

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 14-60166-Civ-SCOLA/OTAZO-REYES

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACQUINITY INTERACTIVE, LLC, *et al.*,

Defendants.

---

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE RELIEF AS TO DEFENDANTS  
ACQUINITY INTERACTIVE, LLC, 7657030 CANADA, INC., GARRY JONAS,  
GREGORY VAN HORN, REVENUE PATH E-CONSULTING  
PRIVATE, LTD., REVENUEPATH LIMITED, AND SARITA SOMANI**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), for a permanent injunction and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The Commission and Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Garry Jonas, Gregory Van Horn, Revenue Path E-Consulting Private, Ltd., Revenuepath Limited, and Sarita Somani (“Stipulating Defendants”) stipulate to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Garry Jonas, Gregory Van Horn, Revenue Path E-Consulting Private, Ltd., Revenuepath Limited, and Sarita Somani (“Order”) to resolve all matters in dispute in this action between them.

**NOW THEREFORE**, Plaintiff and Stipulating Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. The Court has jurisdiction over this matter.
2. The Complaint alleges that Stipulating Defendants have participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in the course of offering to consumers purportedly free merchandise, such as \$1,000 gift cards to large retailers, and products such as an Apple iPad.
3. Stipulating Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Stipulating Defendants admit the facts necessary to establish jurisdiction.
4. Stipulating Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney’s fees.
5. Stipulating Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. “Affiliate” means any person, including any third-party marketer, who participates in an affiliate program.

2. “Affiliate Network” means any person who provides another person with any affiliate for an affiliate program or whom any person contracts with as an affiliate to promote any good or service.

3. “Affiliate Program(s)” means (a) any arrangement under which any marketer or seller of a good or service pays, offers to pay, or provides or offers to provide any form of consideration to any Stipulating Defendant, either directly or through an Affiliate Network, to (i) provide the marketer or seller with, or refer to the marketer or seller, potential or actual customers; or (ii) otherwise market, advertise, or offer for sale the product or service on behalf of the marketer or seller; or (b) any arrangement under which any Stipulating Defendant pays, offers to pay, or provides or offers to provide any form of consideration to any third party, either directly or through an Affiliate Network, to (i) provide any Stipulating Defendant with, or refer to any Stipulating Defendant, potential or actual customers; or (ii) otherwise market, advertise, or offer for sale any good or service on behalf of any Stipulating Defendant.

4. “Outbound Telephone Call” means a telephone call initiated by a Telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

5. “Person” or “persons” includes a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

6. “Plaintiff” means the Federal Trade Commission (“FTC” or “Commission”).

7. “Seller” means any person who, in connection with a Telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Commission.

8. “Stipulating Corporate Defendants” means Acquinity Interactive, LLC, 7657030 Canada, Inc., Revenue Path E-Consulting Private, Ltd., and Revenuepath Limited, and their successors and assigns.

9. “Stipulating Defendants” means all of the Stipulating Individual Defendants and the Stipulating Corporate Defendants, individually, collectively, or in any combination.

10. “Stipulating Individual Defendants” means Garry Jonas, Gregory Van Horn, and Sarita Somani.

11. “Telemarketer” means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor.

12. “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. Telemarketing does not include the solicitation of sales through the mailing of a catalog.

13. “Telemarketing Sales Rule” means the Commission rule titled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, attached as Appendix A.

14. “Unauthorized or Unsolicited Commercial Electronic Text Message” means an unauthorized or unsolicited text message the primary purpose of which is a commercial advertisement or promotion of a commercial good or service (including the content on an Internet website operated for commercial purposes).

**I.**

**BAN ON UNAUTHORIZED OR UNSOLICITED  
COMMERCIAL ELECTRONIC TEXT MESSAGES**

**IT IS ORDERED** that Stipulating Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from making or initiating, or procuring the transmission of, or assisting others in making or initiating, or procuring the transmission of, Unauthorized or Unsolicited Commercial Electronic Text Messages to mobile telephones or other wireless devices.

**II.**

**BAN ON PLACING CHARGES ON TELEPHONE BILLS**

**IT IS FURTHER ORDERED** that Stipulating Defendants are permanently restrained and enjoined from billing, submitting for billing, or assisting or facilitating the billing or submitting for billing, charges to any telephone bill, including but not limited to a bill for any voice, text, or data service.

**III.**

**PROHIBITED REPRESENTATIONS**

**IT IS FURTHER ORDERED** that Stipulating Defendants, Stipulating Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any good or service, are permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, any material fact, expressly or by implication, including, but not limited to:

1. that a good or service is “free;”
2. that a good or service is without cost or obligation;
3. that consumers have won a contest or have been selected to receive a gift or prize;
4. that Stipulating Defendants are collecting consumers’ personal information to send consumers merchandise;
5. the purpose for which consumers are providing personal information;
6. that personal information submitted by consumers will be sold or shared with third parties.
7. the extent to which Stipulating Defendants maintain and protect the privacy and confidentiality of consumers’ personal information, including, but not limited to:
  - a. the purposes for which they collect and disclose that information; and
  - b. the extent to which they make or have made consumers’ personal information accessible to third parties;
8. representations concerning any consumer’s obligation to pay charges for any good or service; and
9. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

B. Failing to disclose, or assisting others in failing to disclose, clearly and conspicuously, the material terms and conditions of any offer, including, but not limited to:

1. in any text message, email, or online advertisement, and on any landing page associated with such text message, email, or online advertisement, that contains any direct or implied representation that a good or service is free or is a gift or prize, failing to disclose, in the same color, font, and size, and within close proximity to such representation, that a purchase is required, or that purchases are required, to obtain such gift or prize, when such is the case; and

2. on any landing page associated with any direct or implied representation that a good or service is free or is a gift or prize, failing to disclose, in a clear and conspicuous manner:

a. the monetary obligations a consumer is likely to incur to obtain the advertised gift or prize; and

b. any non-monetary obligations a consumer is likely to incur to obtain the advertised gift or prize, such as having to apply and qualify for credit cards or an automobile loan.

C. Failing to, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services through an Affiliate Program:

1. Require each Affiliate and/or Affiliate Network to provide to Stipulating Defendants the following identifying information:

a. In the case of a natural person, the Affiliate's or Affiliate Network's first and last name, physical address, country, telephone number, email address, and complete bank account information as to where payments are to be made to that person;

b. In the case of a business entity, the Affiliate's or Affiliate Network's name and any and all names under which it does business, state of incorporation, registered agent, and the first and last name, physical address, country, telephone number, and

email address for at least one natural person who owns, manages, or controls the Affiliate or Affiliate Network, and the complete bank account information as to where payments are to be made to the Affiliate or Affiliate Network;

c. If Stipulating Defendants have access to certain Affiliates only through an Affiliate Network, then Stipulating Defendants shall contractually require each Affiliate Network to obtain and maintain from those Affiliates the identifying information set forth in Subsection C.1.a and C.1.b of this Section prior to the Affiliate's or Affiliate Network's participation in any Stipulating Defendant's Affiliate Program.

2. As a condition of doing business with any Affiliate or Affiliate Network or such Affiliate or Affiliate Network's acceptance into any Stipulating Defendant's Affiliate Program: (a) provide each such Affiliate or Affiliate Network a copy of Sections I-V of this Order; (b) obtain from each such Affiliate or Affiliate Network a signed and dated statement acknowledging receipt of Sections I-V of this Order and expressly agreeing to comply with those provisions of this Order; and (c) clearly and conspicuously disclose in writing that engaging in acts or practices prohibited by Sections I-V of this Order will result in immediate termination of any Affiliate or Affiliate Network and forfeiture of all monies owed to such Affiliate or Affiliate Network; *provided, however*, that if Stipulating Defendants have access to certain Affiliates only through an Affiliate Network, then Stipulating Defendants shall contractually require that the Affiliate Network provide the information required by this Subsection to each of those Affiliates and retain proof of the same prior to any such Affiliate being used in any Stipulating Defendant's Affiliate Program; and if Stipulating Defendants should acquire an entity that has an existing program of selling through Affiliates, the entity must complete all steps in this Subsection prior to Stipulating Defendants' acquisition of the entity.

3. Require that each Affiliate or Affiliate Network, prior to the public use or dissemination to consumers of any marketing materials, including, but not limited to, websites, emails, and pop-ups used by any Affiliate or Affiliate Network to advertise, promote, market, offer for sale, or sell any goods or services, provide Stipulating Defendants with the following information: (a) copies of all materially different marketing materials to be used by the Affiliate or Affiliate Network, including text, graphics, video, audio, and photographs; (b) each location the Affiliate or Affiliate Network maintains, or directly or indirectly controls, where the marketing materials will appear, including the URL of any website; and (c) for hyperlinks contained within the marketing materials, each location to which a consumer will be transferred by clicking on the hyperlink, including the URL of any website. Stipulating Defendants shall also require each Affiliate or Affiliate Network to maintain and provide to Stipulating Defendants upon request records of the dates when the marketing materials are publically used or disseminated to consumers. *Provided, however,* that if Stipulating Defendants have access to certain Affiliates only through an Affiliate Network, then Stipulating Defendants shall contractually require that the Affiliate Network obtain and maintain the same information set forth above from each of those Affiliates who are part of any Stipulating Defendant's Affiliate Program prior to the public use or dissemination to consumers of any such marketing materials, and provide proof to such Stipulating Defendant of having obtained the same.

4. Promptly review the marketing materials specified in Section II.C.3 above as necessary to ensure compliance with this Order. Stipulating Defendants shall also promptly take steps as necessary to ensure that the marketing materials provided to Stipulating Defendants under Section II.C.3 above are the marketing materials publically used or disseminated to consumers by the Affiliate or Affiliate Network. If a Stipulating Defendant determines that use

of any marketing materials does not comply with this Order, such Stipulating Defendant shall inform the Affiliate or Affiliate Network in writing that approval to use such marketing materials is denied and shall not pay any amounts to the Affiliate or Affiliate Network for such marketing, including any payments for leads, “click-throughs,” or sales resulting therefrom. *Provided, however,* that if Stipulating Defendants have access to certain Affiliates only through an Affiliate Network, then Stipulating Defendants shall contractually require that the Affiliate Network comply with the procedures set forth in this Subsection as to those Affiliates.

5. Promptly investigate any complaints that any Stipulating Defendant receives through any source to determine whether any Affiliate or Affiliate Network is engaging in acts or practices prohibited by this Order, either directly or through any Affiliate that is part of any Stipulating Defendant’s Affiliate Program.

6. Upon determining that any Affiliate or Affiliate Network has engaged in, or is engaging in, acts or practices prohibited by this Order, either directly or through any Affiliate that is part of any Stipulating Defendant’s Affiliate Program, immediately:

a. Disable any connection between the Stipulating Defendant’s Affiliate Program and the marketing materials used by the Affiliate or Affiliate Network to engage in such acts or practices prohibited by this Order;

b. Halt all payments to the Affiliate or Affiliate Network resulting from such acts or practices prohibited by this Order; and

c. Terminate the Affiliate or Affiliate Network; *provided, however,* Stipulating Defendants shall not be in violation of this subsection if Stipulating Defendants fail to terminate an Affiliate Network in a case where Stipulating Defendants’ only access to an Affiliate who has engaged in acts or practices prohibited by this Order is through an Affiliate

Network and Stipulating Defendants receive notice that the Affiliate Network immediately terminated the Affiliate violating this Order from any Affiliate Program maintained by any Stipulating Defendant.

**IV.**

**EXPRESS INFORMED CONSENT**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any good or service, Stipulating Defendants, Stipulating Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from causing any consumer to be billed for any good or service without having previously obtained the consumer's express informed consent, and having created and maintained a record of such consent.

**V.**

**PROHIBITION AGAINST ILLEGAL TELEMARKETING PRACTICES**

**IT IS FURTHER ORDERED** that Stipulating Defendants, Stipulating Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, causing others to engage in, or assisting other persons to engage in:

A. Initiating any Outbound Telephone Call that delivers a prerecorded message to induce the purchase of any good or service, unless, prior to making any such call, the Seller has obtained from the recipient of the call an express agreement, in writing, that:

1. the Seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Seller to place prerecorded calls to such person;
  2. the Seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; and
  3. evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific Seller; and
  4. includes such person's telephone number and signature; and
- B. Violations of the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Attachment A.

## VI.

### MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

- A. Judgment in the amount of Seven Million, Eight Hundred Thousand Dollars (\$7,800,000) is entered in favor of the Commission against Stipulating Individual Defendants and Stipulating Corporate Defendants, jointly and severally, as equitable monetary relief.
- B. Stipulating Defendants are ordered to pay to the Commission the Judgment set forth above in Section VI.A as follows:
1. On or before September 22, 2014, Stipulating Defendants shall turn over Three Million One Hundred Thousand Dollars (\$3,100,000) to Greenspoon Marder, P.A., attorneys for certain Stipulating Defendants, who shall hold the entire sum in a client's trust account in escrow for the sole purpose of partially satisfying the Judgment. Greenspoon Marder, P.A. shall promptly notify counsel for the FTC of receipt of said amount, and the identity of the client's trust account where the funds are maintained.

2. On or before five (5) business days after the date of entry of this Order, Greenspoon Marder, P.A. shall wire transfer the sum of Three Million One Hundred Thousand Dollars (\$3,100,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

3. On or before thirty (30) days after the date of entry of this Order, or October 22, 2014, whichever is later, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

4. On or before sixty (60) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

5. On or before ninety (90) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

6. On or before one hundred and twenty (120) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

7. On or before one hundred and fifty (150) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy

Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

8. On or before one hundred and eighty (180) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

9. On or before two hundred and ten (210) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

10. On or before two hundred and forty (240) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

11. On or before two hundred and seventy (270) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

12. On or before three hundred (300) days after the date of entry of this Order, Stipulating Defendants shall wire transfer the sum of Four Hundred Seventy Thousand Dollars (\$470,000) to the Commission pursuant to instructions previously provided by a representative of the Commission.

13. Notwithstanding the foregoing, Stipulating Defendants shall have the right to prepay at any time, and without penalty, the remaining balance, or any part thereof, due the Commission under this Order. Any such prepayment made prior to an installment due date shall be credited as if made on the next installment due date, and Stipulating Defendants shall be relieved of making any further payments on the installment due date for any prepayments to the extent of such prepayment. Nothing herein shall be construed to relieve Stipulating Defendants of their obligations to make timely payment for any installments as they become due which have not otherwise fully been paid in advance.

C. To secure the payment obligations under Section VI.B of this Order, Defendants Garry Jonas, Acquinity Interactive, LLC, 7657030 Canada, Inc., and Revenuepath Limited, along with Guarantor Kare Pharmacy, Inc., grant the Commission a security interest in certain property and proceeds thereof (“Collateral”), as set forth in the Guaranty and Security Agreement (“Security Agreement,” attached as Attachment B), Collateral Assignment of Right to Payment Under Settlement and Release Agreement (“Collateral Assignment,” attached as Attachment C), and Mortgage and Security Agreement (“Mortgage,” attached as Attachment D) (“collectively, the “Security Documents”), which are incorporated herein as if fully set forth verbatim and which grant a security interest in the following Collateral:

1. Kare Pharmacy, Inc., as an affiliate of Acquinity Interactive, LLC, 7657030 Canada, Inc., and Garry Jonas, grants the Commission a security interest in the Collateral, as that term is defined in the attached Security Agreement;

2. Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Garry Jonas, and Revenuepath Limited assign to the Commission all rights to receive payments under

the Settlement and Release Agreement with Indicus Services, Ltd., Philip W. Jenkins, and Nouredine Belhaj, dated May 8, 2014, pursuant to the attached Collateral Assignment; and

3. Defendant Garry Jonas and his spouse, Irene Marciano, hereby grant to the Commission, pursuant to the attached Mortgage, a lien on and security interest in real property located at 550 SE 5th Avenue, Unit 905S, Boca Raton, Florida 33432 (the "Condominium"). Defendant Garry Jonas shall submit to the clerk's office for recording all security documents used to perfect the Commission's lien on the Condominium within fourteen (14) days after entry of this Order, and shall deliver to the Commission copies of such officially recorded documents within seven (7) days after receipt of such documents.

