



1  
2  
3  
4 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**  
5 **FOR THE COUNTY OF MARION**

6  
7 **STATE OF OREGON**, ex rel. ELLEN F.  
8 ROSENBLUM, Attorney General for the state  
9 of Oregon,

10 **Plaintiff,**

11 **v.**

12 **AFFINION GROUP, INC., TRILEGIANT**  
13 **CORPORATION, AND**  
14 **WEBLOYALTY.COM, INC.,**

15 **Defendants.**

Case No. 13021023

**STIPULATED GENERAL JUDGMENT**

ORS 20.140 – State fees deferred at filing

16 WHEREAS Plaintiff, the State of Oregon (“Plaintiff” or “State”), having filed its  
17 complaint (“State’s Complaint”) pursuant to ORS 646.605 *et seq.* and acting by and through  
18 Ellen F. Rosenblum, Attorney General of the State of Oregon, by Assistant Attorney General  
19 Andrew U. Shull, and defendants Affinion Group, Inc., Trilegiant Corporation and Webloyalty,  
20 Inc. (“Defendants”), appearing individually and through their attorneys Manatt, Phelps &  
21 Phillips, LLP, by Clayton Friedman, and Davis & Gilbert, by Ronald R. Urbach, Esq., and local  
22 counsel, Cosgrave Vergeer Kester LLP, by Thomas W. Brown, having consented to entry of this  
23 Stipulated General Judgment (hereafter “Judgment”) without trial or adjudication of any issue of  
24 fact or law, and without finding or admission of wrongdoing or liability of any kind, and that this  
25 Judgment may be signed by a judge, commissioner or judge *pro tem* of the Marion County  
26 Court, and

WHEREAS the parties, having consented to the entry of this Judgment for the purpose of  
settlement only, without this Judgment constituting evidence against or any admission by any

1 party, and without trial of any issue of fact or law, and nothing contained in this Judgment shall  
2 constitute an admission or concession by Defendants, nor shall it be evidence or findings  
3 supporting any of the allegations of fact or law alleged by the Plaintiff, or of any violation of  
4 state or federal law, rule or regulation, or any other liability or wrongdoing whatsoever, and  
5 neither the Judgment, nor any negotiations, statements or documents related thereto, shall be  
6 offered or received in any legal or administrative proceeding or action as an admission, evidence  
7 or proof of any violation of liability under or wrongdoing in connection with any law, rule or  
8 regulation, except in an action by the Attorney General to enforce the terms of this Judgment,  
9 and

10 WHEREAS the parties acknowledge that, in addition to this Judgment, Defendants have  
11 entered into similar judgments with the Attorneys General of the States identified on Exhibit A  
12 and those States filing similar judgments are referred to collectively as “Participating States,”  
13 and

14 WHEREAS the Court having considered the pleadings and the Stipulation for Entry of  
15 Final Judgment and Permanent Injunction executed by the parties and filed herewith, and good  
16 cause appearing,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment may be  
18 entered in this matter as follows:

19 **I. JURISDICTION**

- 20 1. The Court has jurisdiction over the subject-matter of this action and of the parties.  
21 2. Venue is proper in this Court.  
22 3. The State’s Complaint states a cause of action against the Defendants under the Oregon  
23 Unlawful Trade Practices Act, ORS 646.605, *et seq.*; ORS 646A.292 *et seq.* and ORS 646.644 *et*  
24 *seq.* (“Consumer Protection Laws”).  
25 ///  
26 ///

1 **II. THE PARTIES**

2 4. Defendant Affinion Group, Inc. (“Affinion”) is a privately-held corporation and is the  
3 parent company of Trilegiant Corporation (“Trilegiant”) and Webloyalty.com, Inc.  
4 (“Webloyalty”).

5 5. Defendant Trilegiant is a Delaware corporation marketing to consumers in Oregon and  
6 headquartered in Stamford, Connecticut. Trilegiant is a wholly-owned subsidiary and operating  
7 company of Affinion.

8 6. Defendant Webloyalty is a Delaware corporation marketing to consumers in Oregon and  
9 headquartered in Stamford, Connecticut. Webloyalty is a wholly-owned subsidiary of Affinion.

10 **III. DEFINITIONS**

11 **For purposes of this Judgment only, the following definitions apply:**

12 7. **“Account”** means any account to which a charge relating to a Membership Program can  
13 be made, including but not limited to, a credit card account, debit card account, checking  
14 account, savings account, loan account, mortgage account, telecommunications account, utility  
15 account, or other similar account.

16 8. **“Automatic Renewal”** means a plan or arrangement under which an Account (i) is  
17 automatically charged a Membership Charge at the end of a Trial Period and thereafter charged  
18 continually for successive membership terms, unless the consumer affirmatively cancels the  
19 membership or, in the case of a fixed-membership term with a Trial Period, where the  
20 Membership Charge is automatically paid starting at the end of the Trial Period and on an  
21 installment basis throughout the term of the membership, or (ii) if there is no Trial Period, is  
22 automatically charged a Membership Charge continually for successive membership terms,  
23 unless the consumer affirmatively cancels the membership or, in the case of a fixed-membership  
24 term with no Trial Period, the Membership Charge is automatically paid on an installment basis  
25 throughout the term of the membership.

26 ///

1 9. **“Billing Information”** means unique Account information that enables any person to  
2 charge a consumer’s Account, including (i) encrypted Account information or a unique identifier  
3 related to an Account where Defendants do not receive or possess a key to unencrypt the  
4 Account or otherwise obtain the Account number or (ii) any other technological equivalent that  
5 enables any person to charge a consumer’s Account. Billing Information does not include  
6 consumer’s name, mailing address, e-mail address, and telephone number, if such information is  
7 not used to incur a Membership Charge.

8 10. **“Clear and Conspicuous”** or **“Clearly and Conspicuously”** means a statement that,  
9 regardless of the medium in which it is made, is readily understandable and presented in such  
10 size, color, contrast, duration and location, compared to the other information with which it is  
11 presented, that it is readily apparent, readable and understandable to the person to whom it is  
12 disclosed. An audio statement or disclosure shall be delivered in a volume and cadence sufficient  
13 for a consumer to hear and understand the entire statement or disclosure, and not be obscured in  
14 any manner by, for instance, music or other background noise. A statement may not contradict  
15 or be inconsistent with any other information with which it is presented.

16 11. **“Complaint”** is any written statement by a consumer who has Enrolled in a Membership  
17 Program received directly or indirectly by Defendants from a federal, state, or local  
18 governmental agency, including but not limited to the Federal Trade Commission or a State  
19 Attorney General, or a Better Business Bureau, in which the consumer expresses dissatisfaction  
20 in connection with the advertisement, sale, or services of the Membership Program.

21 12. **“Data Pass ”** refers to the transfer of a consumer’s Billing Information from a Marketing  
22 Partner to Defendants, or from Defendants to a Marketing Partner, for purposes of billing a  
23 Membership Charge for a Membership Program, provided that, for purposes of this Judgment,  
24 with regard to consumers who enroll in a Membership Program offered by or through a financial  
25 institution, as defined in the Gramm-Leach-Bliley Act, 15 USC § 6809, Data Pass does not  
26 include the transfer of encrypted Account information or a unique identifier related to an

1 Account where Defendants do not receive or possess a key to unencrypt the Account or  
2 otherwise obtain the Account number.

3 13. **“Effective Date”** means the 17<sup>th</sup> of October, 2013.

4 14. **“Enrollment”** or **“Enroll”** means when a consumer provides the Affirmative Assent  
5 required in Paragraph 33 of this Judgment and such enrollment in a Membership Program is  
6 processed and accepted by Defendants. The date of Enrollment is the date when the Enrollment  
7 is processed and accepted by Defendants, whichever date is the later to occur.

8 15. **“Fulfillment Materials”** means material provided to consumers after they initially Enroll  
9 in a Membership Program that fully describes the complete terms and conditions of a  
10 Membership Program, as described herein at Paragraph 52.

11 16. **“Incentive”** refers to any item, service, product, or good, that is offered to a consumer as  
12 an inducement to Enroll in a Membership Program. This term includes, but is not limited to,  
13 premiums, gift cards, checks, rebate offers, or anything of value, excluding, however, references  
14 to an item, service, product, or good that is part of a Membership Program’s benefits.

15 17. A **“Live Check”** is a negotiable check, money order, draft, or other negotiable  
16 instrument, the presentment or negotiation of which (i) automatically enrolls a consumer in a  
17 Membership Program and obligates the consumer to pay for the Membership Program and (ii)  
18 requires or permits a Marketing Partner to transfer, release, or otherwise disclose its customers’  
19 Billing Information to Defendants for purposes of allowing Defendants to charge the customer a  
20 Membership Charge.

21 18. **“Mail”** means to send by United States Postal Service or other physical delivery method  
22 including, but not limited to, courier, UPS or Federal Express that includes address forwarding,  
23 but excludes electronic mail.

24 19. **“Marketing Partner”** means any entity with whom Defendants contract for purposes of  
25 marketing Membership Programs to customers of that entity. Marketing Partner shall not  
26 include any entity with which Defendants contract for solicitation of (i) media space or time to

1 market its Membership Programs and which entity offers such media space or time to others  
2 (e.g., such as direct-to-consumer television, radio and internet solicitation space or time) or (ii)  
3 any list rental or similar relationship where no joint marketing between such entity and  
4 Defendants occurs.

5 20. **“Membership Charge”** means any amount charged pursuant to an Automatic Renewal  
6 to an Account for membership in a Membership Program.

7 21. **“Membership Program”** means any program in which a consumer enters into an  
8 agreement with Defendants for the provision of benefits, goods or services and for which  
9 Defendants charge a Membership Charge. Membership Program excludes insurance policies for  
10 which the consumer pays a premium in consideration for insurance coverage under policies  
11 regulated by state insurance regulatory agencies.

12 22. **“Proximate”** or **“Proximity”** means on the same page, not in a footnote, and beneath,  
13 beside, or adjacent.

14 23. **“Resident”** refers to a consumer who resides in Oregon as of the Effective Date, or who  
15 resided in Oregon at the time a consumer Enrolled in a Membership Program.

16 24. **“Trial Offer”** means an offer to a consumer to Enroll in a Membership Program for a  
17 Trial Period after which a consumer who does not cancel is automatically charged a Membership  
18 Charge.

19 25. **“Trial Period”** means a finite time period, after a consumer Enrolls in a Membership  
20 Program, in which the consumer is not charged a Membership Charge or is only charged a  
21 nominal fee. A Trial Period begins when the consumer receives the Fulfillment Materials.  
22 Receipt for Mail shall be deemed either five (5) or nine (9) days after Defendants send the  
23 consumer Fulfillment Materials either by first class Mail or any other means of Mail,  
24 respectively. Receipt for e-mail shall be deemed the day Defendants send the consumer the e-  
25 mail with the Fulfillment Materials.

