



1 as the “Attorneys General”), acting pursuant to their respective consumer protection statutes  
2 on behalf of their respective states (the “States”).<sup>3</sup>

### 3 4 I. RECITALS

5 WHEREAS, as TJX publicly announced on January 17, 2007, and February 21, 2007,  
6 a person or persons (such intruder or intruders referred to collectively as the “Intruders”)  
7 gained unauthorized access during periods in 2005 and 2006 to portions of TJX's computer  
8 system that centrally process and store information from payment card and other transactions

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10 <sup>3</sup> ALABAMA – Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1 *et seq.*; ARIZONA –  
11 Arizona Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-152[1] *et seq.*; ARKANSAS – Arkansas Deceptive Trade  
12 Practices Act, Ark. Code Ann. §§ 4-88-101 *et seq.*; CALIFORNIA – Cal. Bus. & Prof. Code §§ 17200 *et seq.*;  
13 COLORADO – Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.*; CONNECTICUT –  
14 Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a *et seq.*; DELAWARE – Delaware  
15 Consumer Fraud Act, Del. Code Ann. tit. 6, §§ 2511-27 *et seq.*; FLORIDA – Florida Deceptive and Unfair Trade  
16 Practices Act, Fla. Stat. Ann. §§ 501.201 *et seq.*; HAWAII – Haw. Rev. Stat. §§ 480-1 *et seq.*; IDAHO – Idaho  
17 Consumer Protection Act, Idaho Code §§ 48.601 *et seq.*; ILLINOIS – Illinois Consumer Fraud and Deceptive  
18 Business Practices Act, 815 Ill. Comp. Stat. §§ 505/1 *et seq.*; IOWA – Iowa Consumer Fraud Act, Iowa Code §  
19 714.16; LOUISIANA – Louisiana Unfair Trade Practices and Consumer Protection Act, LSA-R.S. 51:1401, *et*  
20 *seq.*; MAINE – Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. tit. 5, §§ 210 *et seq.*; MARYLAND –  
21 Maryland Consumer Protection Act, Md. Code Ann. Com. Law §§ 13-101 *et seq.*; MASSACHUSETTS –  
22 Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, §§ 1 *et seq.*; MICHIGAN – Michigan  
23 Protection Act, Mich. Comp. Laws Ann. §§ 445.901 *et seq.*; MISSISSIPPI – Mississippi Consumer  
24 Protection Act, Miss. Code Ann. §§ 75-24-1 *et seq.*; MISSOURI – Missouri Merchandising Practices Act, Mo.  
25 Rev. Stat. §§ 407.010 *et seq.*; MONTANA – Montana Unfair Trade Practices and Consumer Protection Act,  
26 Mont. Code Ann. §§ 30-14-101 *et seq.*; NEBRASKA – Nebraska Consumer Protection Act, Neb. Rev. Stat. §§  
59-1601 *et seq.*; NEVADA – Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903 *et seq.*; NEW  
HAMPSHIRE – New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. §§ 358-A:1 *et seq.*; NEW  
JERSEY – New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*; NEW MEXICO – New Mexico  
Unfair Practices Act §§ 57-12-1 *et seq.*; NEW YORK – N.Y. Gen. Bus. Law §§ 349 & 350 and N.Y. Exec. Law §  
63(12); NORTH CAROLINA – North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-  
1.1 *et seq.*; NORTH DAKOTA – North Dakota Consumer Fraud and Unlawful Credit Practices Act, N.D. Cent.  
Code §§ 51-15-01 *et seq.*; OHIO – Ohio Consumer Sales Practices Act, Ohio Rev. Code §§ 1345.01 *et seq.*;  
OKLAHOMA – Oklahoma Consumer Protection Act, Okla. Stat. tit. 15, §§ 751 *et seq.*; OREGON – Oregon  
Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605 *et seq.*; PENNSYLVANIA – Pennsylvania Unfair Trade  
Practices and Consumer Protection Law, Pa. Stat. Ann. tit. 73, §§ 201-1 *et seq.*; RHODE ISLAND – Rhode Island  
Unfair Trade Practice and Consumer Protection Act, R.I. Gen. Laws §§ 6-13.1-1 *et seq.*; SOUTH DAKOTA –  
South Dakota Deceptive Trade Practices and Consumer Protection Act, S.D. Codified Laws §§ 37-24-1 *et seq.*;  
TENNESSEE – Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 *et seq.*; TEXAS – Texas  
Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. & Com. Code Ann. §§ 17.41 *et seq.*;  
VERMONT – Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §§ 2451 *et seq.*; WASHINGTON –  
Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.010 *et seq.*; WEST VIRGINIA – West  
Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101 *et seq.*; WISCONSIN – Wisconsin  
Statutes §§ 100.18 and 100.20; DISTRICT OF COLUMBIA – District of Columbia Consumer Protection  
Procedures Act, D.C. Code Ann. §§ 28-3901 *et seq.*

1 at certain of TJX's retail stores (such intrusion or intrusions referred to collectively as the  
2 "Intrusion");

