

STATE OF INDIANA  
IN THE MARION COUNTY CIRCUIT/SUPERIOR COURT

MISC. CAUSE NO. \_\_\_\_\_

IN THE MATTER OF:

ENCORE CAPITAL GROUP, INC.,  
MIDLAND FUNDING, LLC, and  
MIDLAND CREDIT MANAGEMENT,  
INC.,

Respondents.

**ASSURANCE OF  
VOLUNTARY  
COMPLIANCE/ASSURANCE OF  
DISCONTINUANCE**

This Assurance of Voluntary Compliance/Assurance of Discontinuance<sup>1</sup> ("Assurance") is entered into between Encore Capital Group, Inc., and the States of Alaska, Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii<sup>2</sup>, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming (collectively referred to as the "Participating States," or individually, as a "State"), acting through and by their respective Attorneys General, and, provides as follows:

**DEFINITIONS**

As used in this Assurance, the following terms shall be defined as follows:

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<sup>1</sup> The State of Delaware and Midland agree that this Assurance shall be treated as a cease and desist agreement pursuant to 29 *Del. C.* §§ 2525(a) and 2526.

<sup>2</sup> Hawaii is represented on this matter 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 undertake consumer protection functions, including legal representation of the State of Hawaii. For simplicity purposes, the entire group will be referred to as the "Attorneys General" or individually as "Attorney General" and the designations, as they pertain to Hawaii, refer to the Executive Director of the State of Hawaii's Office of Consumer Protection.

“Charge-off” means the act of the Creditor that treats an account receivable or other Debt as a loss or expense because payment is unlikely.

“Charge-off Balance” means the amount allegedly due on a Debt at the time of Charge-off.

“Collect” or “Collection” means any attempts by Midland, whether directly or indirectly through a third party on Midland’s behalf, to obtain payments from Consumers for Debts owned by Midland involving a representation, expressly or by implication, that a Consumer owes a Debt or as to the amount of a Debt owed, but does not include any post-judgment activities or Midland’s activities in connection with or participation in bankruptcy or probate proceedings or processes involving a Consumer or a Consumer’s estate, including any act to create, perfect, or enforce any lien that survives a bankruptcy.

“Collections Litigation” means efforts by any internal legal department or a third-party Law Firm on Midland’s behalf to Collect a Debt owned by Midland, including sending correspondence on Law Firm letterhead and filing Collection lawsuits. Collections Litigation does not include any post-judgment Collection or Midland’s activities in connection with or participation in bankruptcy or probate proceedings or processes involving a Consumer or a Consumer’s estate, including any act to create, perfect, or enforce any lien that survives a bankruptcy.

“Consumer” means any natural person obligated or allegedly obligated to pay any Debt, as that term is defined in the Fair Debt Collection Practices Act, 15 U.S.C. §1692(a)(3).

“Consumer Account” means an account for a Debt that Midland has acquired.

“Consumer Reporting Agency” means “consumer reporting agency” as defined in the Fair Credit Reporting Act at 15 U.S.C. § 1681(a)(f).

“Consumer Transaction” means a transaction involving an individual or individuals seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

“Creditor” means any person who offers or extends credit creating a Debt or to whom a Debt is owed, but such term does not include any person to the extent that person receives an assignment or transfer of a Debt in default solely for the purpose of facilitating Collection of such Debt for another.

“Debt” means any obligation or alleged obligation of a Consumer to pay money arising out of a Consumer Transaction.

“Effective Date” means December 14, 2018.

“Law Firm” shall refer to all in-house counsel, third party law firms, and any other legal representatives retained by Midland, directly or indirectly through a third party, for the purpose of conducting Collections Litigation on Midland’s behalf.

“Legacy Account” shall mean any Consumer Account Midland contracted to acquire before the Effective Date, but in no event shall it mean any Consumer Account Midland first acquired more than thirteen months after the Effective Date.

“Midland” shall refer to Encore Capital Group, Inc., as well as its current, as of the Effective Date, direct or indirect, affiliates, subsidiaries, parents, divisions, or branches, and all of their successors and assigns, that are engaged in the purchase or Collection of U.S. consumer receivables.

“Original Account Level-Documents” means:

- a. any documentation that a Creditor or that Creditor’s agent provided to a Consumer about a Debt; or

- b. a complete transactional history of a Debt created by the Creditor or that Creditor's agent; or
- c. where applicable, a copy of the judgment.

"Prior Owners" shall mean all previous owners or assignees of an alleged Debt subsequently sold, assigned, or otherwise transferred to Midland by the Seller, beginning with the Creditor at the time of Charge-off.

"Seller" shall mean the immediate Prior Owner of the Debt sold, assigned, or otherwise transferred to Midland.

"Time-barred" when used to describe a Debt means any Debt that is beyond the applicable statute of limitations for a Collection lawsuit.

#### **I. REQUIREMENTS TO COMPLY WITH ALL APPLICABLE LAWS**

1. Midland shall comply with applicable provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq.*, as amended, with respect to its Collection activities.

2. Midland shall comply with applicable State consumer protection laws, rules and regulations pertaining to its Collection activities, including, to the extent applicable, laws, rules and regulations pertaining to the activities or licensing of debt collectors, debt buyers, and collection agencies, and laws governing credit reporting.

3. Midland shall maintain the confidentiality of all financial information maintained on Consumers in compliance with applicable federal, state, and local laws.

