

NO. \_\_\_\_\_

**IN THE MATTER OF:**

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
AND	§	TRAVIS COUNTY, T E X A S
	§	
DEBTXS, L.P.	§	_____ JUDICIAL DISTRICT

**ASSURANCE OF VOLUNTARY COMPLIANCE**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COME NOW the STATE OF TEXAS (“State”) acting by and through the Attorney General of Texas, Greg Abbott, and DEBTXS, L.P. (“Respondent” or “DebtXS”), by and through its attorney of record, and respectfully submit the following Assurance of Voluntary Compliance (“AVC” or “Assurance”) for the Court’s approval and filing in accordance with the Deceptive Trade Practices – Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE ANN. § 17.58 (Vernon 2002 and Supp. 2005).

**NATURE OF ALLEGED VIOLATIONS**

1. DebtXS advertises its services throughout the country primarily via the Internet. DebtXS is a for-profit “debt settlement” company, which is an alternative to other forms of consumer debt relief, including bankruptcy, credit counseling, or consolidation loans. Debt settlement is a service where a company negotiates a consumer’s debt directly with the creditor, in an attempt to agree upon a lump-sum payment amount to completely pay off the debt at a reduced amount. In order to save enough money to pay these creditors the agreed-upon lump sum, consumers must stop paying their monthly payments on these debts, and instead save that money in a personal savings account. DebtXS represents that

through its services, it can enable a consumer to pay off his or her debts in three years, for approximately forty cents on the dollar. For its negotiation services, DebtXS charges a fee of 15% of the total debt amount, which is paid by the consumer over the first year through automatic withdrawals from the consumer's checking account. In its marketing, DebtXS compares its services to other forms of debt relief, emphasizing the benefits of their debt settlement program over alternatives.

2. The Office of the Attorney General has investigated certain potential claims under the DTPA including that Respondent may have:
  - A. Misrepresented the costs of, and the services provided by, the DebtXS Program;
  - B. Failed to disclose the potential negative effects of participation in a debt settlement program, including the effect on a consumer's credit score and the potential of increased collection activity, including the filing of lawsuits by creditors;
  - C. Misrepresented the results that can be obtained through the DebtXS Program;
  - D. Misrepresented the services provided by and results obtained by alternative forms of consumer debt relief; and
  - E. Misrepresented DebtXS' ability to provide legal advice to consumers.
3. Respondent denies these potential claims and the parties agree and stipulate that this AVC is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation, and that this AVC does not constitute an admission by Respondent of any violation of the DTPA.

4. The parties further acknowledge that the debt settlement industry is still developing standards, and, in an effort to assist in that development, DebtXS has cooperated fully in the events leading to this AVC, and both sides understand that the definitions contained herein may be viewed by industry sources as criteria which may be applicable to the industry generally.

### STIPULATIONS

5. The parties hereby agree and stipulate that:
  - A. The State and Respondent agree to and do not contest the entry of the AVC by this Court;
  - B. The corporate signatory hereto is an officer of Respondent; he or she is authorized to sign this AVC on behalf of Respondent; and, he or she has read the AVC and agrees to entry of same on behalf of Respondent;
  - C. The Office of the Attorney General has jurisdiction in this matter under DTPA § 17.47; and
  - D. The venue of this cause is proper in Travis County.

### DEFINITIONS

6. **“Debt Settlement”** means the service pursuant to which a third party negotiates with a consumer’s creditor in an attempt to reach (or, for the purpose of obtaining) a lump sum settlement agreement or agreement for limited payment schedule with that creditor for less than the full balance that the creditor claims is past due and owed by the consumer.
7. **“DebtXS Program”** means the Debt Settlement service advertised, sold, and provided by DebtXS.

8. **“Clearly and Conspicuously”** means that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. Further:
- A. For print communications, the message shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in print that contrasts with the background against which it appears.
  - B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to comprehend it.
  - C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software) in which both audio and visual means of communications are utilized for any portion of the message, the message shall be presented simultaneously in both the audio and visual portions of the communication. Notwithstanding the preceding sentence, in any communication presented solely through visual or audio means, the message may be made solely through the same means by 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.