3 **WHEREAS**, on August 5, 2008, the United States Department of Justice and the  
4 United States Secret Service announced federal criminal charges against eleven individuals in  
5 connection with the Intrusion into portions of TJX's computer system;

6 **WHEREAS**, through the Intrusion, the Intruders are believed to have intercepted and  
7 stolen certain customer information, including cardholder data collected from the magnetic  
8 stripe on the back of payment cards, possibly while that data was in transit for bank  
9 authorization;

10 **WHEREAS**, a multi-state group of Attorneys General conducted an extensive review  
11 and inquiry of TJX's data security policies and procedures in place when the Intruders  
12 unlawfully gained access to consumer information and also reviewed TJX's policies and  
13 procedures after the discovery of the Intrusion (the "Investigation"). The inquiry considered,  
14 among other things: TJX's data encryption systems; data segmentation systems; data  
15 protection systems; and intrusion detection systems (the "Subject Matter");

16 **WHEREAS**, TJX has cooperated with the Attorneys General in their Investigation by,  
17 among other things, providing certain documents, making others available for inspection, and  
18 providing access to experts consulting with TJX;

19 **WHEREAS**, the Attorneys General have determined that it is in the public interest of  
20 their respective States and TJX's customers to enter into this Assurance at this time and  
21 conclude such review and inquiry; and,

22 **WHEREAS**, the parties wish to completely settle, release, and discharge all civil  
23 claims under the respective consumer protection laws of each of the States, and this Assurance  
24 constitutes a good faith settlement of any disputes and disagreements between TJX and the  
25 Attorneys General, as set forth in section IX.A of this Assurance;

26 **NOW, THEREFORE**, in consideration of their mutual agreements to the terms of this

1 Assurance, and such other consideration as described herein, the sufficiency of which is hereby  
2 acknowledged, the parties hereby agree as follows:

3 **II. DEFINITIONS**

4 A. **“Cardholder Information”** shall mean any electronic record of TJX  
5 containing sensitive payment card authentication data (as defined in subsection (3) of the  
6 definition of Personal Information in this Assurance) collected from the magnetic stripe of a  
7 credit or debit card in connection with a Transaction and transmitted through or stored on  
8 TJX's authorization network.

9 B. **“Confidential Information”** shall mean the confidential and proprietary  
10 information of TJX, including, but not limited to, financial and technical information;  
11 information regarding its computer network, systems, programs, capabilities, and security;  
12 costs and pricing; ideas, designs, specifications, techniques, models, programs, manuals,  
13 documentation, processes, and know-how; information regarding Consumers; marketing plans;  
14 information regarding contracts; information regarding litigation; audit results; investigations;  
15 discounts and rebates; databases; innovations and copyrighted materials; and trade secrets.

16 C. **“Consumer”** shall mean any person, natural person, or individual who has  
17 purchased merchandise from TJX and whose personal information has been obtained and/or  
18 collected by TJX.

19 D. **“Effective Date”** shall mean the date on which TJX receives a copy of this  
20 Assurance duly executed in full by TJX and by each of the Attorneys General.

21 E. **“Personal Information”** shall mean any TJX record, whether in paper,  
22 electronic, or other form, containing nonpublic personal information about a Consumer  
23 collected in connection with a Transaction, including, but not limited to, any (1) Consumer's  
24 name, address, or telephone number, in conjunction with the Consumer's Social Security  
25 number, driver's license number, financial account number, or credit or debit card number;  
26 (2) Consumer's user name and passphrase used to authorize Transactions over the Internet; or

1 (3) sensitive payment card authentication data, which shall mean (a) Primary Account Number  
2 ("PAN"); (b) cardholder name, card expiration date, service code, Social Security number, date  
3 and place of birth, or mother's maiden name, in conjunction with PAN; or (c) full magnetic  
4 stripe data, CVC2/CVV2/CID, or PIN or PIN block; or (4) other information required to be  
5 protected by state or federal law.

6 F. "Subsidiaries" shall mean the wholly owned United States subsidiaries of TJX.

7 G. "TJX" shall mean The TJX Companies, Inc. and its successors and assigns.

8 H. "Transaction" shall mean a retail transaction in which a Consumer has  
9 purchased merchandise from TJX.

10 **III. APPLICATION OF ASSURANCE**

11 The duties, responsibilities, burdens, and obligations undertaken in connection with this  
12 Assurance shall apply to TJX, its successors and assigns, and its officers and employees.

13 **IV. INFORMATION SECURITY PROGRAM**

14 A. General Provisions. TJX shall implement and maintain a comprehensive  
15 Information Security Program that is reasonably designed to protect the security,  
16 confidentiality, and integrity of Personal Information, by no later than one hundred twenty  
17 (120) days after the Effective Date of this Assurance. Such program's content and  
18 implementation shall be fully documented and shall contain administrative, technical, and  
19 physical safeguards appropriate to the size and complexity of TJX's operations, the nature and  
20 scope of TJX's activities, and the sensitivity of the Personal Information, including:

21 1. The designation of an employee or employees to coordinate and be  
22 accountable for the Information Security Program.

