

**STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL**

**IN THE MATTER OF:
BOARDROOM, INC.**

CASE NO.: L11-3-1019

ASSURANCE OF VOLUNTARY COMPLIANCE

A. INTRODUCTION

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes, the STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, hereinafter referred to as the "OAG," caused an inquiry to be made into the advertising and business practices of BOARDROOM, INC., also known as "Bottom Line Publications." Hereinafter, BOARDROOM, INC. shall be referred to as "Respondent."

IT APPEARS that Respondent is prepared to enter into this Assurance of Voluntary Compliance, hereinafter referred to as the "Assurance," without any admission that it has violated the law and for the purpose of resolution of this matter only, and the Associate Deputy Attorney General, by and through the undersigned Senior Assistant Attorney General, being in agreement, does in this matter accept this Assurance in termination of this investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the OAG by said statute. The OAG, and Respondent, hereby agree to the following:

B. STIPULATED FACTS

1. Boardroom, Inc., is a Connecticut corporation with its principal offices, at 281 Tresser Boulevard, 8th Floor, Stamford, Connecticut 06901-3246.

2. Respondent publishes and sells books, DVDs and newsletters to Florida Consumers ("Products"). These Products typically discuss health, nutrition, and financial matters and are distributed by mail and electronically.
3. During the Relevant Time Period, Respondent advertised and sold Products using the names "Bottom Line," "Bottom Line Publications," and "Bottom Line Books," but used other names and domain names for various proprietary web-sites. A list of domain names and web-sites used by Boardroom during the Relevant Time Period is attached to this Assurance as Exhibit A.
4. Boardroom was founded in 1972. Boardroom was incorporated in 1994 in Connecticut. Boardroom distributes online and print advertising for its Products in Florida.
5. During the Relevant Time Period, Respondent has advertised Products using television infomercials, direct mail, print, telemarketing and oral representations made by telephone, and online through proprietary and third party web-sites. Boardroom offers its mailing and customer lists for rent by third parties for their marketing purposes. Boardroom also allows selected third parties to advertise their products in advertising enclosed with certain notices and shipments of Products to Consumers.
6. Boardroom represents that it has not engaged in outbound Telemarketing, as the term is defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, ("TSR") since early, 2010. Boardroom has no present intention to engage in outbound Telemarketing, directly or through a third party. If Boardroom engages in outbound Telemarketing to Consumers, directly or through a third party, at any time within twenty-four (24) months from the Effective Date of this Assurance, then no later than

thirty (30) days after engaging in such activity, Boardroom shall notify the OAG of this fact.

7. During the Relevant Time Period, Respondent's marketing and advertising for Products included the use of Negative Option Plans, as defined in paragraph 23 herein.
Respondent also advertised certain offers as "free" or otherwise without risk or obligation during the Relevant Time Period.
8. During the Relevant Time Period, Respondent used third party vendors to receive, fulfill and mail orders, and to perform certain customer service functions, including receiving and responding to Complaints. These vendors included vendors located in and outside of the state of Florida.
9. The OAG conducted an investigation of Respondent in connection with Respondent's advertising, promoting, offering for sale, selling and/or providing of Products to Florida Consumers. The investigation examined allegations regarding Respondent's use and fulfillment of Negative Option Plans, Products offered as free, billing for Products, the mailing of Merchandise Not Ordered, representations used by Respondent to advertise its Products, and Boardroom's customer service practices. The investigation also inquired into Boardroom's type and degree of communication with third parties who interact with Boardroom's customers.
10. Boardroom denies having violated the laws of Florida or any other jurisdiction. This Assurance is not intended to be used by any third party in any other proceedings, and is not intended, and should not be construed as, an admission of any wrongdoing or liability by Boardroom.

C. DEFINITIONS

11. “Advertising” (including “Advertisement”), when used as a noun herein, means any written, oral, graphic or electronic statement, illustration or depiction, that is designed to create interest in the purchasing of, impart information about, publicize, or affect the sale of, a Product, where the statement appears:
 - a. in a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, on or in packaging; or in other printed material such as inserts, notices or forms; or,
 - b. in electronic mail, on the Internet, in a website, or other digital format, including mobile applications on the Apple iTunes mobile platform or other mobile platforms like Google Play, Android and Blackberry hereinafter referred to as "mobile applications," radio and satellite radio, broadcast television, cable television or commercial or infomercial, or in a telephone or wireless voice transmission.
12. Boardroom has not used, and has no present intention to use, advertising for smartphones, tablets or other mobile devices, other than mobile applications, to advertise, sell or distribute its Products to Consumers.
13. “[A]dvertising” (including “advertise”) when used as a verb herein, means to disseminate or distribute “Advertising” as defined in paragraph 11.
14. “Clear and Conspicuous” (including “Clearly and Conspicuously”) means that a statement, representation, claim, disclosure or term, collectively referred to as “disclosure” being conveyed is sufficiently noticeable for an ordinary Consumer to read and comprehend it. Further, in order to be Clear and Conspicuous:

- a. The disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent because of its type size, contrast to the background against which it appears, location, or other characteristics, for an ordinary Consumer to notice, read and comprehend it in relation to the claim it may be modifying or if not modifying a claim, to other terms and conditions of the offer;
- b. The disclosure shall be presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other terms, representations claims or statements being conveyed;
- c. The disclosure shall be displayed in close proximity to the statement, representation, claim, or term it clarifies, modifies, explains, or to which it otherwise relates;
- d. The Offer Terms, as defined herein, of the Negative Option Plan shall be presented together in a distinct location, in a stand-alone paragraph;
- e. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used;
- f. The disclosure shall not be accompanied by distracting sounds, graphic or text that compete for the attention of the Consumer;
- g. In addition to other requirements of the paragraph, in communications made through the Internet and other web-based application or services, the message shall be unavoidable;
- h. In addition to other requirements of the paragraph, in communications disseminated through video means (e.g., television or streaming video), the

disclosure shall be presented in accordance with subsection a of this definition, and shall appear on the screen for a duration sufficient for an ordinary Consumer to read and comprehend the disclosure;

- i. In addition to other requirements of the paragraph, in communications disseminated orally or through audible means (e.g., radio or streaming video), the disclosure shall be delivered in a volume and cadence sufficient for an ordinary Consumer to hear and comprehend the disclosure.

The parties agree that the Federal Trade Commission's Dot Com Disclosures Guidelines dated March 12, 2013 shall serve as a relevant source for guidance on how to make Clear and Conspicuous disclosures in connection with advertising through mobile applications.

15. "Clearly and Prominently" means that a disclosure is made Clearly and Conspicuously and is the most prominent of all Offer Terms, (as such term is defined herein) in a Negative Option Plan offer, provided however to the extent multiple Offer Terms are required to be disclosed Clearly and Prominently, the disclosure of all such Offer Terms with equal prominence shall be sufficient to satisfy the requirements of this definition.
16. "Consumer" shall mean a person who resides in Florida. In instances where "Consumer" refers to a past or current customer of Boardroom, "Consumer" means a customer of Boardroom who provided a Florida address to Boardroom, either when purchasing a Product or during the course of the customer relationship with Boardroom.
17. "Direct Proximity" shall mean for any communication presented solely through visual means, that a term is disclosed immediately above or beside a triggering representation, term or acceptance mechanism, as applicable; provided, however, information may also be disclosed below the triggering representation or term if it makes the overall

communication easier to understand. In interactive electronic media such as the Internet, software or online services, “Direct Proximity” means on the same Web page, online service page, or other electronic page, and immediately above or beside the triggering representation, term or acceptance mechanism, displayed in such a manner that the that the communication is viewable without requiring the consumer to scroll up, down or sideways, or otherwise adjust their browser window in any way, and shall not include such disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means that take the Consumer to a different page; provided, however, information may also be disclosed below the triggering representation or term if it makes the overall communication easier to understand.

18. “Effective Date” as used herein shall mean the date of execution of this Assurance by the last signatory hereto.
19. “Express Informed Consent” means an affirmative act that is clear and unambiguous evidence of a person’s acceptance. Express Informed Consent to participate or be enrolled in a Negative Option Plan means clear and unambiguous evidence of acceptance of the Offer Terms following disclosure of such terms in the manner set forth in this Assurance. In order to be unambiguous, the act of consent to a Negative Option Plan must clearly apply to the Offer Terms for the Negative Option Plan so that Consumers will fully understand that they are accepting enrollment in a Negative Option Plan and the Offer Terms, and not some other offer or other terms of the offer; provided however, that for purposes of this provision, a Trial Conversion Offer that unless canceled, results in enrollment in a Pre-Notification, Continuity or Automatic Renewal Plan shall be

considered a single Negative Option Plan. More specifically, Express Informed Consent shall be:

- a. With respect to written offers, (including over the Internet or other web-based services), a check box, button or other method that Consumers must affirmatively select, sign or take action to accept the Negative Option Offer Terms. The Negative Option Offer Terms, along with instructions as to the affirmative act the Consumer must take, shall be in Direct Proximity to the check box, signature, or other method of providing assent and shall appear, before billing information (e.g., name, address, credit card, debit card or bank account numbers) is obtained, in a stand-alone paragraph. The Offer Terms shall contain no additional information other than instructions as to the affirmative act that must be taken to accept the Negative Option.
20. “Express Informed Consent” to a one-time charge to a credit or debit card account in print, online or other electronic transaction, relating to a Negative Option Plan, means a check box, button, or other method that requires the Consumer to take affirmative action to clearly indicate acceptance to the amount of the charge and the date the charge is to be made, or if a charge is to be made automatically on a recurring basis, then the Consumer takes such affirmative action to authorize charging a set amount on a set date automatically on a recurring basis without further authorization.
21. “Electronic Fund Transfer” or “EFT” shall mean an “electronic fund transfer” as that term is defined in the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*
22. “Initial Representation” as used herein shall include all sponsored links, organic links, email subject lines, banner ads, pop-ups and any and all other primary impressions

created or presented online by Boardroom, or any third party on Boardroom's behalf or with Boardroom's knowledge.

23. A "Negative Option Plan" is a contractual plan or an arrangement to sell or provide Products under which the Consumer's silence or failure to take an affirmative action to reject the Products or to cancel the agreement is interpreted by the seller as acceptance of the offer. Negative Option Plans as used herein include, but are not limited to, the following:

- a. A "Pre-notification Negative Option Plan" as used herein is as defined in the Federal Trade Commission Rule on the Use of Pre-notification Negative Option Plans by Sellers in Commerce (referenced herein as the "Negative Option Rule"), 16 C.F.R. Section 425.1, as a contractual plan or arrangement under which a seller periodically sends to a Consumer who subscribed to such a plan or arrangement an announcement which identifies merchandise it proposes to send to the Consumer who subscribes to such plan, and the Consumer thereafter receives and is billed for the merchandise identified in each such announcement unless by a date or within a time specified by the seller with respect to each such announcement the Consumer, in conformity with the provision of the plan, instructs the seller not to send the identified merchandise.
- b. An "Automatic Renewal Plan" as used herein means a plan or arrangement whereby a subscription or other agreement is automatically renewed and the Consumer is billed or charged unless the Consumer cancels before the renewal, or before some other specified date or period of time.

- c. A “Trial Conversion Offer” as used herein means an offer to provide a trial period of Products to a Consumer where, as a result of accepting the trial period, the Consumer is required to contact Boardroom before the expiration of the trial period to avoid receiving additional Products or incurring a financial obligation.
 - d. A “Continuity Plan” as used herein means an arrangement, plan or system pursuant to which a Consumer receives, or agrees to receive, periodic shipments of Products or recurrent delivery of Products without agreeing to prior notification of each shipment or delivery, regardless of any trial or approval period allowing the Consumer to return or be reimbursed for the Products and regardless of whether Boardroom sends prior notification of a shipment to the Consumer.
24. A “Form” means any form such as an order or return form, that a Consumer submits either by mail or electronically to Boardroom or its designee, to accept or cancel a selection as part of a Pre-Notification Negative Option Plan as noted in paragraph 23a above.
25. “Merchandise Not Ordered” shall mean merchandise mailed without the prior expressed request or consent of the Consumer.
26. "Matters Investigated" as used herein shall mean the OAG’s investigation of Respondent’s advertising, marketing, promoting, offering for sale, and selling to Consumers directly or through any third party, Products, pursuant to a Negative Option Plan, offered as “free,” Merchandise Not Ordered, billing and collection efforts related to such Products, representations made in advertising about its Products, customer service practices and record-keeping practices of Respondents. The Matters Investigated do not include advertising on smart phones, tablets or other similar mobile device, other than on

mobile applications, inasmuch as Respondent has represented that it does not advertise on such devices at this time.