26 ///

1 **IV. SCOPE**

2 26. The subject matter of this Judgment covers the practices of Defendants and those  
3 Marketing Partners identified by Oregon and the other Participating States, and which are not  
4 subject to any pending investigation by Oregon or the Participating States as of the Effective  
5 Date of this Judgment, (“Covered Marketing Partners”) related to their marketing and sale of  
6 Membership Programs by or through Covered Marketing Partners, which the State alleges  
7 violates its Consumer Protection Laws as they relate to the following practices and any  
8 additional acts or practices covered by this Judgment or as alleged in the State’s Complaint  
9 (“Subject Matter”):

10 A. Defendants’ and their Covered Marketing Partners’ marketing and sales practices relating  
11 to the offer for sale and sale of Defendants’ Membership Programs, through direct mail  
12 solicitations, including the use of live check, and through online offers and sales,  
13 including offers via e-mail. Such marketing and sales practices include, but are not  
14 limited to, the following: disclosures of material terms in the solicitations; the use of Data  
15 Pass in marketing; the use of Incentives, Trial Offers and audio overlays in solicitations;  
16 the use of Covered Marketing Partner names and logos; and references to Covered  
17 Marketing Partners in solicitations, including representations regarding the relationship  
18 between Defendants and Covered Marketing Partners; and the methods of consent  
19 obtained from consumers prior to and during Enrollment in Defendants’ Membership  
20 Programs;

21 B. Defendants and their Covered Marketing Partners billing practices relating to  
22 Defendants’ Membership Programs: the use of Data Pass; disclosures regarding billing  
23 and Data Pass; the recurring billing of Membership Fees; and the use of Automatic  
24 Renewal and negative option marketing and billing;

25 C. Defendants’ communications with consumers who enroll in Defendants’ Membership  
26 Programs: post-enrollment communications regarding the material terms of the

1 Membership Programs

2 sent to consumers who enrolled via online or direct mail; communications regarding the  
3 benefits associated with and change in terms for Defendants' Membership Programs to  
4 consumers regardless of the method of enrollment; and notices on third-party billing  
5 statements to consumers regardless of the method of enrollment; and

6 D. Defendants' customer service, cancellation, saves and refund practices and procedures.

7 This Judgment resolves the State's claims regarding all matters alleged in the State's Complaint,  
8 any matter covered by this Judgment and Subject-Matter, including, but not limited to, payment  
9 of (1) as to Defendants and all Marketing Partners, consumer restitution or refunds to all eligible  
10 consumers who enrolled in Defendants' Membership Programs prior to the Effective Date,  
11 regardless of method of enrollment or Marketing Partner, and (2) as to Defendants and Covered  
12 Marketing Partners, attorneys' fees, investigation and litigation costs, consumer protection  
13 enforcement funds, consumer education, litigation or local consumer aid, civil penalties, fines  
14 and/or forfeiture under the State's Consumer Protection Laws. However, the Subject-Matter and  
15 resolution of this Judgment does not include and does not resolve investigations or claims by the  
16 State related to (i) other marketing practices or conduct of Defendants not included in the  
17 Subject-Matter or alleged in the State's Complaint or Judgment, (ii) the conduct of Covered  
18 Marketing Partners that is not specifically related to the marketing, offer for sale, sale, provision  
19 or billing of Defendants' Membership Programs, or (iii) Covered Marketing Partners' actions  
20 relating to providers other than Defendants of similar programs.

21 **V. INJUNCTIONS**

22 27. Pursuant to ORS 646.605 *et seq.*, Defendants and its agents, directors, officers, and  
23 employees, in their capacity as an agent, director, officer, or employee ("Representatives") of  
24 Defendants, and by any successor, subsidiary or division and their Representatives through  
25 which it acts or hereafter acts, shall comply with the following provisions with respect to (i)  
26 direct mail and online marketing of Membership Programs, as set forth in Paragraphs 31 through



1 54, and 74(D), and (ii) all methods of marketing of Membership Programs, including online,  
2 direct mail, point-of-sale and telemarketing, as set forth in Paragraphs 28 through 30, 55 through  
3 73, 74(A) through 74(C), and 75.

4 **LIVE CHECK OR AUTOMATIC ENROLLMENT INCENTIVE SOLICITATIONS**

5 **Prohibition on Live Check or Automatic Enrollment Incentives**

6 28. Defendants shall not utilize a Live Check in any solicitation, and shall not accept any new  
7 memberships Enrolled by Live Check. Defendants shall not utilize any Incentive, if the act of  
8 using such Incentive automatically Enrolls the consumer in a Membership Program. This shall  
9 not prohibit Defendants from using Incentives in the marketing of its Membership Programs, if  
10 using that Incentive does not automatically Enroll a consumer in a Membership Program.

11 **Marketing Partner Contracts regarding Live Check Solicitations**

12 29. Defendants shall not enter into any contract or arrangement with a Marketing Partner that  
13 does not comply with Paragraph 28, nor shall Defendants provide any Live Check solicitations to  
14 any consumers in connection with any existing contract or arrangement with a Marketing  
15 Partner.

16 **Marketing Partner Contracts regarding Automatic Enrollment Incentives**

17 30. Defendants shall not enter into any contract or arrangement with a Marketing Partner that  
18 does not comply with Paragraph 28, nor shall Defendants provide any solicitations containing  
19 Incentives, to any consumer in connection with any existing contract or arrangement with a  
20 Marketing Partner, where the act of using such Incentives automatically enrolls a consumer in a  
21 Membership Program.

22 **DATA PASS MARKETING IN DIRECT MAIL AND ONLINE SOLICITATIONS**

23 31. For all direct mail and online solicitations pursuant to Defendants' agreements or  
24 arrangements with Marketing Partners, Defendants shall not engage in Data Pass.

1 **REQUIREMENTS FOR ALL DIRECT MAIL AND ONLINE SOLICITATIONS**

2 **Affirmative Assent before Enrolling a Consumer in a Membership Program**

3 32. For all direct mail and online solicitations pursuant to Defendants' agreements or  
4 arrangements with Marketing Partners, Defendants shall comply with the following requirements  
5 before Enrolling a consumer in a Membership Program.

6 A. On the page where a consumer Enrolls in a Membership Program and in direct  
7 Proximity to the space provided for consumers to accept the offer as required in  
8 Paragraph 33, Defendants shall Clearly and Conspicuously set forth the following  
9 statement, except that substantially similar language may be used (1) in instances  
10 where the language does not accurately reflect the terms of the Membership  
11 Program solicitation (i.e., no free trial period) or (2) where additional language is  
12 required by law:

13 "Unless I contact [Affinion/Membership Program] to cancel before my Trial  
14 Period ends, I authorize [Membership Program/Affinion] to [electronically]  
15 charge my [type of account] \$[PRICE] automatically every [Membership  
16 Term] (or a greater amount, if I am notified), for my purchase of a  
17 membership in [Membership Program] until I cancel."

18 B. Defendants shall Clearly and Conspicuously disclose the following, to the extent  
19 not covered by the disclosure required by Paragraph 32(A):

20 1. State the name of the Membership Program and contact information for  
21 the Membership Program (including, at a minimum, a toll-free telephone  
22 number and website), describe the goods or services being offered,  
23 disclose that the Membership Program is offered by Defendants, disclose  
24 that Defendants, and not the Marketing Partner, own and operate the  
25 Membership Program, and, for online solicitations marketed with a  
26 Marketing Partner after the consumer has made a purchase or transaction

- 1 using Billing Information immediately prior to viewing the online  
2 solicitation for a Membership Program, disclose that the offer is unrelated  
3 to the purchase or transaction using Billing Information just completed;
- 4 2. State, if true, that any offer or Incentive is contingent upon Enrollment in  
5 the Membership Program;
- 6 3. State, if true, that the consumer can cancel his or her membership at any  
7 time, without limiting his or her ability to obtain or use any offer or  
8 Incentive;
- 9 4. State, if true, that a consumer must remain a member of his or her  
10 Membership Program as a requirement to obtain or use any offer or  
11 Incentive;
- 12 5. If there is a Trial Period, state the time period in which a consumer must  
13 cancel in order to avoid incurring any Membership Charge; and
- 14 6. State that the consumer may cancel his or her membership at any time by  
15 contacting Defendants.

16 33. To Enroll a consumer in a Membership Program via any direct mail or online solicitation  
17 pursuant to Defendants' agreements or arrangements with Marketing Partners, Defendants shall  
18 obtain a consumer's affirmative assent in the manner described below ("Affirmative Assent"):

19 A. For online solicitations:

20 1. Marketed pursuant to Defendants' agreements or arrangements with a  
21 Marketing Partner after the consumer has made a purchase or transaction  
22 using Billing Information immediately prior to viewing the online  
23 solicitation for the Membership Program, Defendants shall, Proximate to  
24 the statement described in Paragraph 32(A):

25 (a) obtain from the consumer:

26 (i) the full Account number of the Account to be charged or

- 1 other Billing Information, and
- 2 (ii) the consumer's name and address; and
- 3 (b) require the consumer to perform an additional affirmative action,
- 4 such as clicking on a confirmation button or checking a box that indicates
- 5 the consumer's consent to be charged the amount disclosed; or
- 6 2. Marketed in conjunction with a financial institution Marketing Partner
- 7 pursuant to Defendants' agreements or arrangements where the consumer
- 8 did not make a purchase or a transaction using Billing Information
- 9 immediately prior to viewing the online solicitation for a Membership
- 10 Program solicitation, Defendants shall require the consumer to (1) insert
- 11 his or her name or e-mail address, in a box set-off from all other text that
- 12 only contains (i) the disclosure required by Paragraph 32(A) in bold font
- 13 and (ii) an area to perform the affirmative action of inserting his or her
- 14 name or e-mail address, and (2) click on a confirmation button or check a
- 15 box that authorizes the charge to the consumer's Account for Enrollment.
- 16 3. Notwithstanding any provision of this Judgment, Defendants shall comply
- 17 with the Restore Online Shoppers' Confidence Act ("ROSCA").
- 18 B. For direct mail solicitations:
- 19 1. Marketed pursuant to Defendants' agreements or arrangements
- 20 with a Marketing Partner, Defendants shall, Proximate to the
- 21 disclosure required by Paragraph 32(A):
- 22 (a) obtain from the consumer the full Account number of the Account
- 23 to be charged, or other Billing Information, and
- 24 (b) shall require the consumer to perform the affirmative act of placing
- 25 his or her signature on a line that authorizes the charge to the
- 26 consumer's Account for Enrollment; or

1           2.       Marketed with a financial institution Marketing Partner pursuant to  
2                    Defendants' agreements or arrangements where a consumer is not required  
3                    in the solicitation to provide his or her Billing Information directly to  
4                    Defendants, Defendants shall require the consumer to provide a signature  
5                    that indicates the consumer's consent to be charged the amount disclosed,  
6                    in a box set-off from all other text that only contains (i) the disclosure  
7                    required by Paragraph 32(A) in bold font and (ii) space for the affirmative  
8                    action of providing a signature.

9   34.     The disclosures set forth in Paragraph 32 shall be in a form that the consumer can easily  
10           copy, print, download, or retain at the time they are made.

11   35.     For consumers who Enroll in a Membership Program via direct mail and online  
12           solicitations pursuant to Defendants' agreements or arrangements with Marketing Partners,  
13           Defendants shall retain proof of Affirmative Assent while the consumer is an active member of  
14           the Membership Program and for at least 24 months following cancellation of the membership.  
15           Defendants shall maintain the proof in a manner that ensures access to such record reasonably  
16           promptly and, upon written request, Defendants shall make such record available to the State and  
17           to consumers disputing their Enrollment.

18   36.     For all direct mail and online solicitations pursuant to Defendants' agreements or  
19           arrangements with Marketing Partners, Defendants shall not misrepresent the reason why the  
20           consumer is being asked to provide his or her Billing Information, contact information, or  
21           Affirmative Assent.

22   37.     For all direct mail and online solicitations pursuant to Defendants' agreements or  
23           arrangements with Marketing Partners, Defendants shall not misrepresent its relationships with  
24           its Marketing Partners, including, but not limited to, misrepresenting the entity offering the  
25           Membership Program.

26

1 38. For all direct mail and online solicitations pursuant to Defendants' agreements or  
2 arrangements with Marketing Partners, Defendants shall not include a Marketing Partner's name  
3 in the title of any Membership Program in a manner that misrepresents the entity offering the  
4 Membership Program.