9. **“DebtXS Sales Agent”** is an employee or contractor of DebtXS who directly sells the DebtXS Program through telephone consultations.
10. **“Debt Settlement Contract”** means a written contract, signed by the consumer and DebtXS, in which the consumer agrees to enroll in the DebtXS Program, and that Clearly and Conspicuously discloses all material terms and conditions associated with the DebtXS Program, including, but not limited to, an itemized list of the fees paid by the consumer to DebtXS under the DebtXS Program, and the specific debts of the consumer included in the DebtXS Program.
11. **“Debt Settlement Contract Addendum”** means a separate document included with the Debt Settlement Contract, labeled **“REQUIRED DISCLOSURES,”** that is a disclosure form requiring the consumer’s separate signature, as well as the consumer’s initials for each disclosure. Each disclosure shall be made Clearly and Conspicuously and shall disclose any information that would reasonably affect a consumer’s decision to enter into the Debt Settlement Contract. Such disclosures shall include, but are not limited to, each of the following facts, if true:
  - A. The total price charged by DebtXS in fees for a consumer participating in the DebtXS Program;

- B. A consumer's participation in the DebtXS program, like any failure by the consumer to pay creditors timely, will likely increase collection activity, including increased phone calls and correspondence from the creditor or debt collector, and that DebtXS is limited by law in its ability to cease such collection activity;
- C. A consumer's creditors will likely reflect late fees and additional interest on the consumer's monthly statements while participating in the DebtXS Program until a settlement is reached with his or her creditors. If negotiations are unsuccessful, the consumer may be responsible for payment of the entire new balance;
- D. By failing to pay creditors in accordance with the terms of the contractual agreements with those creditors, a consumer may be in violation of the agreements with those creditors, which may result in a creditor suing that consumer, however, the DebtXS Program does not provide legal representation for a consumer in the event that the consumer is sued;
- E. If a consumer settles a debt with a creditor for less than the full amount of that debt, the consumer may have to pay income taxes on the amount the debt was reduced for settlement, however, DebtXS will not provide an accountant to assist a consumer in the completion of that consumer's income tax returns, nor advise how a consumer should or should not treat income tax payable on debt that has been forgiven through the DebtXS Program;
- F. DebtXS cannot guarantee that a consumer's debt will settle for any particular percentage within any particular time period, or that they will be able to settle the consumer's debt at less than full value;

- G. Any individual creditor may use a number of different criteria in determining that creditor's willingness to settle a debt or the amount acceptable in settlement, including, but not limited to, the amount of the debt, the current status of the debt, the reasons a consumer is seeking Debt Settlement, the Debt Settlement program, the type of debt, and the amount of the consumer's disposable income;
- H. While participating in the DebtXS Program, a consumer's credit score is likely to decrease, as their credit report will reflect the fact that they have ceased paying their creditors;
- I. While DebtXS determines a consumer's eligibility for the DebtXS Program, DebtXS will not evaluate a consumer's unique credit and debt situation to determine the best debt relief option for that consumer, rather, it is the consumer's responsibility and choice to evaluate and determine the best available option, which may include credit counseling, loan consolidation, or bankruptcy protection; and
- J. DebtXS will not and does not provide credit repair to assist a consumer in improving their credit score before, during, or after participating in the DebtXS Program;

#### **TERMS OF COMPLIANCE**

- 12. Respondent hereby voluntarily agrees and assures the State that from the date of the signing of this AVC that DebtXS, L.P., its officers, agents, servants, employees, successors, and assigns as well as any other person acting on behalf of DebtXS, L.P., who

receives actual notice of this injunction by personal service or otherwise, will not engage in the following conduct:

A. Misrepresenting the material terms and conditions of the DebtXS Program in any advertisement, including, but not limited to:

- 1) Representing that the DebtXS Program is a method to reduce a consumer's debt without Clearly and Conspicuously disclosing in close proximity to that representation the fact, if true, that participation in the DebtXS Program, just as any failure to pay consumer debt timely, will likely result in a consumer's credit score decreasing if that consumer entered the program with a good credit score;
- 2) Failing to Clearly and Conspicuously disclose the fact, if true, that the DebtXS Program requires consumers to save their money in a personal account and that DebtXS will not control consumers' personal savings;
- 3) Failing to Clearly and Conspicuously disclose the fact, if true, that certain debts do not qualify for resolution in the DebtXS Program;
- 4) Misrepresenting, directly or indirectly, that DebtXS employees will evaluate a consumer's unique credit situation and determine for the consumer the best available option for debt resolution;
- 5) Misrepresenting that DebtXS is a not-for profit company;
- 6) Failing to Clearly and Conspicuously disclose the fact that DebtXS charges a fee for its Debt Settlement program; and