4. Specifically, without limiting the scope of the foregoing, Midland shall not:

- a. State that Consumers owe Debts when corresponding with any person other than the Consumers for the purposes of acquiring

location information, in violation of the FDCPA, 15 U.S.C. § 1692b(2);

- b. Communicate with Consumers in connection with the Collection of Debts at times or places that Midland knows or should know to be inconvenient to the Consumer, in violation of FDCPA, 15 U.S.C. § 1692c(a)(1);
- c. Communicate with Consumers in connection with the Collection of Debts, without the prior consent of the Consumers, if Midland knows that the Consumers are represented by attorneys with respect to such Debts and has knowledge of, or can readily ascertain, such attorneys' names and addresses, unless the attorneys fail to respond within a reasonable period of time to a communication from Midland or Midland's representatives or unless the attorneys consent to direct communication with the Consumers, in violation of the FDCPA, 15 U.S.C. § 1692c(a)(2);
- d. Communicate with Consumers in connection with the Collection of Debts at the Consumers' place(s) of employment when Midland knows that the Consumers' employer(s) prohibit the Consumers from receiving such communications, in violation of the FDCPA, 15 U.S.C. § 1692c(a)(3);
- e. Communicate further with Consumers if a Consumer notifies Midland in writing that the Consumer refuses to pay a Debt or that the Consumer wishes Midland to cease further communication with

the Consumer (except: (i) to advise the Consumer that Midland's further efforts are being terminated; (ii) to notify the Consumer that Midland may invoke specified remedies which are ordinarily invoked by Midland; or (iii) where applicable, to notify the Consumer that Midland intends to invoke a specified remedy), in violation of the FDCPA, 15 U.S.C. § 1692c(c). Midland shall not violate this Subparagraph if it communicates with a Consumer in order to comply with a court order, a binding agreement entered into by Midland and any federal, state, or local governmental body, or as otherwise required to comply with the law;

- f. Engage in conduct the natural consequence of which is to harass, oppress, or abuse persons in connection with the Collection of a Debt, in violation of the FDCPA, 15 U.S.C. § 1692d;
- g. Use obscene or profane language in connection with the Collection of Debts the natural consequence of which is to abuse the hearer or reader, in violation of the FDCPA, 15 U.S.C. § 1692d(2);
- h. Cause a telephone to ring or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number, in violation of the FDCPA, 15 U.S.C. § 1692d(5);
- i. Except to acquire location information as provided in 15 U.S.C. § 1692b of the FDCPA, attempt to Collect Debts by telephone

without providing meaningful disclosure of the caller's identity, in violation of the FDCPA, 15 U.S.C. § 1692d(6);

- j. Use false, deceptive, or misleading representations to Collect or attempt to Collect Debts, in violation of the FDCPA, 15 U.S.C. § 1692e;
- k. Use false representations about the character, amount, or legal status of Debts or services rendered or compensation that may be lawfully received by Midland, in violation of the FDCPA, 15 U.S.C. § 1692e(2);
- l. Threaten to take legal actions against a Consumer when there is no legal authority or intention to do so, in violation of the FDCPA, 15 U.S.C. § 1692e(5);
- m. Use any false representation or deceptive means to Collect or attempt to Collect any Debt, in violation of the FDCPA, 15 U.S.C. § 1692e(10);
- n. Use unfair or unconscionable means to Collect or attempt to Collect Debts, in violation of the FDCPA, 15 U.S.C. § 1692f; or
- o. Collect or attempt to Collect amounts that were not expressly authorized by the agreements creating the Debts or permitted by law, in violation of the FDCPA, 15 U.S.C. § 1692f(1);

## **II. ADDITIONAL REQUIREMENTS RELATED TO DEBT COLLECTION**

### **Prerequisites to Collection**

5. When Collecting a Debt, Midland shall not make any representation that a Consumer owes a Debt or as to the amount of a Debt, unless, at the time of making the representation, Midland has a reasonable basis for making such representation.

6. \*^Midland shall not Collect or attempt to Collect any Debt allegedly owed to Midland unless it has in its possession the following information:

- a. The name and address of the Consumer as they appeared in the Seller's records at or immediately prior to the sale of the Debt;
- b. The name of the Creditor at the time of Charge-off, including, where available and applicable, the name under which the Creditor did business with the Consumer or the affinity name associated with the Consumer Account;
- c. The last four digits of the account number used by the Creditor or other information as will reasonably enable the Consumer to identify the original account;
- d. The name of the current person or entity to whom the Debt is owed and the date on which Midland first acquired the Consumer Account;
- e. The date of Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt);
- f. If Midland reports, or intends to report, the Debt to any Credit Reporting Agency, the date of first delinquency; and



- g. The amount of the Debt at Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt).

7. \*^Midland shall not Collect or attempt to Collect a Debt unless it has reasonable access to documentation supporting the Consumer Accounts.

8. ^ In the following circumstances, Midland shall not make a representation that a Consumer owes a Debt or as to the amount of the Debt until Midland has reviewed Original Account-Level Documentation reflecting the Consumer's name and the claimed amount, excluding any post Charge-off or post-judgment payments or credits (unless the claimed amount is higher than the Charge-off Balance or judgment balance, in which case Midland must review (i) Original Account-Level Documentation reflecting the Charge-off Balance or judgment balance and (ii) an explanation of how the claimed amount was calculated and why such increase is authorized by the agreement relating to the Debt or permitted by law):

- a. The Consumer has disputed the validity or accuracy of the Debt orally or in writing;
- b. The Debt was purchased, after the Effective Date, through a purchase agreement without meaningful and effective representations and warranties as to the accuracy or validity of the Debt;
- c. The Debt was purchased, after the Effective Date, through a purchase agreement without meaningful and effective