D. In the event that Stipulating Defendants fail to make a required payment when due under Section VI.B of this Order, or the Commission is not allowed to retain any such payment, or if any Event of Default as defined in any of the Security Documents occurs and is not timely cured:

1. the entire judgment amount, less any amount previously paid, shall immediately become due and payable by Stipulating Defendants. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. Time is of the essence for the payments specified in this Section; and

2. Stipulating Defendants consent to appointment of a Receiver by the Court for purposes of taking possession and control of and liquidating the Collateral, with the rights and powers, and privileges of an equity receiver. The costs and expenses of the receivership, including reasonable compensation for the Receiver and personnel retained by the Receiver, shall be paid solely from the proceeds of the Collateral.

E. The Commission's agreement to this Order is expressly based on the material representations of Defendants Garry Jonas, Acquinity Interactive, LLC, 7657030 Canada, Inc., and Revenuepath Limited that: they have the right and authority to enter into the Collateral Assignment, and thereby to assign all rights to receive payments under the Settlement and Release Agreement with Indicus Services, Ltd., Philip W. Jenkins, and Nouredine Belhaj, dated May 8, 2014; Kare Pharmacy, Inc. has the right and authority to enter into the Security Agreement; Garry Jonas and Irene Marciano have the right and authority to enter into the Mortgage; and that such Collateral, as that term is defined in the Security Documents, is not encumbered by any lien, assignment, security interest, or other interest not otherwise disclosed in the Security Documents.

1. The Commission's agreement to this Order is expressly based on the material representations by Defendants Garry Jonas, Acquinity Interactive, LLC, 7657030 Canada, Inc., and Revenuepath Limited that the combined value of the Collateral set forth in the Security Documents is at least Eight Million Dollars (\$8,000,000).

2. If, upon motion of the Commission, a Court determines that Defendants Garry Jonas, Acquinity Interactive, LLC, 7657030 Canada, Inc., or Revenuepath Limited made a material misrepresentation or omitted material information concerning ownership or authority to pledge the Collateral, any encumbrance of the Collateral, or the value of the Collateral, the entire judgment amount (\$7,800,000), less any amounts previously paid by Stipulating Defendants, shall immediately become due and payable by Stipulating Defendants. Interest

computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

*Provided* that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies, as may be provided by law, including but not limited to, contempt proceedings or any other proceedings that the Commission may initiate to enforce this Order.

F. Stipulating Defendants relinquish dominion and all legal and equitable rights, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Stipulating Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Stipulating Defendants must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a

representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Stipulating Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited into the U.S. Treasury as disgorgement. Stipulating Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

## **VII.**

### **COOPERATION WITH FTC COUNSEL**

**IT IS FURTHER ORDERED** that Stipulating Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Stipulating Defendants must provide truthful and complete information, evidence, and testimony. Stipulating Individual Defendants must appear and Stipulating Corporate Defendants must cause Stipulating Defendants' officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon ten (10) days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

## **VIII.**

### **PROHIBITIONS REGARDING CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Stipulating Defendants, Stipulating Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation

with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Stipulating Defendants must provide it, in the form prescribed by the Commission, within 14 days.

B. Disclosing, selling, renting, leasing, transferring, using, or benefitting from customer information, including the name, address, birth date, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the marketing or advertising of a good or service offering free gifts or prizes; and

C. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

*Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

## **IX.**

### **ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Stipulating Defendants obtain acknowledgments of receipt of this Order, as follows:

A. Each Stipulating Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, each Stipulating Individual Defendant for any business that such Stipulating Individual Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Stipulating Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Stipulating Defendant delivered a copy of this Order, that Stipulating Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

## X.

### COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that Stipulating Defendants make timely submissions to the Commission:

A. One (1) year after entry of this Order, each Stipulating Defendant must submit a compliance report, sworn under penalty of perjury, as follows:

1. Each Stipulating Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives

of the Commission may use to communicate with Stipulating Defendant; (b) identify all of that Stipulating Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Stipulating Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Stipulating Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Stipulating Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Stipulating Individual Defendant performs services whether as an employee or otherwise and any entity in which such Stipulating Individual Defendant has any ownership interest; and (c) describe in detail such Stipulating Individual Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten (10) years after entry of this Order, each Stipulating Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Stipulating Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Stipulating Corporate Defendant or any entity that Stipulating Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or

dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Stipulating Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Stipulating Individual Defendant performs services whether as an employee or otherwise and any entity in which such Stipulating Individual Defendant has any ownership interest, and identify the name, physical address, and Internet address of the business or entity.

C. Each Stipulating Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Stipulating Defendant within fourteen (14) days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Acquinity Interactive, LLC*, FTC Matter No. X1223161.

**XI.**

**RECORDKEEPING**

**IT IS FURTHER ORDERED** that Stipulating Defendants must create certain records for ten (10) years after entry of the Order, and retain each such record for five (5) years. Specifically, Stipulating Corporate Defendants and each Stipulating Individual Defendant for any business that such Stipulating Individual Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Records relating to Affiliates or Affiliate Networks, including all names, addresses, and telephone numbers; dollar amounts paid or received; and information used in calculating such payments;
- D. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- F. Copies of all marketing materials, documents, and information received pursuant to Subsection II.C.3 of this Order; and all written approvals or denials of marketing materials made pursuant to Subsection II.C.4 of this Order; and

G. A copy of each unique advertisement or other marketing material publicly used or disseminated to consumers.

## XII.

### COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Stipulating Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each Stipulating Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Stipulating Defendant. Stipulating Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Stipulating Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Stipulating Defendants or any individual or entity affiliated with Stipulating Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful

use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XIII.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**IT IS SO ORDERED.**

Dated: October 16, 2014



Hon. Robert N. Scola, Jr.  
United States District Judge

**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF:**



Steven M. Wernikoff  
John C. Hallerud  
Matthew H. Wernz  
Federal Trade Commission  
55 W. Monroe St., Suite 1825  
Chicago, IL 60603  
(312) 960-5634 [phone]  
Attorneys for Plaintiff Federal Trade Commission

Date: OCT. 8, 2014

FOR STIPULATING DEFENDANTS:

  
Defendant Acquinity Interactive, LLC  
by Garry Jonas, CEO

Date: 8/21/2014

  
Defendant 7657030 Canada, Inc.  
by Garry Jonas, CEO

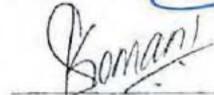
Date: 8/21/2014

  
Defendant Garry Jonas

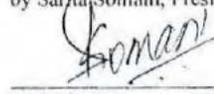
Date: 8/21/2014

  
Defendant Gregory Van Horn

Date: 8/21/2014

  
Defendant Revenue Path E-Consulting Private, Ltd.  
by Sarita Somani, President

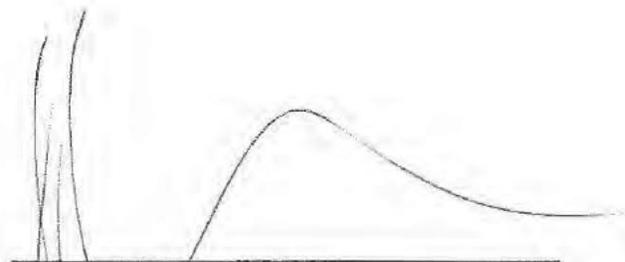
Date: 08/20/2014

  
Defendant Revenuepath Limited  
by Sarita Somani, President

Date: 08/20/2014

  
Defendant Sarita Somani

Date: 08/20/2014



Date: 8-25-14

Richard A. Epstein  
Jeffrey A. Backman  
Lauren Shoemake  
Greenspoon Marder, P.A.  
200 East Broward Blvd., Suite 1500  
Fort Lauderdale, FL 33301  
(954) 491-1120 [Phone]

*Attorneys for Stipulating Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Garry Jonas, Revenue Path E-Consulting Private, Limited, Revenuepath Limited, and Sarita Somani*

---

Douglas J. Jeffrey

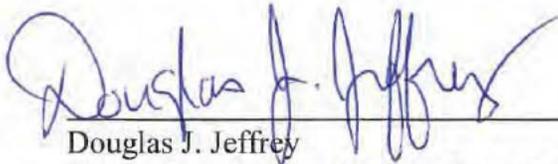
Date: \_\_\_\_\_

Law Offices of Douglas J. Jeffrey, P.A.  
6625 Miami Lakes Drive East, Suite 379  
Miami Lakes, FL 33014  
(305) 828-4744 [Phone]  
*Attorney for Stipulating Defendant Gregory Van Horn*

\_\_\_\_\_  
Richard A. Epstein  
Jeffrey A. Backman  
Lauren Shoemake  
Greenspoon Marder, P.A.  
200 East Broward Blvd., Suite 1800  
Fort Lauderdale, FL 33301  
(954) 491-1120 [Phone]

*Attorneys for Stipulating Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Garry Jonas, Revenue Path E-Consulting Private, Limited, Revenuepath Limited, and Sarita Somani*

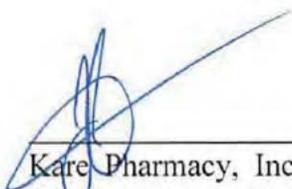
Date: \_\_\_\_\_

  
\_\_\_\_\_  
Douglas J. Jeffrey

Law Offices of Douglas J. Jeffrey, P.A.  
6625 Miami Lakes Drive East, Suite 379  
Miami Lakes, FL 33014  
(305) 828-4744 [Phone]  
*Attorney for Stipulating Defendant Gregory Van Horn*

Date: 8-25-14

**FOR GUARANTOR:**



\_\_\_\_\_  
Kare Pharmacy, Inc., as Guarantor of the  
*Stipulating Defendants' monetary and  
payment obligations to the FTC hereunder*  
by Jordan Soblick, President

Date: 8/21/2014

Attachment A: Telemarketing Sales Rule, 16 CFR Part 310

**PART 310—TELEMARKETING SALES  
RULE 16 CFR PART 310**

- Sec.
- 310.1 Scope of regulations in this part.
  - 310.2 Definitions.
  - 310.3 Deceptive telemarketing acts or practices.
  - 310.4 Abusive telemarketing acts or practices.
  - 310.5 Recordkeeping requirements.
  - 310.6 Exemptions.
  - 310.7 Actions by states and private persons.
  - 310.8 Fee for access to the National Do Not Call Registry.
  - 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101–6108.

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

**§310.1 Scope of regulations in this part.**

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

**§310.2 Definitions.**

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or

**§310.2****16 CFR Ch. I (1–1–12 Edition)**

licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

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

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

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

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

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

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

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

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

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

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

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

(m) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unse-

cured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

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

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

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

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

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

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

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

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

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

(u) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or

**Federal Trade Commission****§ 310.3**

failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

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

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

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

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

(z) *Prize promotion* means:

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

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

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

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

(cc) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(dd) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and

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

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

**§ 310.3 Deceptive telemarketing acts or practices.**

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

**§310.3****16 CFR Ch. I (1–1–12 Edition)**

(1) Before a customer consents to pay<sup>659</sup> for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

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

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

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

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

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

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

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

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

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

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

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

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

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

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in

**Federal Trade Commission****§ 310.3**

the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C).

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

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

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

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

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

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

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

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

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

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

(x) Any material aspect of any debt relief service, including, but not lim-

ited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

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

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

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for

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

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

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

**§ 310.3**

the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

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

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

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

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

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

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

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

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

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

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or tele-

**16 CFR Ch. I (1-1-12 Edition)**

marketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

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

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

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

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

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

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

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

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

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or

**Federal Trade Commission****§ 310.4**

that a charitable contribution is required to win a prize or to participate in a prize promotion; or

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

**§ 310.4 Abusive telemarketing acts or practices.**

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

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

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

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

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

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

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

obtaining or arranging a loan or other extension of credit for a person;

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

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

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

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

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

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

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

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

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

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

**§ 310.4****16 CFR Ch. I (1–1–12 Edition)**

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

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

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

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

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

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

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

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

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph

(a)(7)(i) of this section, the seller or telemarketer must:

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

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

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

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

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

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

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

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

**Federal Trade Commission****§ 310.4**

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

(i) Has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature<sup>664</sup> of that person; or

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

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

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

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

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

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

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

(iv) Includes such person's telephone number and signature;<sup>665</sup> and

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

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

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

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

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

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

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

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

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

(2) Immediately thereafter disconnects the call; and

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

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

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

**§ 310.4****16 CFR Ch. I (1–1–12 Edition)**

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

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

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

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

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

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

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

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

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the

procedures established pursuant to § 310.4(b)(3)(i); and

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

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

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

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

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed<sup>666</sup>; and

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

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

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

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

**Federal Trade Commission****§ 310.5**

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

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

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

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

**§ 310.5 Recordkeeping requirements.**

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

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services

purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;<sup>667</sup>

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

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

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

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

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

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

**§310.6**

of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

**§310.6 Exemptions.**

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

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

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

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

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

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

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer

**16 CFR Ch. I (1-1-12 Edition)**

or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

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

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

**§310.7 Actions by states and private persons.**

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible,

**Federal Trade Commission****§ 310.8**

prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

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

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

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

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

seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$56 for each area code of data accessed, up to a maximum of \$15,503; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$56 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$28 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes

**§ 310.9**

of data for the remainder of the annual period.

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

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 76 FR 53637, Aug. 29, 2011]

**§ 310.9 Severability.**

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

**PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL**

- Sec.  
 311.1 Definitions.  
 311.2 Stayed or invalid parts.  
 311.3 Preemption.  
 311.4 Testing.  
 311.5 Labeling.  
 311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

**16 CFR Ch. I (1–1–12 Edition)****§ 311.1 Definitions.**

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

**§ 311.2 Stayed or invalid parts.**

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

**§ 311.3 Preemption.**

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this part.

**§ 311.4 Testing.**

To determine the substantial equivalency of processed used oil with new oil

Attachment B

**GUARANTY AND SECURITY AGREEMENT**

This GUARANTY & SECURITY AGREEMENT (this "Agreement"), executed as of the date(s) indicated below and effective as of the Effective Date (defined below), is made by and between Kare Pharmacy, Inc., a Florida corporation, with an address at 2901 Coral Hills Drive, Suite 120, Coral Springs, Florida 33065, and its subsidiaries, successors and assigns (collectively, the "Guarantor"), and the Federal Trade Commission (the "Secured Party") (Guarantor and Secured Party shall collectively be referred to as the "Parties").

WHEREAS, the Defendant-Debtors (defined below) and the Secured Party are parties to the Stipulated Final Judgment (defined below) being entered into for the full and final resolution of all claims asserted against the Defendant-Debtors in the matter of *Federal Trade Commission v. Acquinity Interactive, LLC, et. al.*, Case No. 14-cv-60166 (S.D. Fla.);

WHEREAS, Guarantor, as an affiliate of Acquinity Interactive, LLC, 7657030 Canada, Inc., and Garry Jonas, will receive meaningful benefits from the Secured Party entering into the Stipulated Final Judgment with the Defendant-Debtors, and has agreed to enter into this Agreement to provide assurance to the Secured Party for the performance of the Defendant-Debtors' Obligations (defined below) under the Stipulated Final Judgment and to induce the Secured Party to enter into the Stipulated Final Judgment;

WHEREAS, the execution and delivery of this Agreement is a condition to the Secured Party entering into the Stipulated Final Judgment; and

WHEREAS, under the terms hereof, the Secured Party desires to obtain and the Guarantor desires to grant to the Secured Party a security interest in the Collateral (defined below) to secure performance by Defendant-Debtors of the Obligations.

