated third parties or nonaffiliated third parties or affiliated and nonaffiliated third parties]*.

**SECTION 7: CATEGORIES OF PARTIES TO WHOM YOU DISCLOSE INFORMATION**

- **The types of third parties to whom we may disclose information** *[Optional Heading]*

*Option A*

We may disclose your nonpublic personal information to the following types of affiliated and nonaffiliated third parties:

*[Add to, edit or delete information as may be appropriate]*

- Financial service providers, such as *[provide illustrative examples, such as “motor vehicle lenders or lessors, mortgage brokers, insurance agents, and providers of after-market products such as Guaranteed Automobile Protection (GAP) products and service contracts (depending upon how your state regulates the sale of these products”]*.
- Non-financial service providers, such as *[provide illustrative examples, such as “retailers, manufacturers, providers of after-market products such as Guaranteed Automobile Protection (GAP) products, warranties, and service contracts (depending upon how your state regulates the sale of these products), magazine publishers, and direct marketers”]*.
- Others, such as *[provide illustrative examples, such as “trade associations and nonprofit organizations”]*.

*Option B*

We may disclose your nonpublic personal information to the following types of affiliated third parties:

*[Add to, edit or delete information as may be appropriate]*

- Financial service providers, such as *[provide illustrative examples, such as “motor vehicle lenders or lessors, mortgage brokers, insurance agents, and providers of after-market products such as Guaranteed Automobile Protection (GAP) products and service contracts (depending upon how your state regulates the sale of these products”]*.
- Non-financial service providers, such as *[provide illustrative examples, such as “retailers, manufacturers, providers of after-market products such as Guaranteed Automobile Protection (GAP) products, warranties, and service contracts (depending upon how your state regulates the sale of these products), magazine publishers, and direct marketers”]*.
- Others, such as *[provide illustrative examples, such as “trade associations and nonprofit organizations”]*.

*Option C*

We may disclose your nonpublic personal information to the following types of nonaffiliated third parties:

*[Add to, edit or delete information as may be appropriate]*

- Financial service providers, such as *[provide illustrative examples, such as “motor vehicle lenders or lessors, mortgage brokers, insurance agents, and providers of after-market products such as Guaranteed Automobile Protection (GAP) products and service contracts (depending upon how your state regulates the sale of these products”]*.
- Non-financial service providers, such as *[provide illustrative examples, such as “retailers, manufacturers, providers of after-market products such as Guaranteed Automobile Protection (GAP) products, warranties, and service*

contracts (depending upon how your state regulates the sale of these products), magazine publishers, and direct marketers”].

- Others, such as [provide illustrative examples, such as “trade associations and nonprofit organizations”].

#### **SECTION 8: DISCLOSURES PERTAINING TO MARKETING SERVICE PROVIDERS AND JOINT MARKETING AGREEMENTS**

- **The types of third parties to whom we may disclose information about you** [*Optional Heading*]

##### *Option A*

We may [also] disclose the following information to third parties that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements, such as [provide illustrative examples, such as third parties who manufacture or supply our goods and services, advertise or market our products and services, make customer satisfaction inquiries on our behalf, or provide internet related marketing services]:

[Insert the types of information listed in SECTION 4: CATEGORIES OF INFORMATION YOU COLLECT that you may disclose, and/or wish to reserve the right to disclose, to third parties that perform marketing services on your behalf or to other financial institutions with whom you have joint marketing agreements. Add to, edit or delete information as may be appropriate.]

- Information we receive from you on applications or other forms, such as [provide appropriate illustrative examples, such as “your name, address, telephone numbers, e-mail addresses, birth date, social security number, income and employment history”].
- Information about your transactions with us, third parties affiliated with us, or others, such as [provide illustrative examples, such as “your account balance, payment history, and your creditworthiness”].
- Information we receive from your consumer credit reports or a consumer reporting agency, such as [provide appropriate illustrative examples, such as “your credit worthiness, credit score or credit history”].
- Representations made by you to us, such as [provide appropriate illustrative examples, such as “your employment history, your account balances and payment histories, and your relationships with other persons or entities whom you have listed as a reference”].
- Information we collect or that you provide to us when you visit our website, such as [provide appropriate illustrative examples, such as “your name, address, telephone numbers, e-mail addresses, e-mail messages, and information collected from cookies utilized in connection without website”].

We are permitted by law to disclose information about you to third parties that perform marketing services on our behalf and/or to other financial institutions with whom we have joint marketing agreements. We are not required to give you the opportunity to opt out of such disclosures.

##### *Option B*

We may [also] disclose all of the nonpublic personal information that we collect about you, as described [describe location in the policy, such as “above” or “below”] to third parties that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements, such as [provide illustrative examples, such as third parties who manufacture or supply our goods and services, advertise or market our products and services, make customer satisfaction inquiries on our behalf, or provide internet related marketing services]. We are permitted by law to disclose information about you to third parties that perform marketing services on our behalf and/or to other financial institutions with whom we have joint marketing agreements. We are not required to give you the opportunity to opt out of such disclosures.