- commitments to provide Original Account-Level Documentation during the time period in which Midland is Collecting the Debt; or
- d. The Debt was purchased in a portfolio, after the Effective Date, which Midland knows contains unsupportable or materially inaccurate information about the Debt, based on either of the following factors:
- i. At any time during the preceding twelve months, a Consumer disputed, orally or in writing, the accuracy or validity of a Debt in the portfolio and Midland sought but was unable to obtain Original Account-Level Documentation reflecting the amount of the Debt or the identity of the person responsible for the Debt, unless Midland can establish, based on a documented and thorough review of Original Account-Level Documentation concerning other Consumer Accounts in the portfolio, that the inability to obtain Original Account-Level Documentation to support the Consumer Account in the portfolio was an anomaly; or
  - ii. Original Account-Level Documentation produced to Midland, by a Seller or a Consumer, reflected information about the amount of the Debt or the identity of the person responsible for the Debt that was inconsistent and irreconcilable with information previously provided to

Midland by the Seller, unless Midland can establish, based on a documented and thorough review of Original Account-Level Documentation concerning other Consumer Accounts in the portfolio, that the production of inaccurate or inconsistent information concerning the Consumer Account in the portfolio was an anomaly.

9. ^Where Midland is required to review Original Account-Level Documentation in accordance with Subsection (a) of Paragraph 8, Midland shall refrain from engaging in new attempts to Collect the Debt until Midland completes the review. Provided, however, for purposes of this Paragraph, Collecting or attempting to Collect do not include furnishing information to the Credit Reporting Agencies. Where Midland completes such a review, Midland, either directly or by use of a third party such as a Law Firm, shall provide a copy of such documentation to the Consumer without cost unless Midland has sent to the Consumer the documentation within the last six months.

10. At any time during Midland's ownership of a Debt, if Midland determines that the Debt is not owed by a Consumer, Midland shall:

- a. Cease any and all Collection efforts directed to the Consumer in connection with the Debt;
- b. Request the deletion of any negative information (or the entire trade line) associated with the Debt that Midland furnished to a Consumer Reporting Agency relating to that Consumer; and
- c. If Midland returns the Debt to the Seller, Midland shall inform the Seller that it has determined that the Debt is not owed by the Consumer.

11. For Consumer Accounts on which Midland has not commenced Collection activity as of the Effective Date, Midland shall not commence Collection activity against a Consumer unless Midland has attempted, either directly or by use of a third party, to determine whether:

- a. The Debt is subject to the Consumer's active bankruptcy case or has been discharged in bankruptcy;
- b. The Consumer is deceased; and
- c. The Consumer is a service member on active duty.

Midland shall perform subsequent screening as needed, either directly or by use of a third party, to determine the Consumer Account status as set forth in this Paragraph.

12. Determination by Midland that a Consumer Account meets any of the statuses set forth in Paragraph 11 shall not prohibit Midland from Collecting on such account so long as Collections are in accordance with the law and the following terms:

- a. If a Debt is subject to bankruptcy, then Midland shall cease Collecting or attempting to Collect on the Debt from the Consumer that has filed for bankruptcy unless:
  - i. The applicable court approves Collection or attempted Collection;
  - ii. The bankruptcy is dismissed; or
  - iii. The bankruptcy is completed and the Debt is not discharged.
- b. If the Debt has been discharged in bankruptcy, then Midland shall cease attempting to Collect on the Debt from the Consumer who was subject to the bankruptcy.

- c. Subparagraphs (a) and (b) shall not be deemed to preclude Midland from filing a proof of claim or otherwise participating in the bankruptcy proceeding as a creditor and seeking such relief as the law may allow.
- d. If the Consumer(s) responsible for the Debt are deceased, Midland shall cease Collecting or attempting to Collect on the Debt unless Midland complies with the FDCPA or any regulations the Consumer Financial Protection Bureau may adopt regarding the collection of decedents' debts; and
- e. If the individual is an active duty service member, Midland shall comply with the Servicemembers Civil Relief Act and state law equivalents.

13. ^Midland shall not re-sell Debt to anyone other than (a) the entity that initially sold the Debt to Midland or to the Creditor, (b) a subsidiary or affiliate of Midland that is subject to the terms of this Assurance (either by operation of law or by agreement), (c) any entity that is subject to the terms of this Assurance as part of an acquisition or merger with Midland, or purchase of all or substantially all of Midland's assets, or (d) Midland's (or its affiliates') creditors or any agent of such creditors in settlement or satisfaction of any claims under, or in connection with the default or remedial provisions of, any relevant loan or lending agreement. The foregoing provisions of this paragraph shall expire on September 9, 2020. As of that date, Midland shall comply with any regulations the Consumer Financial Protection Bureau may adopt regarding the re-sale of Debt.

14. Once Midland begins Collection activity on a Consumer Account, and continuing for so long as Midland pursues Collection activity on that Consumer Account, it will update regularly the Consumer Account information with information obtained by Midland in the

course of its efforts to Collect on that Consumer Account that Midland deems material and relevant to Collections.

**Notice and Validation**

15. For Consumer Accounts on which Midland has not commenced Collection activity as of the Effective Date, before sending the correspondence required by 15 U.S.C. Section 1692g(a), Midland shall use reasonable efforts, such as using the United States Postal Service's National Change of Address database, to verify the Consumer's current postal or email address. If any validation notice is returned as undeliverable, Midland will disable that address, use reasonable efforts to verify the Consumer's current address, and, if found, send another validation letter to the new address.