5 39. For all direct mail and online solicitations pursuant to Defendants' agreements or  
6 arrangements with Marketing Partners in which a Marketing Partner's logo, mark, or name  
7 appears, Defendants shall Clearly and Conspicuously disclose on the first page and in the main  
8 body of the solicitation and, for online solicitations, above the fold of the screen if viewed on a  
9 standard 1024x768 resolution monitor if the Marketing Partner's logo, mark or name appears  
10 there as well, that it is Defendants, and not the Marketing Partner, that own and operate the  
11 Membership Program.

12 **REQUIREMENTS WHEN CONSUMER IS REDIRECTED FROM MARKETING**

13 **PARTNER WEBSITE**

14 40. In all online solicitations where a Marketing Partner customer has been directed from the  
15 Marketing Partner's web page to Defendants' Membership Program solicitation web page after  
16 the completion of a purchase or transaction using Billing Information with a Marketing Partner,  
17 Defendants shall:

18 A. Clearly and Conspicuously disclose, in a separate web page prior to the consumer  
19 being directed to the Membership Program page, that the consumer is leaving the  
20 website of the Marketing Partner and being re-directed to the Membership  
21 Program website. The separate web page shall remain on the consumer's screen  
22 for a minimum of three seconds for the first line of disclosure and one second for  
23 every additional line; or

24 B. Defendants shall Clearly and Conspicuously disclose at the very top of the  
25 Membership Program's initial or landing web page that the consumer has left the  
26 Marketing Partner's website and is now on the Membership Program website.

1 41. On any web page of an online solicitation pursuant to Defendants' agreements or  
2 arrangements with Marketing Partners where there is a "Yes" or similar button that, when  
3 clicked, results in the Enrollment of a consumer in a Membership Program, Affinion shall have a  
4 Clear and Conspicuous "No Thanks" or similar button directly Proximate to the "Yes" or similar  
5 button.

6 **ADDITIONAL REQUIREMENTS FOR ONLINE AND DIRECT MAIL**

7 **SOLICITATIONS**

8 42. For all direct mail and online solicitations pursuant to Defendants' agreements or  
9 arrangements with Marketing Partners where Defendants offer an Incentive to a consumer to  
10 Enroll in one of their Membership Programs, Defendants shall Clearly and Conspicuously  
11 disclose in the solicitation any material conditions relating to a consumer's ability to claim or  
12 qualify for any such Incentive. Such disclosure shall include, as applicable, a Clear and  
13 Conspicuous disclosure of whether the Incentive applies to a current or a future purchase.

14 43. For all direct mail and online solicitations pursuant to Defendants' agreements or  
15 arrangements with Marketing Partners that use Trial Offers, Defendants shall not misrepresent  
16 the nature of the Trial Offer, including representing that (i) a product or service is offered on a  
17 "free", "trial", or "bonus" basis, or (ii) a purchase is "risk free" or "without risk" when such is  
18 not the case.

19 44. For all direct mail and online solicitations pursuant to Defendants' agreements or  
20 arrangements with Marketing Partners, Defendants shall not misrepresent the reason or purpose  
21 for which a consumer is receiving a solicitation or Incentive from Defendants or any of its  
22 Marketing Partners; provided, however, that disclosing the mere existence of a relationship  
23 between a consumer and the Marketing Partner does not violate this Paragraph.

24 45. For all online solicitations pursuant to Defendants' agreements or arrangements with  
25 Marketing Partners where Defendants use audio overlays to reference any Incentive or offer, the  
26 overlay shall not be misleading and any statements regarding material terms of the Incentive or

1 offer, or disclosures related thereto, included in the audio overlay shall be made Clearly and  
2 Conspicuously, and also shall be Clearly and Conspicuously disclosed visually in the  
3 Membership Program solicitation.

4 46. For all direct mail and online solicitations pursuant to Defendants' agreements or  
5 arrangements with Marketing Partners, Defendants shall not misrepresent that any Membership  
6 Program, Incentive, or benefit offered through any solicitation is offered by any entity other than  
7 Defendants.

8 **REQUIREMENTS FOR POST-ENROLLMENT MATERIALS FOR DIRECT MAIL**  
9 **AND ONLINE ENROLLEES**

10 47. A consumer who Enrolls via an online or a direct mail Membership Program solicitation  
11 marketed with a financial institution Marketing Partner and provides the Affirmative Assent  
12 described in Paragraphs 33(A)(2) and 33(B)(2) will be deemed to be a "Non-Account  
13 Enrollment."

14 **Post-Enrollment Notices**

15 48. The following shall apply to all consumers who Enroll beginning 180 days after the  
16 Effective Date in a Membership Program via direct mail and/or online solicitations pursuant to  
17 Defendants' agreements or arrangements with Marketing Partners:

18 A. If a consumer Enrolls in a Membership Program via online, Defendants may send  
19 communications required by this Judgment via:

- 20 1. E-mail, so long as the communications comply with Paragraph 49; or  
21 2. U.S. Mail if, in addition to complying with the requirements of Paragraph  
22 50, Defendants also Clearly and Conspicuously disclose to the consumer  
23 prior to Enrollment and Proximate to the area where the consumer  
24 provides Affirmative Assent that notices may be sent via U.S. Mail.

25 B. If a consumer Enrolls in a Membership Program via direct mail, Defendants may  
26 send communications required by this Judgment via:



1. U.S. Mail, so long as the communications comply with Paragraph 50; or
2. E-mail if, in addition to complying with the requirements of Paragraph 49, Defendants also (i) obtain an e-mail address from the consumer at the time of Enrollment and (ii) provide a Clear and Conspicuous disclosure proximate to the area where the consumer provides Affirmative Assent notifying the consumer that notices may be sent via e-mail.

C. While Defendants may reserve the right to send notices required under this Judgment to members who Enroll via online and direct mail via either e-mail or U.S. Mail if the requirements of 48(A) or (B), as applicable, are met, Defendants must disclose to members the means (*e.g.*, e-mail or U.S. Mail) by which they will receive the Fulfillment Materials required by Paragraph 52 if Defendants intend to send the Fulfillment Materials (i) by U.S. Mail to members who Enrolled online or (ii) by e-mail to members who Enrolled via direct mail, subject to the obligations of Paragraph 49(C)(2).

D. Nothing in this Paragraph shall prohibit Affinion from providing consumers a means by which to change delivery preferences post-Enrollment.

**Requirements for Electronic Communications**

49. The following shall apply to the communications sent by e-mail to consumers who Enroll in Membership Programs pursuant to Defendants' agreements or arrangements with Marketing Partners beginning 180 days after the Effective Date of this Judgment:

- A. The sender or "From" line of the e-mail shall contain the name of the Membership Program.
- B. The e-mail shall Clearly and Conspicuously:
  1. State that the consumer is Enrolled in the Membership Program; and
  2. Set forth contact information for the Membership Program (including, at a minimum, a toll-free telephone number and a website address) that a

1 consumer may use to cancel his or her membership.

2 C. Defendants shall use commercially-reasonable efforts to:

- 3 1. Ensure that e-mail is not sent to “junk” or “spam” folders or otherwise  
4 filtered; and
- 5 2. Track returned or hard-bounced back Fulfillment Material and Billing  
6 Notice e-mails indicating that the e-mail address may be invalid. If  
7 Defendants receive a returned or hard-bounced back Fulfillment Material  
8 or Billing Notice e-mail, Defendants shall comply with the mailing  
9 requirements set forth in Paragraph 50.

10 **Requirements for Communications Sent by U.S. Mail**

11 50. The following shall apply to the communications sent by U.S. mail to consumers who  
12 Enroll in Membership Programs pursuant to Defendants’ agreements or arrangements with  
13 Marketing Partners beginning 180 days after the Effective Date of this Judgment:

- 14 A. The outside of the envelope or in print visible through a window on the envelope,  
15 or if there is no envelope, the front or outside of the mailing, shall Clearly and  
16 Conspicuously identify the sender as the Membership Program.
- 17 B. If Defendants learn that Fulfillment Materials or Billing Notices are not delivered  
18 to a consumer, Defendants shall (i) check the address against the National Change  
19 of Address Database (“NCOA”), (ii) contact the consumer via telephone to verify  
20 another means for delivery (*e.g.*, alternate address or e-mail) and resend the notice  
21 within two to three weeks of receipt of notice of non-delivery, and/or (iii) cancel  
22 the membership, unless Defendants’ business records indicate that the consumer  
23 used or obtained benefits from the Membership Program in the preceding year. If  
24 Defendants subsequently learn that the re-mailing of a Fulfillment Material or  
25 Billing Notice is not delivered to a consumer, Defendants shall cancel the  
26 consumer’s membership, unless Defendants’ business records indicate that the

1 consumer used or obtained benefits from the Membership Program in the  
2 preceding year.

3 51. **Confirmation Notice.** Defendants shall send a Confirmation Notice to any consumer  
4 who enrolls in a Membership Program beginning 180 days after the Effective Date via an online  
5 solicitation pursuant to Defendants' agreements or arrangements with Marketing Partners. The  
6 Confirmation Notice may be sent either in the form of a separate webpage displayed to the  
7 consumer immediately after the consumer provides Affirmative Assent or as a separate e-mail.  
8 The heading or subject line of the Confirmation Notice shall state: "Thank You for Your  
9 Membership Purchase" or substantially similar language. The Confirmation Notice shall Clearly  
10 and Conspicuously state the following:

- 11 A. That the consumer has chosen to join a Membership Program;
- 12 B. The name of the Membership Program;
- 13 C. The amount of the Membership Charge and the frequency of billing;
- 14 D. The terms of the cancellation policy for the Membership Program, and contact  
15 information for the Membership Program (including, at a minimum, a toll-free  
16 telephone number and a website address) that a consumer may use to cancel his or  
17 her membership;
- 18 E. If a Trial Offer is included, the time period in which a consumer must cancel in  
19 order to avoid being charged for the Membership Charge;
- 20 F. The length of the membership term, that the Membership Charge has been or will  
21 automatically be charged to the consumer's Account, and that the consumer's  
22 membership will be renewed and the Membership Charge will be automatically  
23 charged to the consumer's Account for each successive period unless the  
24 consumer cancels the membership; and
- 25 G. A notice informing the consumer to print and retain a copy of the Confirmation  
26 Notice for his or her records.

1 52. **Fulfillment Materials.** Defendants shall send Fulfillment Materials to any consumer  
2 who Enrolls in a Membership Program beginning 180 days after the Effective Date via an online  
3 or direct mail solicitation pursuant to Defendants' agreements or arrangements with Marketing  
4 Partners.

5 A. Fulfillment Materials Via E-mail. For a consumer who Enrolls via an online  
6 solicitation or who Enrolls via a direct mail solicitation and receives notice that  
7 Fulfillment Materials will be delivered via e-mail, Defendants shall send an e-  
8 mail with the Fulfillment Materials no more than 3 business days after the  
9 consumer's Enrollment. The Fulfillment Materials shall:

- 10 1. State as the subject line: "Materials For Membership You Purchased," or  
11 substantially similar words.
- 12 2. Include a Clear and Conspicuous statement (i) informing the consumer  
13 that he or she has purchased a Membership Program, (ii) setting forth the  
14 information required to be included in the Confirmation Notice, as set  
15 forth at Paragraph 51(A) through (G), (iii) providing information on how  
16 to redeem the Incentive, if applicable, and (iv) providing the consumer's  
17 membership number in the Membership Program. The disclosures  
18 required by Paragraph 51(A) and (B) and the consumer's membership  
19 number shall be displayed above the fold of the screen if viewed on a  
20 standard 1024x768 resolution monitor.

21 B. Fulfillment Materials Via U.S. Mail. For consumers who Enroll via direct mail  
22 solicitation, or who Enroll via an online solicitation but receive notice that the  
23 Fulfillment Materials will be delivered via U.S. Mail pursuant to Paragraph 48,  
24 Defendants shall send Fulfillment Materials by U.S. Mail within 2 to 3 weeks of  
25 Enrollment.

