In the matter of
National Research Center for College and University Admissions

ASSURANCE OF DISCONTINUANCE/ ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Discontinuance, which shall also be considered an Assurance of Voluntary Compliance ("Assurance"), is entered into between the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, West Virginia, Wisconsin and Wyoming, by their respective Attorneys General[1] (collectively "Attorneys General") and The National Research Center for College and University Admissions, Inc. ("NRCCUA"). NRCCUA is a Missouri not for profit corporation with its principal place of business at 3651 N.E. Ralph Powell Road, Lee's Summit, Missouri 64064.

The Attorneys General contend that NRCCUA has engaged in conduct in violation of their respective consumer protection laws[2] in its collection of personal information from high

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[1] Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to represent the State of Hawaii in consumer protection actions. For the sake of simplicity, the entire group will be referred to as the "Attorneys General," and such designation as it pertains to Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection. With regard to Connecticut, it is the Commissioner of the Department of Consumer Protection who is statutorily authorized to accept Assurances of Voluntary Compliance pursuant to the Connecticut Unfair Trade Practices Act. C.G.S. Section 42-110j. Hereafter, when the entire group is referred to as the "Respective States" or "Attorneys General", such designation, as it pertains to Connecticut, refers to the Connecticut Commissioner of the Department of Consumer Protection." Montana is represented by the Governor's Consumer Protection Office. With regard to Virginia, this document will be titled an Agreement.

[2] Specifically:

Alabama – Section 8-19-1, *et seq.*of the Code of Alabama (1975), Alabama Deceptive Trade Practices Act.
Alaska - Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.40.471 *et seq.*
Arizona - Arizona Consumer Fraud Act: A.R.S. § 44-1521 *et seq.*
California - California Unfair Competition Act and False Advertising Act. Ca. Bus. & Prof. Code §§ 17500 *et seq.*, and 17200 *et seq.*
Colorado - Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 to 6-1-115.
Connecticut - Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*
Delaware - Delaware Consumer Fraud Act, Del. Code Ann. tit. 67, §§ 2511 to 2527.
Florida – Chapter 501, Part II, Florida Statutes. Florida Unfair and Deceptive Trade Practices Act
Hawaii - Hawaii Rev. Stat. § 480-2 and 487-5(6).
Idaho – Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*
Illinois - Illinois Consumer Fraud and Deceptive Business Practices Act, 815 IL CS § 505/1 *et seq.*

school students and in its solicitations to high schools, colleges and universities, or to their employees, regarding its collection of this information, as more specifically described in this Assurance.

I. THE STATES' POSITION

1. Since at least 1988, NRCCUA has collected personal information from high school students throughout the United States through a "Post Secondary Planning Survey" (the "Survey"). NRCCUA distributes the Survey to high school teachers and guidance counselors with the request that they have their students complete the Survey. Students may also complete the Survey online at NRCCUA's web site, www.nrccua.org. In 2001, NRCCUA collected personal information from more than 2 million high school students who completed the Survey.

Iowa - Iowa Consumer Fraud Act, Iowa Code § 714.16.
Kentucky – KRS 367.110 *et seq.*
Louisiana – LSA-R.S. 51:1401 *et seq.*
Maine - Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-a *et seq.*
Maryland - Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101, *et seq.*
Michigan - Michigan Consumer Protection Act, MCL 445.901 *et seq.*
Minnesota – Minn. Stat. § 325F.69
Missouri – 407.010 *et seq.* RSMo 2000
Mississippi – Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1 *et seq.*
Montana - MCA 30-14
Nevada - Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999.
New Jersey - New Jersey- Consumer Fraud Act, N.J.S.A. 56:8-1 et seq
New Mexico - New Mexico Unfair Practices Act, NMSA § 57-12-1 *et seq.*
New York - N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12).
North Carolina - North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*
North Dakota – N.D.C.C. § 51-15-02 *et. seq.*
Ohio - Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*
Oklahoma - Oklahoma Consumer Protection Act 150 O.S. §§ 751*et seq.*
Oregon - Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*
Pennsylvania - Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*
Rhode Island – R.I. Gen. Laws § 6-13-1.
South Dakota – SDCL Ch. 37-24.
Tennessee - Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 *et seq.*
Texas - Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*
Utah – Consumer Sales Practices Act. Utah Code Ann. § 13-11-1 *et seq.* Truth in Advertising Act, Utah Ann. Code § 13-119-1 *et seq.*
Vermont - Vermont Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*
Virginia – Consumer Protection Act, 59.1-196 *et seq.*
Washington – Washington Unfair Business Practices – Consumer Protection Act, RCW 19.86.
West Virginia – W.Va.Code 46A-6-104.
Wisconsin- Wisconsin Statutes §§ 100.18(1) and 100.207.
Wyoming – Wyo.Stat.Ann. §§ 40-12-101 through 114. Wyoming Consumer Protection Act.