16. \*^Midland shall, no later than five days after any initial communication with a Consumer (verbal or written) made in connection with the Collection of a Debt, mail a written notice to the Consumer in accordance with 15 U.S.C. Section 1692g(a) (unless the initial communication included the below information or the debt has been paid). That notice shall include the following information:

- a. The name of the Creditor at the time of Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt), including, where available and applicable, the name under which the Creditor did business with the Consumer or the affinity name associated with the Consumer Account;

- b. The last four digits of the account number used by the Creditor or such other information as will reasonably enable the Consumer to identify the original account;
- c. The name of the current person or entity to whom the Debt is owed and the date on which Midland first acquired the Consumer Account;
- d. The amount of the Debt at Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt) and, if the claimed amount of the Debt is more than the Charge-off Balance (or post-default balance), a breakdown of any post-Charge-off (or post-default) fees and interest; and
- e. A clear and conspicuous statement that Midland has purchased the Debt and is attempting to Collect it from the Consumer.

**Furnishing Collection Information to Consumer Reporting Agencies**

17. Midland shall not furnish information to the Consumer Reporting Agencies that Midland knows or has reasonable cause to believe is inaccurate. "Reasonable cause to believe that the information is inaccurate" has the same meaning as the term is defined in section 15 U.S.C. § 1681s-2(a)(1)(D) of the FCRA.

**Requirements Related to Personnel**

18. Midland shall not knowingly employ or permit its agents, employees, representatives, Law Firms or affiliates to employ any deceptive means to Collect a Debt or obtain information concerning a Consumer.

19. Midland shall conduct background checks on all newly hired employees who are located in the United States and whose duties involve personal contact with Consumers or preparation of affidavits. Such background checks shall be carried out before the employee undertakes such duties.

20. Midland shall dedicate an appropriate number of trained representatives to resolve disputes and address questions from Consumers in a timely manner.

21. Midland shall maintain a mandatory training program for newly-hired collection representatives that covers state and federal laws, including the FDCPA, Consumer Financial Protection Act, as well as state law variations, FDCPA terminology, the legal requirements of communicating with Consumers, Midland's internal policies for compliance, the Servicemembers Civil Relief Act, the Gramm-Leach-Bliley Act, and the FCRA. As part of the training program, Midland will require collection representatives to pass a comprehensive examination that includes information on the FDCPA before they are assigned to permanent duties, and to also complete an annual re-examination on the FDCPA.

22. Midland shall monitor a sample of Collection calls of its account managers (*i.e.*, call center employees) for legal compliance and training purposes and will record a sample of Collection calls to the extent permissible or feasible under applicable laws. Based on this monitoring, Midland's quality assurance team will assess the job performance of Midland's account managers and the potential need for corrective or disciplinary action.

23. ^Midland shall confirm in writing any arrangement to settle a Consumer's Debt agreed to after the Effective Date between a Consumer and Midland, or between a Consumer's representative and Midland, over the telephone, and Midland will, not later than 10 business days,



mail, fax, or electronically deliver the confirmation to the Consumer or that Consumer's representative.

### **III. REQUIREMENTS RELATED TO COLLECTIONS LITIGATION**

24. Midland, whether acting directly or indirectly through its Law Firms, shall comply with applicable state and local pleading requirements governing a good faith basis for the filing of Collection lawsuits.

25. Midland, whether acting directly or indirectly through its Law Firms, shall not make material factual assertions in documents filed with a court in Collections Litigation based on information Midland knows or has reasonable cause to believe is inaccurate. Midland shall not be deemed in violation of this Paragraph if the material factual assertions it makes in documents filed with a court comply with the relevant pleading standards applicable in that court.

26. ^Midland, whether acting directly or indirectly through its Law Firms, shall not initiate a Collection lawsuit against Consumers unless it has in its possession:

a. Original Account-Level Documentation reflecting, at minimum:

- i. The name of the Consumer;
- ii. The last four digits of the account number associated with the Debt at the time of Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt) or other such information as will reasonably enable the Consumer to identify the original account; and

- iii. The claimed amount, excluding any post-Charge-off payments or credits, unless the claimed amount is higher than the Charge-off Balance in which case Midland must possess:
  - 1. Original Account-Level Documentation reflecting the Charge-Off Balance; and
  - 2. an explanation of how the claimed amount was calculated and why such an increase is authorized by the agreement creating the Debt or permitted by law.
- b. The name of the Creditor at the time of Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt), including, where available and applicable, the name under which the Creditor did business with the Consumer or the affinity name associated with the Consumer Account;
- c. The date of Charge-off (or other date, such as the date of default, as may be required by regulations the Consumer Financial Protection Bureau may adopt regarding the Collection of Debt);
- d. The address of the Consumer as it appeared in the Seller's records at or immediately prior to the sale of the Debt;
- e. The name of the current person or entity to whom the Debt is owed and the date on which Midland first acquired the Consumer Account;

- f. The terms and conditions applicable to the Debt if Midland is suing under a breach of contract theory. Compliance with regulations the Consumer Financial Protection Bureau may adopt relating to the possession of terms and conditions shall be sufficient to comply with this subparagraph); and
- g. At least one of the following:
  - i. A document signed by the Consumer evidencing the Debt or the opening of the account; or
  - ii. A bill or other record that reflects purchases, payments, or other actual use of a credit card or account by the Consumer.
- h. A chronological listing of the names of all Prior Owners of the Debt and the date of each transfer of ownership, beginning with the name of the Creditor at the time of Charge-off; and
- i. A certified, verified, or otherwise properly authenticated copy of each bill of sale, or other document, evidencing or otherwise attesting to the transfer of ownership of the Debt beginning at the time of Charge-off to each successive owner, including Midland.