- 26 1. Defendants shall Clearly and Conspicuously disclose in 14-point bold type

1 on the outside of the envelope or in 14-point bold type visible through a  
2 window on the envelope containing the Fulfillment Materials, or if there is  
3 not an envelope, on the front or outside of the mailing in 14-point bold  
4 type, the following statement or substantially similar words: "Materials  
5 For Membership You Purchased."

6 2. The Fulfillment Materials shall include, on the first page or as a stand-  
7 alone document, a Clear and Conspicuous statement informing the  
8 consumer that he or she has purchased a Membership Program, as well as  
9 a Clear and Conspicuous statement setting forth the information required  
10 to be included in the Confirmation Notice, as set forth at Paragraph 51(A)  
11 through (G). In addition, the Fulfillment Materials shall include (i)  
12 information describing the Incentive, if applicable, including information  
13 on how to redeem the incentive, and (ii) the consumer's membership  
14 number in the Membership Program.

15 53. **Incentive Notice.** Defendants shall send to any Non-Account Enrollment who Enrolls in  
16 a Membership Program, beginning 180 days after the Effective Date via an online solicitation  
17 where an Incentive was offered with the solicitation, an Incentive Notice that Clearly and  
18 Conspicuously describes to the consumer the terms of how the consumer can receive his or her  
19 Incentive. Defendants shall send the Incentive Notice via e-mail at least seven (7) business days  
20 prior to the expiration of any Trial Period or, if no Trial Period is available, at least seven (7)  
21 business days before the consumer incurs a second Membership Charge.

22 54. **Pre-Bill Notice.** Defendants shall send to any Non-Account Enrollee who Enrolls in a  
23 Membership Program beginning 180 days after the Effective Date via an online solicitation with  
24 a Trial Offer, at least 14 days before the first billing to a consumer following Enrollment, a Pre-  
25 Bill Notice that contains the following Clear and Conspicuous disclosures:

26 A. The amount the consumer will be charged and the amount of time the consumer

1 has to cancel to avoid being charged any Membership Charge;

2 B. The length of the membership term, that the Membership Charge will  
3 automatically be charged to the consumer's Account, and that the consumer's  
4 membership will be renewed and the Membership Charge will be automatically  
5 charged to the consumer's Account for each successive period unless the  
6 consumer cancels the membership; and

7 C. Contact information for the Membership Program (including, at a minimum, a  
8 toll-free telephone number and a website address) that a consumer may use to  
9 cancel his or her membership.

10 **REQUIREMENTS FOR POST-ENROLLMENT MATERIALS FOR ALL ENROLLEES**

11 55. **Billing Notice.**

12 A. Frequency of Billing Notice. Beginning 180 days after the Effective Date,  
13 Defendants shall send a Billing Notice to the following consumers who are Enrolled in a  
14 Membership Program pursuant to Defendants' agreements or arrangements with Marketing  
15 Partners, regardless of method or date of Enrollment, and in the following manner:

- 16 1. For consumers who are billed quarterly or more frequently than quarterly  
17 and did not provide their Billing Information directly to Defendants,  
18 Defendants shall send a Billing Notice to the consumer no less than 15  
19 days before the 13<sup>th</sup> monthly billing, and on the same periodic schedule  
20 going forward (e.g., once every 12 billings for Accounts billed monthly);
- 21 2. For consumers who are billed less frequently than quarterly, Defendants  
22 shall send a Billing Notice no less than 15 days before the next subsequent  
23 billing, and on the same periodic schedule going forward (e.g., once a year  
24 for annually billed Accounts).

25 This Billing Notice obligation shall continue until the consumer cancels or otherwise terminates  
26 his or her membership. For purposes of this Paragraph, consumers who Enrolled via a

1 telemarketing solicitation that complies with the Telemarketing Sales Rule (“TSR”) are not  
2 covered by this Paragraph, except for those billed less frequently than quarterly.

3 B. Subject Line or Heading/Title of Billing Notice.

4 1. Billing Notices Sent by E-Mail. If sent by e-mail, the Billing Notice shall  
5 state as the subject line: “IMPORTANT MEMBERSHIP AND BILLING  
6 INFORMATION,” “MEMBERSHIP RENEWAL NOTICE,” or  
7 substantially similar words.

8 2. Billing Notices Sent by U.S. Mail. If sent by U.S. Mail, the Billing Notice  
9 shall have the following Clear and Conspicuous statement or substantially similar words  
10 in 14-point bold type on the outside of the envelope or in 14-point type visible through  
11 the envelope or, if there is not an envelope, on the front or outside of the mailing, in 14-  
12 point bold type: “IMPORTANT MEMBERSHIP AND BILLING INFORMATION,”  
13 “MEMBERSHIP RENEWAL NOTICE,” or substantially similar words.

14 C. Content of Billing Notice. The Billing Notice shall Clearly and Conspicuously  
15 state:

- 16 1. That the consumer is a member of Defendants’ Membership Program;
- 17 2. The name of the Membership Program in which the consumer is enrolled;
- 18 3. The amount of the Membership Charge and the frequency of billing;
- 19 4. The contact information for the Membership Program (including, at a  
20 minimum, a toll-free telephone number and a website address) that a  
21 consumer may use to cancel his or her membership;
- 22 5. The length of the membership term that the Membership Charge has been  
23 or will automatically be charged to the consumer’s Account and that the  
24 consumer’s membership will be renewed and the Membership Charge will  
25 be automatically charged to the consumer’s Account for each successive  
26 period unless the consumer cancels the membership; and

1           6.       The consumer's membership number in the Membership Program.

2       **Change in Terms Notices**

3       56.       Beginning 180 days after the Effective Date, Defendants shall send, for all members  
4       enrolled in a Membership Program pursuant to Defendants' agreements or arrangements with  
5       Marketing Partners, regardless of the method or date of enrollment, a Change in Terms Notice  
6       whenever there is a material change in the terms and conditions of any Membership Program,  
7       including any increase in the Membership Charge or any change in the frequency of assessing  
8       the Membership Charge, such as a change from annual to monthly billing. Defendants shall,  
9       prior to instituting such change, send a Change in Terms Notice to effected consumers between  
10      30 and 60 days prior to the effective date of any such change.

11       A.       If sent by e-mail, the Change in Terms Notice shall state as the subject line, of the  
12                e-mail: "IMPORTANT CHANGE OF [BILLING] INFORMATION FOR YOUR  
13                MEMBERSHIP," "MEMBERSHIP [CHARGE] CHANGE NOTICE," or  
14                substantially similar words.

15       B.       If sent by U.S. mail, the Change in Terms Notice shall have the following Clear  
16                and Conspicuous statement or substantially similar words in 14-point bold type on  
17                the outside of the envelope or in 14-point bold type visible through the envelope  
18                or, if there is not an envelope, on the front or outside of the mailing, in 14-point  
19                bold type: "IMPORTANT CHANGE OF [BILLING] INFORMATION FOR  
20                YOUR MEMBERSHIP," "MEMBERSHIP [CHARGE] CHANGE NOTICE," or  
21                substantially similar words.

22       C.       The Change in Terms Notice shall Clearly and Conspicuously state:

- 23           1.       That the consumer is a member of Defendants' Membership Program;
- 24           2.       The name of the Membership Program in which the consumer is enrolled;
- 25           3.       The nature of the change in terms (e.g., the amount of the new  
26                Membership Charge, billing frequency, etc.). If there is a change in the



1 Membership Charge, when the new charge goes into effect and the  
2 frequency of billing of the new charge and the fact that the charge will  
3 automatically renew; and

- 4 4. The contact information for the Membership Program (including, at a  
5 minimum, a toll-free telephone number and a website address) that a  
6 consumer may use to cancel his or her membership.

7 Provided however, nothing in this Paragraph shall be interpreted as allowing Defendants to  
8 engage in any acts or practices prohibited by state or federal law, regulation, or rule.

9 **57. Periodic Communications with Members.** Defendants shall send periodic  
10 communications (“Periodic Communications”) to consumers who enroll beginning 180 days  
11 after the Effective Date in a Membership Program pursuant to Defendants’ agreements or  
12 arrangements with Marketing Partners, regardless of the type of solicitation or method of  
13 obtaining affirmative assent, at least twice a calendar year, inclusive of the Billing Notice, if  
14 applicable. The Periodic Communications shall set forth, in a Clear and Conspicuous manner,  
15 the following information: (i) that the consumer is a member of Defendants’ Membership  
16 Program; (ii) the name of the Membership Program in which the consumer is enrolled; and (iii)  
17 the contact information for the Membership Program (including, at a minimum, a toll-free  
18 telephone number and a website address) that a consumer may use to cancel his or her  
19 membership. The Periodic Communications shall be required for each Membership Program in  
20 which a member is enrolled.

1 **REQUIREMENTS FOR ENVELOPES USED IN MAILINGS REQUIRED BY THIS**

2 **JUDGMENT**

3 58. For all envelopes used in mailings required by this Judgment, Defendants shall identify  
4 the Membership Program as the addressee in all instances on the envelope or outer wrapping  
5 containing a mailing, and shall not use the words “Redemption Center” or other substantially  
6 similar words.

7 59. For all envelopes used in mailings required by this Judgment, Defendants shall not use  
8 language on its envelopes that expressly or impliedly misrepresents the purpose of the  
9 solicitation.

10 **CANCELLATION PROCEDURES**

11 60. Defendants shall permit a consumer who enrolled in a Membership Program pursuant to  
12 Defendants’ agreements or arrangements with Marketing Partners to cancel his or her membership  
13 at any time, including during or after any Trial Period, with no restrictions placed on his or her right  
14 to cancel his or her membership and regardless of the method of enrollment. In order to cancel a  
15 membership, Defendants shall only require a consumer to give his or her name and address, e-mail  
16 address, or membership number. If Defendants cannot identify the membership based on this  
17 information, Defendants shall ask the consumer for the minimum amount of additional information  
18 necessary for Defendants to identify the Membership Program account. Defendants shall not  
19 require a consumer to provide a membership number in order to cancel his or her membership  
20 unless it is necessary to identify the consumer’s Membership Program account.

21 61. Defendants shall accept and promptly process any cancellation request they receive from  
22 a consumer who enrolled in a Membership Program pursuant to Defendants’ agreements or  
23 arrangements with Marketing Partners no later than five (5) business days from receipt of a  
24 written request for cancellation and two (2) business days from receipt of all other requests for  
25 cancellation, provided that the request contains sufficient information for Defendants to  
26 determine that the purpose of the communication from the consumer was a request to cancel the

1 consumer's membership and that Defendants are able to identify the consumer's membership.

2 62. On Defendants' corporate websites and on the website of any of their Membership  
3 Programs accessed by consumers who enrolled in a Membership Program pursuant to  
4 Defendants' agreements or arrangements with Marketing Partners, Defendants shall provide a link  
5 on the homepage that directs the consumer to a web page related to Membership Program  
6 customer service and contact information that shall Clearly and Conspicuously disclose all of the  
7 following information, which Defendants shall allow consumers to use to cancel their  
8 memberships:

- 9 A. A toll-free number to contact Defendants;
- 10 B. A mailing address to contact Defendants; and
- 11 C. An e-mail address to contact Defendants or an online cancellation option.

12 63. For all consumers who enrolled in a Membership Program pursuant to Defendants'  
13 agreements or arrangements with Marketing Partners, Defendants shall not initiate a Membership  
14 Charge for a future term after the date a consumer contacts Defendants to cancel and Defendants  
15 process the cancellation.

16 64. For all consumers who enrolled in a Membership Program pursuant to Defendants'  
17 agreements or arrangements with Marketing Partners, Defendants shall adequately staff its  
18 customer service department, including providing adequate staffing to respond to customer  
19 service phone calls during its hours of operation.