- 7) Representing an estimated or average settlement rate for the DebtXS Program without Clearly and Conspicuously disclosing, in close proximity to that representation, the fact that a consumer's actual settlement percentage may vary based upon that consumer's unique circumstances;
- B. Misrepresenting either the costs of, or benefits obtained by, the goods or services of any other company or service marketed or sold to consumers as a form of credit or debt relief, including, but not limited to, credit counseling, consolidation loans, debt management plans, or bankruptcy;
- C. Enrolling a consumer in the DebtXS Program, or accepting payment from a consumer for the DebtXS Program, without first obtaining a completed and signed Debt Settlement Contract from that consumer, and providing a copy of that completed and signed Debt Settlement Contract to the consumer;
- D. Using any title or modifier in describing a DebtXS Sales Agent that falsely indicates or falsely suggests an achievement of licensure or certification, or that misrepresents a person's experience or specialized knowledge compared to other DebtXS Sales Agents, and/or misrepresents the services offered and provided by such DebtXS Sales Agents. This includes, but is not limited to, using the title, "Senior Debt Analyst" to describe all DebtXS Sales Agents;
- E. Making any statement or representation, whether written or oral, that conflicts with, contradicts, or negates, the required disclosures contained in the Debt Settlement Sales Contract Addendum, or that suggests to a consumer that the required disclosures are not important;

- F. Failing to clearly disclose to the consumer, prior to enrolling, that DebtXS has been notified in writing, by the creditor of the consumer, of a formal policy regarding that creditor's participation in the DebtXS program which would likely negatively affect the consumer's decision to enroll in the program, including, but not limited to, a formal policy that the particular creditor will not settle with consumers in the DebtXS program, and as a result, DebtXS has not been able to achieve reduced settlements with that creditor. "Formal policy" shall mean a policy or procedure adopted at the highest level of the creditor's management in charge of settlement policy;
  - G. Misrepresenting, directly or indirectly, that a DebtXS Sales Agent has reviewed a consumer's unique credit situation and determined that the DebtXS Program is the best debt relief option for that consumer as compared to alternative forms of debt relief;
  - H. Misrepresenting, directly or indirectly, that the DebtXS Program will improve a consumer's credit score or rating;
  - I. Misrepresenting, directly or indirectly, that DebtXS can or will provide legal advice to a consumer; and
  - J. Representing that DebtXS, or any other debt settlement company, has been approved by the Office of the Attorney General or the State of Texas.
13. Respondent further voluntarily agrees and assures the State that DebtXS, L.P. shall, within sixty (60) days of the entry of this Assurance:

- A. Adopt written policies and procedures to inform all DebtXS personnel of the requirements of this agreement, and to ensure that all advertisements and sales transactions are conducted in accordance with the laws of the State of Texas and with this agreement. Such policies and procedures shall include, but are not limited to, a systematic monitoring practice whereby the sales phone calls of each DebtXS employee are monitored on a regular basis to ensure compliance with the terms of this AVC, and appropriate disciplinary action is taken against any DebtXS employee whose monitored calls are not in compliance with the law and this agreement, up to and including termination of that Sales Agent. Each current DebtXS employee shall be given a copy of these policies and procedures within thirty days of the effective date of this agreement, and each new DebtXS employee shall be given a copy of these policies and procedures immediately upon their start of employment with DebtXS;
- B. Adopt written policies and procedures to disseminate among employees and sales agents the formal policies adopted by creditors that may negatively affect the consumer's decision to participate in the DebtXS program; and
- C. Forward a copy of this agreement to any third party selling the DebtXS Program. DebtXS shall adopt written policies and procedures for monitoring compliance by those third parties with the terms of this agreement and for disciplining any party which does not comply with those terms, up to and including terminating DebtXS' relationship with that party. DebtXS shall in all future contracts with

third parties granting such parties the right to sell the DebtXS Program require those third parties to comply with the terms of this agreement.

### **RESTITUTION**

14. Respondent further voluntarily agrees and assures that State that it shall provide restitution to any Texas resident who: 1) was a customer of DebtXS on or before the entry of this Assurance by the Court, but did not successfully complete the DebtXS program, 2) filed a written complaint prior to or within ninety (90) days after the entry of this Assurance by the Court, with either the Texas Attorney General or with DebtXS alleging that they were misled as to the costs associated with, or benefits obtained by the DebtXS Program, including the effect of the DebtXS program on their credit scores, and 3) accepts the restitution process as outlined below. Upon receipt of any such complaint, DebtXS shall have 90 days to resolve the complaint in full directly with the consumer, however it shall also inform the consumer of his or her right to have the complaint forwarded to a neutral mediator.
15. Any unresolved complaint shall be referred to David Bragg, Attorney at Law, 101 E. 9<sup>th</sup> Suite 1005, Austin, Texas 78701 (the "Mediator"). DebtXS agrees to pay all costs associated with and assessed by the Mediator. The Mediator shall conduct a paper review of the complaint, DebtXS' response, and any other documents requested by the Mediator, and shall make a recommended resolution for each complaint. DebtXS agrees it shall provide the Mediator with any requested documents in a timely manner. DebtXS further agrees that it shall not engage in ex parte communications with the Mediator regarding any specific complaint. DebtXS further agrees to be bound by the Mediator's

recommended resolution of such complaint, including appropriate restitution, however consumers shall not be bound to the Mediator's recommended resolution.