27. ^Midland shall not engage in Collections Litigation without providing the Consumer, either directly or indirectly through a Law Firm, with certain information about the Debt, unless previously provided, including but not limited to:

- a. The name of the Creditor at the time of Charge-off, including, where available and applicable, the name under which the Creditor did business

with the Consumer or the affinity name associated with the Consumer Account;

- b. Midland's or the Law Firm's name and address;
- c. The last four digits of the account number associated with the Debt at the time of Charge-off or other such information as will reasonably enable the Consumer to identify the original account;
- d. The Charge-off Balance;
- e. The method used to calculate any amount claimed in excess of the Charge-off Balance; and
- f. A statement that Midland, or Midland's agent, will, within 30 days of a written request, provide the Consumer with copies of the documentation referenced in Paragraph 27, at no cost. Provided that, Midland has to provide such documentation upon request only once per year and Midland is not required to provide such documentation in response to a request made more than one year after Midland has ceased collecting the Debt.

28. Midland shall not restrict its Law Firms' ability to order from Midland Original Account-Level Documentation that they may request about a Debt that has been placed in Collections Litigation. This Paragraph shall not create an independent obligation on Midland to order Original Account-Level Documentation from Sellers or Prior Owners of a Debt.

29. Midland shall instruct its Law Firms to which Midland places Consumer Accounts that (a) the Law Firms are responsible for calculating the limitations period for each Consumer Account according to applicable law and based on a review of relevant data and/or records (however, Midland may require its Law Firms to use a shorter limitations period), (b) a

Collection lawsuit shall not be filed on a Consumer Account for which the statute of limitations has expired, and (c) the prosecution of any Collection lawsuit must cease and the Law Firm must take reasonable steps to seek to dismiss the lawsuit in accordance with applicable rules if it is determined that the lawsuit was filed after the applicable statute of limitations had expired. Subparagraph (c) shall not apply where the lawsuit is the subject of litigation between the Consumer and Midland.

30. Midland shall instruct its Law Firms to bring suit in the name of the proper party, consistent with all local, state and federal laws, court rules, and other authorities and take appropriate steps to ensure that such instructions are carried out.

31. Midland, whether acting directly or indirectly through its Law Firms, shall not pursue or threaten litigation or otherwise Collect on Consumer Accounts where it knows or has reason to know that it is not the rightful and named owner. This Paragraph shall not apply to Collections that Midland may hereafter make for third parties.

32. Midland shall instruct its Law Firms to engage process servers who are reputable, licensed (where applicable), in good standing with applicable regulatory agencies and trade associations, and who both conform to all legal requirements concerning the service of process and employ systematic checks to validate effective service (e.g., the appropriate use of technology, digital pictures, compliance audits, etc.). Midland shall also instruct its Law Firms to comply with all relevant state and local laws and procedures related to service of process upon Consumers.

#### **IV. REQUIREMENTS RELATED TO AFFIDAVITS**

33. Midland's affiants shall not sign an affidavit in connection with Collections Litigation unless the facts stated in the affidavit are based upon:

- a. The affiant's review of pertinent business/account records (in either hard copy or electronic format) in Midland's possession, and
- b. Any personal knowledge gained by those records actually reviewed by and relied upon by the affiant.

34. Midland shall not produce an affidavit in connection with Collections Litigation that it knows or should know contains false representations regarding the validity, source, authenticity, trustworthiness, or reliability of the records relied on to Collect the Debt, including but not limited to:

- a. Falsely asserting that the Creditor affirmed the accuracy or reliability of the account records it sold or transferred to Midland;
- b. Falsely asserting that account data was obtained from a source other than the actual source of the data; and
- c. Falsely asserting that the affiant has personal knowledge of the manner and mode by which the Creditor prepared, recorded, or maintained the account records.

35. When an affidavit used in connection with Collections Litigation contains attached documents, the affiant shall review the attached documents before executing the affidavit to confirm that the correct documents have been attached and are true and correct copies of documents contained in Midland's records, and Midland shall, either directly or indirectly through its Law Firms, retain a copy of the attached documents for the duration of the litigation.

36. Midland shall not pay incentives to employees or third-party providers based solely on volume of affidavits prepared, verified, executed, or notarized (except for notaries not employed by Midland, who may be paid customary fees for notarial services).

37. Affidavits shall be signed by hand signature of the affiant, except in jurisdictions and situations where electronic signatures are permitted by law.

38. Midland's procedures for the generation and use of affidavits in Collections Litigation shall require, at a minimum, the following tasks of those employees who review and sign affidavits:

- a. Such employees must carefully review and fully understand any proposed affidavit prior to executing the proposed affidavit;
- b. Such employees must confirm that all of the data points in the proposed affidavit accurately reflect data in Midland's account records prior to executing the proposed affidavit;
- c. Such employees will carefully review attachments to the proposed affidavit to confirm that true and correct copies of documents contained within Midland's records are attached and are accurately described in the proposed affidavit; and
- d. Affidavits passing such review and confirmation will then be executed in the presence of a notary where required by applicable state or local law. In no event will any affidavit be executed by an affiant if it has not been through the review and confirmation procedures set forth above.

39. Midland's procedures for the generation and use of affidavits shall be in writing, and each employee who has job duties involving the preparation and signing of affidavits to be used in Collections Litigation will be trained annually on those procedures, as set forth in Paragraph 40.

40. Midland shall ensure that its affiants, both as new hires and throughout their tenure, undergo, at minimum, annual training regarding the following topics:

- a. the purpose of an affidavit in the legal process;
- b. the general legal terms commonly used in affidavits or lawsuits;
- c. specialized terms used in the collection industry;
- d. federal and state laws specific to the collection industry;
- e. requirements regarding personal review and knowledge of records; and
- f. the penalties associated with making false statements or signing affidavits without requisite personal knowledge of account records.

41. Midland, whether directly or through Law Firms, shall not knowingly file, or knowingly cause to be filed, affidavits that do not comply with applicable state law. Midland will instruct its Law Firms that affidavits filed in Collection lawsuits shall fully comply with all applicable state laws, and take appropriate steps to ensure that such instructions are carried out and document steps taken to ensure compliance with the provisions of this Assurance.