**NOW, THEREFORE**, the Guarantor and the Secured Party intending to be legally bound, hereby agree as follows:

**1. Definitions.**

(a) "**Accounts**" means the Guarantor's two operating accounts held at Citibank, which have account numbers ending in --3179 and --3234.

(b) "**Book of Business**" means all of the consumers, customers, clients, patients, contracts, accounts and other revenue streams of the Guarantor.

(c) "**Cash Proceeds**" means "Cash Proceeds" as defined in the UCC (defined below).

(d) "**Collateral**" means the Accounts, Receivables (defined below), Book of Business, and all Cash Proceeds arising out of or relating to any of the foregoing.

(e) **“Defendant-Debtors”** shall refer to Acquinity Interactive, LLC, 7657030 Canada, Inc., Revenue Path E-Consulting Private Ltd., Revenuepath Limited, Sarita Somani, Gregory Van Horn and Garry Jonas, and shall not include any other defendants involved in the lawsuit styled *Federal Trade Commission v. Acquinity Interactive, LLC, et. al.*, Case No. 14-cv-60166 (S.D. Fla.).

(f) **“Effective Date”** means the date of entry of the Stipulated Final Judgment by the U.S. District Court for the Southern District of Florida.

(g) **“Healthcare Insurance Receivables”** means Guarantor’s interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(h) **“Primary Lien”** means the existing security interest of creditor, KVM, LLC, in the first Three Million Dollars (\$3,000,000) of Healthcare Insurance Receivables, Book of Business and Cash Proceeds, which security interest is and shall remain superior to that of the Secured Party herein, and any other subsequent security interest in the first Three Million Dollars (\$3,000,000) of Healthcare Insurance Receivables, Book of Business and Cash Proceeds, granted by Guarantor in place thereof and which shall be and remain superior to that of the Secured Party herein.

(i) **“Obligations”** shall include all debts, liabilities, monetary obligations, covenants relating to the payment of monies or monies paid, and other similar duties owing from the Defendant-Debtors to the Secured Party with respect to the Stipulated Final Judgment, of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Defendant-Debtors, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), and whether absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, and all costs and expenses of the Secured Party incurred in the enforcement, collection or otherwise in connection with any of the foregoing, including reasonable attorneys’ fees and expenses.

(j) **“Receivables”** means all existing and later arising accounts receivable, including without limitation, Healthcare Insurance Receivables, chattel paper, contract rights, rights to payment and other obligations owed to Guarantor in connection with its sale or lease of goods (including licensing software and other technology) or provision of services, along with all credit, insurance, guaranties, letters of credit or other security associated therewith, and all merchandise returned or reclaimed by Guarantor relating to any of the foregoing, and any proceeds therefrom, as well as, any of the foregoing derived from or through Guarantor’s subsidiaries, and their successors or assigns.

(k) **“Security Documents”** means this Agreement and all other documents and instruments evidencing, securing or executed in connection herewith.

(l) “**Stipulated Final Judgment**” means that certain Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief entered as to the Defendant-Debtors in the lawsuit styled *Federal Trade Commission v. Acquinity Interactive, LLC, et. al.*, Case No. 14-cv-60166 (S.D. Fla.).

(m) “**UCC**” means the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of Florida or such other jurisdiction governing the creation or perfection of a security interest in the Collateral or the exercise of rights or remedies of the Secured Party with regard to the Collateral. Terms used herein which are defined in the UCC and not otherwise defined herein shall have the respective meanings ascribed to such terms in the UCC.

2. **Guaranty.** Guarantor hereby unconditionally and absolutely guarantees Defendant-Debtor’s performance of the Obligations under the Stipulated Final Judgment. This Guaranty shall continue in full force and effect until all of the Obligations have been discharged. Guarantor’s duty and liability under this Guaranty shall be limited solely to the payment of monies for the Obligations, and Guarantor shall have no further obligations to perform, or to otherwise be restrained or enjoined, under the Stipulated Final Judgment, except as may be expressly set forth therein. In addition, Guarantor’s liability hereunder shall not exceed Defendant-Debtors’ liability under the Stipulated Final Judgment.

3. **Effectiveness of the Security Documents.** The Parties acknowledge and agree that none of the Security Documents (including, without limitation, the security interest granted pursuant to Section 4 of this Agreement) shall be effective until the Effective Date.

4. **Grant and Perfection of Security Interest.** To secure the Obligations, as of the Effective Date, the Guarantor assigns and grants to the Secured Party a continuing lien on and security interest in all Collateral in which Guarantor now has or hereafter acquires an interest, subject to the Primary Lien. The Guarantor, at its sole cost and expense, shall prepare and file in any UCC jurisdiction any initial financing statements and amendments thereto necessary to perfect and maintain the perfection of the Secured Party’s security interest in the Collateral, and promptly deliver filed-stamped copies of all such statements to the Secured Party. In the event that Guarantor acquires all or substantially all of the ownership interest in any business entity on or after the Effective Date, Guarantor shall cause that entity to enter into an agreement with Secured Party substantially similar to this Agreement and grant and perfect a lien in favor of Secured Party on such additional collateral, on or before the closing date of the acquisition. For the avoidance of doubt, nothing in this Agreement shall be construed as granting any lien or security interest in or right to any other assets or property belonging to Guarantor that is not specifically set forth in this Agreement or the accompanying Security Documents.

5. **Representations and Warranties.** To induce the Secured Party to enter into this Agreement, the Guarantor represents, covenants and warrants to the Secured Party that:

5.1 Good Standing. The Guarantor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida and is duly qualified and authorized to do business in the State of Florida and any other state if required to do so in order to conduct its business.

5.2 Corporate Authority; Solvency. Subject to the Primary Lien and any purchase money security interest relating to the procurement of inventory, the Guarantor has the power to execute, deliver and carry out each of the Security Documents and all supplements thereto, and its principals have duly authorized and approved the terms of the Security Documents and the taking of any and all action contemplated by the Guarantor in connection with the Security Documents. As of immediately prior to the effectiveness of this Agreement, the Guarantor is solvent and able to pay its debts as they become due in the ordinary course of business.

5.3 Compliance with Law. To the best of the Guarantor's knowledge, the Guarantor is not (i) in violation of its charter or bylaws, (ii) in receipt of notice of any violation of any agreement or undertaking to which it is a party or by which it is bound, or (iii) in violation of any law, statute, rule, regulation, order, writ, injunction or decree of any governmental authority applicable to the Guarantor or any of its properties or assets which violation, individually or in the aggregate, would have a material and adverse effect on the business, financial condition, properties or operations of the Guarantor, materially and adversely affect the transactions contemplated by this Agreement, or otherwise materially and adversely affect the validity or enforceability of this Agreement.

5.4 No Litigation. There are no judgments against the Guarantor as of the date of this Agreement. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before or by any court, public board or body pending, or within the actual knowledge of the Guarantor threatened, where an unfavorable decision, ruling or finding would (i) to the extent not covered by insurance, have any material and adverse effect on the business, financial condition, properties or operations of the Guarantor; (ii) materially and adversely affect the transactions contemplated by this Agreement; or (iii) otherwise materially and adversely affect the validity or enforceability of this Agreement. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery of this Agreement, or in connection with the performance of the Guarantor's obligations hereunder, have been obtained or will be obtained whenever required hereunder or by law.

5.5 No Financial Change. There has been no material and adverse change in the condition of the Guarantor, financial or otherwise, since June 1, 2014.

5.6 Tax Compliance. The Guarantor has filed, or caused to be filed, all tax returns required to be filed, and has paid all taxes shown to be due and payable on said return or on any assessment made against it.

5.7 Good Title. On the date of this Agreement, other than those assets leased in the ordinary course of business, the Guarantor has good and marketable title to all of its properties and assets, real, personal and mixed, comprising the Collateral, and, other than the Primary Lien, and any purchase money security interest relating to the procurement of inventory, none of Guarantor's properties or assets is subject to any mortgage, pledge, lien, security interest, encumbrance, charge or title retention or other security agreement or arrangement other than in favor of the Secured Party. Guarantor has no knowledge of any existing statutory liens on any of the Collateral.

5.8 Place of Records. The Guarantor keeps its records concerning the Collateral at the address set forth in the first paragraph of this Agreement and at the property located at 2200 SW 10<sup>th</sup> Street, Deerfield Beach, Florida 33442. Without the prior written consent of the Secured Party, the Guarantor will not make any change in location of, or any addition to, the place of business or storage referred to herein.

5.9 Warranties as to Healthcare Insurance Receivables. The Guarantor warrants and represents that as to all Healthcare Insurance Receivables as of the date of the information furnished:

- A. Each Health Insurance Receivable represents a bona fide performed transaction;
- B. The amount shown as a Health Insurance Receivable on the Guarantor's books and on any statement delivered to the Secured Party is owing to the Guarantor and is materially accurate;
- C. All agings of Healthcare Insurance Receivables submitted to the Secured Party are and will be true and accurate in all material respects.

6. Affirmative Covenants. The Guarantor covenants that it shall:

(a) Maintain in good standing its existence as a corporation organized under the laws of the State of Florida and remain qualified to conduct its business in the State of Florida and any other state or foreign jurisdiction as required in order to conduct its business.

(b) From time to time and at all reasonable times allow the Secured Party to examine or inspect the Collateral, and obtain valuations and audits of the Collateral, at the Guarantor's expense, wherever located.

(c) Do, obtain, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as the Secured Party may require to vest in and assure

to the Secured Party its rights hereunder and in or to the Collateral, and the proceeds thereof, including performing any and all steps reasonably requested by the Secured Party to create and maintain in the Secured Party's favor a valid lien on the Collateral, including, without limitation, the execution, delivery, filing and recording of UCC-1 financing statements and continuation statements, supplemental security agreements, notes and any other documents necessary, in the reasonable opinion of the Secured Party, to protect its interest in the Collateral.

(d) Collect the Receivables in the ordinary course of business, including engaging in third-party collection efforts in the ordinary course of business consistent with past practice.

(e) Defend the Collateral against the claims and demands of all parties other than the holder(s) of the Primary Lien.

(f) Keep accurate and complete records of its Receivables consistent with the Guarantor's normal accounting procedures.

(g) Pay all of its indebtedness consistent with prior practices and before same shall become in default, and pay and discharge prior to delinquency or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, as well as all lawful claims for labor, materials, supplies and warehousing/fulfillment charges which, if unpaid, might become a lien or charge upon the Collateral; provided, however, that it shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings, and it shall have set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim so contested; and further provided that, subject to the foregoing proviso, it will pay or cause to be paid all such taxes, assessments, charges, levies or claims upon the commencement of proceedings to foreclose any lien which has attached as security therefor.

(h) The Guarantor and each subsidiary of the Guarantor shall (i) comply in all material respects with the applicable provisions of ERISA; and (ii) furnish to the Secured Party (a) as soon as possible, and in any event within thirty (30) days after any officer of the Guarantor or any subsidiary of the Guarantor knows or has reason to know that any Reportable Event, as defined in 29 U.S.C. §1343, with respect to any Plan has occurred, a statement of the principal financial officer of the Guarantor setting forth details as to such Reportable Event and the action that the Guarantor or such subsidiary proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the Pension Benefit Guaranty Corporation, or such entity as is required by applicable law; and (b) promptly after receipt thereof, a copy of any notice the Guarantor or any subsidiary of the Guarantor may receive from the Pension Benefit

Guaranty Corporation relating to the intention of said Corporation to terminate any plan or to appoint a trustee to administer any Plan.

7. **Negative Covenants.** The Guarantor represents and agrees that it will not, without the prior express written consent of the Secured Party, which consent shall not be unreasonably withheld:

- (a) Change its name or jurisdiction of organization.
- (b) Effect a material change in the nature and character of its business as presently conducted.
- (c) Create, incur, assume, guarantee or otherwise become liable in respect of the obligations of any third party, other than in the ordinary course of business.
- (d) Pay any dividends or any distributions to its shareholders.
- (e) Transfer the Collateral.
- (f) Except for the Primary Lien, encumber, mortgage, pledge, assign or grant any security interest in any Collateral outside of the ordinary course of business, other than to the Secured Party.
- (g) Extend the payment terms of any Receivables except in the ordinary course of business, or otherwise effect a material change in the terms and conditions with respect to payment for goods sold by the Guarantor, in each case without prompt notice thereof to the Secured Party.
- (h) Except as may be required under the Primary Lien: (i) cause to be deposited into any bank account other than the Accounts, the cash proceeds of the Collateral generated by the Guarantor; (ii) cause cash proceeds generated by merchant processing activities by or on behalf of the Guarantor to be remitted to any bank account other than the Accounts; or (iii) modify or replace the Accounts.
- (i) Make any loans or advances to any third parties, except for deposits and other payments made by the Guarantor in the ordinary course of its business (i.e., security deposits on leases or deposits paid to vendors regarding the purchase of inventory).

8. **Financial Reporting Requirements.** Unless the Secured Party notifies the Guarantor in writing that it dispenses with any one or more of the following requirements, the Guarantor will during the term hereof:

- (a) Furnish to the Secured Party, within fifteen (15) days of the end of each calendar month, monthly financials and cash flows of the Guarantor; and

(b) Furnish to the Secured Party, within fifteen (15) days of its request therefor, such information and documents relating to the Collateral as the Secured Party may reasonably request, including, without limitation, all invoices, documents, contracts, chattel paper, instruments and other writings pertaining to Guarantor's contracts or the performance thereof, all of the foregoing to be certified upon the request of the Secured Party by an authorized officer of the Guarantor.

9. **Collateral Inspection Rights.** The Secured Party shall have the right (i) upon reasonable notice to the Guarantor and during normal business hours to call at the Guarantor's place of business, or any other place where the Collateral may be located, at intervals to be determined by the Secured Party, and inspect, audit and copy any books and records of the Guarantor relating to the Collateral or this Agreement; provided, however, that same shall not occur more than once every calendar month, unless an Event of Default (defined below) has occurred; and (ii) upon and during the continuance of an Event of Default, to verify Receivables with the respective account debtors. The Secured Party may at intervals determined by the Secured Party, at the Guarantor's expense, conduct audits of the Guarantor. All audits, inspections and review of records of Guarantor by Secured Party shall be subject to the confidentiality of Guarantor's customers and records as required under applicable law.

10. **Indemnification of the Secured Party.** Except to the extent caused by the actions of the Secured Party or its Agents, the Guarantor covenants and agrees at its expense to defend, pay, indemnify and save the Secured Party, its officers, employees and directors, harmless of, from, and against any and all claims, damages, demands, expenses, liabilities, and lawsuits of every kind, character and nature asserted by or on behalf of any person, firm or entity against the Secured Party, its officers, employees and directors as a result of a material breach of this Agreement by the Guarantor and the transaction contemplated by the Security Documents. In the event that any such action or proceeding is brought against the Secured Party by reason of any such claim or demand, the Guarantor shall upon notice from the Secured Party, resist and defend any action or proceeding on behalf of the Secured Party, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. The Secured Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof at the sole cost and expense of the Secured Party if such employment is reasonable and necessary under the circumstances. This provision shall survive the repayment and satisfaction of all Obligations by the Defendant-Debtors.