27. "Offer Terms" shall mean the material terms and conditions of a Negative Option Plan that are specifically required to be disclosed pursuant to paragraphs 38-42 of this Assurance.
28. "Order path" as used herein shall mean the sequence of impressions, generally beginning with the Initial Representation via on online display advertisement, e.g., banner advertisement, search engine title and description or email advertisement, and including one or more web pages, that together constitute an advertisement.
29. "Promotional Material" refers to an advertisement containing or accompanying any ordering device or similar material that a Consumer sends to Boardroom to request acceptance or enrollment in a Negative Option Plan.
30. "Relating to" as used herein shall mean without limitation, the concepts: referring to, concerning, describing, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving in whole or in part.
31. "Relevant Time Period" as used herein shall refer to the time period of August 29, 2008 to the Effective Date.
32. "Return Date" as used herein refers to a date specified by a Boardroom when using a Pre-notification Negative Option Plan as the date by which a Form must be received by Boardroom or its designee to prevent shipment of a selection.

33. “Representing” (including “represent”) as used herein shall mean stating, orally, in writing, or by any electronic means, directly or by implication, by affirmative statements or material omissions.
34. “Selection” as used herein shall mean the book or other Product that is offered in a Pre-Notification Negative Option Plan.

D. AGREEMENT TO COMPLY

35. This Assurance applies to Respondent in the advertising, marketing, promotion, offering for sale or selling and providing Products to Consumers and in billing for such Products. Respondent shall comply with the terms of this Assurance in accordance with the following schedule:
- a. As of the Effective Date, Respondent shall comply with (i) paragraph 36 relating to Merchandise Not Ordered; (ii) paragraphs 38 and 39 relating to Pre-notification Negative Option Plans; (iii) paragraph 65 relating to announcements in a Continuity or Pre-notification Negative Option Plan; (iv) paragraphs 66, 68-72 and 75 relating to customer service; (v) paragraphs 77-78 and 82 related to billing; (vi) paragraphs 83 and 84 relating to telemarketing; (vii) paragraphs 85, 86 and 90 relating to third party collections; (viii) paragraph 93 relating to Electronic Funds Transfers; (ix) any paragraphs that apply to mobile applications as they relate to mobile applications; (x) paragraph 115 relating to reports and records; and (xi) paragraphs 122, 125-126.
- b. No later than 30 days after the Effective Date, Respondent shall comply with (i) paragraphs 73 and 74 relating to customer service; (ii) any paragraphs that apply to advertising via direct mail solicitations, including paragraphs 40-42 and 44-52 as they relate to advertising via direct mail solicitations; and (iii) paragraph 98 related to refunds.

- c. No later than 60 days after the Effective Date, Respondent shall comply with (i) paragraphs 58-60 relating to advertising representations; (ii) paragraphs 61-63 relating to notices and confirmations; (iii) paragraph 67 relating to customer service; (iv) paragraphs 79 related to billing; (v) paragraph 88 related to collections; and (vi) paragraph 114 relating to reports and records.
- d. No later than 90 days after the Effective Date, Respondent shall comply with paragraphs 110-113 relating to reports and records.
- e. That unless a time period is otherwise specified in a provision of this Assurance, or in this paragraph subsections (a)-(d), Respondent shall comply with the provision within 180 days of the Effective Date (the "Implementation Period").

Merchandise Not Ordered

- 36. Respondent, in connection with the advertising, marketing, promoting, offering for sale, selling or providing Products to Consumers, directly or through third parties, shall not:
 - a. send Products to Consumers without the prior expressed request or consent of the Consumer, unless the Product is Clearly and Conspicuously marked as a free sample and has attached to it a Clear and Conspicuous statement that the Consumer may treat the Product as a gift and may retain, use, discard or dispose of it in any manner without any obligation whatsoever; or,
 - b. send to any recipient of Merchandise Not Ordered, a bill, invoice, or any writing that would reasonably be interpreted as a bill or invoice, or dunning communication, that seeks to obtain payment for Products shipped or delivered, without the prior expressed request or consent of the Consumer.

Negative Option Plans

37. Respondent, in connection with the advertising, marketing, promotion, offering for sale or selling, or providing Products in Negative Option Plans to Consumers, or in billing or collection efforts related to such Plans, directly or through a third party, shall not represent that the recipient of a Product sent or delivered without the prior Express Informed Consent of the recipient is required, or otherwise obligated, to pay for the Product or to return the Product. With respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan, Respondent shall be allowed to bill or engage in collection efforts, either directly or through a third party, for items delivered and billed in the Negative Option Plan after the Implementation Period, provided that the Consumer has been provided with the Confirmation Notice and has not chosen to cancel participation in the Negative Option Plan. Notwithstanding the foregoing, Respondent shall not be required to send Confirmation Notices to Consumers who enrolled in an Automatic Renewal Plan for a subscription to a newsletter Product before the Relevant Time Period and paid for at least four automatic renewals of the Product during the Relevant Time Period (“Legacy Newsletter Consumers”) and shall not be prohibited from billing, either directly or through a third party, in connection with such Legacy Newsletter Consumers.
38. Respondent, in connection with the advertising, marketing, promotion, offering for sale or selling, or providing of Products to Consumers directly or through a third party, pursuant to a Pre-notification Negative Option Plan, shall:
- a. Clearly and Conspicuously disclose in Promotional Material and in any separable device or material that the Consumer transmits or sends to Boardroom that may result in enrollment in the Pre-notification Negative Option Plan:

- i. that by ordering or purchasing a Product offered in the Promotional Material, the Consumer will be enrolled in a plan in which specified Products will automatically be sent to the consumer;
 - ii. that the Consumer will receive an announcement each time Respondent plans to send a Selection under the plan; and that the Consumer is required to notify Boardroom, directly or through a third party, in a specified manner if the Consumer does not wish to purchase a selection and that if Boardroom or the third party does not receive notification, it will send the Selection and bill the Consumer. In Advertising or Forms or other devices Consumers return or transmit to accept an offer that includes a Pre-notification Negative Option Plan, Respondent shall make disclosures relating to announcements and Forms in a sequence that is meaningful to the Consumer such that a reasonable Consumer would understand that prior to each selection, an announcement will be sent to the Consumer, and that the Consumer has obligations regarding the announcement and must return a Form in order to prevent Respondent from sending the Selection;
- b. Clearly and Conspicuously disclose in Promotional Material, immediately adjacent to the separate device or material that the Consumer transmits or sends to Boardroom that may result in enrollment in the Negative Option Plan:
 - i. that the Consumer will be provided with at least 10 days in which to mail or send a Form, contained in or accompanying an announcement identifying the Selection, to Boardroom or to a third party;

- ii. the frequency with which the announcements and Forms will be sent to the Consumer and the maximum number of announcements and Forms, if any, which will be sent during a twelve month period;
- iii. whether billing charges will include an amount for postage and handling;
- iv. the right of a Consumer to cancel membership at any time in accordance with the terms of the Pre-notification Plan, specifying the steps that the Consumer must take to cancel;
- v. that Boardroom will credit the return of any Selections sent back to it and that postage will be paid by Boardroom for returns of Selections if the Form was not received by the Consumer in time to afford the Consumer at least 10 days to mail back the Form to Boardroom.

39. Boardroom shall, before sending each Selection in a Pre-notification Negative Option Plan, mail to the Consumer:

- a. either at least 20 days prior to the Return Date, or
- b. at least 15 days prior to the mailing date, or
- c. in sufficient time to provide a mailing date at least ten days after receipt by the recipient; provided however the Consumer must have at least 10 days in which to mail the Form to Boardroom:
 - i. an announcement identifying the Selection Boardroom intends to mail to the Consumer and instructing the Consumer to return the accompanying form if the Consumer does not wish to receive the next Selection, which announcement shall be separate and apart from any other Advertising or Promotional Material for the Selection or for any other Product;

- ii. a Form contained in or accompanying the announcement, Clearly and Conspicuously disclosing that the Consumer will receive the Selection identified in the announcement unless the Consumer instructs Boardroom that he or she does not want the Selection, designating a procedure by which the Form may be used for the purpose of enabling the Consumer to so instruct Boardroom, and specifying either the Return Date or the mailing date.
- 40. Respondent, in connection with the advertising, marketing, promotion, offering for sale or selling, of Products to Consumers, directly or through a third party, pursuant to a Continuity Plan, shall:
 - a. Clearly and Prominently disclose, in Promotional Materials and in any separable device or material that the Consumer transmits or sends to Boardroom or to a third party that will result in enrollment in a Continuity Plan, the disclosures set forth in subsections a. i. and ii. below. If the Continuity Plan is offered both online and by charging payment for subsequent shipments of Products pursuant to the Continuity Plan to the Consumer's credit, debit or other account, then in such online Promotional Materials, the disclosures set forth in subsections a.i. and ii. and in subsections b.i.-iii. shall be presented together and preceded by the Clear and Prominent Title "Automatic Shipment Terms" or words of substantially similar meaning:
 - i. the Consumer is agreeing to receive (or authorizes Boardroom to send) automatic shipments of additional Products, (identifying the type of

Products) and the approximate interval between shipments, until the Consumer cancels;

- ii. the Consumer will be billed for the shipment, or the Consumer's account will be charged (whichever is applicable), including if applicable shipping and handling fees and taxes, and the event that will trigger the bill or charge, e.g., when the Product is shipped.

- b. Clearly and Conspicuously disclose in Promotional Materials and in any separable device or material that a Consumer transmits or sends to Boardroom or to a third party that may result in enrollment in a Continuity Plan:

- i. any obligation on the part of the Consumer to take affirmative action to cancel participation in the Continuity Plan, and instructions on how to cancel, all in accordance with Boardroom's cancellation policy, and the time frame in which cancellation must be made in order to avoid additional shipments;
- ii. whether the Consumer has a right to return or reject Products under the Continuity Plan, and if so, the procedure to be used by the Consumer in order to do so; and if applicable, that the Consumer will be responsible for return shipping charges;
- iii. the price of Products that will be shipped or a statement that the price in effect at the time of each shipment will apply, which may change over time.

41. Respondent, in connection with the advertising, marketing, promotion, offering for sale or selling, of Products to a Consumer, directly or through a third party, pursuant to an Automatic Renewal Plan, shall:
- a. Clearly and Prominently disclose in Promotional Materials and in any separable device or other material that a Consumer returns or transmits to Boardroom or to a third party that may result in enrollment in an Automatic Renewal Plan, the disclosures set forth in subsections a. i., ii., and iii. below. If the Automatic Renewal Plan is offered both online and by charging payment for subscription renewal to the Consumer's credit, debit or other account, then in such Promotional Materials the disclosures set forth in subsections a. i., ii., and iii. below, and in subsections b. i. and ii, must be preceded by the Clear and Prominent title "Automatic Renewal Terms," or words of substantially similar meaning:
 - i. the Consumer is agreeing to automatic renewal of the subscription and the time period of renewals, e.g., each year, until the Consumer cancels;
 - ii. the Consumer will be billed for the renewal, or the Consumer agrees that his or her account will be charged (whichever is applicable);
 - iii. the price of each subscription renewal or a statement that the price in effect at the time of each renewal will apply, which may change over time, and, if applicable, the Consumer may pay shipping and handling charges in addition to the subscription price.