#### **V. REQUIREMENTS RELATED TO TIME-BARRED DEBT**

42. Midland shall not knowingly pursue or threaten to pursue, directly or indirectly, Collections Litigation on any Time-barred Consumer Accounts.

43. ^Midland, whether directly or through Law Firms or other third parties, shall disclose clearly and conspicuously the following disclosures regarding the statute of limitations in oral or written communications to applicable Consumers, depending on the following specific status of the Consumer Account:

- a. For those Consumer Accounts where the Debt is Time-barred and generally cannot be included in a consumer report under the provisions of the FCRA,



15 U.S.C. § 1681c(a), Midland, whether directly or through Law Firms or other third parties, shall include the following statement, either verbatim or in substance, in any oral or written Collection attempt: "The law limits how long you can be sued on a debt and how long a debt can appear on your credit report. Due to the age of this debt, we will not sue you for it or report payment or non-payment of it to a credit bureau;" and

- b. For those Consumer Accounts where the Debt is Time-barred but collectible, and may be included in a consumer report under the provisions of the FCRA, 15 U.S.C. § 1681c(a), Midland, whether directly or through Law Firms or other third parties, will include the following statement, either verbatim or in substance, in any oral or written Collection attempt: "The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it."

Provided, however, that with regard to oral communications, Midland is not required to make either disclosure to any individual person more than once per 30-day period. Midland will be deemed to have complied with the disclosure requirements of this Paragraph if it makes a disclosure to Consumers that is substantially similar to the disclosure required by this Paragraph.

44. ^Midland shall not, directly or indirectly through a Law Firm or other third parties, make any representation or statement, or take any other action that interferes with, detracts from, contradicts, or otherwise undermines the disclosures required in Paragraph 43 above. Nothing contained in paragraphs 43 or 44 shall be construed to require Midland to make any disclosure that would otherwise be prohibited by, or create liability under, federal, state or local

law; and nothing contained in paragraphs 43 or 44 shall be construed to prohibit Midland from making any disclosure that would otherwise be required by, or to avoid liability under, federal, state or local law.

## **VI. MISCELLANEOUS COMPLIANCE PROCEDURES**

45. Midland shall employ legal counsel, compliance officer(s), and/or other senior manager(s) responsible for compliance oversight, who will identify reasonably foreseeable internal and external violations of applicable laws by its employees and agents.

46. All new Law Firms engaged by Midland after the Effective Date shall be subject to a due diligence process, which will include a site visit by a member of Midland's vendor management team (or equivalent). All Law Firms active as of the Effective Date will be also subject to regular performance reviews for so long as they are engaged in Collections Litigation.

47. Midland shall create, to the extent not already in existence, policies and procedures reasonably expected to ensure compliance with this Assurance.

48. Should Midland learn that any Midland employee, Law Firm, third-party collection agency, or other agent acting on its behalf, is acting in violation of the law or the requirements of this Assurance, Midland shall take such action as may be reasonable to prevent further violation, up to and including the termination of any individual or agent that is in violation of the law or this Assurance.

49. In lieu of any steps required by this Assurance as a prerequisite to any Collection efforts, Midland may, at its option, choose not to pursue Collection efforts on any given Consumer Account.

50. No later than 30 days after the Effective Date of this Assurance, Midland shall deliver a copy of this Assurance to all of its current officers, directors, third-party collection agencies, and Law Firms (current as of the Effective Date).

## **VII. DISPUTE RESOLUTION**

51. Before seeking any relief from any court for any alleged violation of this Assurance, and if in the discretion of the State, the lack of immediate enforcement action will not threaten the health, safety, or welfare of the citizens of their State, the State will give Midland written notice of the alleged violation. Midland shall then be provided the opportunity to respond to the State regarding the alleged violation within a period of ten (10) business days after the written notice is received. Within that ten (10) business day period, Midland may request a meeting to discuss the alleged violation. If Midland makes such a request, the State shall meet with Midland, either by phone or in person, at the earliest possible date, but in no event more than ten (10) business days from the date of Midland's request. The State and Midland agree to attempt to resolve any alleged violation of this Assurance through good-faith negotiation using the procedure described herein prior to the State initiating any action for enforcement.

52. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by any State with respect to its own laws, or by the federal government or any federal agency, such that Midland contends the statute or regulation is in conflict with any provision of this Assurance and therefore that Midland cannot comply with both the statute or regulation and the provision of this Assurance, Midland shall provide advance written notice of at least thirty (30) days to the State of the inconsistent provision of the statute or regulation with which Midland intends to comply and of the counterpart provision of this Assurance that Midland contends is in conflict with the statute or regulation. If the State

disagrees, that State shall, within thirty (30) days of receipt of Midland's notice, notify Midland that the State does not agree there is a conflict between the requirements of the Assurance and the state or federal law. Any court orders modifying the Assurance in one or more states do not in any way affect the validity or enforceability of the Assurance entered in other states, and cannot be used to support modification of the Assurance in other states. Nothing in this Paragraph shall be deemed to relieve Midland from following any subsequently enacted law that is more restrictive than the provisions of this Assurance, or from following this Assurance if it is more restrictive than applicable laws, to the extent Midland can adhere to both this Assurance and the provisions of state or federal law.

53. To seek a modification of this Assurance for any reason, Midland will send a request to the State. The State will make a good-faith evaluation of the then-existing circumstances and Midland's request, and after collecting any information the State deems necessary, make a prompt decision as to whether to agree to the modification of this Assurance. In the event that the State timely denies the modification request, Midland reserves all rights to pursue any legal or equitable remedies that may be available to it.