2. The Survey solicits from high school students personal information, including, but not limited to, name, address, gender, grade point average, date of birth, academic and occupational interests, athletic and extracurricular interests, racial or ethnic background, and, in the event the student is interested in attending a college with a religious affiliation, the denomination of their choice (the "Survey Data").

3. NRCCUA markets Survey Data primarily to colleges and universities, the information from which NRCCUA represents is used to target high school students for recruitment purposes. However, NRCCUA has also shared the Survey Data with (a) commercial entities that used the information to solicit high school students for the sale of educational and noneducational commercial products or services, and (b) commercial entities that shared the Survey Data with other commercial entities that, in turn, engaged in such solicitations.

4. In its written communications addressed to high school students, high school personnel and colleges and universities, NRCCUA made the following representations:

(a) "[The Survey] is completely funded by our members, 850 colleges and universities who include most of the top national and regional colleges and universities as ranked by *U.S. News and World Report*."

(b) "All costs for this program are paid by NRCCUA with resources supplied by the participating schools and colleges."

(c) "All of this is <u>free</u> to your students because it is funded by our member educational institutions."

(d) "These survey results are provided at no cost to participating high schools, NRCCUA is funded by its member colleges and universities for the purpose of distributing helpful educationally-related literature to students."

(e) "NRCCUA is the largest non-profit organization in the nation dedicated solely to assisting students and institutions in this linking [college selection] process, through information management."

5. The representations included in paragraph 4 above constituted deceptive and unfair

practices in violation of the states' consumer protection laws for the following reasons:

(a) The representations state or imply that the information collected from high school students through the Survey is shared only with colleges, universities, and other entities providing education-related services when, in fact, NRCCUA has shared the information with (1) commercial entities that used the information to solicit high school students for the sale of educational and noneducational commercial products or services, and, (2) commercial entities that shared the information with other commercial entities that, in turn, engaged in such solicitations.

(b) The representations state or imply that the Survey is funded solely by educational institutions when, in fact, the Survey is also funded by two commercial entities, American Student List and Educational Communications, Inc., which used the survey data in the manner described in above subparagraph (a).

(c) The representations state or imply that NRCCUA is dedicated only to linking colleges and universities with prospective students when, in fact, part of its function has been to sell the Survey Data to commercial entities that solicit the students for the purchase of commercial products or to commercial entities that sell the Survey Data to other commercial entities that use it in that manner.

6. In its written communications addressed to high school students NRCCUA has made the following disclosures in its "privacy statements":

a. "It is understood that information obtained through the questionnaire is given voluntarily by students in high school. Use of this survey data is authorized by NRCCUA for the purpose of research and dissemination of college and career information, and other educational information helpful to students and their families in the transition from high school to college."

b. "This data is used by colleges, universities and other organizations to assist students and their families by providing them with valuable information. The National Research Center for College and University Admissions advocates responsible and secure use of

information obtained voluntarily through this survey. Students or parents may request the removal of their information at anytime. Our complete privacy policies may be viewed on our Web site at www.nrccua.org."

7. The NRCCUA "privacy statements" constituted deceptive and unfair practices, in violation of the states' consumer protection laws, in that they implied that the Survey Data would be used only for non-commercial purposes when, in fact, the information NRCCUA collected from high school students through the Survey has been shared not only with colleges, universities, and other entities providing education-related services, but also with commercial entities for educational and non-educational marketing purposes.

II. NRCCUA'S POSITION

8. Since 1972, NRCCUA's mission has been to make the important process of selecting a college education or career path easier for students. NRCCUA's annual Surveys enable more than 5 million high school students to indicate their unique college and career preferences to over 1200 colleges and universities. These institutions use NRCCUA Survey Data to identify students who meet their recruitment criteria and would appear, from their responses, to have a potential interest in their institutions. Colleges and universities then target students to receive information about their particular programs. Students also receive other education related materials, such as federal financial aid information and student loan opportunities from non-profit and for-profit organizations and government agencies. Because the Survey is free to students, over 800,000 high school juniors are selected to receive information about colleges and other educational opportunities only because of their participation in the Survey. Many of these are students who may be interested in continuing their education after high school, but are not included on most college recruitment lists because they typically do not take college admissions tests.

9. Prior to January 2002, NRCCUA's Survey included a privacy statement informing students and the educators who administered the Survey that the data provided by students would be used by colleges and universities, as well as by "other organizations," to assist students and

their families by providing them with valuable information. The privacy statement also informs students and educators that students or parents may request the removal of their information at any time and that further information about NRCCUA's privacy policies is available at www.nrccua.org. NRCCUA's web site included a link to NRCCUA's privacy statement which also disclosed that information obtained through the Survey is used to provide "other information helpful to students and their families . . . ."