11. **Account Control Agreement.** To perfect the Secured Party's security interest in the Accounts, Guarantor and Secured Party have entered into one or more Deposit Account Control Agreements with Citibank, a copy of which is attached as **Exhibit "A"** hereto and incorporated by reference herein, providing for control by the Secured Party of the Guarantor's Accounts in an Event of Default.

12. **Opening Statement of Healthcare Insurance Receivables.** A statement of Healthcare Insurance Receivables of the Guarantor as of the date indicated (the "H/R Statement"), is set forth as **Exhibit "B"** hereto. The H/R Statement sets forth Healthcare Insurance Receivables aged not more than ninety (90) days, net of reserves for doubtful accounts. All of the Healthcare Insurance Receivables are in the name of the Guarantor.

13. **Events of Default.** The Guarantor shall be in default under this Agreement upon the happening of any of the following events or conditions (each, an "Event of Default"): (a) any failure on the part of Guarantor to timely cure the failure of Defendant-Debtors to make any payment when due as required by the Stipulated Final Judgment; (b) the failure by the Guarantor to perform any of its obligations under the Security Documents, including without limitation the failure to cause any after-acquired subsidiary to enter into an agreement substantially similar to this Agreement as set forth in Section 4 above; (c) the falsity, inaccuracy or material breach by the Guarantor of any written warranty, representation or statement made or furnished to the Secured Party by the Guarantor; (d) the entry of any judgment against the Guarantor or any lien against or the making of any levy, seizure or attachment of or on the Collateral other than the Primary Lien or as otherwise contemplated hereunder; provided, however, the Guarantor shall have a period of thirty (30) days following written notice to cause any judgment or non-permitted lien to be paid, dismissed, or bonded; (e) the failure of the Secured Party to have a perfected security interest in the Collateral subject only to the priority of the Primary Lien and any purchase money security interest relating to the procurement of inventory as may be required in the ordinary course of business; (f) other than the Primary Lien and any purchase money security interest relating to the procurement of inventory as may be required in the ordinary course of business, the Guarantor caused or permitted a security interest, perfected or otherwise, other than the security interest specifically provided for or permitted hereunder, to be created in any Collateral, or the Guarantor otherwise failed to take any action requested by the Secured Party to perfect or protect the security interest provided for herein; (g) the failure of the Guarantor to comply with the terms and conditions of any applicable material order, ordinances, laws or statutes of any city, state or other governmental department having jurisdiction with respect to Collateral, and such non-compliance is not cured or stayed within thirty (30) days; (h) any breach by the Guarantor of the covenants set forth in this Agreement; or (i) the filing of a petition for relief by or against Guarantor under the U.S. Bankruptcy Code, or any similar federal or state insolvency proceeding, which is not dismissed within 90 days of notice by the Secured Party.

14. **Remedies.** Upon the occurrence of any such Event of Default and at any time thereafter, the Secured Party may declare all Obligations owing by the Defendant-Debtors under the Stipulated Final Judgment and secured hereby immediately due and payable and shall have, in addition to any remedies provided herein or by any applicable law or in equity, all the remedies of a secured party under the UCC. The Secured Party's remedies include, but are not limited to, to the extent permitted by law, the right to deliver instructions to the Guarantor's bank

as to the withdrawal or disposition of funds from time to time credited to the Accounts, or as to any other matters relating to the Accounts. Expenses of retaking, holding, preparing for sale, selling or the like shall include the Secured Party's reasonable attorney's fees and legal expenses, incurred or expended by the Secured Party to enforce any payment due to it under this Agreement either as against the Guarantor or in the prosecution or defense of any action, or concerning any matter growing out of or in connection with the subject matter of this Agreement and the Collateral. The Guarantor waives all relief from all appraisal or exemption laws now in force or hereafter enacted.

**15. Payment of Expenses.** At its option, the Secured Party may, but is not required to: discharge taxes, liens, security interests or such other encumbrances as may attach to the Collateral other than the Primary Lien, unless the Primary Lien is in default; pay for required insurance on the Collateral, and pay for the maintenance, appraisal or reappraisal, and preservation of the Collateral, as determined by the Secured Party to be necessary. The Guarantor will reimburse the Secured Party on demand for any payment so made or any expense incurred by the Secured Party pursuant to the foregoing authorization, and the Collateral also will secure any advances or payments so made or expenses so incurred by the Secured Party.

**16. Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered (with confirmation of delivery), sent by electronic mail (with confirmation of delivery) or facsimile transmission (with confirmation of delivery) and a copy sent by U.S. certified mail return receipt requested, or sent by nationally recognized overnight courier service (with confirmation of delivery), to a Party's address set forth in the Security Documents or to such other address as either Party may give to the other in writing for such purpose.

**17. Preservation of Rights.** No delay or omission on the Secured Party's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Secured Party's action or inaction impair any such right or power. The Secured Party's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Secured Party may have under other agreements, at law or in equity.

**18. Illegality.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**19. Changes in Writing.** No modification, amendment or waiver of any provision of this Agreement, nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing and signed by the Party against whom its enforcement is sought, and then such

waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

20. **Entire Agreement.** This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement shall not be construed more strictly against any Party hereto by virtue of the preparation of this Agreement.

21. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the Parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail or facsimile transmission shall be effective as delivery of a manually executed counterpart. Any Party so executing this Agreement by electronic mail or facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

22. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Guarantor and the Secured Party and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Guarantor may not assign this Agreement in whole or in part without the Secured Party's prior written consent, but the Secured Party at any time may assign this Agreement in whole or in part.

23. **Interpretation.** In this Agreement, unless the Secured Party and the Guarantor otherwise agree in writing the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivision of sections) or exhibits are to those of this Agreement unless otherwise indicated. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

24. **Severability.** If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall remain in full force and effect.

25. **Governing Law and Jurisdiction.** This Agreement will be deemed to have been made in the State of Florida. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, EXCEPT THAT THE LAWS OF THE STATE WHERE ANY COLLATERAL IS LOCATED, IF DIFFERENT, SHALL GOVERN THE CREATION, PERFECTION AND**

**FORECLOSURE OF THE LIENS CREATED HEREUNDER ON SUCH PROPERTY OR ANY INTEREST THEREIN.** The Guarantor hereby irrevocably consents to the jurisdiction of any state or federal court located in Broward County, Florida; provided that nothing contained in this Agreement will prevent the Secured Party from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor, against any Collateral of the Guarantor located within any other county, state or other foreign or domestic jurisdiction. The Secured Party and the Guarantor agree that if the Secured Party selects venue of a suit within the State of Florida, such venue will be located within Broward County, Florida. The Guarantor waives any objection to venue and any objection based on a more convenient forum than Broward County, Florida in any action instituted by the Secured Party under this Agreement.

**26. WAIVER OF JURY TRIAL. EACH OF THE GUARANTOR AND THE SECURED PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND THE SECURED PARTY ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

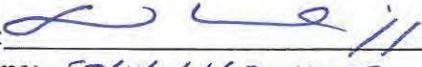
*(signature page follows)*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the 8th  
day OCTOBER, 2014.

**GUARANTOR:** Kare Pharmacy, Inc.

By:   
Name: Jordan Soblick  
Title: President

**SECURED PARTY:** The Federal Trade Commission

By:   
Name: STEVE WERNIKOFF  
Title: ATTORNEY

*(Signature page to Security Agreement)*

## Deposit Account Control Agreement



This Deposit Account Control Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ among Kare Pharmacy, Inc. (the "Customer"), The U.S. Federal Trade Commission (the "Secured Party") and Citibank, N.A. (the "Bank").

### RECITALS

- A. The Customer maintains deposit account number 3179 in the name of the Customer at the Bank (whether individually or collectively, the "Account").
- B. The Customer and the Secured Party have notified the Bank that, in connection with a certain loan, financial or other transaction, the Customer has granted the Secured Party (for itself and/or as agent for other parties) a security interest in the Account.
- C. The Secured Party and the Customer desire to enter into this Agreement to perfect the Secured Party's security interest in the Account and to describe the respective rights and duties of the parties hereto with respect to the Account.

Therefore, the parties agree as follows:

1. In this Agreement, the following terms have the following meanings or interpretations:
  - (a) "Account-related Agreements" means the CitiBusiness Client Manual, funds transfer agreement, and any cash management or other agreements entered into between the Bank and the Customer with respect to the Account, each as may be amended, modified or supplemented from time to time.
  - (b) "Business Day" means any day of the week that is not a Saturday, Sunday, bank holiday or other day that the Commercial Banking Servicing Department of the Bank is closed.
  - (c) "Disposition Notice" means the Initial Instruction and any other notice received by the Bank from the Secured Party thereafter directing the disposition of funds in the Account.
  - (d) "Initial Instruction" means the notice received by the Bank from the Secured Party in the form of Exhibit A.
  - (e) "Outside Time" means a reasonable time, not to exceed two (2) Business Days, after the Business Day on which the Initial Instruction is actually received by the Commercial Banking Servicing Department of the Bank by facsimile in accordance with the notice provisions set forth in this Agreement. If the Initial Instruction is actually received by the Commercial Banking Servicing Department of the Bank after noon, Central Prevailing Time, then, in determining the Outside Time, the Initial Instruction will be deemed to have been received on the following Business Day.
  - (f) "Release Notice" means a written notice from the Secured Party to the Bank in the form of Exhibit B, notifying the Bank that the Secured Party is terminating the Agreement and releasing its security interest in the Account.
  - (g) "UCC" means the Uniform Commercial Code of the jurisdiction whose law governs this Agreement.
2. The parties hereto agree that, in accordance with the terms of this Agreement, the Bank shall comply with the instructions originated by the Secured Party directing the disposition of the funds in the Account without further consent by the Customer. The parties hereto further agree that (i) prior to the Outside Time, the Customer (but not the Secured Party) may withdraw funds from the Account and provide all other funds transfer and other disposition instructions with respect to the Account to which it is entitled under the Account-related Agreements and that (ii) on and after the Outside Time, and until such time as the Bank is in receipt of a Release Notice or a final order of a court of competent jurisdiction ordering the disposition of the funds in the Account, the Secured Party (but not the Customer) may direct the disposition of the funds in the Account by delivering a Disposition Notice. On and after the Outside Time, the Bank will not comply with any instructions from the Customer and will block the Account in a manner that will prevent the Customer from having any rights of withdrawal from the Account. The Customer acknowledges and agrees that the Bank shall have no obligation to inquire or investigate whether the Customer is in default in the payment or performance of its obligations to the Secured Party or to any other party. The Customer further acknowledges and agrees that the Bank will not be liable to the Customer for complying with any direction of the Secured Party even if the Customer notifies the Bank that a default had not occurred and/or that the Secured Party was not justified in issuing a Disposition Notice.

3. Notices.
  - (a) In order for any Disposition Notice, Release Notice or any other notice sent to the Bank to be binding upon the Bank, such notice must be delivered to the Commercial Banking Servicing Department of the Bank by facsimile transmission to:  
**Facsimile Number: (877) 285-9314**  
**Attention: Citibank, N.A. CBG Servicing Re: Control Agreement**  
with a written copy sent to the address set forth for the Bank on the signature pages hereto. Such copy must be delivered by hand, mailed by United States registered or certified first class mail, postage prepaid and return receipt requested, sent by overnight courier or delivered via facsimile or email transmission, to the extent that a facsimile number or email address has been provided for the purpose of receiving such notices.
  - (b) Notices to all other parties, must be in writing and delivered by hand, mailed by United States registered or certified first class mail, postage prepaid and return receipt requested, sent by overnight courier or delivered via facsimile transmission or email, to the extent that a facsimile number or email address has been provided for the purpose of receiving such notices.
  - (c) Any notice or communication shall be deemed to have been duly given or made and to have become effective at the time of the receipt thereof by the recipient. Any party may change its mailing or email address or facsimile number for notices by notifying the other parties hereto in accordance with the notice provisions set forth in this Section.
4. The Bank will not be obligated to follow, nor shall it be liable to the Secured Party or the Customer for failing to follow
  - (a) an Initial Instruction, that is not in the form of Exhibit A or is not otherwise fully completed; or
  - (b) a Disposition Notice
    - (i) prior to the Outside Time;
    - (ii) that does not have attached to it a fully executed copy of this Agreement;
    - (iii) that requires the disposition of funds from the Account that are not immediately available at the time such funds are to be transferred;
    - (iv) that requires the disposition of funds from the Account if the Bank has not received evidence reasonably required by the Bank (in the form of an incumbency certificate signed by a secretary of the Secured Party in the form of Exhibit C attached hereto or other authorizing form satisfactory to the Bank) as to the authority of the person giving the Disposition Notice to act on behalf of the Secured Party;
    - (v) that requires funds be sent to more than one recipient;
    - (vi) that requires the Bank to make more than one disposition of funds during the term of this Agreement, unless the disposition of funds will be pursuant to an automated standing wire in accordance with the Bank's wire procedures;
    - (vii) that requires the disposition of funds in the Account by a method not available to the Customer under the Account-related Agreements; or
    - (viii) that requires the disposition of funds to a location outside of the United States, except for a Disposition Notice requesting a one-time disposition of funds and that is accompanied by a Release Notice from the Secured Party.

In addition, the Bank will not be liable to the Secured Party or the Customer for any failure to follow or any delay in following any Disposition Notice (including any funds transfer requests) or any provision of this Agreement due to a computer malfunction, interruption of communication facilities, labor difficulties, act of God, war, terrorist attack, or other cause beyond the Bank's reasonable control.

5. If at any time, (a) the Customer becomes subject to a voluntary or involuntary proceeding under the United States Bankruptcy Code, (b) the Bank is otherwise served with a court order which the Bank in good faith believes affects the Account, or (c) the Bank determines that acting upon the instructions of either the Customer or the Secured Party would result in the violation of any applicable law, rule or regulation, the Bank may cease acting upon the instructions of both the Customer and the Secured Party and suspend disbursements from the Account otherwise required by the terms hereof or any Disposition Notice, until such time as the Bank receives assurances reasonably satisfactory to the Bank that funds in the Account may continue to be disbursed.
6. The Bank represents and warrants to the Secured Party that the Bank (a) is an organization engaged in the business of banking and (b) maintains the Account as a deposit account in the ordinary course of the Bank's business. The Bank has not entered into any currently effective control agreement with respect to the Account for the benefit of any person other than the Secured Party and the Bank will not enter into a control agreement with respect to the Account for the

benefit of any person other than the Secured Party during the term of this Agreement. The Bank agrees that it will not change the name or account number of the Account without the prior written consent of the Secured Party.