#### **VIII. ENFORCEMENT**

54. By execution of this Assurance, the Attorney General of each State releases and forever discharges Midland as well as Midland's past and present directors, employees, officers, shareholders, agents and attorneys ("Released Parties") from the following: all common law and other civil law claims that arise under any statute, regulation, or other law that the Attorney General of such State has authority to enforce, and that relate to consumer protection, unfair and deceptive business practices, the purchase and/or collection of debts (including but not limited to laws related to registration, licensing, or certification to engage in debt purchasing and/or debt collection),

and/or the enforcement of judgments (all of which shall be deemed to include, without limitation, the Dodd-Frank Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act) insofar as such claims relate to Midland's Collection activities, up to and including the Effective Date of this Assurance (collectively, the "Released Claims").

55. Nothing in this Assurance shall impair any private right of action as provided by federal or state law or any action by any other local, state, federal, governmental agency; nor shall this Assurance create any right of action in any person or entity, except that the Attorney General in each of the Participating States shall have the right to seek enforcement of this Assurance.

#### **IX. PAYMENT PROVISIONS**

##### **Payment Other Than Consumer Relief**

56. Within thirty (30) days after the Effective Date of this Assurance, Midland shall pay \$6,000,000 to the States. At the sole discretion of the Attorneys General, the payment shall be used for reimbursement of attorneys' fees and/or investigative costs, used for future public protection purposes, placed in or applied to the consumer protection enforcement fund, consumer education, litigation, or local consumer aid fund or revolving fund, or similar fund by whatever name, or used for other consumer protection purposes permitted by state or local statutes, rules, or regulations.

##### **Consumer Relief**

57. Upon full execution of this Assurance,
- a. Midland shall internally set aside \$25,000 per State to be available for restitution for Consumer redress. Notwithstanding Midland's express denial of any violation of local, state or federal law, rule or regulation, for a

period of two years from the Effective Date, a State may submit a claim for restitution to Midland demonstrating a *prima facie* showing that, as a result of Collection efforts undertaken by Midland:

- i. Midland submitted an affidavit in support of a Collection lawsuit against a Consumer where the amounts allegedly owed by the Consumer reflected in the affidavit did not accurately reflect Midland's account records related to that Consumer's Debt at the time of execution of the affidavit;
- ii. A Consumer of the State made a payment to Midland on a Debt that was not actually owed by the Consumer, and which was not refunded; or
- iii. A Consumer of the State made a payment to Midland in excess of that which was owed by the Consumer, and which was not refunded.

Upon any such occurrence, within thirty (30) days of the receipt of the State's claim for restitution, Midland will refund to the Consumer an amount equal to the Consumer's overpayment, unless Midland provides information within that thirty (30) day period that raises a question of fact regarding the validity of that claim. If such evidence is provided by Midland, the State submitting the claim will have thirty (30) days to evaluate the claim in good faith. The State's decision, however, will be final and binding on Midland. After two years from the date of the full execution of this Assurance, or at the

time that the \$25,000 fund set aside by Midland for the State has been exhausted, whichever comes first, Midland's obligations under this provision shall terminate.

- b. Midland shall provide a credit to the outstanding balance of the judgment up to \$1,850 to each Consumer where: (i) the judgment was taken in a court in a Participating State; (ii) the Consumer disputed the Debt with Midland; (iii) Midland filed a Collection lawsuit against the Consumer after the Consumer disputed the Debt with Midland and a Law Firm requested an affidavit from Midland to support the lawsuit between January 1, 2003 and September 14, 2009; and (iv) the Consumer never made a payment to Midland in connection with the Debt. If the amount of the credit would extinguish the outstanding balance of the judgment, Midland shall apply only such amount as will reduce the balance to zero and no refund shall be due. The credits provided by Midland under this subparagraph: (a) shall not renew or extend the period within which the underlying judgments remain valid and subject to enforcement by legal process; and (b) represent settlements, by Midland and the Participating States, of contested liabilities that were disputed in good faith by the Attorneys General of the Participating States on behalf of the Consumers who receive the credits.
- c. Consumer relief under this Paragraph does not cover accounts or Debts owned by any subsidiaries of Encore Capital Group before the subsidiaries were acquired by Encore Capital Group.



- d. In addition, within 90 days of the Effective Date, Midland shall send notice to all Consumers whose accounts receive a credit under Paragraph 57(b) of the Agreement informing them of the credit. That notice shall be sent to such Consumers' last known mail address or last known email address, as appearing in the records of Midland. Within 120 days of the Effective Date, Midland shall provide the Attorney General of each Participating State a spreadsheet showing the identity of the Consumers in that State who received the credit and the amount of the credit provided.

#### **X. GENERAL PROVISIONS**

58. Midland shall not seek, nor is it entitled to obtain, specific releases from Consumers in conjunction with the restitution ordered herein or related to this Assurance.

59. Any notices required or permitted by this Assurance shall be in writing and sent by United States mail, certified mail return receipt requested, or other nationally-recognized courier service that provides for tracking services and identification of the person signing for the document. Any notice to any Attorney General shall be addressed to such contact and address as the Attorney General shall designate.

Any notices or other documents required by this Assurance to be sent to Midland shall be sent to both of the following addresses:

Midland Credit Management, Inc.  
Attention:  
Andrew Asch, General Counsel  
3111 Camino del Rio North, Suite 1300  
San Diego, CA 92108

Siran S. Faulders, Esq.  
and/or Ashley L. Taylor, Jr., Esq.  
Troutman Sanders LLP  
1001 Haxall Point, Suite 1500



Richmond, VA 23219

Either Party may change or add the name and address or addresses of the person(s) designated to receive notice on its behalf by notice given (effective upon the giving of such notice), as provided in this Paragraph.