## **SECTION 9: HOW YOU PROTECT THE INFORMATION YOU COLLECT AND SHARE**

### **• How we protect the nonpublic personal information we collect about you** *[Optional Heading]*

We take our responsibility to protect your nonpublic personal information very seriously. Whenever we collect information about you, we restrict access to your nonpublic personal information to our employees and those third parties who need the information to respond to your inquiries, to provide better customer service, and to provide products, services and other promotional information we believe may help meet your needs or be of interest to you. We explain the importance of protecting your nonpublic personal information to our employees and take appropriate measures to enforce employee responsibilities regarding our Privacy Policy. We also maintain physical, electronic and procedural safeguards to protect the confidentiality and security of the information we collect. We require any third party who receives information about you from us to agree to keep that information confidential and to use the information only for the purposes for which it was disclosed.

## **SECTION 10: EXPLANATION OF OPT OUT RIGHT**

### **• How you may instruct us not to disclose certain information about you which we are not otherwise permitted to disclose by law** *[Optional Heading]*

If you are comfortable with our Privacy Policy and do not mind if we disclose your nonpublic personal information in order to respond to your inquiries, to provide better customer service, and to provide products, services and other promotional information we believe may help meet your needs or be of interest to you, then you do not need to take any further action at this time.

If you prefer that we not disclose your nonpublic personal information to the types of *[indicate as appropriate: affiliated third parties or nonaffiliated third parties or affiliated and nonaffiliated third parties]* described in this Privacy Policy, and you have not completed an Opt Out Form provided by us *[insert if appropriate: or one of the affiliated third parties listed below]*, then you may direct us not to make those disclosures as follows:

*[Describe a reasonable means of opting out]*

**To opt out in person:** You may complete the attached Opt Out Form and deliver it to *[you may insert the name of person, describe the position of a Dealership representative such as “your salesperson”, “our cashier” or “our receptionist,” or you may simply state “one of our Dealership representatives”]*.

**To opt out by mail:** You may complete the attached Opt Out Form and return it by mail within thirty days of your receipt of the Form to: *[Dealership Name]*, Attention: *[contact person]*, at *[address]*.

**To opt out by phone:** You may contact \_\_\_\_\_ *[contact person]* at *[telephone number]* within thirty days of your receipt of the attached Opt Out Form.

You may also have additional privacy rights under state law. Please remember, however, that even if you decide to opt out of having your nonpublic personal information disclosed to certain third parties, we may still disclose nonpublic personal information about you as permitted by law.

If you are opting out for the first time, it may take up to *[insert appropriate time frame- not to exceed more than six weeks]* to process your request. Your decision to opt out will apply to all financial products and services you obtain from us *[insert if appropriate: and the affiliated third parties listed below]*.

## **SECTION 11: LIST OF AFFILIATED THIRD PARTIES**

### **• Our Affiliated Parties** *[Optional Heading]*

This Privacy Policy *[insert if appropriate: and your opt out decision]* applies to our Dealership as well as the following affiliated third parties: *[provide a list of any applicable affiliated third parties]*.

## **SECTION 12: CLOSING/ACKNOWLEDGEMENT**

We appreciate your business and the opportunity to assist you in understanding our Privacy Policy. We hope that you have found this information to be useful and appreciate the opportunity to continue to serve you in the future. *[Optional for use*

*when presenting a copy of the Policy in person at your Dealership:* Please sign below to acknowledge that you have read and received a copy of our Privacy Policy.]

I/we acknowledge that I/we have read and received a copy of this Privacy Policy.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## SECTION 13: SAMPLE OPT OUT FORM

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### OPT OUT FORM

Many of our customers have found the products, services and other promotional information offered by us and the [*indicate as appropriate: affiliated third parties or nonaffiliated third parties or affiliated and nonaffiliated third parties*] described in this Privacy Policy helpful and informative. However, if you prefer that we not share your nonpublic personal information with these [*indicate as appropriate: affiliated third parties or nonaffiliated third parties or affiliated and nonaffiliated third parties*], you may direct us not to do so by checking the appropriate box below.

Please Note: If you opt out of having your nonpublic personal information disclosed to [*indicate as appropriate: affiliated third parties or nonaffiliated third parties or affiliated and nonaffiliated third parties*], you may not receive special product and service offers which may be of assistance or interest to you. In addition, if you opt out of having your nonpublic personal information disclosed to third parties, we may still disclose the nonpublic personal information we collect about you to third parties as permitted by law.

If you have obtained a financial product or service by means of a joint transaction with another person, each of you may make a separate opt out decision, but either person can opt out on behalf of the other. If you elect to opt out, information about the other person(s) may be disclosed unless an opt out decision has been made by them or by you on their behalf.

#### *Option A*

- Please do not disclose my/our nonpublic personal information to any affiliated third parties, other than as permitted by law.

#### *Option B*

- Please do not disclose my/our nonpublic personal information to the following categories of affiliated third parties, other than as permitted by law:

[*Add to, edit or delete information as may be appropriate. The options should mirror those listed in Section 7 of your Privacy Policy.*]

- Financial service providers
- Non-financial service providers
- Others: [*insert appropriate categories of others*]

#### *Option C*

- Please do not disclose my/our nonpublic personal information to any nonaffiliated third, other than as permitted by law.

#### *Option D*

- Please do not disclose my/our nonpublic personal information to the following nonaffiliated third parties, other than as permitted by law:

[*Add to, edit or delete information as may be appropriate. The options should mirror those listed in Section 7 of your Privacy Policy.*]

- Financial service providers
- Non-financial service providers
- Others: [*insert appropriate categories of others*]

Only the person(s) who do not wish to have nonpublic personal information disclosed as indicated above should sign this Opt Out Form.

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Name

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Address

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City State Zip Code

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Signature

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Name

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Address

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City State Zip Code

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Signature