20 65. Defendants shall allow a consumer who enrolled in a Membership Program pursuant to  
21 Defendants' agreements or arrangements with Marketing Partners to cancel his or her  
22 membership via telephone. In those instances when live customer service lines are closed,  
23 Defendants shall promptly process and cancel the membership when notified of the  
24 cancellation, consistent with the requirements of Paragraph 61. If Defendants need additional  
25 information to identify and cancel the consumer's membership Defendants shall promptly  
26 contact the consumer and obtain the information. Defendants shall treat the Membership

1 Program as canceled as of the date the consumer provides Defendants with the cancellation  
2 information required in Paragraph 60 and the cancellation is processed.

3 66. For all consumers who enrolled beginning 90 days after the Effective Date in  
4 a Membership Program pursuant to Defendants' agreements or arrangements with Marketing  
5 Partners, Defendants shall maintain records of cancellations for their Membership Programs,  
6 regardless of the method of enrollment, for at least 24 months following the date that the  
7 cancellation request was processed and upon written request, shall make such records available  
8 to the Attorney General. The cancellation records required by this Paragraph shall include  
9 originals, copies or electronic copies of Defendants' internal records of such cancellations.  
10 Defendants, upon written request, shall also create an electronically-searchable cancellation  
11 database that includes, if known: (1) name, address, e-mail and telephone number of consumer;  
12 (2) method of solicitation; (3) Marketing Partner; (4) date of enrollment; (5) date that  
13 cancellation request was processed; (6) cancellation method; (7) the total amount of  
14 Membership Charges paid by consumer; and (8) the amount, if any, of any refund provided to  
15 the consumer. Defendants shall maintain such data so that it includes the information  
16 concerning each cancellation for at least 24 months following the date that the cancellation  
17 request was processed and shall, upon written request, make such database available to the  
18 Attorney General.

19 **Cancellation Saves**

20 67. For all consumers who enrolled in a Membership Program pursuant to Defendants'  
21 agreements or arrangements with Marketing Partners:

22 A. For purposes of this Judgment, a consumer who enrolled beginning 90 days after  
23 the Effective Date in a Membership Program pursuant to Defendants'  
24 agreements or arrangements with Marketing Partners who contacts Defendants  
25 to cancel, but decides not to cancel his or her membership after being offered an  
26 incentive to continue the Membership Program, such as a lower price, is referred

1 to as having his or her membership “saved.”

2 B. Prior to treating a membership as saved, Defendants must Clearly and  
3 Conspicuously reaffirm his or her decision to remain enrolled in a Membership  
4 Program.

5 C. Defendants shall notify each consumer who indicates that he or she did not  
6 consent to, authorize, or understand that he or she would be assessed a  
7 Membership Charge and subsequently consents to be saved (i) the amount the  
8 consumer will be billed and frequency of billing, and (ii) information related to  
9 accessing the benefits of the Membership Program. Such notification shall take  
10 place during the conversation when the consumer consents to be saved.

11 68. Defendants shall notify each consumer who calls to dispute a Membership Charge or  
12 otherwise indicates that he or she did not consent to, authorize, or understand that he or she  
13 would be assessed a Membership Charge, of Defendants’ cancellation policy. If such  
14 consumer elects to cancel his or her membership in the Membership Program, Defendants shall  
15 use best efforts to identify the account, honor the cancellation request and provide any and all  
16 credits or refunds that are provided for under the cancellation policy for that Membership  
17 Program, provided that Defendants are given sufficient information to identify the account  
18 being canceled.

19 **NOTICES REQUIRED ON BILLING STATEMENTS**

20 69. Defendants shall, to the extent practical and permitted under the billing practices of any  
21 applicable billing entities whose billing statements contain Membership Charges, request the  
22 billing entity in writing to:

23 A. Disclose information on the consumers’ billing statements sufficient to identify  
24 the name of the Membership Program, a clearly identifiable toll-free telephone  
25 number for customer service on each billing statement or invoice, and, if  
26 sufficient space, the membership number;

- 1 B. If the Membership Charge is billed to a mortgage, loan, utility, or  
2 telecommunications account, Clearly and Conspicuously disclose on the  
3 consumers' billing statement or invoice that the charge is not related to the  
4 services provided;
- 5 C. Not use the term "Optional Product" or similar terms to describe Membership  
6 Charges on consumers' billing statements without Clearly and Conspicuously  
7 disclosing on the first page of the billing statement or invoice that the Optional  
8 Product is a Membership Program purchased by the consumer and without  
9 providing a toll-free telephone number the consumer may call to cancel the  
10 Membership Charge or receive a refund; and
- 11 D. Not include solicitations with consumers' billing statements, unless they Clearly  
12 and Conspicuously distinguish the solicitation from the billing statement provided  
13 that the fact that a solicitation is included in the same envelope as a consumer's  
14 billing statement shall not be in and of itself deemed to be a violation of this  
15 provision.
- 16 E. If Defendants are notified of material changes to the billing practices of any  
17 applicable billing entities whose consumers' billing statements contain  
18 Membership Charges that would affect the requirements of this Paragraph,  
19 Defendants shall notify the State in writing.

20 **CONSUMERS' REQUESTS FOR MEMBERSHIP DOCUMENTS IN HARD COPY**

21 70. Defendants shall not charge a consumer who enrolled in a Membership Program pursuant  
22 to Defendants' agreements or arrangements with Marketing Partners a fee if the consumer  
23 requests a copy of the consumer's payment authorization (e.g., copy of the Live Check or proof  
24 of Affirmative Assent, or other proof that the consumer authorized the Membership Charges) or  
25 the terms and conditions of the consumer's membership. Defendants shall provide such copy or  
26 terms within thirty (30) days of the consumer's request; provided, however, if Defendants need

1 more time because they cannot identify the membership based on the information provided by the  
2 consumer, Defendants shall ask the consumer for the minimum amount of additional information  
3 necessary for Defendants to identify the Membership Program account. Defendants shall then  
4 provide such copy or terms to the consumer after receiving sufficient additional information to  
5 identify the Membership Program. Defendants shall allow consumers to update their contact  
6 information by telephone and/or e-mail.

7 **COMPLIANCE MONITORING**

8 71. Defendants shall implement a program of internal monitoring to ensure compliance with  
9 this Judgment. As part of this program, Defendants shall record the following data for consumers  
10 who enroll beginning 90 days after the Effective Date in Membership Programs pursuant to  
11 Defendants' agreements or arrangements with Marketing Partners, regardless of method of  
12 enrollment:

13 A. Enrollments. Except for consumers who enroll via telemarketing, for a period of  
14 not less than two (2) years from the date of cancellation, Defendants shall record  
15 and retain, if supplied by the consumer at the time of enrollment, the name,  
16 address, e-mail address, and phone number of each consumer enrolled into any of  
17 Defendants' Membership Programs. In addition, for each of these consumers,  
18 Defendants shall record and retain (1) proof of affirmative assent; (2) the fee  
19 charged to the consumer; (3) type of solicitation; (4) name of the Membership  
20 Program; (5) date of enrollment; (6) method of enrollment; and (7) to the extent  
21 identifiable, Marketing Partner. For consumers who enroll via telemarketing,  
22 Defendants shall maintain consumer records as required by the TSR.

23 B. Complaints. For every Complaint received by Defendants, whether received  
24 directly or forwarded from a third-party including but not limited to a Marketing  
25 Partner, Defendants shall record and retain (1) the complaining consumer's name,  
26 address, e-mail address (if available), and phone number (if available); (2) the

1 subject of the Complaint; (3) the Membership Program the consumer is enrolled  
2 in; (4) the type of solicitation; (5) the date and method of enrollment; (6) the  
3 Marketing Partner, to the extent identifiable; and (7) the resolution of the  
4 Complaint. Defendants shall retain this data for a period of three (3) years after  
5 the date of the Complaint.

6 C. Solicitations. For every materially-different solicitation used by Defendants or its  
7 Marketing Partner to market any Membership Program, Defendants shall retain a  
8 representative copy of that solicitation for three (3) years after the last use of that  
9 solicitation.

10 D. Cancellation Procedures. For every materially-different script regarding  
11 cancellation procedures or written cancellation policies and procedures provided  
12 to their customer service representatives, Defendants shall maintain a  
13 representative copy of the script, policy or procedure for three (3) years after the  
14 last use of that document.

## 15 **TRAINING REQUIREMENTS**

16 72. Beginning 60 days after the Effective Date of the Judgment, Defendants shall institute,  
17 for a period of three years, annual training approved by outside legal counsel for all relevant  
18 current and future employees regarding the relevant requirements of this Judgment within the  
19 following categories of employees:

- 20 A. All business and creative personnel responsible for creating solicitations, post-  
21 enrollment materials, and websites;
- 22 B. All customer service personnel who interact with consumers; and
- 23 C. All business development personnel responsible for creating new Marketing  
24 Partner relationships.

25 73. Upon written request from any duly authorized representative of the Oregon Department  
26 of Justice, Defendants shall provide a copy of training materials used during the trainings



1 required by this Judgment and shall certify that these trainings have occurred.

2 **CONTRACT REQUIREMENTS FOR DEFENDANTS' MARKETING PARTNERS**

3 74. Any contract or arrangement that Defendants enter into or re-affirm with a Marketing  
4 Partner, at a minimum:

5 A. Shall direct that Defendants review Membership Program solicitations that are to  
6 be sent, presented, or displayed to a Marketing Partner's customers by or on  
7 behalf of Defendants;

8 B. Shall direct the Marketing Partner to provide a consumer who contacts the  
9 Marketing Partner with questions regarding a Membership Program or to cancel  
10 his or her Membership Program, with a toll-free telephone number that may be  
11 used to contact Defendants regarding the Membership Program;

12 C. Shall direct that Defendants provide all Membership Program solicitations to the  
13 Marketing Partner and shall further provide that the Marketing Partner has the  
14 opportunity to review and approve the content and form of the solicitations before  
15 they are provided to customers of the Marketing Partner; and

16 D. Shall direct that Defendants provide, on at least a quarterly basis, to Marketing  
17 Partners with whom Defendants continue to market at the time of reporting, the  
18 number of customers of the Marketing Partner who joined a Membership Program  
19 and the number of Complaints received by Defendants regarding the customers of  
20 the Marketing Partner who had Enrolled as Non-Account Enrollees beginning 90  
21 days after the Effective Date of the Judgment.

22 75. Defendants shall not enter into or renew any contract with any Marketing Partner  
23 regarding the marketing of Membership Programs that do not comply with the injunctive  
24 provisions of this Judgment.

25 **MISCELLANEOUS INJUNCTIVE PROVISIONS**

26 76. Nothing in this Judgment shall be interpreted as allowing Defendants to engage in any

1 acts or practices prohibited by state or federal law, regulation, or rule.

2 77. Defendants shall not make any representation in any solicitation or notice to consumers,  
3 directly or by implication, that is contrary to any of the statements and disclosures required by  
4 this Judgment.

5 78. Nothing in this Judgment shall be construed as limiting or restricting in any way any right  
6 that the State, the Oregon Attorney General, or any other State governmental entity may  
7 otherwise have to obtain information, documents, or testimony from Defendants pursuant to state  
8 or federal law, regulation, or rule.

9 79. Upon reasonable prior written notice, any duly authorized representative of the Attorney  
10 General of Oregon shall be permitted to inspect and copy such records as may be reasonably  
11 necessary to determine whether Defendants are in compliance with this Judgment. Nothing  
12 herein shall prohibit Defendants from filing an action in court to limit or set aside any such  
13 request to inspect and copy such records beyond those permitted by law. For requests related to  
14 Complaints, Defendants shall provide the requesting party an electronically-searchable database.