7. Subordination.
  - (a) Except for amounts referred to in clause (b) of this Section, the Bank (i) subordinates any security interest, lien or other encumbrance it may have against the Account to the Secured Party's security interest and (ii) will not exercise any right of recoupment, setoff or debit against the Account. This subordination will not apply to any security interest that the Bank has in an item under the UCC Article 4 as a collecting bank.
  - (b) Notwithstanding subparagraph (a) of this Section, and regardless of any agreement of the Customer to compensate the Bank by means of balances in the Account, the Bank may charge the Account, to the extent permitted by any of the Account-related Agreements or applicable law, for (i) the face amount of a check, draft, money order, instrument, wire transfer of funds, automated clearing house entry, other electronic transfer of funds or other item (A) deposited in or credited to the Account and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or for any other reason and without regard to the timeliness of the return or adjustment or the occurrence or timeliness of any other person's notice of nonpayment or adjustment, or (B) subject to a notice against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve regulations or Operating Circulars, clearing house rules, the UCC or other applicable law, (ii) any adjustments or corrections of any posting or encoding errors, and (iii) fees and expenses chargeable by the Bank in respect of the Account or any related services, including those services specified in the Account-related Agreements.
8. This Agreement shall be absolute and continuing and shall remain in effect until terminated as hereinafter provided.
9. This Agreement shall apply only to the Account and shall not apply to any other accounts of the Customer now existing or hereafter created at the Bank except pursuant to a written amendment to this Agreement executed by the parties hereto.
10. Except with respect to the obligations and duties expressly provided in this Agreement, this Agreement shall not impose or create any obligations or duties upon the Bank that are greater than or in addition to the usual and customary obligations and duties, if any, of the Bank with respect to the Account or the Customer. The Bank shall have no obligation or duty whatsoever to interpret the terms of any agreements between the Customer and the Secured Party or to determine whether any default exists thereunder.
11. The Customer hereby irrevocably authorizes and instructs the Bank to perform and comply with the terms of this Agreement. The Account-related Agreements will continue to apply to the Account and any services provided in connection with the Account (including any funds transfers); provided, however, that to the extent there is any conflict between this Agreement and any Account-related Agreement, the provisions of this Agreement will control. Notwithstanding the foregoing, this Agreement will not (a) derogate from any claim or defense that the Bank may have against the Customer under any Account-related Agreements or (b) create any third-party beneficiary rights under any of the Account-related Agreements in favor of the Secured Party.
12. During the term of this Agreement, the Account may not be closed by the Customer, except by a notice to the Bank given jointly with the Secured Party. The parties acknowledge, however, that the Bank reserves the right to close the Account in accordance with the terms of the Account-related Agreements. This Agreement may not be terminated by the Customer, except by a notice to the Bank given jointly with the Secured Party. This Agreement may be terminated (a) by the Secured Party at any time by providing a Release Notice to the Customer and the Bank and (b) by the Bank (i) immediately upon notice to the Customer and the Secured Party if the Bank becomes obligated to terminate this Agreement or to close the Account under any statute, rule or regulation, court order or any legal process binding upon the Bank, (ii) otherwise upon thirty (30) days' notice to the Customer and the Secured Party. If the Bank terminates this Agreement pursuant to clause (i) of this Section, the Bank will, unless a previously delivered and continuing effective Disposition Notice directs otherwise, remit any available funds in the Account on the date of termination, by check mailed to the address of the Secured Party for receiving communications under this Agreement. If the Bank terminates this Agreement pursuant to clause (ii) of this Section, the Bank will, unless a previously delivered and continuing effective Disposition Notice directs otherwise, remit any available funds in the Account on the effective date of termination (A) at the direction of the Secured Party if the direction is received by the Bank prior to the effective date of termination of this Agreement or (B) if no such direction is received by the Bank prior to such date by check mailed to the address of the Secured Party for receiving communications under this Agreement. Any obligation of the Bank

to remit any funds to or at the direction of the Secured Party under this subsection is subject to Sections 4 and 5 hereof. The termination of this Agreement will not affect any rights created or obligations incurred under this Agreement before the termination.

13. The Customer shall indemnify and hold harmless the Bank from and against any and all claims, actions and suits (whether groundless or otherwise), losses, damages, costs, expenses (including reasonable attorney's fees and disbursements) and liabilities of every nature and character arising out of or related to this Agreement or the transactions contemplated hereby or any actions taken or omitted to be taken by the Bank hereunder, except to the extent directly caused by the Bank's gross negligence or willful misconduct. The foregoing indemnity provision shall survive any termination of this Agreement.
14. The Bank may act upon any instrument or other writing believed by it in good faith to be genuine and to have been signed or presented by a person purporting to be the Secured Party or the Customer (or any agent thereof), as the case may be. The Customer and the Secured Party hereby agree that the procedures set forth in this Agreement, together with the execution of this Agreement, are commercially reasonable for each of them and that no other security procedures, as such term is defined in Article 4A of the UCC, are necessary or desired, including, without limitation, those involving any call back to the Secured Party or other methods of verification of authority with respect to Disposition Notices or any other writings. The Bank shall not be liable in connection with the performance or non-performance of its duties hereunder, except for its own gross negligence or willful misconduct. The Bank's duties shall be determined only with reference to this Agreement and applicable laws, and the Bank shall not be charged with knowledge of, or any duties or responsibilities in connection with, any other document or agreement. The Bank shall have no liability to any party for any incidental, punitive or consequential damages resulting from any breach by the Bank of its obligations hereunder.
15. If the Secured Party so requests the Bank will provide to the Secured Party, a copy of each periodic account statement relating to the Account ordinarily furnished by the Bank to the Customer. The Bank's liability for failing to provide the account statement will not exceed the Bank's cost of providing the statement. The Customer authorizes the Bank to provide to the Secured Party such statements and any other information concerning the Account that the Bank may agree to provide to the Secured Party at the Secured Party's request.
16. This Agreement may not be amended or modified without the prior written consent of the Bank, the Customer and the Secured Party.
17. No delay or omission on the part of the Secured Party, the Customer or the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Agreement. No waiver of any right under this Agreement shall be effective unless in writing and signed by the party waiving such right, and no waiver on one occasion shall be construed as a bar to or waiver of any such right on any other occasion.
18. This Agreement and any waiver or amendment hereto may be executed in counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This Agreement may be executed and delivered by pdf format via email transmission or by facsimile transmission, all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.
19. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the conflicts of law principles thereof) and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The Bank's jurisdiction for purposes of Part 3 of Article 9 of the UCC is New York.
20. This Agreement, together with any Schedules and Exhibits attached hereto, constitutes the entire agreement, and supersedes any prior agreements, of the parties concerning its subject matter. In the event a provision of this Agreement is unenforceable, this Agreement shall be construed to the extent possible as if the unenforceable provision were omitted.
21. EACH OF THE SECURED PARTY, CUSTOMER AND THE BANK HEREBY KNOWINGLY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT.

**Secured Party**

FEDERAL TRADE COMMISSION  
Name of Secured Party

[Signature]  
Signature of Authorized Signer

STEVEN WERNIKOFF  
Printed Name of Authorized Signer

STAFF ATTORNEY  
Title of Authorized Signer

55 W. MONROE ST # 1825  
Address - Line 1

CHICAGO IL 60603  
Address - Line 2

Attention: \_\_\_\_\_

**Customer**

Kare Pharmacy, Inc.  
Name of Customer

[Signature]  
Signature of Authorized Signer

Jordan Soblick  
Printed Name of Authorized Signer

President  
Title of Authorized Signer

2200 SW 10<sup>th</sup> Street  
Address - Line 1

Deerfield Beach, FL 33442  
Address - Line 2

Attention: Legal

**Citibank, N.A.**

\_\_\_\_\_  
Signature of Authorized Signer

\_\_\_\_\_  
Printed Name of Authorized Signer

\_\_\_\_\_  
Title of Authorized Signer

**Address for Notices:**  
Facsimile Number: (877) 285-9314  
Attn: Citibank, N.A. CBG Servicing Re: Control Agreement

**With a copy to:**

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address - Line 2

\_\_\_\_\_  
Attention:

EXHIBIT A  
FORM OF INITIAL INSTRUCTION

[LETTERHEAD OF THE SECURED PARTY]  
DEPOSIT ACCOUNT CONTROL AGREEMENT INITIAL INSTRUCTION

DATE: \_\_\_\_\_

CITIBANK, N.A.:

Facsimile: (877) 285-9314

Attention: Citibank, N.A. CBG Servicing Re: Control Agreement

With a copy to:

CITIBANK, N.A.:

\_\_\_\_\_  
\_\_\_\_\_

Attn:

Re: Account number: \_\_\_\_\_ (the "Account")

Ladies and Gentlemen:

This is an Initial Instruction, as defined in the Deposit Account Control Agreement dated \_\_\_\_\_, 20\_\_\_\_ attached hereto (as currently in effect, the "Control Agreement"), among Citibank, N.A. (the "Bank"), us and \_\_\_\_\_ (the "Customer"). Capitalized terms used in this Initial Instruction have the meanings assigned to them in the Control Agreement.

We hereby direct the Bank to block the Account in a manner that will prevent the Customer from having any rights of withdrawal from the Account [and further direct the Bank to initiate a funds transfer, in accordance with the wire instructions set forth on Schedule 1 attached hereto].

We recognize that, as a condition to the Bank complying with this Initial Instruction and to the extent that we have not already done so, we must provide to the Bank evidence reasonably required by the Bank (in the form of an incumbency certificate signed by a secretary of the Secured Party or such other form satisfactory to the Bank) as to the authority of the person signing this Initial Instruction to act for us. We also recognize that the Bank's obligation to comply with this Initial Instruction is subject to the other terms of the Control Agreement, including without limitation, Sections 4 and 5 thereof.

Very truly yours,

[SECURED PARTY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1 TO INITIAL INSTRUCTION**

**WIRE INSTRUCTIONS BY SECURED PARTY**

<b>Account Information</b>	
Customer Name	Secured Party Name
Account Number	Account Name
<b>Fund Transfer Instruction Information</b>	
Beginning Date	Stop Date (if applicable)
Frequency (Business Days) <input type="checkbox"/> One Time Wire <input type="checkbox"/> Each Business Day <input type="checkbox"/> Once a week <input type="checkbox"/> Twice a month Enter date of second monthly transfer _____ <input type="checkbox"/> Once a month	Approximate transfer time <input type="checkbox"/> 6:00 am ET <input type="checkbox"/> 12:00 pm ET <input type="checkbox"/> 4:00 pm ET
US Dollar Amount  Fixed amount: _____  All available funds: _____  Percentage of available funds: _____  All available funds less: _____  All available funds up to: _____	
Amount in Words	
<b>Beneficiary Information</b>	
<b>NOTE: Dispositions of funds to locations outside of the United States are not permitted, except in connection with a one-time disposition of funds that is accompanied by a Release Notice.</b>	
Beneficiary Name	
Account Name	Account Number
Bank Name	Bank ABA
Special Instructions	

EXHIBIT B  
FORM OF RELEASE NOTICE

[LETTERHEAD OF THE SECURED PARTY]

DEPOSIT ACCOUNT CONTROL AGREEMENT RELEASE NOTICE

DATE: \_\_\_\_\_

CITIBANK, N.A.  
Facsimile: (877) 285-9314  
Attention: Citibank, N.A. CBG Servicing Re: Control Agreement

With a copy to:

CITIBANK, N.A.  
\_\_\_\_\_  
\_\_\_\_\_

Re: Account number: [ \_\_\_\_\_ ] (the "Account")

Ladies and Gentlemen:

This is a Release Notice, as defined in the Deposit Account Control Agreement dated [ \_\_\_\_\_ ] (as currently in effect, the "Control Agreement"), among [ \_\_\_\_\_ ] (the "Customer"), us and Citibank, N.A. (the "Bank"), attached hereto. Capitalized terms used in this Release Notice have the meanings given them in the Control Agreement.

We hereby give you notice that we have released our security interest in the Account and are hereby terminating the Control Agreement, effective upon your receipt of this notice. To the extent we have delivered any Disposition Notices instructing the Bank to block the Customer's access to the Account or directing the disposition of funds from the Account, such instructions are hereby terminated and we agree that we no longer have any rights to provide instructions with respect to the Account.

We recognize that, as a condition to the Bank complying with this Release Notice and to the extent that we have not already done so, we must provide to the Bank evidence reasonably required by the Bank (in the form of an incumbency certificate signed by a secretary of the Secured Party or such other form satisfactory to the Bank) as to the authority of the person signing this notice to act for us.

Very truly yours,

[SECURED PARTY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C  
FORM OF CERTIFICATE OF INCUMBENCY**

The undersigned, [Assistant] Secretary of [ \_\_\_\_\_ ] (the "Secured Party"), does hereby certify that:

1. The following named person whose name, title and signature appears below is duly elected or appointed, qualified and an acting representative of the Secured Party and holds, on the date of this Certificate, the office set forth opposite his or her name, and the signature set forth opposite his or her name is a genuine signature.

NAME	SIGNATURE	TITLE
_____	_____	_____
_____	_____	_____

2. The person designated to serve in the above-entitled capacity is duly authorized to act on behalf of and to bind the Secured Party and to execute and deliver any document or notice in connection with the Deposit Account Control Agreement between the Secured Party and Citibank, N.A., including any amendments, disposition notices or release notices.
3. Pursuant to the Secured Party's organizational documents, the undersigned has the power and authority to execute this certificate on behalf of the Secured Party and that he/she has so executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Assistant] Secretary

## Deposit Account Control Agreement



This Deposit Account Control Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, among Kare Pharmacy, Inc. (the "Customer"), the U.S. Federal Trade Commission (the "Secured Party") and Citibank, N.A. (the "Bank").

### RECITALS

- A. The Customer maintains deposit account number 3234 in the name of the Customer at the Bank (whether individually or collectively, the "Account").
- B. The Customer and the Secured Party have notified the Bank that, in connection with a certain loan, financial or other transaction, the Customer has granted the Secured Party (for itself and/or as agent for other parties) a security interest in the Account.
- C. The Secured Party and the Customer desire to enter into this Agreement to perfect the Secured Party's security interest in the Account and to describe the respective rights and duties of the parties hereto with respect to the Account.

Therefore, the parties agree as follows:

1. In this Agreement, the following terms have the following meanings or interpretations:
  - (a) "Account-related Agreements" means the CitiBusiness Client Manual, funds transfer agreement, and any cash management or other agreements entered into between the Bank and the Customer with respect to the Account, each as may be amended, modified or supplemented from time to time.
  - (b) "Business Day" means any day of the week that is not a Saturday, Sunday, bank holiday or other day that the Commercial Banking Servicing Department of the Bank is closed.
  - (c) "Disposition Notice" means the Initial Instruction and any other notice received by the Bank from the Secured Party thereafter directing the disposition of funds in the Account.
  - (d) "Initial Instruction" means the notice received by the Bank from the Secured Party in the form of **Exhibit A**.
  - (e) "Outside Time" means a reasonable time, not to exceed two (2) Business Days, after the Business Day on which the Initial Instruction is actually received by the Commercial Banking Servicing Department of the Bank by facsimile in accordance with the notice provisions set forth in this Agreement. If the Initial Instruction is actually received by the Commercial Banking Servicing Department of the Bank after noon, Central Prevailing Time, then, in determining the Outside Time, the Initial Instruction will be deemed to have been received on the following Business Day.
  - (f) "Release Notice" means a written notice from the Secured Party to the Bank in the form of **Exhibit B**, notifying the Bank that the Secured Party is terminating the Agreement and releasing its security interest in the Account.
  - (g) "UCC" means the Uniform Commercial Code of the jurisdiction whose law governs this Agreement.
2. The parties hereto agree that, in accordance with the terms of this Agreement, the Bank shall comply with the instructions originated by the Secured Party directing the disposition of the funds in the Account without further consent by the Customer. The parties hereto further agree that (i) prior to the Outside Time, the Customer (but not the Secured Party) may withdraw funds from the Account and provide all other funds transfer and other disposition instructions with respect to the Account to which it is entitled under the Account-related Agreements and that (ii) on and after the Outside Time, and until such time as the Bank is in receipt of a Release Notice or a final order of a court of competent jurisdiction ordering the disposition of the funds in the Account, the Secured Party (but not the Customer) may direct the disposition of the funds in the Account by delivering a Disposition Notice. On and after the Outside Time, the Bank will not comply with any instructions from the Customer and will block the Account in a manner that will prevent the Customer from having any rights of withdrawal from the Account. The Customer acknowledges and agrees that the Bank shall have no obligation to inquire or investigate whether the Customer is in default in the payment or performance of its obligations to the Secured Party or to any other party. The Customer further acknowledges and agrees that the Bank will not be liable to the Customer for complying with any direction of the Secured Party even if the Customer notifies the Bank that a default had not occurred and/or that the Secured Party was not justified in issuing a Disposition Notice.