- b. Clearly and Conspicuously disclose in Promotional Materials and in any separable device or other material that a Consumer returns or transmits to Boardroom or a third party that may result in enrollment in an Automatic Renewal Plan:
 - i. any obligation on the part of the Consumer to take affirmative action to avoid renewal or a financial obligation, e.g., contact Boardroom or, at the option of the Consumer, write “cancel” on an invoice and return it to Boardroom;
 - ii. for all Consumers who will be enrolled in an Automatic Renewal Plan with a renewal term longer than 90 days, the Consumer will be sent a notice, at least 28 days prior to the date the subscription will be renewed, which, in order to ensure receipt of all consecutive issues may be before the last issue is received by the Consumer, that will advise the Consumer of the date or the number of days from the receipt of the notice after which the subscription will be renewed, and the date or the number of days from the receipt of the notice by which Boardroom or its designee must be notified to prevent renewal.
42. Respondent, in connection with the advertising, marketing, promoting, offering for sale, or selling, of Products to Consumers, directly or through a third party, pursuant to a Trial Conversion Offer, shall:
- a. Clearly and Prominently disclose in Promotional Materials and in any separable device or other material that a Consumer returns or transmits to Boardroom or to a third party that may result in enrollment in the Trial Conversion Offer, for Products that must be returned if the offer is not accepted during the trial period,

the disclosures set forth in subsections a. i. through v. below. If the Trial Conversion Offer is offered both online and by charging payment to a Consumer's credit, debit or other account, then in such online Promotional Materials, the disclosures set forth in subsections a. i. through v. and in subsections b. i and ii. below must be presented together and preceded by the Clear and Prominent title, "Trial Offer Terms," or words of substantially similar meaning:

- i. the Consumer is agreeing to review the Product, for a period of time, stating the period;
- ii. that if the Consumer does not return the Product, the Consumer will be billed (or, if applicable, must pay the invoice sent with the Product), or the Consumer's account charged for the cost of the Product, and if true, that shipping or handling fees will be added and, if applicable, that tax will be added; provided that if the cost of the Product may be paid in installments, the representation of the amount of the installment payments shall include a statement that shipping or handling fees, if applicable, will be added and, if applicable, that tax will be added, and, if applicable, that fees will be added to each installment payment;
- iii. any obligation on the part of the Consumer if the Consumer does not want to keep and pay for the Product;
- iv. when the Consumer will be billed or the Consumer's account charged for the Product, or if applicable, when the Consumer must pay the invoice that accompanies the Product;

- v. the event that will trigger the start of the trial period.
- b. Clearly and Conspicuously disclose in Promotional Materials, to the extent not otherwise Clearly and Conspicuously disclosed on the separable device or other material that a Consumer sends or transmits to Boardroom or to a third party that may result in enrollment in a Trial Conversion Offer for Products that must be returned if the offer is not accepted during the trial period:
 - i. that the Consumer has the right to return the Product if the Consumer does not want to keep it or pay for it, and by what date or in what time period from the receipt of the Product it must be returned in order to avoid a financial obligation.
 - ii. the steps the Consumer must follow to return the Product.
- c. Clearly and Prominently disclose in Promotional Materials and in any separable device or other material that a Consumer returns or transmits to Boardroom or to a third party that may result in enrollment in the Trial Conversion Offer, for Products that do not need to be returned if the offer is not accepted during the trial period, the disclosures set forth in subsections c. i. through v. below. If the Trial Conversion Offer is offered both online and by charging payment to a Consumer's debit or credit card, then in such online Promotional Materials, it must be presented together and preceded by the Clear and Prominent title, "Trial Offer Terms," or words of substantially similar meaning:
 - i. the Consumer is agreeing to receive free issues or editions of the Products, for a period of time or for a number of issues or editions, stating the period of time or number of issues or editions;

- ii. that if the Consumer does not cancel the Trial Conversion Offer within the specified time frame in accordance with Respondent's cancellation policy, the Consumer will be billed, or the Consumer's account will be charged (whichever is applicable), for the specified price of the Product, and if true, that shipping or handling fees will be added and if applicable that tax will be added; provided that if the cost of the Product may be paid in installments, the representation of the amount of the installment payments shall include a statement that shipping or handling fees will be added and, if applicable, that tax will be added, and, if applicable, that fees will be added to each installment payment;
 - iii. any obligation on the part of the Consumer if the Consumer does not want to enroll in the offer for the Product;
 - iv. when the Consumer will be billed or the Consumer's account charged for the Product; and
 - v. the event that will trigger the start of the trial period.
- d. Disclose in Promotional Materials and in any separable device or other material that a Consumer returns or transmits to Boardroom or to a third party that may result in enrollment in the Trial Conversion Offer, the Offer Terms of any Negative Option Plan in which the Consumer will be enrolled if the Consumer does not cancel and/or return the Product offered under a Trial Conversion Offer, as applicable.

43. Respondent, in connection with the advertising, marketing, promotion, offering for sale or selling of Products to Consumers pursuant to a Negative Option Plan, directly or

through a third party, shall Clearly and Conspicuously disclose in an online offer for a Product, before obtaining or using the Consumer's billing information (including credit card and debit card numbers), or before the Consumer accepts the offer, whichever comes first, the cost of shipping and handling fees and all other costs associated with obtaining the Product, other than state sales or use taxes if any.

44. The disclosures in written or electronic offers, required to be made under paragraphs 38-42, shall contain no additional information, unless otherwise provided in this Assurance.
45. Respondent, in connection with the advertising, marketing, promoting, offering for sale, or selling of Products to Consumers, directly or through a third party, pursuant to a Negative Option Plan in which the Consumer must pay the shipping and handling costs to return Products to Boardroom in order to cancel participation in the Plan or to reject a particular Product or Selection, shall Clearly and Conspicuously disclose such obligation with other Negative Option Offer Terms at least once in the Promotional Materials and in any separable device or other material that a Consumer returns or transmits that may result in enrollment in a Negative Option Plan.
46. Respondent, in connection with the advertising, marketing, promoting, offering for sale, or selling of Products to Consumers, directly or through a third party, pursuant to a Negative Option Plan, shall not deceptively represent that the Consumer's enrollment in the Negative Option Plan will continue only if the Consumer takes further affirmative action.
47. Respondent, in connection with the advertising, marketing, promoting, offering for sale, or selling, or providing Products to Consumers, directly or through a third party, pursuant

to a Negative Option Plan, shall not deceptively use the terms “continuous service” or “continuous service guarantee” to refer to or describe a Continuity Plan for Products.

Representations of “Free”

48. Respondent, in connection with the advertising, promoting, offering for sale, or selling, or providing Products to Consumers, directly or through a third party, pursuant to a Negative Option Plan shall not deceptively represent that a Consumer owes, or must remit payment before the end of the “free” trial or preview in a Trial Conversion Offer.
49. Respondent, in connection with the advertising, promoting, offering for sale or selling, or providing Products to Consumers pursuant to a Negative Option Plan, or in billing or collection efforts pursuant to a Negative Option Plan, directly or through a third party, shall not deceptively advertise a Product, or a trial or preview of a Product, as “free,” or “totally free” “free trial” or “no obligation” or words of similar meaning or import if the Consumer must cancel or take other affirmative action, including paying to return the Product offered as free or any other Product, to avoid being billed or charged; provided however, it shall not be deceptive to use “free,” or “totally free,” “free trial” or “no obligation” or words of similar meaning or import, collectively referred to as “free,” to describe an offer that is conditioned upon enrollment in a Negative Option Plan so long as the fact of such enrollment is disclosed as follows:
 - a. Offer Terms relating to such offer are disclosed Clearly and Conspicuously in any separable device or other material, which is part of the Promotional Material, that a Consumer returns or transmits to Boardroom or to a third party, as required under the terms of this Assurance;

- b. that the receipt of the "free" Product or other Products is conditioned upon enrollment in a Negative Option Plan, e.g., "[] day preview – simply return the book if you choose not to purchase," "receive three free issues and cancel if you don't want to subscribe," or "free book with enrollment in an automatic shipment plan," that is: (i) Clearly and Conspicuously disclosed in Direct Proximity to the representations of "free" on the first page where "free" is presented; and (ii) Clearly and Conspicuously disclosed in Direct Proximity to the most prominent representation of "free" in the lesser of ½ the font size of the representation of "free" or 16 point font, on no less than every third page of a multi-page promotion in which "free" is used in other than the main body copy.
50. Respondent, in connection with the advertising, promoting, offering for sale or selling of Products pursuant to a Negative Option Plan to Consumers, directly or through a third party, shall, in any offer described as a "free preview," Clearly and Conspicuously disclose in Direct Proximity to the phrase "free preview" that the Consumer will be billed or charged, as applicable, for the Product and shipping and handling charges if the Consumer does not cancel or return the Product in accordance with Respondent's return policy; provided that such disclosure shall be made (i) at least once in the Promotional Material immediately adjacent to at least one prominent use of the term "free preview" (excluding use of such words in a headlines) and (ii) in any separable device or other material that a Consumer returns or transmits to Boardroom or to a third party.
51. Respondent, in connection with the advertising, promoting, offering for sale or selling, or providing Products to Consumers, directly or through a third party, in any Promotional Material containing an offer that includes one or more Negative Option Plans and that

represents that a Product or service offered pursuant to a Negative Option Plan is offered as “free,” “free trial,” “risk-free,” or words of similar meaning and import, then in the device or other material a Consumer returns or transmits that may result in enrollment in a Negative Option Plan, shall Clearly and Conspicuously disclose the Offer Terms, as applicable to the Negative Option Plan, in Direct Proximity to at least one prominent representation of “free,” “free trial,” “risk-free,” or words of similar meaning, for each Negative Option Plan offered.

52. Respondent, in connection with the advertising, promoting, offering for sale or selling, of Products to Consumers, directly or through a third party, pursuant to a Negative Option Plan, shall not deceptively represent a separable order device as "certificate" for "free" merchandise, a “free gift certificate,” a "free gift claim card," or other representations of similar meaning and import, or otherwise use such terms, if by responding to the offer a Consumer may be billed or the Consumer’s account charged for a Product or for shipping or handling charges; provided however, this shall not prevent Respondent from using such terms in a truthful, non-deceptive and non-misleading way, e.g., when the certificate may be used as payment or in lieu of payment, with no other terms or conditions attached to its use.

Express Informed Consent

53. For all Consumers who are solicited after the Implementation Period, Respondent, in connection with the advertising, promoting, offering for sale or selling of Products to Consumers, directly or through a third party, shall obtain the Consumer’s Express Informed Consent to enrollment in the Negative Option Plan and the Offer Terms applicable to the Negative Option Plan, before enrolling the Consumer in the Negative

Option Plan, sending any Products pursuant to such Negative Option Plan, or billing or charging a Consumer for such Products. With respect to Consumers who were solicited before or during the Implementation Period or during the Relevant Time Period to purchase Products in a Negative Option Plan and who also purchased such Products during the Implementation Period or the Relevant Time Period (as applicable), then Respondent shall be allowed to send the Consumer Products pursuant to such Negative Option Plan, provided that Respondent has provided a Confirmation Notice to the Consumer as outlined in paragraphs 103 and 104 below, and that the Consumer has not cancelled enrollment in the Negative Option Plan. Notwithstanding the foregoing, Respondent shall not be required to send Confirmation Notices to Legacy Newsletter Consumers and shall not be prohibited from sending newsletter Products to Legacy Newsletter Consumers under this paragraph.

54. Respondent, in connection with the advertising, promoting, offering for sale or selling of Products to Consumers, directly or through a third party, shall obtain the Consumer's Express Informed Consent to a one-time charge to a credit or debit card account in print, online or other electronic transaction, and to charges that will be made on a recurring basis, before making such charges to a Consumer's account.
55. Respondent, in connection with the advertising, marketing, promotion, offering for sale or selling, or providing of Products to Consumers directly or through a third party, in any Promotional Material containing an offer that includes more than one Negative Option Plan, shall disclose the Offer Terms as to each Negative Option Plan in a separate and distinct paragraph and shall provide a separate mechanism for Express Informed Consent for each Negative Option Plan; provided however, that for purposes of this provision, a

Trial Conversion Offer that unless canceled, results in enrollment in a Pre-Notification, Continuity or Automatic Renewal Plan shall be considered a single Negative Option Plan.