15 80. Provisions of this Judgment that specifically permit Defendants to make required  
16 statements in “substantially similar” words require Defendants to make such statements in words  
17 that have the same substantive meaning and do not materially change any of the terms of the  
18 statement.

19 81. Defendants shall not participate, directly or indirectly, in any activity or form a separate  
20 entity or corporation for the purpose of engaging in acts or practices in whole or in part which  
21 are prohibited in this Judgment or for any other purpose which would otherwise circumvent any  
22 part of this Judgment.

23 82. Defendants shall comply with the terms in Paragraphs 28 to 31, 60 to 76, and 78 to 81 no  
24 later than 90 days after the Effective Date of the Judgment, unless otherwise noted. Defendants  
25 shall comply with the terms in Paragraphs 32 to 59, and 77 no later than 180 days after the  
26 Effective Date of the Judgment.

1 **VI. CONSUMER RESTITUTION**

2 83. Defendants shall provide refunds to all “Eligible Notice Consumers,” “Eligible  
3 Complainants,” “Eligible Non-Notice Consumers” and “Additional Eligible Complainants”  
4 (each as defined below), in accordance with Paragraphs 84-101 below.

5 **RESTITUTION FOR ONLINE DATA PASS AND LIVE CHECK ENROLLEES**

6 84. “Eligible Notice Consumers” refers to a Resident who (1) enrolled in an Affinion or  
7 Trilegiant Membership Program, via online Data Pass between January 15, 2008, and the  
8 Effective Date of this Judgment; (2) enrolled in an Affinion or Trilegiant Membership Program  
9 via Live Check between January 15, 2008, and the Effective Date of this Judgment; or (3)  
10 enrolled in a Webloyalty Membership Program via online Data Pass between September 30,  
11 2008 and the Effective Date, and who:

12 A. As of the Effective Date has not canceled the Membership Program and received  
13 a full refund of his or her Membership Charges; and

14 B. For consumers who Enrolled in a Webloyalty Membership Program, did not take  
15 any of the following actions after the expiration of the Trial Period, if there is one,  
16 or after Enrollment, if there is no Trial Period:

- 17 1. File a claim for a protection benefit offered by the Membership Program  
18 in which the consumer was enrolled;
- 19 2. Download a coupon from that Membership Program’s website;
- 20 3. Make a purchase from or through that Membership Program; or
- 21 4. Purchase a gift card from that Membership Program.

22 85. Within five (5) business days after the Effective Date of this Judgment, Defendants shall  
23 place \$19,387,162.38 (“Participating States’ Fund”) in an escrow account for restitution  
24 payments to consumers in the Participating States. The Participating States’ Fund shall be held  
25 in an escrow account by a mutually-agreeable third-party escrow agent (“Escrow Agent”) and in  
26 accordance with a mutually-agreeable escrow agreement (“Escrow Agreement”). In the amount

1 specified, such funds shall be disbursed by Escrow Agent to Defendants, upon notice to Escrow  
2 Agent by representatives of the Attorneys General of the States of California and Texas. The  
3 disbursed amount shall only be used for payments pursuant to the requirements of this Judgment  
4 and the Escrow Agreement. No payments shall be made pursuant to Paragraphs 84 and 99 until  
5 and unless Defendants have received all claims and are able to ascertain refund amounts, as  
6 further described in Paragraph 95. Defendants shall not be in violation of this Judgment for a  
7 failure of the representatives of the Attorneys General of the States of California and Texas to  
8 give notice in a timely manner of a distribution under this Paragraph.

9 86. Within 30 days after the Effective Date of this Judgment, Defendants shall compile an  
10 electronically searchable database of Eligible Notice Consumers. The database shall contain,  
11 for each membership for each Eligible Notice Consumer, the following information, each in  
12 a separate field (to the extent each is available):

- 13 A. Name;
- 14 B. Telephone number;
- 15 C. Street address;
- 16 D. City;
- 17 E. State;
- 18 F. Zip or postal code;
- 19 G. Membership Number;
- 20 H. Name of the Membership Program;
- 21 I. Name of the Marketing Partner;
- 22 J. The date of Enrollment;
- 23 K. The amount of the Membership Charge paid by the Eligible Notice Consumer  
24 to Defendants; and
- 25 L. Total amount of Membership Charges refunded to Eligible Notice  
26 Consumers.

1 A copy of the State's database of Eligible Notice Consumers shall be made available to the  
2 State upon request.

3 **Time Period for Mailing Notices**

4 87. Within 30 days after Defendants compile the database described in Paragraph 86,  
5 Defendants shall send to all Eligible Notice Consumers a Notice Letter, a copy of which is  
6 attached as Exhibit B hereto, and a Claim Form, a copy of which is attached as Exhibit C  
7 hereto. The Claim Form shall have the name, address and/or member number pre-  
8 populated prior to issuance.

9 88. Defendants shall send the Notice Letters and Claim Forms to Eligible Notice Consumers  
10 by First Class U.S. Mail to Eligible Notice Consumers who Enrolled via direct mail and by e-  
11 mail to Eligible Notice Consumers who Enrolled via online. In the case of First Class U.S. Mail,  
12 Defendants shall use NCOA to update the mailing address prior to sending the Notice Letters  
13 and Claim Forms. Defendants shall use commercially-reasonable efforts to ensure that e-mail is  
14 not sent to "junk" or "spam" folders and track returned or hard-bounced back e-mail. If  
15 Defendants receive a returned or hard-bounced back e-mail they shall resend the Notice Letter  
16 and Claim Form via First Class U.S. Mail, if a physical address is available. The Notice Letter  
17 shall state, in the subject line of the e-mail, and, for mailings, in 14-point bold type on the outside  
18 of or visible through the envelope: "IMPORTANT SETTLEMENT NOTICE REGARDING  
19 YOUR PAID MEMBERSHIP(S)." The "From" field of the e-mail shall state "Marketing  
20 Settlement Restitution Program" and, for mailings, the return address on the envelope shall be  
21 the "Marketing Settlement Restitution Program".

22 89. Upon request, Defendants shall provide to any Eligible Notice Consumer who  
23 contacts Defendants any information requested by the consumer pertaining to his or her  
24 membership(s) that is reflected on the database specified in Paragraph 86, assuming the  
25 Eligible Notice Consumer provides Defendants adequate information to identify the relevant  
26 membership(s).

1 **Deadline for Eligible Notice Consumers to Return Claim Forms**

2 90. To be eligible for restitution pursuant to this Judgment, Claim Forms must be (i)  
3 properly completed by Eligible Notice Consumers, (ii) postmarked within 90 days of the  
4 date Defendants mailed the notice to Eligible Notice Consumers, and (iii) received by  
5 Defendants within 105 days of the date Defendants mailed such notice. For purposes of this  
6 Judgment, a Claim Form is not properly completed if (i) based upon the information  
7 submitted by the consumer, together with Defendant's own records, Defendants are unable  
8 to identify the consumer requesting restitution; (ii) the consumer failed to check the required  
9 box or checked the box indicating that the consumer knowingly consented to be charged for  
10 a Membership Program from Defendants on his or her credit or debit card or other account;  
11 (iii) the consumer failed to sign the Claim Form; or (iv) the consumer already received a full  
12 refund of charges with respect to the specific Membership Program(s) for which the  
13 consumer is seeking restitution.

14 **Claim Form Processing Procedures**

15 91. No later than 15 days after receiving a timely returned Claim Form from an Eligible  
16 Notice Consumer, Defendants shall cancel any current memberships of such Eligible Notice  
17 Consumer, if the Eligible Notice Consumer provides adequate information to identify the  
18 membership(s).

19 92. No later than 90 days after the deadline for returning Claim Forms, Defendants shall  
20 refund all Membership Charges not previously refunded to the Eligible Notice Consumers  
21 who return a properly completed Claim Form except that Defendants are not required to  
22 notify Eligible Notice Consumers who checked the box indicating that the consumer  
23 knowingly consented to be charged for a membership program from Defendants on his or  
24 her credit or debit card or other account.

25 93. If an Eligible Notice Consumer fails to submit a properly completed Claim Form,  
26 Defendants shall, if possible, notify the Eligible Notice Consumer and indicate what still

1 needs to be completed and inform him or her of the date (not less than thirty (30) days after  
2 Defendants mail back the incomplete Claim Form) by which the Eligible Notice Consumer  
3 must provide the properly completed Claim Form to Defendants in order to be eligible for  
4 restitution. If the properly completed Claim Form is returned within such time period,  
5 Defendants shall comply with Paragraph 92.

6 94. If the Claim Form is not approved, Defendants shall notify the Eligible Notice  
7 Consumer, within 90 days of the deadline for returning the Claim Form, that the Eligible  
8 Notice Consumer is ineligible for restitution and why.

9 95. In the event that the Participating States Fund is not sufficient to provide full  
10 restitution to all consumers eligible to receive restitution pursuant to Paragraphs 84 and 99  
11 of this Judgment, then restitution shall be distributed on a pro rata basis.

12 96. No later than 270 days after the Effective Date of this Judgment, Defendants shall  
13 submit an electronically searchable report to the State that includes, with a breakdown of:  
14 (a) the total amount of restitution; (b) the number and identification of consumers provided  
15 with restitution; and (c) the number and identification of Claim Forms that were rejected as  
16 ineligible and the reasons they were rejected. With respect to checks that Defendants have  
17 sent to Oregon consumers but which are not cashed or deposited, Defendants shall comply  
18 with the Oregon unclaimed property laws, ORS § 98.302 *et seq.* Upon request by the  
19 Oregon Department of Justice, Defendants shall, after the date that non-cashed checks  
20 mailed pursuant to this restitution program are voided, provide a report, of consumers of  
21 that State who failed to cash restitution checks.

22 97. If the total payment due to consumers eligible to receive restitution pursuant to  
23 Paragraphs 84 and 99 of this Judgment is less than the total of the Participating States Fund,  
24 the Escrow Agent shall send the remaining amount to each Participating State in the  
25 amount for each Participating State as directed by and at the sole discretion of the Attorneys  
26 General of California and Texas, in accordance with and for the purposes stated in the

1 Escrow Agreement, Oregon's portion of which shall be paid to the Oregon General Fund  
2 pursuant to ORS 180.095(4). That sum shall be provided to each Participating State within  
3 five (5) business days after the Escrow Agent distributes the amounts due to consumers to  
4 Defendants under Paragraphs 84 and 99 and pursuant to the Escrow Agreement.  
5 Defendants shall not be in violation of this judgment for a failure of the representatives of the  
6 Attorneys General of the States of California and Texas to give notice in a timely manner of a  
7 distribution under this Paragraph.

8 **OTHER RESTITUTION PROVISIONS**

9 98. Defendants shall treat all Complaints from consumers who enrolled via online Data  
10 Pass or Live Check submitted by consumers to any federal, state or local governmental  
11 agency prior to or within 120 days after the Effective Date of this Judgment, and forwarded  
12 to Defendants within 130 days of the Effective Date of this Judgment, ("Eligible  
13 Complainants"), in the same manner and provide refunds in the same manner and in the  
14 same time frames as refunds provided to Eligible Notice Consumers, except that Eligible  
15 Complainants shall not be required to submit a claim form and refunds shall be provided  
16 directly by Defendants and not be deducted from the Participating States Fund. Defendants  
17 shall also cancel any current memberships of such Eligible Complainants. Defendants may  
18 subject Eligible Complainants to the same usage limitations as Eligible Notice Consumers,  
19 as provided in Paragraph 84.

20 99. Defendants shall treat all Complaints from consumers who enrolled via any means  
21 other than online Data Pass or Live Check, submitted by consumers to any federal, state or  
22 local agency 18 months prior to July 1, 2012, and forwarded to Defendants prior to  
23 execution of this Judgment ("Additional Eligible Complainants"), in the same manner and  
24 provide refunds in the same manner and in the same time frames as refunds provided to  
25 Eligible Notice Consumers, except that Additional Eligible Complainants shall not be  
26 required to submit a claim form and refunds shall be provided directly by Defendants and



1 not be deducted from the Participating States Fund. Defendants may subject Additional  
2 Eligible Complainants to the same usage limitations as Eligible Notice Consumers, as  
3 provided in Paragraph 84.