3. Notices.
  - (a) In order for any Disposition Notice, Release Notice or any other notice sent to the Bank to be binding upon the Bank, such notice must be delivered to the Commercial Banking Servicing Department of the Bank by facsimile transmission to:  
**Facsimile Number: (877) 285-9314**  
**Attention: Citibank, N.A. CBG Servicing Re: Control Agreement**  
with a written copy sent to the address set forth for the Bank on the signature pages hereto. Such copy must be delivered by hand, mailed by United States registered or certified first class mail, postage prepaid and return receipt requested, sent by overnight courier or delivered via facsimile or email transmission, to the extent that a facsimile number or email address has been provided for the purpose of receiving such notices.
  - (b) Notices to all other parties, must be in writing and delivered by hand, mailed by United States registered or certified first class mail, postage prepaid and return receipt requested, sent by overnight courier or delivered via facsimile transmission or email, to the extent that a facsimile number or email address has been provided for the purpose of receiving such notices.
  - (c) Any notice or communication shall be deemed to have been duly given or made and to have become effective at the time of the receipt thereof by the recipient. Any party may change its mailing or email address or facsimile number for notices by notifying the other parties hereto in accordance with the notice provisions set forth in this Section.
4. The Bank will not be obligated to follow, nor shall it be liable to the Secured Party or the Customer for failing to follow
  - (a) an Initial Instruction, that is not in the form of Exhibit A or is not otherwise fully completed; or
  - (b) a Disposition Notice
    - (i) prior to the Outside Time;
    - (ii) that does not have attached to it a fully executed copy of this Agreement;
    - (iii) that requires the disposition of funds from the Account that are not immediately available at the time such funds are to be transferred;
    - (iv) that requires the disposition of funds from the Account if the Bank has not received evidence reasonably required by the Bank (in the form of an incumbency certificate signed by a secretary of the Secured Party in the form of Exhibit C attached hereto or other authorizing form satisfactory to the Bank) as to the authority of the person giving the Disposition Notice to act on behalf of the Secured Party;
    - (v) that requires funds be sent to more than one recipient;
    - (vi) that requires the Bank to make more than one disposition of funds during the term of this Agreement, unless the disposition of funds will be pursuant to an automated standing wire in accordance with the Bank's wire procedures;
    - (vii) that requires the disposition of funds in the Account by a method not available to the Customer under the Account-related Agreements; or
    - (viii) that requires the disposition of funds to a location outside of the United States, except for a Disposition Notice requesting a one-time disposition of funds and that is accompanied by a Release Notice from the Secured Party.

In addition, the Bank will not be liable to the Secured Party or the Customer for any failure to follow or any delay in following any Disposition Notice (including any funds transfer requests) or any provision of this Agreement due to a computer malfunction, interruption of communication facilities, labor difficulties, act of God, war, terrorist attack, or other cause beyond the Bank's reasonable control.

5. If at any time, (a) the Customer becomes subject to a voluntary or involuntary proceeding under the United States Bankruptcy Code, (b) the Bank is otherwise served with a court order which the Bank in good faith believes affects the Account, or (c) the Bank determines that acting upon the instructions of either the Customer or the Secured Party would result in the violation of any applicable law, rule or regulation, the Bank may cease acting upon the instructions of both the Customer and the Secured Party and suspend disbursements from the Account otherwise required by the terms hereof or any Disposition Notice, until such time as the Bank receives assurances reasonably satisfactory to the Bank that funds in the Account may continue to be disbursed.
6. The Bank represents and warrants to the Secured Party that the Bank (a) is an organization engaged in the business of banking and (b) maintains the Account as a deposit account in the ordinary course of the Bank's business. The Bank has not entered into any currently effective control agreement with respect to the Account for the benefit of any person other than the Secured Party and the Bank will not enter into a control agreement with respect to the Account for the

benefit of any person other than the Secured Party during the term of this Agreement. The Bank agrees that it will not change the name or account number of the Account without the prior written consent of the Secured Party.

7. Subordination.
  - (a) Except for amounts referred to in clause (b) of this Section, the Bank (i) subordinates any security interest, lien or other encumbrance it may have against the Account to the Secured Party's security interest and (ii) will not exercise any right of recoupment, setoff or debit against the Account. This subordination will not apply to any security interest that the Bank has in an item under the UCC Article 4 as a collecting bank.
  - (b) Notwithstanding subparagraph (a) of this Section, and regardless of any agreement of the Customer to compensate the Bank by means of balances in the Account, the Bank may charge the Account, to the extent permitted by any of the Account-related Agreements or applicable law, for (i) the face amount of a check, draft, money order, instrument, wire transfer of funds, automated clearing house entry, other electronic transfer of funds or other item (A) deposited in or credited to the Account and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or for any other reason and without regard to the timeliness of the return or adjustment or the occurrence or timeliness of any other person's notice of nonpayment or adjustment, or (B) subject to a notice against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve regulations or Operating Circulars, clearing house rules, the UCC or other applicable law, (ii) any adjustments or corrections of any posting or encoding errors, and (iii) fees and expenses chargeable by the Bank in respect of the Account or any related services, including those services specified in the Account-related Agreements.
8. This Agreement shall be absolute and continuing and shall remain in effect until terminated as hereinafter provided.
9. This Agreement shall apply only to the Account and shall not apply to any other accounts of the Customer now existing or hereafter created at the Bank except pursuant to a written amendment to this Agreement executed by the parties hereto.
10. Except with respect to the obligations and duties expressly provided in this Agreement, this Agreement shall not impose or create any obligations or duties upon the Bank that are greater than or in addition to the usual and customary obligations and duties, if any, of the Bank with respect to the Account or the Customer. The Bank shall have no obligation or duty whatsoever to interpret the terms of any agreements between the Customer and the Secured Party or to determine whether any default exists thereunder.
11. The Customer hereby irrevocably authorizes and instructs the Bank to perform and comply with the terms of this Agreement. The Account-related Agreements will continue to apply to the Account and any services provided in connection with the Account (including any funds transfers); provided, however, that to the extent there is any conflict between this Agreement and any Account-related Agreement, the provisions of this Agreement will control. Notwithstanding the foregoing, this Agreement will not (a) derogate from any claim or defense that the Bank may have against the Customer under any Account-related Agreements or (b) create any third-party beneficiary rights under any of the Account-related Agreements in favor of the Secured Party.
12. During the term of this Agreement, the Account may not be closed by the Customer, except by a notice to the Bank given jointly with the Secured Party. The parties acknowledge, however, that the Bank reserves the right to close the Account in accordance with the terms of the Account-related Agreements. This Agreement may not be terminated by the Customer, except by a notice to the Bank given jointly with the Secured Party. This Agreement may be terminated (a) by the Secured Party at any time by providing a Release Notice to the Customer and the Bank and (b) by the Bank (i) immediately upon notice to the Customer and the Secured Party if the Bank becomes obligated to terminate this Agreement or to close the Account under any statute, rule or regulation, court order or any legal process binding upon the Bank, (ii) otherwise upon thirty (30) days' notice to the Customer and the Secured Party. If the Bank terminates this Agreement pursuant to clause (i) of this Section, the Bank will, unless a previously delivered and continuing effective Disposition Notice directs otherwise, remit any available funds in the Account on the date of termination, by check mailed to the address of the Secured Party for receiving communications under this Agreement. If the Bank terminates this Agreement pursuant to clause (ii) of this Section, the Bank will, unless a previously delivered and continuing effective Disposition Notice directs otherwise, remit any available funds in the Account on the effective date of termination (A) at the direction of the Secured Party if the direction is received by the Bank prior to the effective date of termination of this Agreement or (B) if no such direction is received by the Bank prior to such date by check mailed to the address of the Secured Party for receiving communications under this Agreement. Any obligation of the Bank

to remit any funds to or at the direction of the Secured Party under this subsection is subject to Sections 4 and 5 hereof. The termination of this Agreement will not affect any rights created or obligations incurred under this Agreement before the termination.

13. The Customer shall indemnify and hold harmless the Bank from and against any and all claims, actions and suits (whether groundless or otherwise), losses, damages, costs, expenses (including reasonable attorney's fees and disbursements) and liabilities of every nature and character arising out of or related to this Agreement or the transactions contemplated hereby or any actions taken or omitted to be taken by the Bank hereunder, except to the extent directly caused by the Bank's gross negligence or willful misconduct. The foregoing indemnity provision shall survive any termination of this Agreement.
14. The Bank may act upon any instrument or other writing believed by it in good faith to be genuine and to have been signed or presented by a person purporting to be the Secured Party or the Customer (or any agent thereof), as the case may be. The Customer and the Secured Party hereby agree that the procedures set forth in this Agreement, together with the execution of this Agreement, are commercially reasonable for each of them and that no other security procedures, as such term is defined in Article 4A of the UCC, are necessary or desired, including, without limitation, those involving any call back to the Secured Party or other methods of verification of authority with respect to Disposition Notices or any other writings. The Bank shall not be liable in connection with the performance or non-performance of its duties hereunder, except for its own gross negligence or willful misconduct. The Bank's duties shall be determined only with reference to this Agreement and applicable laws, and the Bank shall not be charged with knowledge of, or any duties or responsibilities in connection with, any other document or agreement. The Bank shall have no liability to any party for any incidental, punitive or consequential damages resulting from any breach by the Bank of its obligations hereunder.
15. If the Secured Party so requests the Bank will provide to the Secured Party, a copy of each periodic account statement relating to the Account ordinarily furnished by the Bank to the Customer. The Bank's liability for failing to provide the account statement will not exceed the Bank's cost of providing the statement. The Customer authorizes the Bank to provide to the Secured Party such statements and any other information concerning the Account that the Bank may agree to provide to the Secured Party at the Secured Party's request.
16. This Agreement may not be amended or modified without the prior written consent of the Bank, the Customer and the Secured Party.
17. No delay or omission on the part of the Secured Party, the Customer or the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Agreement. No waiver of any right under this Agreement shall be effective unless in writing and signed by the party waiving such right, and no waiver on one occasion shall be construed as a bar to or waiver of any such right on any other occasion.
18. This Agreement and any waiver or amendment hereto may be executed in counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This Agreement may be executed and delivered by pdf format via email transmission or by facsimile transmission, all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.
19. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the conflicts of law principles thereof) and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The Bank's jurisdiction for purposes of Part 3 of Article 9 of the UCC is New York.
20. This Agreement, together with any Schedules and Exhibits attached hereto, constitutes the entire agreement, and supersedes any prior agreements, of the parties concerning its subject matter. In the event a provision of this Agreement is unenforceable, this Agreement shall be construed to the extent possible as if the unenforceable provision were omitted.
21. EACH OF THE SECURED PARTY, CUSTOMER AND THE BANK HEREBY KNOWINGLY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT.

**Secured Party**

FEDERAL TRADE COMMISSION  
Name of Secured Party

[Signature]  
Signature of Authorized Signer

STEVEN WERNIKOFF  
Printed Name of Authorized Signer

STAFF ATTORNEY  
Title of Authorized Signer

55 W. MONROE ST. #1825  
Address - Line 1

CHICAGO IL 60603  
Address - Line 2

Attention: \_\_\_\_\_

**Customer**

Kare Pharmacy, Inc.  
Name of Customer

[Signature]  
Signature of Authorized Signer

Jordan Soblick  
Printed Name of Authorized Signer

President  
Title of Authorized Signer

2200 SW 10th Street  
Address - Line 1

Deerfield Beach, FL 33442  
Address - Line 2

Attention: Legal

**Citibank, N.A.**

\_\_\_\_\_  
Signature of Authorized Signer

\_\_\_\_\_  
Printed Name of Authorized Signer

\_\_\_\_\_  
Title of Authorized Signer

**Address for Notices:**

Facsimile Number: (877) 285-9314  
Attn: Citibank, N.A. CBG Servicing Re: Control Agreement

**With a copy to:**

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address - Line 2

\_\_\_\_\_  
Attention:

EXHIBIT A  
FORM OF INITIAL INSTRUCTION

[LETTERHEAD OF THE SECURED PARTY]  
DEPOSIT ACCOUNT CONTROL AGREEMENT INITIAL INSTRUCTION

DATE: \_\_\_\_\_

CITIBANK, N.A.:

Facsimile: (877) 285-9314

Attention: Citibank, N.A. CBG Servicing Re: Control Agreement

With a copy to:

CITIBANK, N.A.:

\_\_\_\_\_  
\_\_\_\_\_

Attn:

Re: Account number: \_\_\_\_\_ (the "Account")

Ladies and Gentlemen:

This is an Initial Instruction, as defined in the Deposit Account Control Agreement dated \_\_\_\_\_, 20\_\_\_\_ attached hereto (as currently in effect, the "Control Agreement"), among Citibank, N.A. (the "Bank"), us and \_\_\_\_\_ (the "Customer"). Capitalized terms used in this Initial Instruction have the meanings assigned to them in the Control Agreement.

We hereby direct the Bank to block the Account in a manner that will prevent the Customer from having any rights of withdrawal from the Account [and further direct the Bank to initiate a funds transfer, in accordance with the wire instructions set forth on Schedule 1 attached hereto].

We recognize that, as a condition to the Bank complying with this Initial Instruction and to the extent that we have not already done so, we must provide to the Bank evidence reasonably required by the Bank (in the form of an incumbency certificate signed by a secretary of the Secured Party or such other form satisfactory to the Bank) as to the authority of the person signing this Initial Instruction to act for us. We also recognize that the Bank's obligation to comply with this Initial Instruction is subject to the other terms of the Control Agreement, including without limitation, Sections 4 and 5 thereof.

Very truly yours,

[SECURED PARTY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1 TO INITIAL INSTRUCTION**

**WIRE INSTRUCTIONS BY SECURED PARTY**

<b>Account Information</b>	
Customer Name	Secured Party Name
Account Number	Account Name
<b>Fund Transfer Instruction Information</b>	
Beginning Date	Stop Date (if applicable)
Frequency (Business Days) <input type="checkbox"/> One Time Wire <input type="checkbox"/> Each Business Day <input type="checkbox"/> Once a week <input type="checkbox"/> Twice a month Enter date of second monthly transfer _____ <input type="checkbox"/> Once a month	Approximate transfer time <input type="checkbox"/> 6:00 am ET <input type="checkbox"/> 12:00 pm ET <input type="checkbox"/> 4:00 pm ET
US Dollar Amount  Fixed amount: _____  All available funds: _____  Percentage of available funds: _____  All available funds less: _____  All available funds up to: _____	
Amount in Words	
<b>Beneficiary Information</b>	
<b>NOTE: Dispositions of funds to locations outside of the United States are not permitted, except in connection with a one-time disposition of funds that is accompanied by a Release Notice.</b>	
Beneficiary Name	
Account Name	Account Number
Bank Name	Bank ABA
Special Instructions	

EXHIBIT B  
FORM OF RELEASE NOTICE

[LETTERHEAD OF THE SECURED PARTY]

DEPOSIT ACCOUNT CONTROL AGREEMENT RELEASE NOTICE

DATE: \_\_\_\_\_

CITIBANK, N.A.  
Facsimile: (877) 285-9314  
Attention: Citibank, N.A. CBG Servicing Re: Control Agreement

With a copy to:

CITIBANK, N.A.  
\_\_\_\_\_  
\_\_\_\_\_

Re: Account number: [ \_\_\_\_\_ ] (the "Account")

Ladies and Gentlemen:

This is a Release Notice, as defined in the Deposit Account Control Agreement dated [ \_\_\_\_\_ ] (as currently in effect, the "Control Agreement"), among [ \_\_\_\_\_ ] (the "Customer"), us and Citibank, N.A. (the "Bank"), attached hereto. Capitalized terms used in this Release Notice have the meanings given them in the Control Agreement.