56. Respondent, in connection with the advertising, promoting, offering for sale or selling of Products pursuant to a Negative Option Plan to Consumers, directly or through a third party, in offers presented in interactive media such as the Internet, online services, or mobile applications, in addition to requirements set forth in other provisions in this Assurance shall:

- a. disclose the Offer Terms required to be disclosed in this Assurance in Direct Proximity to the mechanism that the Consumer must use to provide Express Informed Consent to enroll in the Negative Option Plan, which mechanism shall be separate and distinct from the mechanism used to accept the full offer or other terms of the offer;
- b. disclose the Offer Terms required to be disclosed in this Assurance, in the manner in which they are required to be disclosed, before obtaining the Consumer's billing information.
- c. Clearly and Conspicuously disclose, on each of the Initial Representations in which a representation of "free", "free preview," "trial," "risk-free" or words of similar meaning or import, or a representation of price that reflects both a substantial discount off of the regular selling price and a special price conditioned on the purchase of a Product as part of a Negative Option Plan is made, and on the landing page (if applicable) and on the web page or page in a mobile application through which an order is placed, immediately adjacent to the

most prominent triggering representation on each such page, that the offer includes enrollment in a Negative Option Plan, e.g., “with automatic yearly renewal,” or, “with your agreement to preview our book for 21 days and to return it if you do not decide to purchase,” or, “when you agree to receive automatic shipments of other [books].” The foregoing shall not apply to an Initial Representation consisting of a banner advertisement or search result provided that the disclosures required to be made hereunder are contained on the first webpage to which the Consumer will be directed upon clicking on the banner advertisement or search result;

d. not use, and shall not permit third parties to use, pre-checked boxes, that are intended to be used for acceptance of one or more Offer Terms or conditions of the Negative Option Plan.

57. Respondent, in connection with the advertising, promoting, offering for sale or selling, or providing Products to Consumers, directly or through a third party, shall Clearly and Conspicuously disclose in a notice with all shipments or deliveries of Products to Consumers on a review or trial basis or on the invoice sent in connection therewith: a) the date or event that will trigger any review or trial period, if any, and the date by which the Consumer must return the Product to avoid any obligation to pay for it; b) the date the Consumer will be billed or charged, or the invoice will be due if the Consumer does not return the Product or cancel, as applicable; and c) instructions on how to return the Product if the Consumer decides not to buy it, if the Consumer is required to return the Product in order not to be billed or charged for it.

Advertising Representations Relating to Benefits or Performance of Products

58. Respondent, in connection with the advertising, promoting, offering for sale or selling of Products to Consumers, directly or through a third party, shall not deceptively represent the benefits, qualities or performance of Respondent's Products.
59. Respondent, in connection with the advertising, promoting, offering for sale or selling of Products to Consumers, directly or through a third party, shall not deceptively represent the content of or any material fact about the Products, and shall not deceptively represent that a Product contains any material statement or claim that the Product does not, in fact, contain.
60. Respondent, in connection with the advertising, promoting, offering for sale or selling, or providing Products to Consumers directly or through a third party, shall not deceptively represent that a Product of Respondent will disclose, will show, or will prove, or will provide evidence that:
- a. Alzheimer's disease is preventable, reversible, curable, or that Alzheimer's plaques can be made to disappear;
 - b. There are secret vaccines that will beat prostate or breast cancer;
 - c. Food supplements can lower blood pressure or decrease artery plaque.
 - d. A vaccine can provide immunity to stroke damage;
 - e. The Consumer can make sure he or she never dies from cancer;
 - f. Melanoma is 100% curable;
 - g. A food supplement can build bone mass, cure osteoporosis or reduce broken bones.

Notices and Confirmations

61. Respondent shall Clearly and Conspicuously disclose with all shipments or deliveries of Products to Consumers and on all invoices, bills and renewal statements and notices sent to Consumers, and on each proprietary web-site, the name of the company as Boardroom or other properly registered trade name used by Boardroom and the mailing or physical address used on behalf of Boardroom, and a toll-free number or an e-mail address, and shall disclose in all initial shipments of Products in a Negative Option Plan that such contact information may be used to contact Boardroom to cancel enrollment in a Negative Option Plan.
62. For sales made via interactive media such as the Internet, online services or software of Products to Consumers pursuant to a Negative Option Plan, Boardroom shall send, directly or through a third party, a confirming e-mail with subject line "Confirmation from [trade name used in transaction]," or words of similar meaning and import, within one business day after a Consumer's enrollment in a Negative Option Plan is processed to Consumers for whom Boardroom or the third party has an email address. The email shall not contain any advertising messages. If the subject of the email is enrollment in a Negative Option Plan, the Offer Terms shall be included in the email, in the manner set forth in this Assurance.
63. Respondent shall provide Consumers a written acknowledgement in connection with the delivery of the first Product mailed or delivered pursuant to a Negative Option Plan in which enrollment was made via interactive media other than mobile applications, such as the Internet or online services, in addition to other disclosures required to be made under the terms of this Assurance, unless such disclosures have already been made in such

mailing pursuant to other provisions of this Assurance, a written acknowledgement by email or regular mail, at Respondent's option, Clearly and Conspicuously disclosing:

- a. that the Consumer enrolled in the Negative Option Plan via interactive media such as the Internet, online services or software, whereby the Consumer agreed to preview a Product and return it if not purchased, or to receive automatic shipments of Products or automatic renewals of subscriptions, whichever is applicable;
- b. a Clear and Conspicuous statement of the procedures by which the Consumer can cancel or obtain a refund, as applicable; and
- c. the date the Consumer enrolled in the Negative Option Plan.

64. Respondent, in connection with the advertising, promoting, offering for sale or selling, or providing of Products, directly or through a third party, in a Negative Option Plan in which a subscription is automatically renewed with a renewal term of 90 days or longer, in addition to the requirements for Automatic Renewal Plans specified herein in paragraph 41, shall:

- a. Other than in mobile applications, send a notice via first class mail, (or by email if Respondent Clearly and Conspicuously discloses in Promotional Material, or in the separate device or material that the Consumer transmits or sends to Boardroom that may result in enrollment in the Negative Option Plan, that the Consumer may choose to receive notices by email and the Consumer agrees to receive notices by email), at least 28 days but no longer than 60 days prior to the date the subscription will be renewed, which, in order to ensure receipt of all consecutive issues, may be before the last issue is received by the Consumer;

provided, however, Respondent may elect, at its sole option, to send notices via first class mail in lieu of email. The notice shall Clearly and Conspicuously disclose only the following:

- i. the Consumer will be charged or billed, as applicable, for an automatic renewal, and if charged to an account, the prior form of payment;
- ii. the Product that will be renewed;
- iii. the price of the renewal and the shipping and handling fees if the Consumer will be charged, if applicable;
- iv. the tax that will be billed or charged to an account, if applicable;
- v. the ways in which and the procedure to be used by the Consumer to cancel the renewal which must be in accordance with Respondent's cancellation policy;
- vi. the date or time period within which the cancellation must be received in order to avoid being charged or billed; and
- vii. the Consumer's Automatic Renewal Plan account number;

provided that, Respondent shall not send an automatic renewal notice to any Consumer who has not given Express Informed Consent to the terms and conditions of the Automatic Renewal Plan, nor shall Respondent automatically renew such subscriptions; provided, however, with respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan, and who also purchased such Products before or during the Implementation Period, then Respondent shall be allowed to send an automatic renewal notice pursuant to such Negative Option Plan, or bill or charge a Consumer for such Products, provided, Respondent has provided

a Confirmation Notice as outlined in paragraphs 103 and 104 below, and the Consumer did not cancel enrollment in the Negative Option Plan. Notwithstanding the foregoing, Respondent shall not be required to send Confirmation Notices to Legacy Newsletter Consumers and shall be allowed to send automatic renewal notices and bill or charge Legacy Newsletter Consumers for newsletter Products purchased before the Relevant Time Period.

b. in mobile applications, utilize renewal notice procedures available through the mobile platform.

65. Respondent shall not send Consumers announcements of a Selection or automatic shipment of Products in a Continuity or Pre-notification Negative Option Plan, unless the Consumer after the Implementation Period has given Express Informed Consent to the terms and conditions of the Plan; provided, however, with respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan, and who also purchased such Products before or during the Implementation Period, then Respondent shall be allowed to send a Selection or automatic shipment of Products, as applicable, pursuant to such Negative Option Plan, or bill or charge a Consumer for such Products, provided, Respondent has provided a Confirmation Notice as outlined in paragraphs 103 and 104 below, and the Consumer did not cancel enrollment in the Negative Option Plan.

Customer Service

66. Respondent will ensure that calls from Consumers to Boardroom's customer service during business hours, or to a third party that provides customer service on behalf of Boardroom, relating to any matter described in paragraph 26 are answered promptly, or if

the call is not placed during business hours that the calls are responded to promptly, and that Consumers are not placed on hold for longer than 2 minutes during a call unless the Consumer is told that a longer period of time will apply. Respondent shall be responsible for compliance with these policies and procedures and shall gather such data and reports that show compliance with such policies and procedures by its employees and third parties.

67. Respondent shall answer, and shall require third parties acting on Respondent's behalf, to answer telephone calls, e-mail and other electronic and written communications relating to any matter described in paragraph 26 in a reasonable and timely manner, but in no event longer than 5 business days from the date of the Consumer's communication. Respondent shall monitor and keep reasonable records of the response times for all such communications.
68. Respondent shall fully and promptly investigate any complaint relating to Negative Option Plans, renewal of subscriptions, shipping and handling charges, billing, collections, offers of free merchandise, or Merchandise Not Ordered, collectively referred to as "Complaints," and shall resolve the Complaint and notify the Consumer of the resolution as reasonably practicable, but no later than 10 business days after receipt.
69. Respondent shall provide, and shall require third parties acting on Respondent's behalf to provide, adequate customer service staffing to receive and timely respond to Consumers' inquiries and Complaints relating to any matter described in paragraph 26.
70. Respondent shall promptly honor a Consumer's request to cancel participation in a Negative Option Plan at the request of the Consumer, subject to Boardroom's cancellation policy, as soon as reasonably practicable after receipt of the request.

71. Respondent shall provide a return postage label to any Consumer who requests one in order to return a Product and exercise his/her rights under the applicable provisions of the Negative Option Plan, and who represents to Respondent, directly or through a third party, that the Product was not ordered. In any contact with any such Consumer who represents that a Product received from Boardroom was not ordered, Boardroom, or a third party acting on Boardroom's behalf, shall inform the Consumer that if the Product was not ordered, the Consumer is not obligated to return the Product and may keep it as a gift; provided however, that if Boardroom has a record establishing that the Product was received in a Negative Option Plan in Compliance with the terms of this Assurance, Boardroom is not required to make such disclosure or to provide the return postage label; further, provided, with respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan, and who also purchased such Products during such time period, then Respondent shall not have to make such disclosure about a gift or provide a return postage label if, Respondent has provided a Confirmation Notice as outlined in paragraphs 103 and 104 below, and the Consumer did not cancel enrollment in the Negative Option Plan.
72. Respondent shall not ship Products pursuant to a Negative Option Plan to a Consumer from whom Respondent has received and processed a request to cancel enrollment in the Negative Option Plan. It is acknowledged that it is not reasonably practicable for Respondent to retrieve materials that have already been mailed or generated prior to receipt and processing by Respondent of the cancellation request.
73. Respondent shall require that each third party with whom Boardroom enters into a contract to provide fulfillment or customer service with respect to the Products, agree in

such contract to comply with the terms of this Assurance to the extent applicable to the services provided by the third party.