10. Prior to February 2002, NRCCUA primarily shared Survey information with colleges and universities and other post secondary educational institutions. It also shared information with non-profit and for-profit entities with educational purposes, such as standardized test preparation services, student recognition programs, career counseling services, and student loan programs, among others. In addition, some NRCCUA Survey information was provided to other for-profit entities which may have used the information for school-related or other purposes which were not wholly educational in nature. As stated in paragraph 9, these uses, which NRCCUA represents constituted a small percentage of its activities, were described in NRCCUA's privacy statements and on its web site.

11. NRCCUA states that on or about February 1, 2002, NRCCUA modified its practices regarding the use of the student information it collects. These modifications include sharing personally identifiable Survey information only with entities which have an educational or employment-related purpose for the information and prohibiting all recipients of its data from disseminating Survey information to any entity without an educational or employment-related purpose for the information. It has also modified the privacy statement appearing on its Surveys and web site. The privacy statement included on Surveys for the 2004-2005 academic year is as follows:

> Dear Student: The most important benefit of participating in this voluntary survey and research project is the information you and your family will receive from colleges and universities. In some cases, you and your family may also receive information from non-profit and for-profit organizations and government agencies, including offers for

educational products and services such as student loans and financial aid, college admissions and tutorial services, extra-curricular enrichment and recognition programs, career, employment and military opportunities, and camps. NRCCUA does not share your information with commercial marketers offering to sell you non-education related products and services.

III. DEFINITIONS

12. The following definitions shall apply to this Assurance.

a. "Clearly and conspicuously" means:

(1) In print communications, the message shall be in a type size and location sufficiently noticeable for the person to whom it is being disclosed to read and comprehend it, in print that contrasts with the background against which it appears, and in close proximity to the terms it purports to clarify, modify, or explain.

(2) In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it.

(3) In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the message shall be presented simultaneously in both audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message shall be made through the same means in which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for a consumer to read and comprehend it.

The message shall be in understandable language and syntax. Nothing contrary to,

inconsistent with, or in mitigation of the message shall be used in any communication.

b. "Noneducational-related marketing purpose" shall mean for the purpose of marketing products or services or selling personally identifiable information from or about an individual for use in marketing products or services to individuals which have no apparent educational purpose. "Noneducational-related marketing purpose" does not apply to the collection, disclosure or use of personally identifiable information from or about a student for the exclusive purpose of developing, evaluating, or providing to students or educational institutions:

(1) college or postsecondary education recruitment, or military recruitment;

(2) curriculum and instructional materials used by elementary schools and secondary schools;

(3) book clubs, magazines, and programs providing access to low-cost literary products;

(4) student recognition programs; and,

(5) any other activity expressly determined under 20 U.S.C. § 1232h(c)(4)(A) or its implementing regulations to be an "educational product or service."

Provided further that, for purposes of determining whether any specific activity is covered by subsections (1) through (5) above, any official written interpretation adopted by administrative rule and disseminated to the public by the Department of Education regarding such activity shall be controlling.

c. "NRCCUA" means The National Research Center for College and University Admissions, Inc., and its directors, officers, employees, agents, successors, and assigns, and anyone acting in concert with it or at its behest.

d. "Personally identifiable information" or "personal information" shall mean individually identifiable information from or about an individual including, but not limited to:

(1) a first and last name;

(2) a home or other physical address, including street name and name of city or town;

(3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual's e-mail address;

(4) a telephone number;

(5) a Social Security number;

(6) an Internet Protocol ("IP") address or host name that identifies an individual;

(7) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is combined with other available data that identifies an individual; or,

(8) any information, including, but not limited to, grade point average, date of birth, academic or occupational interests, athletic or extracurricular interests, racial or ethnic background, or religious affiliation, that is combined with any of the personal information described in sections (1) through (7) of this subparagraph.

IV. NRCCUA'S ASSURANCES REGARDING ITS FUTURE CONDUCT

13. NRCCUA, in connection with the collection of personally identifiable information from or about an individual, shall not misrepresent in any manner, expressly or by implication:

a. how personally identifiable information will be collected, used or disclosed; or

b. how the collection of personally identifiable information is funded.

14. NRCCUA, in connection with the collection of personally identifiable information from students for any purpose, shall disclose clearly and conspicuously:

a. the existence and nature of the purpose for collecting the information; and

b. the types or categories of any entities to which the information will be disclosed.

15. The disclosures required by paragraph 14 shall be made in all NRCCUA privacy statements and in all questionnaires, survey instruments, and other documents through which

NRCCUA collects personally identifiable information from students.