4 100. Defendants also shall provide refunds to Residents of Oregon who (i) had previously  
5 submitted written complaints directly to Defendants, (ii) had been canceled prior to the  
6 Effective Date, (iii) contact Defendants within 120 days after the Effective Date seeking a  
7 refund, and had enrolled in an (1) Affinion or Trilegiant Membership Program via online Data  
8 Pass between January 15, 2008 and the Effective Date of this Judgment; (2) Affinion or  
9 Trilegiant Membership Program via Live Check between January 15, 2008 and the Effective  
10 Date of this Judgment; or (3) Webloyalty Membership Program via online Data Pass between  
11 September 30, 2008 and the Effective Date of this Judgment (“Eligible Non-Notice  
12 Consumers”). Eligible Non-Notice Consumers shall be eligible for a full refund from the  
13 Participating States Fund in the same manner and in the same time frames as refunds  
14 provided to Eligible Notice Consumers, except that Eligible Non-Notice Consumers shall  
15 not receive notice as required by Paragraph 87, nor shall they be required to submit a Claim  
16 Form as required by Paragraph 90.

17 101. No later than 270 days after the Effective Date of this Judgment, Defendants shall  
18 submit an electronically searchable report to the State that includes: (a) the total amount of  
19 refunds paid to Eligible Non-Notice Consumers, and (b) the number of Eligible Non-Notice  
20 Consumers provided with such refunds.

21 **Costs for Restitution**

22 102. Defendants shall bear all of the costs incurred in complying with the terms of the  
23 Judgment, including restitution and refunds as set forth herein, including the costs of any  
24 Escrow Agent or third-party administrator that may be hired to administer the restitution and/or  
25 refund process required by this Judgment.

26

1 **VII. PAYMENT TO THE STATE**

2 103. Within seven (7) business days after the Effective Date of this Judgment, Defendants,  
3 after receiving wire instructions from the State, shall pay Seven Hundred Thousand Dollars  
4 \$720,000.00 to the Oregon Department of Justice, to be deposited in the Department of Justice  
5 Protection and Education Revolving Account, as payment for attorneys' fees and investigation  
6 and litigation costs, and/or consumer protection enforcement funds, consumer education,  
7 litigation or local consumer aid, and other uses permitted by state law, at the discretion of the  
8 Oregon Attorney General pursuant to ORS 180.095. No part of this payment shall be  
9 designated as a civil penalty, fine and/or forfeiture.

10 **VIII. OTHER PROVISIONS**

11 104. This Judgment supersedes the Judgments and Assurances of Voluntary Compliance  
12 identified in Exhibit D.

13 105. Defendants understand and acknowledge that pursuant to the provisions of ORS 646.642,  
14 any willful violation of the terms of this Judgment shall be punishable by civil penalties of not  
15 more than Twenty-Five Thousand Dollars (\$25,000.00) per violation, in addition to any other  
16 authorized sanctions.

17 106. Upon full and final payment of the amount required under Paragraph 103, this Judgment  
18 constitutes a complete settlement and release of any and all civil claims, causes of actions,  
19 restitution, costs, penalties and disgorgement based on conduct, acts or omissions for conduct  
20 alleged in the State's Complaint or that relates to the Subject Matter or terms of this Judgment  
21 and the State's Complaint, under the Oregon Consumer Protection Laws (the "Released  
22 Claims"), by the Office of the Oregon Attorney General against Defendants and their principals,  
23 successors, and assigns and on behalf of each of their respective agents, representatives,  
24 directors, officers, employees and by any corporation, subsidiary or division through which they  
25 act or hereafter act. Released Claims do not include: (i) claims pursuant to any other statute or  
26 regulation (including, without limitation, antitrust laws, environmental laws, tax laws, credit

1 repair/service organization laws, and criminal statutes and codes), (ii) claims occurring after the  
2 Effective Date, or (iii) claims under the Oregon Consumer Protection Laws unrelated to the  
3 Subject-Matter.

4 107. The Court retains jurisdiction as the ends of justice may require for the purpose of  
5 enabling any party to this Judgment to apply to the Court at any time for such further orders and  
6 directions as may be necessary or appropriate. Subject to the terms of Paragraph 108 below, this  
7 includes Affinion's right to petition the Court to modify the injunctive terms of the Final  
8 Judgment, upon giving at least 45 days written notice to the Oregon Attorney General.

9 108. In the event that any statute, rule or regulation pertaining to the subject matter of  
10 this Judgment is modified, enacted, promulgated or interpreted by Oregon, the federal  
11 government or any federal agency in conflict with any provision of this Judgment, or a court of  
12 competent jurisdiction holds that a statute, rule or regulation is in conflict with any provision of  
13 this Judgment, Defendants may comply with such statute, rule or regulation and such action shall  
14 constitute compliance with the counterpart provision of this Judgment. Defendants shall provide  
15 advance written notice to the Attorney General of the inconsistent provision of the statute, rule or  
16 regulation with which Defendants intend to comply pursuant to this Judgment, and the  
17 counterpart provision of this Judgment which is in conflict with the statute, rule or regulation.  
18 Nothing in this Paragraph shall prohibit the Attorney General from  
19 disagreeing with Defendants as to the existence of any conflict and seeking to enforce this  
20 judgment accordingly.

21 109. Notices to be given under this Judgment are sufficient if given by nationally recognized  
22 overnight courier service or certified Mail (return receipt requested), or personal delivery to the  
23 named party at the address below:

24 A. If to Defendants:  
25 General Counsel  
26 Affinion Group  
6 High Ridge Park  
Stamford CT 06905

1 and

2 Clayton S. Friedman  
3 Manatt, Phelps and Phillips  
4 695 Town Center Dr  
5 Fourteenth Floor  
6 Costa Mesa, CA 92626

7 B. If to the State:

8 Andrew U. Shull  
9 Assistant Attorney General  
10 Financial Fraud/Consumer Protection Section  
11 Civil Enforcement Division  
12 Oregon Department of Justice  
13 1162 Court St. NE  
14 Salem, OR 97301-4096

15 110. Notice is effective when delivered personally; or three (3) business days after it is sent by  
16 certified Mail; or on the business day after it is sent by nationally recognized courier service for  
17 next day delivery. Any party may change its notice address by giving notice in accordance with  
18 this Paragraph.

19 111. The acceptance of this Judgment by the Oregon Attorney General shall not be deemed  
20 approval by the Oregon Attorney General of any of Defendants' advertising or business  
21 practices. Further, neither Defendants nor anyone acting on their behalf shall state or imply or  
22 cause to be stated or implied that the Oregon Attorney General or any other governmental unit of  
23 the State has approved, sanctioned or authorized any practice, act, advertisement or conduct of  
24 Defendants.

25 112. Except as provided herein, no waiver, modification, or amendment of the terms of this  
26 Judgment shall be valid or binding unless made in writing, signed by the party to be charged,  
approved by this Court and then only to the extent specifically set forth in such written waiver,  
modification or amendment.

113. This Judgment sets forth the entire agreement between the parties, and there are no  
representations, agreements, arrangements, or understanding, oral or written, between the parties

1 relating to the subject matter of this Judgment which are not fully expressed hereto or attached  
2 hereto.

3 114. This Judgment shall not be construed against the “drafter” because the parties all  
4 participated in the drafting of the Judgment.

5 115. This Judgment shall not be construed or used as a waiver or any limitation of any defense  
6 otherwise available to Defendants in any pending or future legal or administrative action or  
7 proceeding relating to Defendants’ conduct prior to the Effective Date of this Judgment or of  
8 Defendants’ right to defend themselves from, or make any arguments in, any individual or class  
9 claims or suits relating to the existence, subject matter, or terms of this Judgment.

10 116. Except as otherwise set forth herein, if the State receives a request for documents  
11 provided by Defendants relating to the State’s investigation of Defendants, negotiations of this  
12 Judgment, any reports specified or required herein, or information obtained by the Defendants or  
13 Claims Administrator in connection with this Judgment, the State shall comply with applicable  
14 public disclosure laws and provide reasonable notice to Defendants consistent with the  
15 framework of the State’s public disclosure law(s). Defendants have asserted that such  
16 documents include confidential or proprietary information and have specifically designated such  
17 documents as confidential. To the extent permitted by law, the Attorney General shall notify  
18 Defendants of (a) any legally enforceable demand for, or (b) the intention of any Attorney  
19 General to disclose to a third party, such information, records, or documents at least thirty (30)  
20 business days, or such shorter period as required by state law, in advance of complying with the  
21 demand or making such disclosure, in order to allow Defendants the reasonable opportunity to  
22 intervene and assert any legal exemptions or privileges they believe to be appropriate.

23 117. With respect to solicitations, advertising or marketing which has been used prior to the  
24 Effective Date of this Judgment, Defendants shall not be liable for their non-compliance so long  
25 as they have made reasonable efforts to locate, withdraw, or amend such solicitations,  
26 advertising or marketing to comply with the foregoing requirements. Defendants shall not be

1 liable for failing to prevent the republication of pre-existing solicitation, advertising or marketing  
2 that does not comply with this Judgment by independent third-parties or parties who are not  
3 subject to Defendants' control so long as Defendants make reasonable efforts to prevent such  
4 republication, including, but not limited to, exercising any available contractual rights, and,  
5 where no contractual relationship exists, requesting in writing that the third party terminate the  
6 republication of such solicitation, advertising or marketing.

7 118. To the extent that any changes in Defendants' business, advertising materials, and/or  
8 solicitations to customers, or customer service practices are made to achieve or to facilitate  
9 conformance to the terms of this Judgment, such changes shall not constitute any form of  
10 evidence or admission by Defendants, explicit or implicit, of wrongdoing or failure to comply  
11 with any federal or state statute or regulation or the common law.

12 119. This Judgment is made without trial or adjudication of any issue of fact or law or finding  
13 of liability of any kind. Nothing in this Judgment, including this Paragraph, shall be construed to  
14 limit or to restrict Defendants' right to use this Judgment to assert and maintain the defenses of  
15 res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or  
16 any other legal or equitable defenses in any pending or future legal or administrative action or  
17 proceeding.