74. Upon the request of any Consumer, Boardroom shall promptly transmit copies of documents that show the Consumer's Express Informed Consent to enrollment in a Negative Option Plan or to otherwise purchase or be billed for Products, including statements of account, invoices, letters, and offers to which the Consumer responded and evidence of the Consumer's Express Informed Consent to enroll in a Negative Option Plan, or to make a purchase.
75. Boardroom shall process returns of Products and cancellation requests within 10 days of the date of receipt.

Billing

76. Respondent shall not bill a Consumer or charge a Consumer's account for a Product that is not delivered to the Consumer. Boardroom shall verify the shipment of the Product, and Boardroom's approximate expected delivery date, within 7 business days from the time a Consumer makes Boardroom aware that a Product has not been received. In the event that the Consumer does not receive the shipment of the Product, Boardroom will take the necessary corrective action to resolve the Consumer's concern.
77. Respondent shall not bill a Consumer or charge a Consumer's account for a Product that has been returned to Boardroom and received by Boardroom or a third party authorized to act on Boardroom's behalf, which return is in accordance with the applicable return policy, or which Product has been paid for by the Consumer. If the Consumer returns a Product in accordance with Boardroom's return policy and has paid for the Product in whole or in part, Respondent shall send the Consumer a refund or credit the Consumer's

account as applicable in accordance with Boardroom's return policy. Refunds shall be sent or credits shall be issued within 30 days of the receipt of the Product by Boardroom or a third party authorized to act on Boardroom's behalf. If a Consumer has not yet paid for a Product in whole or in part, and the Consumer returns the Product in accordance with Boardroom's return policy, Boardroom shall credit such returns and shall not bill the Consumer for the returned Product.

78. With respect to sales of Products to Consumers pursuant to a Negative Option Plan, Respondent shall not charge a Consumer's account for a Product during the free trial period of the Product, if applicable, unless the Consumer expressly agrees, prior to the expiration of the trial period, to purchase the Product and be charged for it, or pays for the Product during the trial period.
79. With respect to sales of Products to Consumers pursuant to a Negative Option Plan, Respondent shall not demand payment from a Consumer for a Product in connection with a Trial Conversion Offer during any free trial or preview period; provided, however, nothing shall prevent Respondent from sending an acknowledgment during a free trial or preview period setting forth the amount that will become due after the expiration of the free trial or preview period if the acknowledgement Clearly and Conspicuously states when the amount is due and under what conditions. Further, nothing shall prevent Respondent from accepting payment from a Consumer to the extent the Consumer chooses to remit payment before the expiration of the free trial or preview period.
80. Respondent shall Clearly and Conspicuously state the date payment is due, or the number of days from the invoice date within which payment is due, on all invoices sent to Consumers who enrolled in a Negative Option Plan during the Relevant Time Period.

81. Respondent's first bill or invoice sent to Consumers for each new Product sold under the applicable Negative Option Plan shall include instructions on: a) how to cancel participation in a Negative Option Plan in accordance with Respondent's cancellation policy, if the Product is subject to the Plan; and b) how to return the Product to Boardroom, if a Consumer is responsible for returning the Product to avoid being billed or the Consumers' account charged.
82. Respondent shall not solicit the payment of money by means of a statement or invoice, or any writing that would reasonably be interpreted as a statement or invoice, for Products not yet ordered unless there appears on the face of the statement or invoice or writing in 30 point bold-faced type the following warning:

This is a solicitation for the order of Products, and you are under no obligation to make payment unless you accept the offer contained herein.

Telemarketing

83. In addition to other provisions set forth in this Assurance, in Telemarketing sales made to Consumers, including upsells, directly or through a third party, Respondent shall comply with the TSR, attached to this Assurance as Exhibit B and made a part hereof, as and to the extent applicable, and as defined therein.
84. Respondent, in connection with the advertising, marketing, promotion, offer for sale, selling or in providing Products to Consumers, or in billing or collection efforts, shall comply with the Florida Telemarketing Act, Chapter 501, Part IV, Florida Statutes (2012), as and to the extent that the Act applies to Respondent and its conduct.

Collections

85. Respondent shall not refer or sell the account or purported debt of any Consumer who was enrolled in a Negative Option Plan during the Relevant Time Period or before the

end of any applicable Implementation Period to any third party for collection on a debt for one year subsequent to the Effective Date, except as provided in paragraph 37.

86. Respondent shall cease, and shall instruct each third party engaged in the collection of debts based upon sums purportedly owed to Boardroom by a Consumer who was enrolled in a Negative Option Plan before the end of the Implementation Period or during the Relevant Time Period to cease, all collection efforts relating to such debts or sums purportedly owed to Boardroom. In this regard, Respondent represents and warrants that it has authority to prevent such third parties from engaging in collections or sending dunning or collection communications. Respondent shall obtain written confirmation from all third parties within 30 days from the Effective Date that they have ceased all collection efforts relating to the aforementioned Consumers and immediately provide the original, signed letter to the OAG. To the extent that any such Consumer contacts Respondent during a period of up to one year subsequent to the Effective Date to inquire about the collection of any such debts by Respondent or a third party engaged in collection of such debts on Respondent's behalf, Respondent shall notify such Consumer that the third party has ceased collection efforts.

87. Boardroom shall notify, within 30 days of the Effective Date, all credit reporting agencies, as to each Consumer who has been reported to the agency and who were enrolled in a Negative Option Plan during the Relevant Time Period as a result of a purported debt owed by the Consumer to Boardroom, that as a result of an agreement with the Florida Office of the Attorney General, all information related to such Consumer's debt, and all negative information related to such debt or to such Consumer's account with Boardroom, must be removed. Boardroom shall obtain confirmations from

the credit reporting agencies of receipt of the notification and deletion of any negative information submitted by Respondent or any entity working to collect Consumers' debts attributable to a Boardroom Product.

88. Boardroom, in invoices sent to Consumers, directly or through a third party, who were enrolled in a Negative Option Plan during the Relevant Time Period or prior to the end of the Implementation Period shall not represent that a Consumer's credit will be at risk or damaged or that the Consumer's account will be sent to collections, or words of similar meaning or import.
89. After the one year period subsequent to the Effective Date, in the event that Boardroom sends or assigns a Consumer's account to a third party for the collection of delinquent accounts, Boardroom shall send a notice to the Consumer, via first class mail, at least 10 days but not longer than 30 days before the account is sent or assigned, of Boardroom's intention to do so, and shall include the amount Boardroom believes is owed, the Products for which the amount is owed, what the Consumer may do to avoid the transfer of the account, and the date by which payment must be received in order to avoid the transfer. No promotional statements or advertising shall be included in the notice. The notice shall be mailed in a white envelope Clearly and Conspicuously marked on the front in black, bold 14 point or larger font **"IMPORTANT NOTICE: Do Not Discard,"** or words of similar meaning and import, with no other advertising or color appearing on the envelope.
90. Respondent shall not attempt to collect, and shall not allow third parties to attempt to collect for a Product from Consumers who have paid for a Product in full or who have returned the Product in accordance with Boardroom's cancellation policies; provided,

however, that a Consumer's receipt of any such collection notice from Respondent or a third party prior to Respondent's processing of the Consumer's payment or return shall not be deemed to be a violation of this paragraph. For the sake of clarity, Respondent is not in violation of this paragraph if Respondent sends the notice prior to its processing of the payment or return.

Deceptive and Unfair Representations

91. Respondent, in connection with the advertising, promoting, offering for sale or selling, or providing of Products, directly or through a third party, or in or in billing or collection efforts, shall not:
- a. represent that a Product has been ordered by the Consumer when it has not been ordered by the Consumer;
 - b. represent that a Consumer has agreed to be enrolled in a Negative Option Plan or has accepted the terms and conditions of such a plan, when the terms and conditions of the Negative Option Plan have not been Clearly and Conspicuously disclosed to the Consumer or the Consumer has not given Express Informed Consent to enrollment in such Plan pursuant to the terms of this Assurance; provided, however, with respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan, and who also purchased such Products before or during the Implementation Period, then Respondent shall not be bound by the terms of this subparagraph b., provided a Confirmation Notice has been provided to the Consumer as outlined in paragraphs 103 and 104 below and the Consumer has not cancelled enrollment in the Negative Option Plan. Notwithstanding the foregoing, Respondent shall

not be required to send Confirmation Notices to Legacy Newsletter Consumers and shall not be bound by the terms of this subparagraph b with respect to Legacy Newsletter Consumers.

92. After the Implementation Period, Respondent, in connection with the advertising, promoting, offering for sale, or selling of Products directly or through a third party, or in providing Products to Consumers, pursuant to a Negative Option Plan, or as Merchandise Not Ordered, or in billing or collection efforts, shall not:
- a. deceptively represent the price of a Product, or the cost to obtain or use a Product;
 - b. deceptively represent that a Consumer ordered a Product;
 - c. deceptively represent the amount a Consumer will be charged or billed;
 - d. deceptively represent the risks or obligations, or the absence of risk or obligation, attendant to a Negative Option Plan;
 - e. deceptively represent risks or obligation, or the absence of risk or obligation, attendant to the acceptance of an offer;
 - f. deceptively represent the risks or obligations, or the absence of risk or obligation, attendant to a “free” offer;
 - g. deceptively represent that a Consumer owes money;
 - h. deceptively represent that a Consumer agreed to pay for a Product;
 - i. deceptively represent that a Consumer has an obligation to pay for a Product;
 - j. deceptively represent that a Consumer has not met an obligation to pay for a Product;
 - k. deceptively represent any material term or condition of a Negative Option Plan;

- l. deceptively represent, in Internet offers, the purpose for any button or similar mechanism that may be used by a Consumer, or the consequence to a Consumer for utilizing the mechanism;
- m. deceptively represent when payment for a Product is due or owing;
- n. deceptively represent by label, heading or title on an order card or other material used to submit an order, the nature, purpose, benefit, or consequences attendant to the offer or responding to an offer.

Electronic Fund Transfers

93. Respondent, in connection with the sale directly or through a third party of Products to Consumers subsequent to the Effective Date, shall comply with the following provisions as and to the extent they apply: § 205.3(b)(2) of the Regulation E, 12 C.F.R., §205(3)(b) as more fully set out in § 205.3(b)(2) of the Federal Reserve Board's Official Staff Commentary to Regulation E 12 C.F.R. § 205 Supp. 1 or as they may be hereafter amended; § 907 of the Electronic Funds Transfer Act, 15 U.S.C. § 1693, or as they may hereafter be amended and § 205.10(b)(d) of Regulation E, 12 C.F.R. § 205.10(b)(d), as more fully set out in § 205.10(b) of the Federal Reserve Board's Official staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. 1, or as they may hereafter be amended.

E. CONSUMER REFUNDS

94. It is agreed that within 45 days of the Effective Date of this Assurance, Respondent or a third party designated by Respondent with the approval of the OAG, which approval shall not be unreasonably withheld, shall mail the notice and claim form attached hereto as

Exhibit C, ("Refund Notice") via first class mail, to each Consumer who during the Relevant Time Period:

- a. enrolled in a Negative Option Plan for a Product and paid for one or more Products offered under the Negative Option Plan. Consumers who only paid for an initial Product that they affirmatively ordered, other than in a Trial Conversion Offer, are not required to be sent a Refund Notice based solely on such a purchase; or,
- b. was sent an unordered Product by Respondent, directly or through a third party, and who paid for the Product;

provided however, Respondent shall not be required to mail a Refund Notice to Consumers described in subparagraph a or b who: (i) paid for a Product within 105 days from the date the order for the Product was entered by Respondent or a third party who processes orders for Products on Respondent's behalf; (ii) enrolled in an Automatic Renewal Plan and subsequently paid for at least four automatic renewals of the Product, or (iii) enrolled in a Continuity Plan, and subsequently paid for at least four continuity shipments of the Product. The Consumers entitled to receive a Refund Notice under this paragraph shall be collectively referred to as "Eligible Consumers."

95. The Refund Notice specified in Paragraph 94 shall list all applicable Products shipped during the Relevant Time Period for which the Consumer had not received a full refund ("Eligible Products") as described in paragraph 2 and shall offer to refund all sums paid by the Consumer for such Products. Boardroom shall include a pre-addressed, postage paid envelope for Consumers to use to return a signed refund claim form.

