

## APPENDIX A

### SUMMARY OF COURT ORDER ENTERED IN FTC V. SPECIAL DATA PROCESSING CORPORATION ON [INSERT THE DATE OF THE ORDER'S ENTRY]

#### DEFINITIONS

1. "Defendant" means Special Data Processing Corporation and its successors and assigns.
2. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
3. "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. Agreements with negative option features include, but are not limited to: (i) free-to-pay conversion agreements; (ii) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods; and (iii) automatic renewal plans in which the seller automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal; **provided, however**, that the fact that payments under a contract will be made in installments does not by itself mean that an agreement has a negative option feature.
4. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit

card protection, legal services and discounts on goods and services; **provided, however,** that the term "membership service" shall not include magazine subscriptions.

5. "Telemarketing" means any activity (including, but not limited to, initiating or receiving telephone calls; managing others who initiate or receive telephone calls; contracting or employing others who initiate or receive telephone calls; operating an enterprise that initiates or receives telephone calls; or owning an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, product, good, service, investment, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided, however,** that the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumer solicited, and the consumer is not required to pay or authorize payment until after such a presentation; **Provided further,** that for purposes of Part I of this Order (requiring compliance with the TSR), the definition of telemarketing shall be consistent with the definition set forth in the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently).
6. "Third party" means (a) any entity that is not owned or controlled by Defendant, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendant or any entity owned or controlled by Defendant.
7. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity,

including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind for any person or entity; or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

8. "Billing information" means any data that enables any person to access to a customer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.
9. "Free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.
10. "Preacquired account information" means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

**NOTE: Each of the following Order provisions applies to Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device. The effective date of the Order is the date the Order was entered by the Court.**

**VIOLATIONS OF TELEMARKETING SALES RULE  
PART I OF THE ORDER**

Defendant is permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), including but not limited to:

- A. the provisions requiring specified disclosures in connection with the sales of goods or services, including the sale of goods or services with a negative option feature and upsells, set forth in Sections 310.3(a)(1) and 310.4(d) (as amended as of March 31, 2003 and as it may be amended subsequently);
- B. the provisions prohibiting misrepresentations in connection with the sale of goods or services, including the sale of goods or services with a negative option feature and upsells, set forth in Sections 310.3(a)(2) and 310.3(a)(4) (as amended as of March 31, 2003 and as it may be amended subsequently); and
- C. the provisions regarding the submission of billing information for payment, or the collection or attempt to collect payment for goods or services, in transactions involving preacquired account information, either in conjunction with or without a free-to-pay conversion plan, set forth in Sections 310.3(a)(3) and 310.4(a)(6) (as amended as of March 31, 2003 and as it may be amended subsequently).

**PROHIBITED BUSINESS PRACTICES  
PART II OF THE ORDER**

In connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or

service during a single telemarketing transaction after a consumer has already purchased a different good or service and provided billing information in connection with such purchase, Defendant is permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation, including but not limited to:

1. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services, (2) that a consumer will not be charged or billed for any goods or services, (3) the timing or manner of any charge or bill (including but not limited to the date of the charge and whether it will be a credit card charge or a checking account debit), or (4) that a consumer will not be charged or billed without the consumer's authorization; and
2. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer.

**PROHIBITED FAILURES TO DISCLOSE  
PART III OF THE ORDER**

In connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or service during: (a) a single telemarketing call after a consumer has already purchased a different good or service and provided billing information in connection with such purchase; and (b) any

subsequent telephone call during which defendant, or any third party on behalf of defendant, verifies or attempts to verify the consumer's purchase of any good or service during a previous telemarketing call, Defendant is permanently restrained and enjoined from failing to disclose, clearly and conspicuously, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

1. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the identity of that seller;
2. The number of required payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, and the amount of the payment(s); **provided**, if there is not a known fixed amount for a future payment, such as the automatic renewal of an annual membership service fee, Defendant must disclose how the renewal fee or other future payment will be determined (*e.g.*, the annual fee then in effect); **provided further**, if the number of payments is undetermined at the time of the sale, Defendant must disclose the frequency of the payments (*e.g.*, every month or every year while the agreement is in effect);
3. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller, or the seller obtained it from another source, will be used to bill or charge the consumer;
4. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact; the length of the trial period and when it begins if it begins sooner than upon the consumer's receipt of the written confirmation

required by the proviso immediately following Subpart III.G; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received if different from the date the trial period ends; and either a telephone number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received; **provided, however,** for purposes of this Subpart, Defendant may disclose the telephone number or address to which a cancellation request may be directed after and in close proximity to the consumer's express consent as set forth in Part IV;

5. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after consumer advised of an upcoming shipment); and either a telephone number or address to which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which such a notice must be received; **provided, however,** for purposes of this Subpart, Defendant may disclose the telephone number or address to which such a notice may be directed after and in close proximity to the consumer's

express consent as set forth in Part IV;

6. All material conditions, limitations and restrictions on the ability of the consumer to use any trial membership, information kit, good or service that is offered “free,” “risk-free,” with “no obligation,” or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the trial membership, information kit, good or service or to take affirmative action to avoid incurring payment obligations; and
7. All material conditions, limitations and restrictions on the ability of the consumer to use any good or service offered for “free” or with “no obligation,” or as discounted or reduced in price, or words of similar import, to a consumer who accepts an offer for other goods or services subject to this Part;

**provided** that, in connection with the telemarketing of any goods or services subject to this Part pursuant to an offer or agreement with a free-to-pay conversion feature, Defendant, within a reasonable time prior to billing or charging the consumer for such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part; **provided further** that these disclosures are in addition to and not in lieu of those disclosures required by the TSR, as amended March 31, 2003, and as it may be amended subsequently.

#### **EXPRESS AND VERIFIABLE INFORMED CONSENT PART IV OF THE ORDER**

In connection with (1) the telemarketing of any membership service pursuant to an offer or



agreement with a negative option feature or (2) soliciting the purchase of any other good or service during: (a) a single telemarketing call after a consumer has already purchased a different good or service and provided billing information in connection with such purchase; and (b) any subsequent telephone call during which defendant, or any third party on behalf of defendant, verifies or attempts to verify the consumer's purchase of any good or service during a previous telemarketing call, Defendant is permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the express informed consent of the consumer evidenced as follows:

- A. To obtain a consumer's express informed consent, Defendant must disclose all of the following information to the consumer, clearly and conspicuously, and in close proximity to, the consumer's express consent to purchase goods or services:
  1. The amount and manner of the billing or payment for such goods or services, including but not limited to, the disclosures set forth in Subparts B and C of Part III of this Order, prior to obtaining the consumer's express consent;
  2. All of the disclosures set forth in Subparts A, D, E, F and G of Part III of this Order, prior to obtaining the consumer's express consent, unless otherwise specifically provided in Subparts III.D and E, **provided, however,** nothing in this Subpart shall prohibit Defendant from obtaining informed consent by making such disclosures to the consumer, clearly and conspicuously, in a print advertisement or print promotional or marketing

material to which the consumer was responding, provided that Defendant has reliable evidence that it made such written disclosures to the consumer; and

3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, sufficient information to enable the consumer to reasonably identify which specific account will be charged to collect payment for those goods or services that are the subject of the sales offer; and

B. Defendant must use one of the following means to evidence that the Defendant has obtained the consumer's express informed consent:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);
2. The consumer's express oral agreement to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that is recorded and meets the following criteria:
  - (a) For all inbound and outbound telemarketing calls, the recording must include the entire portion of any telephone call that relates to the goods or services that are the subject of the Defendant's offer, including all of the information Defendant is required to disclose pursuant to Subpart A of this Part;

- (b) The recording can be identified and located by either the consumer's name or telephone number; and
- (c) A copy of the recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Commission; or

- 3. Express informed consent that is verified by an independent third party verifier ("TPV") that meets the requirements of Part V of this Order;

**provided, however,** that the requirements of Part IV are in addition to and not in lieu of the requirements of the TSR, as amended March 31, 2003, and as it may be amended subsequently.

#### **RECORD-KEEPING PROVISIONS PART VIII OF THE ORDER**

For a period of three (3) years from the date of entry of this Order, in connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or service during a single telemarketing transaction after a consumer has already purchased a different good or service and provided billing information in connection with such purchase, Defendant is restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number

of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly or through any third party, in writing or by telephone) and any responses to those complaints or requests to the extent such information is obtained in the ordinary course of business;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. Each tape recording of a telemarketing call made pursuant to Part IV of the Order.