18 120. If the Attorney General decides to pursue enforcement of this Judgment because the  
19 Attorney General has determined that Defendants have failed to comply with any of the terms of  
20 this Judgment, and if, in the Attorney General's sole discretion, the failure to comply does not  
21 threaten the health or safety of the citizens of the State and/or does not create an emergency  
22 requiring immediate action, the Attorney General will notify Defendants in writing of such  
23 failure to comply and Defendants shall thereafter have fifteen (15) business days from receipt of  
24 such written notice, prior to the Attorney General initiating any enforcement proceeding, to  
25 provide a written response to the Attorney General's notice of failure to comply. The response  
26 may include:



1 JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

2 FOR PLAINTIFF, STATE OF OREGON:

3 ELLEN F. ROSENBLUM

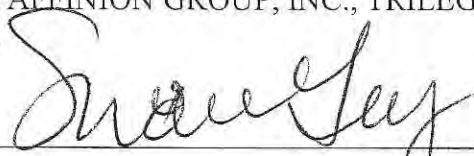
4 Attorney General

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

Date: October 9, 2013

6 Andrew U. Shull, OSB #024541  
7 Assistant Attorney General  
8 Financial Fraud/Consumer Protection Section  
9 Civil Enforcement Division  
10 Oregon Department of Justice  
11 1162 Court St. NE  
12 Salem, OR 97301-4096  
13 Tel. (503) 934-4400  
14 Fax (503) 378-5017  
15 Email: andrew.shull@doj.state.or.us

12 FOR AFFINION GROUP, INC., TRILEGIANT CORPORATION, AND WEBLOYALTY,  
13 INC.

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

15 Title: Executive Vice President & Secretary  
16 Affinion Group, Inc.

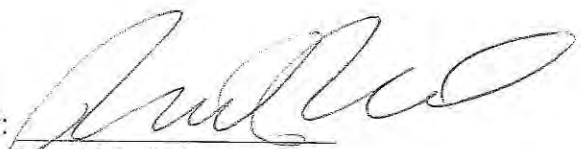
17  
18  
19 By:  \_\_\_\_\_

20 Clayton S. Friedman  
21 **Manatt, Phelps & Phillips, LLP**  
22 695 Town Center Drive, Floor 14  
23 Costa Mesa, CA 92626  
24 714.338.2704 (telephone)  
25 714.371.2573 (facsimile)  
26 cfriedman@manatt.com

*Counsel for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty, Inc.*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

By: 

Ronald R. Urbach  
**Davis & Gilbert, LLP**  
1740 Broadway  
New York, NY 10019  
212.468.4824 (telephone)  
212.621.0922 (facsimile)  
RUrbach@dglaw.com

*Counsel for Affinion Group, Inc., Trilegiant Corporation, and Webloyalty, Inc.*

LOCAL COUNSEL:



Thomas W. Brown, *OSB 801779 TB*  
Cosgrave Vergeer Kester LLP  
500 Pioneer Tower  
888 SW Fifth Ave.  
Portland, OR 97204  
503.323.9000 (telephone)  
503.323.9019 (facsimile)  
tbrown@cosgravelaw.com

**EXHIBIT A**

1. Alabama
2. Alaska
3. Arizona
4. Arkansas
5. California
6. Colorado
7. Connecticut
8. Delaware
9. District of Columbia
10. Florida
11. Georgia
12. Idaho
13. Illinois
14. Indiana
15. Iowa
16. Kansas
17. Kentucky
18. Louisiana
19. Maine
20. Maryland
21. Massachusetts
22. Michigan
23. Minnesota
24. Mississippi
25. Missouri
26. Montana
27. Nebraska
28. Nevada
29. New Hampshire
30. New Jersey
31. New Mexico
32. North Carolina
33. North Dakota
34. Ohio
35. Oklahoma
36. Oregon
37. Pennsylvania
38. Rhode Island
39. South Dakota
40. Tennessee
41. Texas
42. Utah
43. Vermont
44. Virginia
45. Washington
46. West Virginia
47. Wisconsin
48. Wyoming

**EXHIBIT B**

**ELIGIBILITY NOTICE**

**MARKETING SETTLEMENT RESTITUTION PROGRAM**

c/o GCG  
P.O. Box 35071  
Seattle, WA 98124-3508  
1 (866) 297-3088

JANE CLAIMANT  
123 4TH AVE  
CITY, STATE 01234

Dear JANE CLAIMANT:

You are receiving this notice because you may be entitled to a refund in connection with a settlement the Office of the State Attorney General ("OAG") has obtained with Affinion Group, Inc. and its subsidiaries Trilegiant Corporation and Webloyalty.com, Inc. (collectively "Settling Parties"), businesses that solicit consumers for various Membership Programs online using a discount, cash-back or other incentive or rebate offer, or via checks sent in the mail. This notice is being sent from GCG, Inc. ("GCG") on behalf of the Settling Parties as administrator pursuant to a settlement agreement.

According to the Settling Parties' records, you are currently enrolled in and being charged on a credit or debit card, bank account or mortgage account for the following Membership Programs:

Great Fun, Complete Home, Privacy Guard.

The Settling Parties' records show that you were enrolled in the Membership Programs listed above via a solicitation offered to customers of a business with which you had previously transacted. That business shared your account information with the Settling Parties.

An investigation conducted by the OAG has revealed that some consumers who allegedly accepted the Membership Program offers did not understand that by doing so they were agreeing to enroll in a Membership Program for which they would be charged periodically if they failed to cancel during a trial period. On [EFFECTIVE DATE], the OAG entered into a settlement with the Settling Parties to resolve the OAG's investigation. Pursuant to this settlement, consumers receiving this notice who did not knowingly enroll in a Membership Program or knowingly authorize billing for the Membership Program **may be eligible for a full refund of all fees paid by them that have not previously been refunded.**

To be eligible for a full refund, you must fill out, sign and postmark the enclosed claim form by [DATE] and send it to GCG at the following address:

**MARKETING SETTLEMENT RESTITUTION PROGRAM**

c/o GCG  
P.O. Box 35071  
Seattle, WA 98124-3508

Upon receipt of the claim form, your claim will be evaluated, and then you will be contacted by mail as to the disposition of your claim. If your claim is approved, you will be mailed a check.

**If you cash, deposit or redeem a refund check sent to you or otherwise avail yourself of a refund in response to this claim form, you will be releasing the Settling Parties from any claims you may have with respect to the specific Membership Program(s) for which you receive a refund or refunds of charges to your account(s).**

The OAG believes that the settlement resolving the investigation is in the public interest. However, you are not required to participate in this settlement. We cannot provide you with advice, legal or otherwise, concerning your rights and options in connection with this matter. You may consult a lawyer before making any decisions in this regard.

**Please note that your membership is "current" and you are being billed on a periodic basis. If you file a claim, your membership will be cancelled automatically. If you do not file a claim for a refund, you will continue to be periodically billed unless and until you cancel the membership. You can cancel your membership at any time by calling GCG at 1 (866) 297-3088.**

If you have specific questions about this notice or the claim form, you can contact the Office of the State Attorney General at 1 (800) 000-0000 or <http://www.stateag.gov/contact-us/>.

Very truly yours,

GCG

---

**From:** Marketing Settlement Restitution Program  
<MarketingSettlementRestitutionProgram@tgcginc.com>  
**Sent:**  
**To:**  
**Subject:** IMPORTANT SETTLEMENT NOTICE REGARDING YOUR PAID MEMBERSHIP(S)

**ELIGIBILITY NOTICE**

**MARKETING SETTLEMENT RESTITUTION PROGRAM**

c/o GCG  
P.O. Box 35071  
Seattle, WA 98124-3508  
1 (866) 297-3088

Dear Jane Dough:

You are receiving this notice because you may be entitled to a refund in connection with a settlement the Office of the State Attorney General ("OAG") has obtained with Affinion Group, Inc. and its subsidiaries Trilegiant Corporation and Webloyalty.com, Inc. (collectively "Settling Parties"), businesses that solicit consumers for various Membership Programs online using a discount, cash-back or other incentive or rebate offer, or via checks sent in the mail. This notice is being sent from GCG, Inc. ("GCG") on behalf of the Settling Parties as administrator pursuant to a settlement agreement.

According to the Settling Parties' records, you are currently enrolled in and being charged on a credit or debit card, bank account or mortgage account for the following Membership Programs:

Great Fun, Complete Home, Privacy Guard.

The Settling Parties' records show that you were enrolled in the Membership Programs listed above via a solicitation offered to customers of a business with which you had previously transacted. That business shared your account information with the Settling Parties.

An investigation conducted by the OAG has revealed that some consumers who allegedly accepted the Membership Program offers did not understand that by doing so they were agreeing to enroll in a Membership Program for which they would be charged periodically if they failed to cancel during a trial period. On [EFFECTIVE DATE], the OAG entered into a settlement with the Settling Parties to resolve the OAG's investigation. Pursuant to this settlement, consumers receiving this notice who did not knowingly enroll in a Membership Program or knowingly authorize billing for the Membership Program **may be eligible for a full refund of all fees paid by them that have not previously been refunded.**

To be eligible for a full refund, you must fill out, sign and postmark a claim form by [DATE] and send it to GCG at the following address:

**MARKETING SETTLEMENT RESTITUTION PROGRAM**

c/o GCG  
P.O. Box 35071  
Seattle, WA 98124-3508

## MARKETING SETTLEMENT RESTITUTION PROGRAM

c/o GCG  
P.O. Box 35071  
Seattle, WA 98124-3508

To access your personalized claim form, click [here](#). Upon receipt of the claim form, your claim will be evaluated, and then you will be contacted by mail as to the disposition of your claim. If your claim is approved, you will be mailed a check.

**If you cash, deposit or redeem a refund check sent to you or otherwise avail yourself of a refund in response to a claim form, you will be releasing the Settling Parties from any claims you may have with respect to the specific Membership Program(s) for which you receive a refund or refunds of charges to your account(s).**

The OAG believes that the settlement resolving the investigation is in the public interest. However, you are not required to participate in this settlement. We cannot provide you with advice, legal or otherwise, concerning your rights and options in connection with this matter. You may consult a lawyer before making any decisions in this regard.

**Please note that your membership is “current” and you are being billed on a periodic basis. If you file a claim, your membership will be cancelled automatically. If you do not file a claim for a refund, you will continue to be periodically billed unless and until you cancel the membership. You can cancel your membership at any time by calling GCG at 1 (866) 297-3088.**

If you have specific questions about this notice or the claim form, you can contact the Office of the State Attorney General at 800-000-0000 or [attorney@attorneygeneral.com](mailto:attorney@attorneygeneral.com).

Very truly yours,

GCG

---

If you wish to UNSUBSCRIBE from future email messages from the Settlement Administrator with regard to this Settlement, please click on this [link](#).

**EXHIBIT C**



**MUST BE  
POSTMARKED ON  
OR BEFORE  
XXXXX XX, 2013**

**MARKETING SETTLEMENT RESTITUTION PROGRAM**

**AFN**

c/o GCG  
P.O. Box 35071  
Seattle, WA 98124-3508  
Toll-Free: 1 (866) 297-3088



Control No:  
Claim No:

JANE CLAIMANT  
123 4TH AVE  
CITY, STATE 01234

**Claim Form**

To be eligible for a refund, you must complete this form and mail it to the address listed above.  
**All forms must be completed, signed, and postmarked by \_\_\_\_\_, 2013, to be accepted.**

The following is your current contact information (please update if incorrect):

Customer Name: **JANE CLAIMANT**  
Mailing Address: **123 4TH AVENUE**  
**CITY, STATE 01234**

Email Address: **janeclaimant@hotmail.com**  
Telephone: **123-456-7890**


Member No.	Program Name	Did you knowingly consent to be charged for this Membership Program from the Settling Parties on your Credit or Debit Card or other account?	
000001	Great Deal	<input type="checkbox"/>	<input type="checkbox"/>
000002	Specialty Retail	<input type="checkbox"/>	<input type="checkbox"/>
000003	Fast Forward Rewards	<input type="checkbox"/>	<input type="checkbox"/>

You are encouraged to check your credit card or debit card account statements for charges for these Membership Programs.

**PLEASE READ THE FOLLOWING BEFORE SIGNING. YOU MUST SIGN BELOW AND RETURN THE COMPLETED FORM BY THE ABOVE DATE TO RECEIVE A REFUND.**

I understand and agree that by cashing, depositing or redeeming any refund check sent to me in response to this claim form, I am releasing the Settling Parties from any claims I may have with respect to the specific Membership Program(s) for which I receive a refund or refunds of charges to my account(s).

Signature	Date
	/   /
Name (print)	

**EXHIBIT D**

**States with a Previous Judgment or an Assurance of Voluntary Compliance**

1. Alaska
2. Arkansas
3. California
4. Connecticut
5. Illinois
6. Iowa
7. Louisiana
8. Maine
9. Michigan
10. Missouri
11. New Jersey
12. North Carolina
13. Ohio
14. Oregon
15. Pennsylvania
16. Tennessee
17. Vermont
18. Washington
19. West Virginia