We hereby give you notice that we have released our security interest in the Account and are hereby terminating the Control Agreement, effective upon your receipt of this notice. To the extent we have delivered any Disposition Notices instructing the Bank to block the Customer's access to the Account or directing the disposition of funds from the Account, such instructions are hereby terminated and we agree that we no longer have any rights to provide instructions with respect to the Account.

We recognize that, as a condition to the Bank complying with this Release Notice and to the extent that we have not already done so, we must provide to the Bank evidence reasonably required by the Bank (in the form of an incumbency certificate signed by a secretary of the Secured Party or such other form satisfactory to the Bank) as to the authority of the person signing this notice to act for us.

Very truly yours,

[SECURED PARTY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C  
FORM OF CERTIFICATE OF INCUMBENCY**

The undersigned, [Assistant] Secretary of [ \_\_\_\_\_ ] (the "Secured Party"), does hereby certify that:

1. The following named person whose name, title and signature appears below is duly elected or appointed, qualified and an acting representative of the Secured Party and holds, on the date of this Certificate, the office set forth opposite his or her name, and the signature set forth opposite his or her name is a genuine signature.

NAME	SIGNATURE	TITLE

2. The person designated to serve in the above-entitled capacity is duly authorized to act on behalf of and to bind the Secured Party and to execute and deliver any document or notice in connection with the Deposit Account Control Agreement between the Secured Party and Citibank, N.A., including any amendments, disposition notices or release notices.
3. Pursuant to the Secured Party's organizational documents, the undersigned has the power and authority to execute this certificate on behalf of the Secured Party and that he/she has so executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: [Assistant] Secretary



Accounts Receivable Report

NCPDP#: 1012397

Through: 7-1-2014

Listed Below is summary information by plan.

Plan Name	# Claims	Approved	Received	Total Due	1-30	31-60	61-90	91+
ACS	107	\$10,774.22	\$132.05	\$10,642.17	\$10,642.18	(\$0.01)	\$0.00	\$0.00
ACS/Conslutec - Iowa Medicaid	42	\$5,211.09	\$0.00	\$5,211.09	\$5,211.09	\$0.00	\$0.00	\$0.00
Aetna Pharmacy Management	936	\$82,555.55	\$2,330.12	\$80,225.43	\$67,782.87	\$9,725.07	\$2,140.89	\$576.60
Anthem/One Nation	86	\$3,937.94	\$187.33	\$3,750.61	\$3,758.52	(\$7.91)	\$0.00	\$0.00
Argus	5	\$359.70	\$7.51	\$352.19	\$359.70	(\$7.51)	\$0.00	\$0.00
Argus - 4D Pharmacy Management Systems	30	\$1,269.02	\$0.00	\$1,269.02	\$1,269.02	\$0.00	\$0.00	\$0.00
Argus - Blue Shield California HMO/PPD	4	\$206.30	\$0.00	\$206.30	\$206.30	\$0.00	\$0.00	\$0.00
Argus - Cignature Rx (Part D)	1	\$300.03	\$0.00	\$300.03	\$300.03	\$0.00	\$0.00	\$0.00
Argus - Clarion Health Plan	1	\$125.81	\$0.00	\$125.81	\$125.81	\$0.00	\$0.00	\$0.00
Argus - Clinical Pharmacy Advantage	2	\$158.29	\$0.00	\$158.29	\$158.29	\$0.00	\$0.00	\$0.00
Argus - Essence Members	5	\$378.23	\$279.90	\$98.33	\$378.23	(\$279.90)	\$0.00	\$0.00
Argus - FutureScripts	2	\$112.05	\$224.54	(\$112.49)	\$0.00	(\$112.49)	\$0.00	\$0.00
Argus - Gateway Health Plan	122	\$8,658.62	\$187.12	\$8,471.50	\$8,508.29	(\$171.84)	\$0.00	\$135.05
Argus - Gateway Medicare Part-D	49	\$7,341.54	\$1,954.90	\$5,386.64	\$5,403.72	(\$17.08)	\$0.00	\$0.00
Argus - Humana	100	\$19,236.90	\$1,208.07	\$18,028.83	\$17,352.96	\$558.15	\$117.72	\$0.00
Argus - Humana LIS	4	\$723.53	\$0.00	\$723.53	\$723.53	\$0.00	\$0.00	\$0.00
Argus - Humana Part D	2142	\$176,211.58	\$15,116.67	\$161,094.91	\$165,381.90	(\$3,504.27)	(\$421.43)	(\$361.29)
Argus - Keystone Mercy Health Plan	15	\$1,002.76	\$30.53	\$972.23	\$984.92	(\$12.69)	\$0.00	\$0.00
Argus - LaCare	15	\$432.55	\$0.00	\$432.55	\$432.55	\$0.00	\$0.00	\$0.00
Argus - Lilly Answers Program	22	\$12.48	\$824.60	(\$812.12)	\$0.00	(\$568.31)	(\$243.81)	\$0.00
Argus - Medicare Part D	7	\$1,449.02	\$0.00	\$1,449.02	\$1,449.02	\$0.00	\$0.00	\$0.00
Argus - Neighborhood Health of Rhode Island	16	\$1,013.47	\$0.00	\$1,013.47	\$1,013.47	\$0.00	\$0.00	\$0.00

Report Created On: 7/3/2014 2:42:30 PM

1 of 5



Accounts Receivable Report

Argus - Priority Health	25	\$3,519.23	\$49.08	\$3,470.15	\$3,317.15	\$0.00	\$0.00	\$153.00
Argus - Regence Blue Cross of Oregon	7	\$84.41	\$455.62	(\$371.21)	\$0.00	\$0.00	\$0.00	(\$371.21)
Argus - Rxedo	4	\$178.92	\$0.00	\$178.92	\$178.92	\$0.00	\$0.00	\$0.00
Argus - Scott & White Part-D	2	\$445.36	\$0.00	\$445.36	\$445.36	\$0.00	\$0.00	\$0.00
Argus Health Systems	791	\$61,497.80	\$1,933.51	\$59,564.29	\$60,258.39	(\$290.13)	(\$403.97)	\$0.00
Argus-Humana Careplus	8	\$1,106.14	\$0.00	\$1,106.14	\$1,106.14	\$0.00	\$0.00	\$0.00
Avia Partners (formerly SMC Rx)	45	\$5,384.77	\$0.00	\$5,384.77	\$2,796.80	\$924.94	\$84.71	\$1,578.32
BCBS of Alabama	59	\$4,092.73	\$491.01	\$3,601.72	\$3,601.77	(\$0.05)	\$0.05	(\$0.05)
BCBS of Arizona	1	\$0.00	\$45.11	(\$45.11)	\$0.00	\$0.00	(\$45.11)	\$0.00
Bin # 015400	13	\$436.73	\$0.00	\$436.73	\$217.94	\$113.78	\$105.01	\$0.00
Bio Scrip (formerly Scrip Solutions)	7	(\$35.54)	\$16.96	(\$52.50)	(\$20.00)	\$40.00	(\$72.50)	\$0.00
CareMark	177	\$15,094.79	\$1,575.41	\$13,519.38	\$12,438.67	(\$463.47)	\$1,544.18	\$0.00
Caremark FEP	1029	\$56,171.60	\$21,269.06	\$34,902.54	\$50,186.68	(\$13,223.92)	(\$2,988.67)	\$928.45
CaremarkPCS	3366	\$314,626.26	\$13,516.39	\$301,109.87	\$304,928.21	(\$5,878.37)	(\$952.64)	\$3,012.67
Catamaran	18	\$399.46	\$0.00	\$399.46	\$38.72	\$135.08	\$0.00	\$225.66
Catamaran	32	\$1,484.09	\$455.51	\$1,028.58	\$1,374.88	(\$420.82)	\$0.00	\$74.52
Data Rx Management	1	(\$3.00)	\$0.00	(\$3.00)	\$0.00	\$0.00	(\$3.00)	\$0.00
Emblem Health Services	21	\$1,213.46	\$100.62	\$1,112.84	\$1,213.46	(\$100.62)	\$0.00	\$0.00
Envision - Rx Options	193	\$15,329.70	\$1,147.97	\$14,181.73	\$10,477.49	\$2,773.40	\$1,039.56	(\$108.72)
Express Scripts	8750	\$701,742.11	\$27,457.18	\$674,284.93	\$636,428.37	\$40,312.22	(\$2,166.78)	(\$288.88)
Florida Medicaid	25	\$11,496.33	\$0.00	\$11,496.33	\$2,556.85	\$8,939.48	\$0.00	\$0.00
FLRx (Fingertakes)	2	\$55.63	\$0.00	\$55.63	\$55.63	\$0.00	\$0.00	\$0.00
HDS - Rx Savings Access Card	1	\$25.75	\$0.00	\$25.75	\$25.75	\$0.00	\$0.00	\$0.00
Healthreach /Medben	3	\$162.09	\$170.10	(\$8.01)	\$121.09	(\$129.10)	\$0.00	\$0.00
HealthTrans Company	7	\$370.68	\$946.25	(\$575.57)	\$327.40	(\$902.97)	\$0.00	\$0.00
Hip of New York - HMC	35	\$2,883.95	\$244.43	\$2,639.52	\$2,838.72	(\$182.80)	(\$16.40)	\$0.00

Report Created On: 7/3/2014 2:42:30 PM

2 of 5



Accounts Receivable Report

HIP- VIP Medicare Part D	9	\$966.00	\$266.44	\$699.56	\$699.56	\$0.00	\$0.00	\$0.00
Horizon BCBS	1705	\$164,862.93	\$5,344.69	\$159,518.24	\$158,346.53	(\$1,481.51)	\$316.90	\$2,336.32
Innoviant	25	\$2,187.34	\$0.00	\$2,187.34	\$2,187.34	\$0.00	\$0.00	\$0.00
Kentucky Medicaid	3	\$98.12	\$0.00	\$98.12	\$98.12	\$0.00	\$0.00	\$0.00
LDI	5	\$349.17	\$0.00	\$349.17	\$309.92	\$39.25	\$0.00	\$0.00
Local 119	8	\$1,512.15	\$0.00	\$1,512.15	\$1,512.15	\$0.00	\$0.00	\$0.00
Magellan Health Services	12	\$595.29	\$0.00	\$595.29	\$595.29	\$0.00	\$0.00	\$0.00
Maxor Plus	15	\$806.84	\$0.00	\$806.84	\$806.84	\$0.00	\$0.00	\$0.00
MD Medicaid MCO - Caremark	15	\$674.78	\$0.00	\$674.78	\$674.78	\$0.00	\$0.00	\$0.00
MD Medicaid MCO - RX Solutions	43	\$1,825.94	\$221.17	\$1,604.77	\$1,738.05	(\$133.28)	\$0.00	\$0.00
Medco Health	169	\$9,146.71	\$148.60	\$8,998.11	\$0.00	\$0.00	\$4,522.66	\$4,475.45
MedImpact	661	\$57,695.64	\$2,040.36	\$55,655.28	\$47,045.87	\$8,035.84	(\$108.76)	\$682.33
Medimpact - Alabama Peehip	33	\$1,255.56	\$21.91	\$1,233.65	\$1,255.56	(\$21.91)	\$0.00	\$0.00
Medimpact - Harvard Pilgrim Health Care	3	\$169.19	\$0.00	\$169.19	\$0.00	\$169.19	\$0.00	\$0.00
MedImpact - Kaiser	90	\$7,573.86	\$190.41	\$7,383.45	\$5,191.58	\$1,870.86	\$321.01	\$0.00
Medimpact - Medica	295	\$18,263.79	\$862.24	\$17,401.55	\$11,462.00	\$6,469.58	(\$530.03)	\$0.00
Medimpact - ODS Health Plan	63	\$6,202.73	\$277.68	\$5,925.05	\$3,440.58	\$1,625.41	\$859.06	\$0.00
Medimpact- Healthpartners of Minnesota	26	\$2,768.42	\$0.00	\$2,768.42	\$491.07	\$2,277.35	\$0.00	\$0.00
Meditrak	16	\$1,201.85	\$0.00	\$1,201.85	\$1,076.97	\$124.88	\$0.00	\$0.00
Minnesota Medicaid	28	\$2,293.98	\$0.00	\$2,293.98	\$1,523.94	\$402.78	\$367.26	\$0.00
Navitus Health Solutions	25	\$2,144.78	\$0.00	\$2,144.78	\$2,144.78	\$0.00	\$0.00	\$0.00
Nevada Medicaid	4	\$380.06	\$0.00	\$380.06	\$380.06	\$0.00	\$0.00	\$0.00
NPS - National Pharmaceutical Services	5	\$1,130.34	\$648.59	\$481.75	\$524.26	(\$42.51)	\$0.00	\$0.00
OptumRx	11	\$168.41	\$0.00	\$168.41	\$168.41	\$0.00	\$0.00	\$0.00
OptumRx	1	\$195.98	\$0.00	\$195.98	\$195.98	\$0.00	\$0.00	\$0.00
Pharmicare	2	\$19.92	\$0.00	\$19.92	\$19.92	\$0.00	\$0.00	\$0.00

Report Created On: 7/3/2014 2:42:30 PM

3 of 5



Accounts Receivable Report

Pharmaceutical Care Network	189	\$20,924.47	\$4,278.86	\$16,645.61	\$16,182.83	(\$568.14)	\$943.48	\$87.44
Pharmacy Advantage Systems	7	\$405.00	\$0.00	\$405.00	\$265.00	\$140.00	\$0.00	\$0.00