96. The front of the envelope transmitting the Refund Notice shall be in the form of Exhibit D to this Assurance. The phrase "Attention: Notice of Refund Offer" shall be in red, 14 point or larger typeface.
97. Respondent or a third party designated by Respondent with the approval of the OAG, which approval shall not be unreasonably withheld, shall issue a refund consisting of the amount paid for the Products referenced in the Refund Notice, including the tax and shipping and handling charges paid in connection with the purchase of the Products, to each Consumer entitled to a refund offer under paragraph 94 of this Assurance who responds to the Refund Notice within a period of 60 days from the mailing of such notices.
98. Respondent or the designated third party shall issue a refund of the amount paid plus the tax and shipping and handling charges to any Consumer who, during the Relevant Time Period, paid Boardroom for a Product and who notifies Respondent that the Product was not ordered and that the Consumer wishes a refund of the purchase. Respondent shall provide a claim form for such Consumers, attached as Ex. E hereto, upon request made by calling Respondent's toll-free number or through Respondent's web-site.
99. The refund checks shall be mailed in plain white envelopes that disclose only a return address containing the name "Boardroom, Inc." and Respondent's address. The envelope shall contain only the refund check and a short statement identifying the check as the refund previously requested by the Consumer.
100. Respondent or a designated third party shall issue and mail a refund required to be paid under the terms of the Assurance within 30 days of the receipt of a request for a refund.

101. Respondent shall maintain sufficient telephone lines and electronic hardware and software, and sufficient personnel, to respond to Consumers who contact Respondent with regard to this Assurance or requests for refunds, or to register a Complaint.
102. Respondent may make it a condition of redemption of any refund check that will ensure the Eligible Consumer waives all other recourse and remedy and fully releases Respondent from all claims related to the Eligible Products.
103. With respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan excluding Legacy Newsletter Consumers, and who also enrolled in a Negative Option Plan before or during the Implementation Period, and who have an unpaid balance with Respondent with respect to the Negative Option Plan in which the Consumer enrolled, no later than 45 days following the expiration of the Implementation Period, Boardroom shall enclose in the next invoice scheduled to be sent to the Consumer or in a separate, first-class mailing, a notice in the form attached hereto as Exhibit F, "Confirmation Notice. " The mailing in which the invoice and notice is enclosed shall contain no other documents, other than a reply envelope and a return postage paid label. The notice shall be placed in the mailing so that it is unavoidable and likely to be seen and read by the Consumer. Respondent may request that Consumers who are sent the notice under this paragraph return the Product as long as a postage paid label for that purpose is enclosed with the invoice.
104. With respect to Consumers who were solicited before or during the Implementation Period to purchase Products in a Negative Option Plan excluding Legacy Newsletter Consumers, and who also enrolled in a Negative Option Plan before or during the Implementation Period, and whose accounts are currently paid in full but who are

enrolled in an Automatic Renewal Plan or a Continuity Plan, no later than 45 days following the expiration of the Implementation Period, Respondent shall mail to the Consumer via U.S. first class mail, a notice in the form attached hereto as Exhibit G, "Confirmation Notice." The notice shall be mailed in a plain white envelope that discloses only a return address containing the name "Boardroom, Inc." and directly underneath "(Bottom Line Publications)" and Respondent's address. The front of the envelope transmitting the notice shall include the phrase "Attention: Notice of Automatic Shipments" or "Attention: Notice of Automatic Renewals" (as applicable), which phrases shall be in red, 14 point or larger typeface.

F. REPORTS AND RECORDS

105. Respondent, for a period of 2 years after the date the last Refund Notices are mailed under paragraph 94, shall retain all data relating to the notice process, including but not limited to the process used to select Consumers to whom the Refund Notice is mailed and to each person who was mailed the Refund Notice. Respondent shall create a spreadsheet from such data relating to the notice process, including for each Consumer to whom a notice is sent, the following information in separate fields: the account number; first name; middle initial, if any; last name; street address; mailing address, if different from street address; city; state; zip code; telephone number and e-mail address, if available, and whether the Consumer has been identified as deceased; each of Respondent's Eligible Products identified in each Refund Notice; the type of Negative Option Plan in which each Product was provided; the date such notice was mailed; the Eligible Product(s) for which a refund is sought; the Eligible Product(s) for which a refund was provided; the amount of any refund; the amount of refund attributed to shipping and handling charges

(to the extent Respondent can determine these fees) and taxes (to the extent Respondent can determine these taxes); the date the refund request was received; the date the refund was mailed; the Eligible Products for which the refund was made; and an explanation of any discrepancy between the amount sought and the amount refunded.

106. Respondent shall produce the data and spreadsheet maintained as described in paragraph 105 to the OAG within 15 days of the receipt of a request from the OAG. Respondent shall produce the spreadsheet required by paragraph 105 herein 6 months from the date the last Refund Notices are mailed in accordance with paragraph 94 herein. In the event that Respondent claims that such information in whole or part is trade secret or confidential, Respondent shall produce, in addition to such information, a summary report that summarizes the data without disclosing the asserted trade secret or confidential information. The summary report shall state the number of Refund Notices that were sent, the number of Consumers who responded, the number of each specific Product for which refunds were sought, the amount due to Consumers based upon the claims filed for purchase price, shipping or handling, and taxes, the total amount refunded to Consumers for the purchase price, shipping or handling, and taxes, and the number of refunds provided. Respondent shall not claim that the summary report or its contents are trade secrets or confidential, and the summary report and its contents shall not be trade secret or confidential.
107. Respondent shall develop, within 60 days following the Effective Date, written policies and procedures relating to Complaints transmitted to Respondent or to any designated third party by mail, email or calls placed to Respondent's designated toll-free number or

into other numbers for Respondent or for third parties who handle such Complaints by agreement with Respondent, as follows:

- a. receiving and responding to Complaints;
- b. promptly and fully investigating Complaints;
- c. regular and detailed recording and reporting of Complaint data, in writing, from Respondent's employees and third parties to customer service managers and other personnel who have direction or control over decisions related to Complaints, advertising and marketing;
- d. the segregation and retention of all written Complaints and the creation and retention of records of Complaints received by telephone and through electronic means, regardless of whether such Complaints are received by Respondent or by a third party under agreement with Respondent to receive or respond to Complaints; and
- e. requests for cancellation of enrollment in Negative Option Plans by Consumers.

108. Respondent shall develop, within 60 days following the Effective Date, written policies and procedures relating to:

- a. ensuring that the disclosures that are required to be made under the terms of this Assurance in Advertising Respondent's Products are being made;
- b. handling of calls and other contacts received from Consumers regarding the Refund Notices;
- c. making and retention of documents and information required to be made and retained under the terms of this Assurance of Voluntary Compliance;

- d. disciplinary processes and actions against third parties under agreement with Respondent to provide customer services who are not in compliance with this Assurance; and
 - e. all other policies and procedures reasonably necessary to effectuate compliance with the terms of this Assurance.
109. Respondent shall immediately upon completion distribute only those policies and procedures described in paragraphs 107 and 108 to Respondent's officers, directors, managers, and supervisors of employees whose conduct is intended to be directly affected by such policies and procedures, as applicable and shall complete such distribution within 90 days of the Effective Date. Respondent shall provide third parties involved in any aspect of advertising, marketing, sales, fulfillment billing or collection, and all customer service employees, with all such policies and procedures relevant to their participation. Respondent shall maintain a record of all recipients of policies and procedures and the date they were provided to the recipients.
110. Respondent shall use reasonable efforts to effectuate, maintain and monitor the policies and procedures described in paragraphs 107 and 108 and shall maintain documents and records of such efforts.
111. Respondent shall segregate and retain for a period of four (4) years after the date of receipt in a readily retrievable manner, the following:
- a. all written and electronically transmitted Complaints, as such term is defined herein, relating to Negative Option Plans, renewal of subscriptions, Products containing a deceptive representation prohibited under paragraph 92 of this Assurance, shipping and handling charges, billing, collections, offers of free

merchandise, failure to respond to a Complaint, Merchandise Not Ordered, and copies of all written or electronic responses to such Complaints and documents sufficient to evidence the manner in which such Complaints were handled or resolved.

- b. a record of every Complaint, as such term is defined herein received by phone, relating to Negative Option Plans, renewal of subscriptions, Products containing a deceptive representation prohibited under paragraph 92 of this Assurance, shipping and handling charges, billing, collections, offers of free merchandise, failure to respond to a Complaint, Merchandise Not Ordered, including, in separate fields: the first name of the Consumer, the last name of the Consumer, and address of the Consumer including in separate fields the street address, city, state and postal code; date of Complaint; a detailed summary of the Complaint as stated by the Consumer, a detailed summary of Respondent's response to the Complaint; the reason for cancelling; the Product provided in the Negative Option Plan or otherwise the subject of the Complaint; nature of response and date of response; final resolution and date of resolution;
- c. records sufficient to reflect requests from Consumers to cancel participation in a Negative Option Plan, and records of all requests for such cancellations received by phone, including in separate fields: the first name of the Consumer, the last name of the Consumer, and address of the Consumer including in separate fields the street address, city, state and postal code; telephone number and address if known; and all documents relating to Respondent's cancellation of such Plans;

- d. all original and non-identical copies of training and marketing materials used by Respondent or third parties relating to Negative Option Plans, Complaints, renewal of subscriptions, billing or collections;
- e. order cards, recordings, and other devices evidencing Express Informed Consent to offers or to enrollment in a Negative Option Plan on the terms and conditions disclosed, for each transaction in which a Consumer makes a purchase or is enrolled in a Negative Option Plan;
- f. all materially different Advertising and offers for Respondent's Products distributed to Consumers, whether distributed by Respondent directly or through any third party, and all documents relating to distribution of such Advertising.
All Internet Advertising and offers shall include the complete order path, from the Initial Representation through order and confirmation pages and all e-mails;
- g. all audits, reports and analyses relating to Respondent's Negative Option Plans, Complaints, or compliance by Respondent and third parties with this Assurance.
- h. the following data with regard to each Product sent or distributed by Respondent to Consumers as part of a Negative Option Plan: identification of the Plan; approximate dates of distribution; number distributed; names and addresses of Consumer who are recipients; price of Product; name and address of Consumers who paid, cancelled enrollment, or did not respond; approximate dates of billing; and
- i. records of payment and account information for Consumers who are enrolled in, or sent Products in a Negative Option Plan.

112. Respondent shall, for a period of 4 years from the Effective Date, have specific employees whose job responsibilities include assuring compliance with this Assurance, with at least one such employee reporting directly to the President.
113. Respondent, and third parties employed to perform customer service on behalf of Respondent, shall on a regular basis, but no less frequently than monthly, create reports that number, categorize, and summarize each Complaint received under paragraphs 111a and b with sufficient detail so that the recipient of such reports may read and understand the Complaint without reference to other documents. The reports, with supporting data, shall be transmitted to the employees described in paragraph 112, who shall be responsible for investigating Complaints which, if true, evidence a violation of this Assurance, and resolving the Complaints to the satisfaction of the Consumer. If any such Complaint provides evidence that other Promotional Material or Advertising is not in compliance with this Assurance, Respondent shall, as applicable: (a) investigate the matter; (b) offer refunds to Consumers who have paid for Products as a result of the practice, Promotional Materials or Advertising; and (c) discontinue the practice, Promotional Materials or Advertising.
114. For a period of 2 years after the Effective Date, Respondent shall make and retain corporate organizational charts that show the positions at every level of management and control within Respondent that are responsible for compliance with this Assurance, and the names and titles of employees who hold the positions. The documents required to be written or maintained under paragraphs 111 and 113 herein shall be produced at the request of the OAG at the offices of the OAG within 30 days of receipt of such request. By entering into this Assurance and producing the documents referenced in this

paragraph, Respondent does not waive any claim of confidentiality or trade secret regarding documents sought to be produced. Respondent may submit business sensitive and confidential documents pursuant to any applicable exemption from disclosure under the Florida public records law. Documents are not deemed exempt from the public records law based solely upon such a claim.