16. Any cash restitution shall be made by certified check, mailed directly to each eligible consumer, within fifteen (15) days of a consumer's acceptance of either DebtXS' restitution offer or the restitution as determined by the Mediator.
17. Within thirty (30) days after providing restitution under this section to consumers, Respondent shall provide a written list of all consumers to whom it made refunds, and the amount of the refund to each consumer, to the Office of the Texas Attorney General.

#### **ATTORNEYS' FEES**

18. Respondent further agrees that it will pay to the State the sum of FIFTY NINE THOUSAND DOLLARS (\$59,000.00) which shall be paid to the State as reimbursement for the State's reasonable attorneys' fees and investigative costs.
19. Respondent shall make such payment to the State via certified checks, bearing the Attorney General case number 031769227 on its face, which shall be delivered to the Office of the Attorney General, Consumer Protection and Public Health Division, 300 West 15<sup>th</sup> Street, William P. Clements Building, 9<sup>th</sup> Floor, Austin, Texas 78701.  
Payments shall be made in nine equal installments of SIX THOUSAND DOLLARS (\$6,000.00), and a final payment of FIVE THOUSAND DOLLARS (\$5,000.00).  
DebtXS shall pay the first installment on or before July 15, 2006, and each additional installment thereafter shall be paid on or before the 15<sup>th</sup> of each subsequent month, with the final payment due on or before April 15, 2007.

## **GENERAL PROVISIONS**

20. This AVC shall be binding upon Respondent and its successors and assigns. If Respondent merges with any other business entities or sells, assigns, or otherwise transfers substantially all of its assets, Respondent shall provide reasonable prior notice to the surviving corporation or the purchaser, assignee, or transferee of this AVC and its binding effect upon the surviving corporation, purchaser, assignee, or transferee.
21. Nothing in this AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Respondent with respect to their practices alleged herein.
22. This AVC shall be deemed in effect from the day it is approved by the District Court. To the extent that the provisions of this AVC conflict with any Texas, local, or federal law which now exists, or is later enacted or amended, such law and not this AVC shall apply only to the extent such conflict exists. For the purposes of this AVC, a conflict exists if conduct prohibited by this AVC is required by such Texas, local, or federal law, or if conduct required by this AVC is prohibited by such Texas, local, or federal law.
23. This AVC shall be governed by DTPA § 17.58, and shall remain in effect until rescinded by agreement of the parties or voided by a Court of competent jurisdiction for good cause.
24. To seek a modification or termination of this AVC for any reason, Respondent shall send a written request to the Attorney General. The Attorney General shall make a good faith evaluation of the then existing circumstances, and after collecting information the Attorney General deems necessary, make a prompt decision as to whether to agree to the

modification or termination of this AVC. In the event the Attorney General timely denies the modification or termination, Respondent reserves all rights to pursue any legal or equitable remedies that may be available to it. No waiver, termination, modification, or amendment of the terms of this AVC shall be valid or binding unless made by order of the Court; provided, however, the parties may agree to an extension of any time periods in this AVC without an order of the Court.

25. The parties to this AVC expressly understand that the subsequent failure to comply with any term of this AVC is prima facie evidence of a violation of the DTPA.
26. Any notices, complaints, or other documents required by this Assurance to be sent to the Attorney General or to DebtXS shall be sent to the following individuals at the following addresses:

Office of the Texas Attorney General  
Consumer Protection and Public Health Division  
Attn: Assistant Attorney General Paul Singer  
PO Box 12548  
Austin, Texas 78711

DEBT XS  
Attn: Compliance Department  
15301 Dallas Parkway, Suite 1110  
Addison, TX 75001

27. All relief not expressly granted herein is denied.

AGREED this 3<sup>rd</sup> day of July, 2006.

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Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

EDWARD D. BURBACH  
Depute Attorney General for Litigation

PAUL D. CARMONA  
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(972) 233-3135

By: DebtXS Management, LLC

Its: General Partner

  
By: Kenneth Talbert, President

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