60. Midland shall designate one or more management-level employees to be the primary contact for the Signatory Attorneys General regarding complaints and inquiries from Consumers regarding their Debt. Midland shall provide the Attorney General or Consumer a written response to such inquiries, or seek from the Attorney General additional time to respond, within forty-five (45) days after Midland receives the inquiry from the Attorney General.

61. Midland's assurance to undertake the obligations described herein shall not be construed as evidence that such steps are necessary to comply with any statute, regulation or other rule of law of any State or the United States of America, nor shall such Assurance be construed as evidence that such measures did not exist at Midland prior to the execution of this Assurance, nor shall this Assurance otherwise prejudice the position of Midland with respect to whether it has complied with any statute, regulation or other rule of law of the State.

62. Each of the Parties is represented by counsel who participated in the drafting of this Assurance shall be deemed to have been mutually drafted by the Parties and shall not be construed against either Party as the author thereof.

63. Nothing in this Assurance shall be construed to authorize or require any action by Midland in violation of applicable federal, state or other laws.

64. The titles or headings to each section or provision of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of this Assurance.

65. 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.

66. Nothing contained herein, and no act required to be performed hereunder, including, but not limited to, the provision of information and/or material, is intended to require the disclosure by Midland of any communication by and between any officer, director, employee, agent or consultant of Midland and any person retained to provide Midland with legal advice, or otherwise, to constitute, cause or effect any waiver (whether by subject matter, in whole, or in part) of: (a) attorney-client privilege, work product protection, common law defense privilege and/or any other applicable privilege; or (b) confidential, proprietary or trade secret exception under each States' public records laws.

67. Nothing contained in this Assurance shall be construed to diminish the post-investigation obligations undertaken by the States in the course of their investigation of Midland (including but not necessarily limited to the post-investigation obligations set forth in the Confidentiality Agreement executed by Midland and the members of the Executive Committee in October 2012). Said obligations shall survive the execution of this Assurance and shall continue to be in effect. Nothing contained herein shall be construed to diminish any confidentiality obligations arising under state law with respect to materials or information obtained during the course of said investigation. Any documents provided to the States under the terms of this Assurance shall be treated in accordance with the Confidentiality Agreement that was executed by Midland and the members of the Executive Committee in October 2012.

68. This Assurance supersedes and nullifies the terms of any prior Tolling Order executed between Midland and any of the States during this investigation.

69. Notwithstanding any provision of this Assurance, Midland is not required to refuse to accept any payments voluntarily submitted by Consumers; suspend Collections for Consumers who have acknowledged the Debt and agreed to make payments, or refuse to communicate with a Consumer who affirmatively contacts Midland (or Midland's agents) or requests contact from Midland (or Midland's agents) to discuss the Consumer Account.

70. This Assurance shall be effective upon the Effective Date, except that the obligations of Paragraphs 10(c), 16, 27(b), and 47 shall not take effect until 60 days after the Effective Date. Notwithstanding the foregoing, the obligations imposed by this Assurance by Paragraphs 6, 7, and 16 shall not apply to any Legacy Accounts.<sup>3</sup>

71. Paragraphs 6, 7, 8, 9, 13, 16, 23, 26, 27, 43, and 44 shall terminate September 9, 2020.<sup>4</sup>

72. Except for Midland's obligations to credit judgments, as set forth in Paragraph 57(b), nothing contained herein shall be deemed to apply to any act or omission by Midland (i) with respect to any natural person who is not a resident of a Participating State at the time of such act or omission; or (ii) with respect to Collections Litigation in any court outside of the Participating States.

73. Midland shall ensure that any entities acquired by Midland subsequent to the Effective Date are brought into compliance with the applicable terms of this Assurance within one year after the closing of the acquisition transaction.

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<sup>3</sup> \*Indicates that paragraph will not apply to Legacy Accounts

<sup>4</sup> ^Indicates that paragraph will sunset

74. Midland shall not participate directly or indirectly in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited by this Assurance or for any other purpose that would otherwise circumvent any part of this Assurance.

75. Midland shall not represent directly or indirectly or in any way whatsoever imply that the State has sanctioned, condoned, or approved any part or aspect of Midland's business practices, current efforts to reform its practices, or any further practices that Midland may adopt or consider adopting.

76. This Assurance does not constitute an admission by Midland of any fact or any violation of any local, state or federal law, rule or regulation, and Midland expressly denies any such violation. Midland enters into this Assurance for settlement purposes only. This Assurance is made without trial or adjudication of any issues of fact or law other than those finding that Midland was engaged in trade or commerce. This Assurance does not constitute evidence or admission of any issues of fact or law.

77. The provisions of this Assurance, stating that Midland shall perform a certain action or engage in certain practices or conduct itself in a certain manner (*e.g.*, comply with various statutes), shall not be construed to imply that Midland did not perform that action or engage in that practice or conduct itself in that manner before the execution of this Assurance. Likewise, the provisions of this Assurance, stating that Midland shall not perform a certain action or engage in certain practices or conduct itself in a certain manner, shall not be construed to imply that Midland performed that action, or engaged in that practice, or conducted itself in that manner before the execution of this Assurance.

IN WITNESS WHEREOF, Midland and the undersigned Attorneys General have executed this Assurance on the dates set forth below.

**IN THE MATTER OF:**

**Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc.**

STATE OF INDIANA

By: 

Jacob M. Murray  
Deputy Attorney General  
Office of the Indiana Attorney General  
302 West Washington St., 5th Floor  
Indianapolis, IN 46204


Date: 11/27/2018

IN THE MATTER OF:

**Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc.**

ENCORE CAPITAL GROUP, INC., et al.

By: Troutman Sanders, LLP

By:   
Siran S. Faulders, Esq.

Date: December 4, 2018