115. For a period of 4 years from the Effective Date, Respondent shall notify the OAG in the event of a change in management or control of Respondent and simultaneously provide a statement or report detailing the changes.

COMPLIANCE MONITORING

116. For the purpose of monitoring and investigating compliance with any provision of this Assurance, Respondent agrees that, for a period of 3 years from the date of this Assurance, upon the written request of the OAG, Respondent shall provide business records or documents and make any requested information available that are reasonably necessary to enable the OAG to monitor compliance with this Assurance, which documents and information are not specifically set forth in paragraphs 107-115 herein, within thirty (30) days of the request, at its business office or at the OAG's office, at the election of the OAG.
117. Respondent shall, on a quarterly basis beginning 3 months after the Effective Date, and for a period of 2 years, provide written reports to the OAG that include:
 - a. a summary of the information required to be retained under paragraphs 111a and
 - b of this Assurance and Respondent's responses and other documents related to such Complaints; and

- b. reports of investigations conducted under paragraph 113 of this Assurance, including findings made and Respondent's response.

118. Respondent shall reasonably monitor its in-house and third party telephone sales and customer service representatives for compliance with the terms of this Assurance. For a period of 2 years from the date of this Assurance, such monitoring shall include the following, at a minimum:

- a. requiring in writing that its third party customer service vendors comply with Respondent's policies and procedures enacted pursuant to the terms of this Assurance;
- b. monitoring (with the consent of the Consumer) a reasonable sample of calls made and received each month by each customer service vendor and reviewing them for compliance with this Assurance;
- c. drafting all scripts, or approving scripts of third parties; and
- d. taking appropriate disciplinary measures with respect to any third party or customer service representative who Respondent determines is not complying with the requirements of this Assurance, and thoroughly documenting such discipline. The range of disciplinary measures shall include, but shall not be limited to, terminating a contractual relationship with a third party vendor or an employment relationship with a Respondent employee, as permitted by law and as limited by Respondent's contractual rights and obligations.

119. The records required to be made or retained in paragraphs 107-115 and documents requested in paragraph 116 herein, shall be produced upon request or in accordance with those paragraphs, as they are maintained in the normal course of business. Documents

created in electronic format must be produced in their native electronic format. To the extent that a document has been electronically scanned (for any purpose), the document must be produced in a TIFF or .pdf format. For information contained in databases, the information shall be produced in Excel spreadsheet format (.xls), Microsoft Access (.mdb), or if not possible, comma-separated text files (.csv) or txt format. For electronic mail systems using Microsoft Outlook or LotusNotes, all emails and, if applicable, email attachments and any related documents shall be produced in their native file format (e.g., .pst for Outlook).

F. ATTORNEY'S FEES AND COSTS

120. Respondent, upon the return of the Assurance executed by all parties with the exception of the OAG, shall pay to the State of Florida, Office of the Attorney General, attorney's fees and costs of investigation and the cost of future monitoring of compliance with this Assurance of Voluntary Compliance in the sum of three hundred thousand dollars (\$300,000.00). Respondent shall pay this amount in three installments as follows: (a) the first installment of \$100,000.00 shall be paid within ten days after the Effective Date of this Assurance; (b) the second installment of \$100,000.00 shall be paid within thirty days after the first installment is due; and (c) the third installment of \$100,000.00 shall be paid within thirty days after the second installment is due. The sums due to the Office of the Attorney General shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes. Payment to the Department of Legal Affairs shall be made by certified check payable to the Department of Legal Affairs' Revolving Trust Fund, and shall be delivered to Gerald Johnson, Office of the Attorney General, The Capitol, FL-01, Tallahassee, Florida 32399-1050 or by wire

transfer. In addition, within ten days after the Effective Date Respondent shall make a contribution to the Seniors v. Crime project in the amount of seventy-five thousand dollars (\$75,000.00), by certified check payable to: "Seniors v. Crime," and shall be delivered to Gerald Johnson, at the address set forth in this paragraph. The payments set forth in this paragraph are not penalties or fines and are intended solely to reimburse the OAG for fees and costs incurred in connection with its investigation and compliance monitoring, during which Respondent acted in good faith and fully cooperated with the OAG.

G. SETTLEMENT AND RELEASE

121. This Assurance constitutes a complete settlement and release by the State of Florida of all claims, causes of action, demands or suits asserted or that could have been asserted by the OAG against Respondent, and all of its respective officers, directors, managers, employees, salespersons, agents, and others responsible for implementing the obligations set forth in this Assurance, for conduct occurring before the Effective Date arising out of the Matters Investigated.
122. The OAG shall not institute any action against Respondent, including but not limited to actions seeking restitution, injunctive relief, fines, penalties, attorney's fees or costs, arising out of any claims with respect to the Matters Investigated before the Effective Date of this Assurance, except that the OAG may institute an action to enforce the provisions of this Assurance.
123. The parties acknowledge and agree that Respondent is entering to this Assurance solely for the purpose of settlement. Nothing contained herein may be taken to be an admission or concession of violation of law, or of any liability all of which Respondent expressly

denies. This Assurance is not intended for use by a third party in any other proceeding. No part of this Assurance constitutes or shall constitute evidence against Respondent in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law except in an action brought to enforce the terms of this Assurance. To the extent that any changes in Respondent's business are made to achieve or facilitate conformance to this Assurance, the fact that such changes were made shall not itself constitute any form of evidence, explicit or implicit, by Respondent of wrongdoing or failure to comply with any federal or state statute, regulation or the common law.

H. MISCELLANEOUS PROVISIONS

124. Respondent shall not affect any change in its form of doing business or its organizational identity for the purpose of avoiding the terms and conditions set forth in this Assurance.
125. Future violations of this Assurance of Voluntary Compliance shall subject Respondent to any and all applicable civil penalties and sanctions provided by law, and payment of attorney's fees and costs.
126. If the OAG believes that it possesses information evidencing a violation of this Assurance, the OAG shall provide written notice of the evidence to Respondent and an opportunity promptly to cure such violation or to explain to the OAG why it does not believe a violation has occurred. Respondent shall have twenty (20) days from the receipt of the notice within which to provide a good faith written response to the OAG's notice. The response shall include, at a minimum, either:
 - a. a statement explaining why Respondent believes it is in full compliance with the Assurance; or

- b. an explanation of how the alleged violation occurred; and
 - i. a statement that the alleged violation has been cured, and explaining how;
or
 - ii. a statement that the alleged violation cannot be reasonably cured within 20 days from receipt of the notice, but
 - 1. Respondent has begun to take corrective action to cure the violation;
 - 2. Respondent is pursuing such corrective action with reasonable due diligence; and
 - 3. Respondent has provided the OAG with a detailed and reasonable timetable for curing the violation;

provided, however, that this provision shall not prevent the OAG from pursuing its statutory obligation to conduct investigations or bring enforcement actions necessary to protect the public interest. Nothing herein shall prevent the OAG from agreeing in writing to provide Respondent with additional time beyond the 20 day period to respond to the notice.

- 127. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.
- 128. Respondent may request a modification of the terms of this Assurance based upon future changes in technology or applicable laws or regulations. The OAG shall make a good faith evaluation of the then existing circumstances and, after collecting the information necessary, make a prompt decision, but in no event more than ninety (90) days from the OAG's receipt of a request for the same unless both parties agree in writing to a different

schedule. At the request of either the OAG or Respondent, the parties shall meet to discuss the provision(s) at issue and an appropriate manner in which to resolve any potential disagreement. The decision to modify this Assurance shall rest within the sole discretion of the Attorney General.

129. To the extent that any changes in Respondent's business, advertising, sales, billing, collections, and/or customer service practices are made to achieve or to facilitate conformance with the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Respondent, and the OAG shall not take the position that it constitutes evidence or admission, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute, regulation, or the common law.
130. This Assurance shall not be construed against the "drafter" because the parties all participated in the drafting of the Assurance.
131. This Assurance shall not be construed or used as a waiver or any limitation of any defense otherwise available to Respondent in any pending or future legal or administrative action or proceeding relating to Respondent's conduct prior to the Effective Date of this Assurance or of Respondent's right to defend itself from, or make any arguments in, any individual or class claims or suits relating to the existence, subject matter, or terms of this Assurance.
132. This Assurance is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Thus, nothing in this Assurance, including this Paragraph, shall be construed to limit or to restrict Respondent's right to use this Assurance to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and

settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

133. Respondent has produced (and may produce additional) documents and other information to the OAG related to the Matters Investigated and this Assurance that have been (or will be) claimed and marked as trade secret or confidential (collectively, the "Designated Materials"). Respondent does not waive any claimed exemption from public disclosure under Florida law with respect to the Designated Materials, and nothing in this Assurance shall prevent Respondent from seeking appropriate relief under Florida law concerning same. The OAG, to the extent not prohibited by law, shall notify Respondent of: (a) any legally enforceable demand for Designated Materials, or (b) the intention of any employee or agent of the Attorney General to disclose Designated Materials (the "Records Request Notice"). The OAG shall provide the Records Request Notice as soon as practicable and in advance of complying with the demand or making such disclosure. It is the intent of this provision to afford Respondent the ability to seek appropriate relief under Florida law with respect to the disclosure of the Designated Materials.

134. This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understanding, oral or written, between the parties relating to the subject matter of this Assurance which are not fully expressed hereto or attached hereto.

135. This Assurance of Voluntary Compliance shall become effective upon its execution by the parties. The person who signs this Assurance in a representative capacity for Respondent warrants that he or she is duly authority to do so. Respondent acknowledges that it has had a full opportunity to review this Assurance and consult with legal counsel

regarding same. Respondent agrees and represents that it has read and understand this Assurance, that it accepts the legal consequences involved in signing it and that there are no other representations, agreements or understandings between Respondent and the State of Florida related to this Assurance that are not stated in writing herein.

136. This Assurance may be executed in or one or more counterparts, each of which shall be deemed to be an original but which together shall constitute the Assurance. The receipt or deposit by the OAG of any monies pursuant to the Assurance of Voluntary Compliance does not constitute acceptance by the Attorney General, and any monies received will be returned if this Assurance of Voluntary Compliance is not executed by the OAG.

IN WITNESS WHEREOF, Boardroom, Inc. has caused this Assurance of Voluntary Compliance to be executed by Samuel Edelston as EVP of Boardroom, Inc., as a true act and deed, in Fairfield County, CT, this 19 day of June, 2013.

By my signature I hereby affirm that I am acting in my capacity and within my authority as EVP of Boardroom, Inc., and that by my signature I am binding the corporation to this agreement.



STATE OF CT

COUNTY OF Fairfield

BEFORE ME, an officer duly authorized to take acknowledgments in the State of CT, personally appeared Samuel Edelston as EVP of Boardroom,

Inc., and acknowledged before me that he/she executed the foregoing instrument for the purposes therein stated, on this 19 day of June, 2013.

Sworn to and subscribed before me

this 19 day of June, 2013.