Pharmacy Data Management	6	\$629.91	\$0.00	\$629.91	\$528.75	\$80.19	\$20.97	\$0.00
Pharmacy Data Management	4	\$166.11	\$0.00	\$166.11	\$166.11	\$0.00	\$0.00	\$0.00
Prescription Solutions	3051	\$302,274.40	\$20,324.15	\$281,950.25	\$286,739.57	(\$3,168.09)	(\$926.14)	(\$695.09)
Prescriptions Solutions	5	\$475.63	\$0.00	\$475.63	\$475.63	\$0.00	\$0.00	\$0.00
Prime Therapeutics	54	\$4,749.81	\$497.76	\$4,252.05	\$4,260.41	(\$42.82)	(\$33.91)	\$68.37
Prime Therapeutics	100	\$8,770.60	\$609.11	\$8,161.49	\$8,463.62	(\$204.82)	\$0.00	(\$97.31)
Prime Therapeutics - BCBS of Illinois	166	\$10,370.01	\$1,989.87	\$8,380.14	\$8,750.17	(\$319.90)	(\$50.13)	\$0.00
Prime Therapeutics - BCBS of Kansas	14	\$594.66	\$104.18	\$490.48	\$483.08	\$7.40	\$0.00	\$0.00
Prime Therapeutics - BCBS of NC	65	\$4,656.24	\$1,185.08	\$3,471.16	\$3,609.76	(\$46.67)	\$0.00	(\$91.93)
Prime Therapeutics - BCBS of New Mexico	3	\$426.19	\$0.00	\$426.19	\$426.19	\$0.00	\$0.00	\$0.00
Prime Therapeutics - BCBS of Texas	109	\$12,231.66	\$2,577.80	\$9,653.86	\$9,602.83	\$0.05	(\$22.51)	\$73.49
Prime Therapeutics - BCBS of Wyoming	2	\$56.85	\$0.00	\$56.85	\$56.85	\$0.00	\$0.00	\$0.00
Prime Therapeutics - BCBSFL	109	\$8,867.77	\$528.15	\$8,339.62	\$8,427.86	(\$88.29)	\$0.05	\$0.00
Restat	2	\$0.00	\$131.07	(\$131.07)	\$0.00	(\$131.07)	\$0.00	\$0.00
Restat	1	\$1.53	\$0.00	\$1.53	\$0.00	\$0.00	\$1.53	\$0.00
Rx America	18	\$1,123.39	\$0.00	\$1,123.39	\$1,065.88	\$0.00	\$0.00	\$57.51
RxWest, Inc.	29	\$2,040.48	\$53.41	\$1,987.07	\$1,920.82	\$99.74	(\$33.49)	\$0.00
Sav Rx/Sav Rx Advantage	3	\$277.30	\$0.00	\$277.30	\$277.30	\$0.00	\$0.00	\$0.00
ScriptCare	19	\$1,270.52	\$0.00	\$1,270.52	\$1,214.33	\$56.19	\$0.00	\$0.00
Select Health	15	\$1,104.02	\$1,041.61	\$62.41	\$61.76	\$0.65	\$0.00	\$0.00
SXC	6	\$0.00	\$580.28	(\$580.28)	\$0.00	(\$177.28)	(\$403.00)	\$0.00
SXC- Kroger	1	\$0.00	\$31.06	(\$31.06)	\$0.00	(\$31.06)	\$0.00	\$0.00
Tmesys	7	\$923.65	\$0.00	\$923.65	\$923.65	\$0.00	\$0.00	\$0.00
Touchpoint Health Plan	3	\$94.54	\$62.00	\$32.54	\$55.05	(\$22.51)	\$0.00	\$0.00

Report Created On: 7/3/2014 2:42:30 PM

4 of 5



Accounts Receivable Report

US Script	174	\$5,895.06	\$203.36	\$5,691.70	\$5,815.56	(\$29.83)	(\$94.03)	\$0.00
WHI Health Initiatives	25	\$4,386.03	\$3,756.60	\$629.43	\$950.53	(\$328.40)	\$7.30	\$0.00
<b>Grand Total:</b>	<b>25794</b>	<b>\$2,196,439.74</b>	<b>\$140,333.99</b>	<b>\$2,056,105.75</b>	<b>\$1,988,969.89</b>	<b>\$51,809.13</b>	<b>\$2,876.03</b>	<b>\$12,450.70</b>



Attachment C

**COLLATERAL ASSIGNMENT OF RIGHT TO PAYMENT UNDER  
SETTLEMENT AND RELEASE AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF RIGHT TO PAYMENT UNDER SETTLEMENT AND RELEASE AGREEMENT ("Assignment") dated as of the 19<sup>th</sup> day of August, 2014, is made by **Acquinity Interactive, LLC** ("Acquinity"), **7657030 Canada, Inc.** ("Acquinity-Canada"), **Garry Jonas** ("Jonas"), and **Revenuepath Limited** ("RPL") (collectively hereinafter referred to as "Assignors"), to the **Federal Trade Commission** (the "FTC") (the FTC and the Assignors are collectively referred to as the "Parties").

**WITNESSETH:**

WHEREAS, the Parties have agreed to settle the lawsuit between them styled *Federal Trade Commission v. Acquinity Interactive, LLC, et al.*, Case No. 14-cv-60166 (S.D. Fla.) (hereinafter the "Lawsuit"), under the terms set forth in the Stipulated Final Judgment and Order for Permanent Injunction as to Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Garry Jonas, Gregory Van Horn, Revenue Path E-Consulting Private, Ltd., Revenuepath Limited, and Sarita Somani (the "Stipulated Final Judgment;" the Defendants subject to the Stipulated Final Judgment, collectively, the "Defendants-Debtors").

WHEREAS, the Defendants-Debtors have agreed to make payments totaling \$7.8 million to the FTC pursuant to the installment payment schedule set forth in Section VI of the Stipulated Final Judgment (the "Settlement Payout"), which payments shall herein be secured by, *inter alia*, the right to receive payment under that Settlement and Release Agreement between the Assignors and Indicus Services, Ltd., Philip W. Jenkins, and Nouredine Belhaj, dated May 8, 2014 (the "Indicus Settlement Agreement").

NOW, THEREFORE, to further secure the above-described Settlement Payout and in consideration for the full and final resolution and settlement of all the FTC's claims in the Lawsuit against the Defendants-Debtors, the Assignors do hereby collaterally assign, transfer and set over to the FTC all of their rights, title and interest in and to all remaining payments to be made under the Indicus Settlement Agreement after the effective date of this Assignment.

In conjunction with the foregoing:

1. The Assignors covenant and warrant to the FTC that: (a) this Assignment is not restricted by the Indicus Settlement Agreement; (b) they have not assigned nor shall they assign to any other person or entity any interest in the Indicus Settlement Agreement; and (c) the Assignors shall take whatever action, including, but not limited to, the payment of fees and

charges, necessary or required to keep both the Indicus Settlement Agreement and this Assignment in full force and effect until the payment in full of the Settlement Payout.

2. The Assignors warrant that the FTC shall not be under any obligation to perform any of the terms and provisions of the items and matters assigned hereby. Nothing contained herein shall be construed to impose any liability upon the FTC by reason of the assignment granted hereby.

3. Assignors' Rights until Default. So long as no default shall exist under the Stipulated Final Judgment, the Assignors shall have the right to exercise all of the Assignors' rights and benefits under, in and to the Indicus Settlement Agreement.

4. FTC's Rights in Event of Default.

(a) Immediately upon the occurrence of a default under the Stipulated Final Judgment, and until such default shall have been cured, the FTC is hereby expressly and irrevocably authorized to assume any and all of the Assignors' rights to payment under the Indicus Settlement Agreement without further authorization, notice or demand and without the commencement of any action.

(b) The Assignors hereby constitute and appoint the FTC irrevocably, and with full power of substitution and revocation, the true and lawful attorney, for and in the name, place and stead of the Assignors, to exercise any and all rights and remedies of the Assignors under the Indicus Settlement Agreement. The Assignors hereby grant unto said attorney full power and authority to do and perform each and every act whatsoever requisite to be done with respect to the Indicus Settlement Agreement, as fully to all intents and purposes, as the Assignors could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof; provided, however, that any acts or omissions by the FTC after default shall be at the FTC's discretion and shall not be or become the basis for any liability of the Assignor.

(c) Acceptance of this Assignment by the FTC shall not constitute a satisfaction of all or any part of the obligations of the Defendant-Debtors under the Stipulated Final Judgment. However, any payments received by the FTC pursuant to this Assignment shall be applied to offset any remaining monetary obligations due from the Defendant-Debtors under the Stipulated Final Judgment.

(d) The rights and powers of the FTC hereunder shall continue and remain in full force and effect until the monetary obligations of the Defendant-Debtors under the Stipulated Final Judgment are satisfied in full. The FTC shall not be liable to the Assignors or anyone claiming under or through the Assignors by reason of any act or omission by the Assignors hereunder.

(e) A default shall be cured when the Defendant-Debtors have satisfied any applicable provisions for cure in the Stipulated Final Judgment.

5. This Assignment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

6. The Assignors acknowledge that the agreement to settle the instant Lawsuit shall be made by the FTC in full reliance upon this Assignment. This instrument is for the sole benefit of the FTC and shall not be construed for the benefit of any third party or parties.

7. Upon the payment in full of all obligations under the Stipulated Final Judgment, this Assignment shall be deemed null and void and Assignors shall be authorized to file termination statements with respect to any financing statements pertaining solely to this Assignment.

*[signature pages follow]*





Garry Jonas

Sign: [Signature]  
Print Name: Garry Jonas

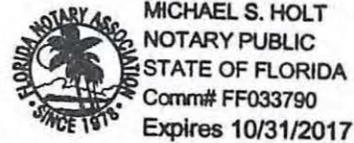
STATE OF FLORIDA )  
 ) SS:  
COUNTY OF BLOUNT )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by GARRY JONAS, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 19<sup>th</sup> day of August, 2014.

[Signature]  
Notary Public  
Michael S. Holt  
Typed, printed or stamped name of Notary Public

My Commission Expires:  
10/31/2017





## Attachment D

This Instrument Prepared By and  
To Be Returned To:

Lauren Shoemake, Esq.  
GREENSPOON MARDER, P.A.  
200 East Broward Boulevard, Suite 1800  
Fort Lauderdale, Florida 33301

[Space above this line for recording data]

### MORTGAGE AND SECURITY AGREEMENT

This Indenture, made this 19<sup>th</sup> day of August, 2014, by and between **Garry Jonas and Irene Marciano, husband and wife**, whose address is **550 SE 5<sup>th</sup> Avenue, Unit 905S, Boca Raton, Florida 33432**, hereinafter collectively called the "Mortgagor", and the **Federal Trade Commission**, whose address is **55 West Monroe Street, Suite 1825, Chicago, Illinois 60603**, hereinafter called the "Mortgagee":

The terms "Mortgagor" and "Mortgagee", shall include heirs, personal representatives, successors, legal representatives and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires.

**Witnesseth**, that the Mortgagor, for and in consideration of the Mortgagee's consent to settlement of the the lawsuit styled *Federal Trade Commission v. Acquinity Interactive et al.*, Case No. 14-cv-60166 (S.D. Fla.), under the terms set forth in the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (the "Stipulated Final Judgment"), entered as to Defendants Acquinity Interactive, LLC, 7657030 Canada, Inc., Revenue Path E-Consulting Pvt., Ltd., Revenuepath Limited, Sarita Somani, Garry Jonas (the "Stipulating-Mortgagor"), and Greg Van Horn (these parties shall collectively be referred to hereafter as "Defendant-Debtors"), pursuant to which Stipulating-Mortgagor is made jointly and severally liable, along with all other Defendant-Debtors, for all monetary and payment obligations contained therein, and as further security therefor, the Mortgagor, under the terms set forth herein, does hereby grant, bargain, sell, remise, convey, assign, pledge, deliver, set over, warrant and confirm unto the Mortgagee and grant a security interest to said Mortgagee, its successors and assigns, in fee simple, the following described real property situated, lying and being in Palm Beach County, Florida, to-wit:

**Unit No. S-905 of Mizner Grand, a Condominium, according to The Declaration of Condominium recorded in O.R. Book 10936, Page 896, as amended to add Phase II in O.R. Book 11773, Page 1498 and all exhibits and amendments thereof, Public Records of Palm Beach County, Florida,**

together with all buildings and improvements now or hereafter situated upon said property, and all fixtures and equipment now or hereafter located in the premises and improvements thereon, together

with all additions thereto and replacements thereof (all of which is hereinafter referred to as the "Property").

And the said Mortgagor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

**Provided always**, that if said Defendant-Debtors, their successors or assigns, shall pay unto the said Mortgagee, its successors or assigns, the amounts due under that certain Stipulated Final Judgment, and the Mortgagor shall perform, comply with and abide by each and every covenant of this mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, and all other costs and expenses that may arise to maintain the Property, including any costs or reasonable attorneys' fees that the Mortgagee may incur in collecting money secured by this mortgage, and also in enforcing this mortgage by suit or otherwise, then this mortgage and the estate hereby created shall cease and be null and void. Once all funds due and owing by Defendant-Debtors to the FTC as set forth in the attached Stipulated Final Judgment have been paid, this mortgage shall cease and shall immediately be declared null and void, and the Mortgagee shall assist the Mortgagor in executing any documents evidencing the release of same.

The Mortgagor hereby covenants and agrees:

1. To keep the buildings now or hereafter on the land insured for fire and extended coverage in a sum at least equal to the value of the Property, and to furnish the Mortgagee with a copy of all current policies upon request. If Mortgagor does not provide the Mortgagee with copies of the policies after fifteen (15) days written demand by the Mortgagee, then the Mortgagee may purchase such insurance and shall add any payments made for such policy to the balance owed on the Stipulated Final Judgment, and such payments shall accrue interest at the maximum rate of interest allowed by law. In the event of a loss to the Property, Mortgagor shall give immediate notice to the Mortgagee. In the event any sum of money becomes payable under such policy for a covered loss to the Property, the Mortgagor shall use such funds, or any part thereof, for repair or replacement of the Property to its pre-loss condition.
2. To permit, commit or suffer no waste, impairment or deterioration of the Property, or any part thereof.
3. To permit no other lien(s) or mortgage(s) securing more than Three Million Dollars (\$3,000,000) in total principal debt obligations to be placed ahead of this mortgage, and the Mortgagee hereby agrees to subordinate this mortgage to any such present or future lien(s) or mortgage(s), and the Mortgagee shall, at the request of the Mortgagor, sign, execute, make and do all such documents, acts and things as may reasonably be required to effectuate the subordination contemplated herein. All costs and expenses associated with the preparation and recording of the foregoing shall be borne solely by the Mortgagor.
4. The Mortgagor shall provide proof of payment of annual real estate taxes by April 15<sup>th</sup>, for the preceding year's taxes. In the event that the Mortgagor does not pay the taxes by such date, the Mortgagee may pay the taxes and the full amount of such payment by the Mortgagee shall be added to the principal balance owed by the Defendant-Debtors pursuant

to the Stipulated Final Judgment, and shall accrue interest at the maximum rate allowed by law.

This mortgage, and Defendant-Debtors' monetary obligations under the Stipulated Final Judgment being secured herein, shall be construed and enforced according to the laws of the State of Florida.

The Mortgagor may not transfer title to the Property by sale or otherwise without the written consent of the Mortgagee, and the Mortgagee may condition its consent hereunder upon the Mortgagor or Defendant-Debtors providing the Mortgagee with an alternative security interest of reasonably equivalent value to that being granted herein. Notwithstanding the foregoing, the Mortgagee's consent hereunder shall not be unreasonably withheld where the Mortgagor or Defendant-Debtors have offered to grant the Mortgagee an alternative security interest of reasonably equivalent value in connection with a request for the Mortgagee's consent to the Mortgagor's transfer of title to the Property by sale or otherwise. If a transfer of title to the Property, by sale or otherwise, is made while this mortgage remains a lien thereon, but without the Mortgagee's written consent, the principal sum secured hereby shall immediately become due and payable upon demand, at the option of the Mortgagee.

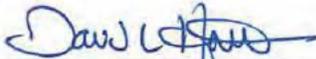
Executed at Broward County, Florida on the date written above.

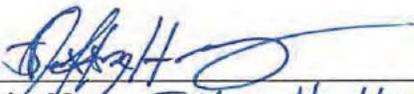
[NO FURTHER TEXT ON THIS PAGE]

WITNESS the due execution hereof as of the date first above written.

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
Garry Jonas

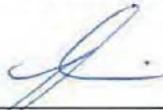
  
\_\_\_\_\_  
Print Name: DAVID L. HALTON

  
\_\_\_\_\_  
Print Name: Jeffrey Hochberg

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF Browns        )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Garry Jonas, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 19<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Notary Public

Michael S. Holt  
\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:  
10/31/2017