16. If NRCCUA chooses to use or permit others to use Survey Data for any noneducational-related marketing purpose, then NRCCUA shall:

(1) supply to a representative of each school that is requested by NRCCUA to administer its Survey, an electronic or written notice to be provided to parents of students under age 18 or to students age 18 and over, to whom the Survey will be administered which shall contain the disclosures stated in paragraph 14 above, and shall also clearly and conspicuously disclose : (a) that the Survey may be administered; (b) the parents' right to opt their children out of completing the Survey and the right of students age 18 or over to opt themselves out of completing the survey; and, (c) all methods by which the opt out right described in subparagraph 16(1)(b) may be accomplished. The representative to whom NRCCUA must supply the notice must be a school employee who is asked to administer the survey to students;

(2) provide the school representative with electronic or written instructions clearly and conspicuously stating that NRCCUA is requesting that the notice form be sent to parents or students age 18 and over by the school at least 30 days prior to the administration of the Survey in any manner deemed appropriate by school personnel, including via e-mail or other appropriate form by which parents or students receive communications from that school. For any school requesting written notices, NRCCUA shall supply to the school personnel sufficient quantities of the written notice form such that there is at least one per student to whom the Survey is administered; and

(3) provide notice to all school personnel who agree to administer the Survey stating that the notice to parents and students age 18 and over is available at the NRCCUA Internet web site and from a representative at that school.

17. The disclosures required to be made in this Assurance are in addition to, and not in lieu of, any other disclosures that NRCCUA may be required to make, including but not limited to a disclosure required by state or federal law.

18. Upon receipt of a specific request from a parent or guardian of a student under the

age of 18, or from a student age 18 or older, that the student be opted out of completing the Survey or that NRCCUA cease using personally identifiable information previously collected from the student via the Survey, NRCCUA shall, within ten (10) business days of receiving the request, cease all future use of such information.

V. PAYMENT TO THE STATES

19. Upon the signing of this Assurance by all parties to this agreement, NRCCUA shall make an initial payment equal to the sum of $150,000.00 to the Attorney General of Iowa on behalf of the Attorneys General of the States of Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Vermont and Wisconsin to be divided as determined by these Attorneys General for attorneys' fees and investigative costs, consumer education, litigation, public protection or local consumer aid funds, at the discretion of each State's Attorney General as allowed by each State's law.[3] NRCCUA shall, sixty (60) days following payment of the initial installment, make a second payment equal to the sum of $150,000.00 to the Attorney General of Iowa, for use in the same manner as described in the preceding sentence.

20. Payment shall be made by cashier's check made payable to the "Attorney General of Iowa" and delivered with the signed Assurance to the Office of the Attorney General, Consumer Protection Division, 1305 E. Walnut Street, Des Moines, Iowa. The initial payment shall be accompanied by the signed Assurance.

VI. MONITORING AND COMPLIANCE

21. Upon the request of one or more of the Attorneys General, NRCCUA agrees to provide books, records and documents to the requesting Attorney General at any time, and further, to informally or formally under oath, provide testimony and other information to the

[3] With respect to the State of Colorado, its apportionment of the funds shall be used first for reimbursement of Colorado's actual costs and attorney fees and second, to be held, along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud or antitrust enforcement purposes.

States relating to compliance with this Assurance. NRCCUA shall make any requested information available within thirty (30) business days of such request, at the Office of the Attorney General of the requesting State, or at the location of NRCCUA, or at such location as directed by the requesting Attorney General, at the preference of the requesting Attorney General. This Section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

VII. GENERAL TERMS OF ASSURANCE

22. This Assurance is for settlement purposes only and does not constitute an admission by NRCCUA that any of the allegations are in violation of any of the state consumer protection laws.

23. The parties agree that this Assurance does not constitute an approval by the Attorneys General of any of NRCCUA's past or future practices, and NRCCUA shall not make any representation to the contrary.

24. Nothing contained herein shall be construed to waive any individual right of action by any consumer, including any action for consequential damages.

25. NRCCUA shall not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance.

26. This Assurance may only be enforced by the parties hereto.

27. Nothing in this Assurance shall be construed as relieving NRCCUA of the obligation to comply with all state and federal laws, regulations and rules.

28. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

29. NRCCUA shall provide written notice within twenty (20) business days of the

effective date of this Assurance and for a period of three (3) years thereafter to any agent, servant, employee, or representative of NRCCUA, having responsibilities with respect to the subject matter of this Assurance, of the existence and terms of the Assurance entered in this case, and of their duty to comply with the terms set forth herein.

30. NRCCUA agrees that a violation by NRCCUA of any requirement of this Assurance shall constitute a violation of the respective States' consumer protection laws.

31. The parties agree that this Assurance will become binding and effective when executed by all of the parties.

32. NRCCUA has read and understands this Assurance and enters into it voluntarily, having been advised by its undersigned counsel of the meaning and effect of each provision of this Assurance.