Denise Taylor
(print name)

NOTARY PUBLIC

Denise Taylor
(Print, type or stamp commissioned name of
Notary Public)

DENISE TAYLOR
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2015

Personally known _____ or Produced

Identification ☒ (check one)

Type of Identification Produced:


Driver's license

OFFICE OF THE ATTORNEY GENERAL

Pat A Connors
PATRICIA A. CONNERS
ASSOCIATE DEPUTY ATTORNEY GENERAL

Department of Legal Affairs
OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, Florida 32399-1050
(850) 245-0140

Dated: 6/20/2013

By: 

RICHARD LAWSON
Director, Consumer Protection Division
Department of Legal Affairs
OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, FL 32399-1050
(850) 245-0140

Dated: 06/20/2013

By: 

TINA FURLOW
Senior Assistant Attorney General

MARK S. HAMILTON
Special Counsel
Department of Legal Affairs
OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, FL 32399-1050
(850) 245-0140

Dated: June 20, 2013

EXHIBIT A

AMERICASNATURALDOCTOR.COM
anniegarber.com
askbottomline.com
askbottomlinehealth.com
askbottomline secrets.com
askdoctorstengler.com
askdrstengler.com
bigfatbookoffreemoney.com
BLDIGITALLIBRARY.COM
BLINEPUBLICATIONS.COM
BLINEPUBS.COM
blp.net
BLPINFO.COM
BLPMAIL.COM
blpproductionsinc.com
blradio.com
blsecrets.com
boardroom.com
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boardroombooks.com
boardroomclassics.com
boardroompublications.com
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bottomline secrets.com
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bottomline-business.com
bottomlineclassics.biz
bottomlineclassics.com
bottomlineclassics.info
bottomlinecustompub.com
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bottomlineenews.com
bottomlineexpert.com
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bottomlinegiftrenewals.com
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bottomlinehealth.tv
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 BOTTOMLINEPUBLICATIONS.US
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 bottomlineradio.com
 bottomlinereg.com
 bottomlineretirement.com
 bottomlinesbooks.com
 bottomlinescrets.com
 bottomlinesdailyhealthnews.com
 bottomlinesecret.com
 bottomlinecrets.biz
 bottomlinecrets.com
 bottomline-secrets.com
 bottomlinecrets.info
 bottomlinecrets.mobi
 bottomlinecrets.net
 bottomlinecrets.org
 bottomlinecrets.tv
 bottomlinesecrts.com

bottomlinesnaturalhealing.com
 bottomlinesretirement.com
 bottomlinessecrets.com
 bottomlinestore.com
 bottomlinestores.com
 bottomlineswomenshealth.com
 bottomlineswomenshealth.net
 bottomlinetaxhotline.com
 bottomlinetelevision.com
 bottomlinetogo.com
 bottomlinetommorow.com
 bottomlinetomorrow.biz
 bottomlinetomorrow.com
 bottomlinetomorrow.info
 bottomlineuniversity.com
 bottomlinewealth.biz
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 bottomlineweekly.com
 bottomlinewh.com
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 bottomlinewomen.com
 bottomlinewomenshealth.com
 bottomlinewomenshealth.net
 bottomlineyearbook.biz
 bottomlineyearbook.com
 bottomlineyearbook.info
 bottomlinsecrets.com
 BOUNDLESSENERGYNOW.COM
 buyultimatehealing.com
 DAILYBURSTOFENERGY.COM
 dailyfreesecond.com
 dailyfreeseconds.com
 dailyhotsecret.com
 dailyhotsecrets.com
 dailysecret.net
 dhntree.com
 directorbottomlinesecrets.com
 doeverythingright.com
 dontwantyouknow.com
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 healthorharm.com
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 healthorharm.org
 healthsecrets.com
 healthsecrets.tv
 healthsecretsforwomen.com
 healthsecretsfree.com
 healthsecretsfree.net
 HIGHENERGYFORLIFE.COM
 homesecretsbook.com
 HOUSEHOLDMAGICDAILYTIPS.COM
 howtodoeverythingright.com
 insideinfobook.com
 keepyoursavings.com
 meetdoctorstengler.com
 meetdrstengler.com
 moneysworth.com
 mybottomline.com
 myfreesecond.com
 myfreeseconds.com
 myhomeseconds.com
 mypowersecret.com
 mypowersecrets.com
 myspeedhealing.com
 myultimatehealing.com
 nullbook.com
 nullcures.com
 nullhealing.com
 nullhealth.com
 nullwellness.com
 pennycures.com
 pennycures.net
 pennycures.tv
 POWERHEALINGNOW.COM

POWERHEALINGPLUS.COM
 POWERHEALINGTODAY.COM
 PROVEN-HEALTH-TIPS.COM
 PROVENHEALTHTIPSFOR.ME
 PROVENHEALTHTIPSFORME.COM
 renewmyblpgift.com
 renewmyblpgift.net
 renewmyhealthgift.com
 renewmyhealthgift.net
 secretsecrets.com
 secretsecrets.net
 secretsecrets.org
 secretssecrets.com
 secretssecrets.net
 secretssecrets.org
 secretssecret.com
 secretssecret.net
 secretssecret.org
 secretfoodcures.com
 secretfoodcures.info
 secretfoodcures.net
 secretfoodcures.tv
 secret-secrets.com
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 secret-secrets.org
 secrets-secret.com
 secrets-secret.net
 secrets-secret.org
 secretosdesalud.com
 secretos-de-salud.com
 secretosdesalud.org
 secretos-de-salud.org
 secretosdesalud.us
 secretos-de-salud.us
 sheildyoursavings.com
 shieldyoursavings.com
 stenglerbook.com
 taxhotline.biz
 taxhotline.com
 taxhotline.info
 taxhotlinesecrets.com
 thebottomlinemag.com
 thedailysecret.com
 thedailysecret.net
 treasury.tv
 treasuryoffers.com

treasuryofhealth.com
treasuryofhealth.net
treasuryofhealth.org
treasuryofhealthoffers.com
treasuryofhealthsecrets.com
ultimatehealingbook.com
ultimatehealingbook.net
ultimatehealingnow.com
ultimatehealingoffer.com

ultimatehealthoffer.com
uncommoncures.com
WILENSISTERS.COM
womenhealthsecrets.com
womenshealthsecrets.com
wwwbottomlinehealth.com
wwwbottomlinepersonal.com
wwwbottomlinecrets.com

EXHIBIT B

EXHIBIT B

PART 310—TELEMARKETING SALES RULE 16 CFR PART 310

Sec.

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310.8 Fee for access to the National Do Not Call Registry.

310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

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§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(n) *Donor* means any person solicited to make a charitable contribution.

(o) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(p) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(q) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(r) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(s) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the

purchase of goods or services or a charitable contribution.

(u) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(v) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(w) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(x) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(y) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(z) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(aa) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(bb) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(cc) *Telemarketer* means any person who, in connection with telemarketing,

initiates or receives telephone calls to or from a customer or donor.

(dd) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(ee) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay⁶⁵⁹ for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;⁶⁶⁰

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of

participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes

⁶⁵⁹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before the consumer enrolls in an offered program.

⁶⁶⁰ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to

avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,⁶⁶¹ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁶⁶² Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁶⁶³

⁶⁶¹ Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226.

⁶⁶² Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR part 205.

⁶⁶³ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to

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a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in §310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

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(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section; or

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or

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on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller:

(i) Has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

(ii) Has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in §310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the

agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

⁶⁶⁴ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

⁶⁶⁵ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller:

(i) Has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

(ii) Has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in §310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the

agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

⁶⁶⁴ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

⁶⁶⁵ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or § 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than

thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the charitable organization on behalf of which the request is being made; and
- (2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011]

§310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁶⁶⁷

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

⁶⁶⁷ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

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(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of

upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

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§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or

through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$58 for each area code of data accessed, up to a maximum of \$15,962; provided, however, that there shall be no charge to any person for accessing the first five area codes of data, and provided further, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in §310.8(c), each person excepted under §310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under §310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under §310.8(c) must first pay \$58 for each additional area code of data

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not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under §310.8(c) must first pay \$29 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012]

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

EXHIBIT C

[Boardroom Letterhead]

(DATE)

(NAME)

(ADDRESS)

(ACCOUNT NUMBER)

Dear _____:

As a result of a voluntary agreement with the Attorney General of the State of Florida, Boardroom, Inc. ("Boardroom"), also doing business under [Bottom Line, etc.], is offering to provide you with refunds for certain products that have been shipped or provided to you during the time period of _____ to [Effective Date]. According to our records, these are the products for which you may seek a refund. Boardroom is offering to provide you with refunds for these items:

[List items]

Boardroom values you as a customer, and we want to ensure that your experience with us has been fully satisfactory. We hope you have been happy with your items. However, **if you did not intend for us to send them to you, you can obtain a refund** of the amount you paid including any tax and shipping and handling charge you paid by fully **filling out and signing the claim form below** and returning it to us by mail [to address, or "to the above address"] within sixty (60) days of the date of this letter. A postage paid return envelope is enclosed. If you ordered the items, no action is necessary.

If you cash, deposit, or redeem a refund check sent to you in response to this claim form, you will be releasing Boardroom from any claims you may have with respect to the specific products for which you receive refunds of charges.

Your continued satisfaction with our products is important to us and if there is ever anything we can do, please contact us at [e-mail address, toll-free telephone number].

Sincerely,

CLAIM FORM

Name [pre-printed] _____

Address: [pre-printed] If your address has changed, please print your new address below:

Account #: [pre-printed]

Date: _____

I hereby declare that I did not intend to order the following products: Please issue a refund for these items below:

I further understand and agree that by cashing, depositing, or redeeming a refund check sent to me in response to this claim form, I am releasing Boardroom from any claims I may have with respect to the specific products for which I may receive refunds of charges.

Signature: _____

RETURN TO:

BOARDROOM, INC.

[address]

EXHIBIT D

REIMBURSEMENT NOTICE ENVELOPE:

Boardroom, Inc.

[Bottom Line Publications]

[address]

FORWARDING AND ADDRESS CORRECTION REQUESTED

[address or address window]

ATTENTION: NOTICE OF REFUND ENCLOSED

EXHIBIT E
BOARDROOM
BOTTOM LINE, etc., PUBLICATIONS
CLAIM FORM

INSTRUCTIONS: Please complete this claim form and mail it to [ADDRESS]. All claim forms must be fully completed, signed, and postmarked by [DATE] to be accepted.

Name [print please]: _____

Current Address: _____

I hereby declare that I did not knowingly order the following products or knowingly authorize Boardroom to charge me for such products. Please issue a refund for these items:

[List the products below]

If you lived at a different address when you received the products listed above, please list it here:

PLEASE READ THE FOLLOWING BEFORE SIGNING.

YOU MUST SIGN BELOW TO RECEIVE A REFUND.

I further understand and agree that by cashing, depositing, or redeeming a refund check sent to me in response to this claim form, I am releasing Boardroom from any claims I may have with respect to the specific products for which I may receive refunds of charges.

Date: _____

Signature: _____

Please contact [PHONE NUMBER / E-MAIL ADDRESS] if you have any questions regarding this claim form.

EXHIBIT F

[Boardroom Letterhead]

[BOTTOM LINE, etc., PUBLICATIONS]

Dear Valued Customer:

We are pleased to have you as a loyal customer.

We are writing to confirm that you intended to order a ["__day review of [Product]" or "a trial subscription to [Product]"] referenced in the enclosed invoice.

Our records reflect that you were sent this invoice for [Product] because you responded to an advertisement that included these terms:

[applicable Offer Terms]

If you would like to cancel your order and any future ["automatic renewals" or "automatic shipments"] of [Product], please write "cancel" on the enclosed invoice and send the invoice and the [Product] back to us using the enclosed postage paid label.

Your continued satisfaction is important to us. If there is anything we can do, contact us at 800-###-####.

Sincerely,

EXHIBIT G

[Boardroom Letterhead]

[Bottom Line, etc., Publications]

(DATE)

(NAME)

(ADDRESS)

(ACCOUNT NUMBER)

Dear Valued Customer:

We are pleased to have you as a loyal customer.

We are writing to confirm that you intended to order ["automatic shipments" or "automatic renewals"] of [product] on the following terms:

[applicable Offer terms]

If you would like to continue to receive ["automatic renewal," or "automatic shipments"] of [Product], you don't need to take any action right now. We will continue to ["automatically renew your subscription to" or "send automatic shipments of "] [Product].

If you would like to cancel ["automatic renewals" or "automatic shipments"] of [Product] please fill out the enclosed form and send it back to us using the enclosed postage paid envelope. You may also do this by calling 800-###-####.

Your continued satisfaction is important to us. If there is ever anything we can do, contact us at 800-###-####.

Sincerely,

CANCELLATION FORM

Name; [preprinted]

Address: [pre-printed]

Account # [preprinted]

Date: _____

Please cancel my future ["automatic renewals" or "future automatic shipments"] for the following product(s).

I do not wish to [renew this subscription/receive shipments of future editions] of these products:

(List Products below)

Signature: _____

Date: _____

Return completed form to:

Boardroom

[address]