23 2. The identification of material internal and external risks to the security,  
24 confidentiality, and integrity of Personal Information that could result in the unauthorized  
25 disclosure, misuse, loss, alteration, destruction, or other compromise of such information and  
26 assessment of the sufficiency of any safeguards in place to control these risks. At a minimum,

1 this risk assessment should include consideration of risks in each area of relevant operation,  
2 including, but not limited to: (a) employee training and management; (b) information systems,  
3 including network and software design, information processing, storage, transmission, and  
4 disposal; and (c) prevention, detection, and response to attacks, intrusions, or other systems  
5 failures.

6           3.       The design and implementation of reasonable safeguards to control the  
7 risks identified through risk assessment and regular testing or monitoring of the effectiveness  
8 of the safeguards' key controls, systems, and procedures.

9           4.       The implementation and evaluation of any modification to TJX's  
10 Information Security Program, in light of the results of the testing and monitoring of any  
11 material changes to TJX's operations or business arrangements, or any other change in  
12 circumstances that TJX knows or has reason to know may have a material impact on the  
13 effectiveness of its Information Security Program.

14           B.       Specific Provisions. The Attorneys General and TJX recognize that technology  
15 relating to information security is constantly changing and that current security procedures,  
16 software, hardware, and other security infrastructures may become obsolete or inadequate in  
17 the future. Without either party admitting that the following provisions alone amount to  
18 reasonable actions to protect Cardholder or Personal Information in the future, TJX shall, to the  
19 extent it has not already done so:

20           1.       Replace or upgrade all Wired Equivalent Privacy ("WEP") based  
21 wireless systems in TJX's retail stores with wired systems or with Wi-Fi Protected Access  
22 ("WPA") or wireless systems at least as secure as WPA.

23           2.       Not store or otherwise maintain on its network subsequent to the  
24 authorization process the full contents of the magnetic stripe of a credit or debit card, or of any  
25 single track of such a stripe, or the CVC2/CVV2/CID of any such card, or the PIN or PIN  
26 block of any such card. TJX may retain a portion of the contents of the magnetic stripe of a

1 credit or debit card on its network subsequent to the authorization process for a period of time  
2 for legitimate business, legal, or regulatory purpose(s), but if TJX does so, any such  
3 Cardholder Information must be securely stored in encrypted form, be accessed by essential  
4 personnel only, and retained for no longer than necessary to achieve the business, legal, or  
5 regulatory purpose.

6           3.     Segment appropriately from the rest of the TJX computer system those  
7 network-based portions of the TJX computer system that store, process, or transmit Personal  
8 Information, including Cardholder Information, by firewalls, access controls, or other  
9 appropriate measures.

10           4.     Implement security password management for the portions of the TJX  
11 computer system that store, process, or transmit Personal Information, including Cardholder  
12 Information, such as, where appropriate, strong passwords and, with respect to remote access  
13 to the network, two-factor authentication.

14           5.     Implement security patching protocol for the portions of the TJX  
15 computer system that store, process, or transmit Cardholder Information.

16           6.     Use Virtual Private Networks (“VPNs”) or, where appropriate, encrypted  
17 transmissions, or other methods at least as secure as VPNs for transmission of Personal  
18 Information, including Cardholder Information, across open, public networks.

19           7.     Install and maintain appropriately configured antivirus software on the  
20 portions of the TJX computer system that store, process, or transmit Personal Information,  
21 including Cardholder Information, and that are commonly affected by viruses.

22           8.     Implement and maintain security monitoring tools, such as intrusion  
23 detection systems or other devices to track and monitor unauthorized access to the portions of  
24 TJX's computer system that store, process, and transmit Personal Information, including  
25 Cardholder Information. Conduct regular testing or monitoring of the key systems and  
26 procedures used to protect Personal Information, including Cardholder Information.

1           9.     Implement access control measures for the portions of TJX's computer  
2 system that store, process, and transmit Personal Information, including Cardholder  
3 Information. Access control measures include: (a) limiting physical and electronic access to  
4 Cardholder Information on a need-to-know basis; (b) assigning unique user IDs to persons with  
5 access to Cardholder Information; and (c) generating logs or other inventories of the user  
6 accounts on the portions of TJX's computer system used to store, process, or transmit  
7 Cardholder Information.

8           C.     Confirmation of Compliance with Specific Provisions.

9           1.     Within one hundred twenty (120) days following the Effective Date of  
10 this Assurance, TJX shall identify in writing the provision(s) in section IV.B of this Assurance  
11 with which it has achieved Compliance ("Compliance Certification") and/or shall submit a  
12 Compliance Plan (as defined below) with respect to any such provision(s) with which it has not  
13 achieved Compliance by that date. "Compliance" with such provisions shall mean (A) that  
14 TJX has taken the relevant measure(s) where technologically feasible and otherwise reasonable  
15 or has taken alternative measure(s) that alone or in the aggregate provide for substantially  
16 equivalent security, or (B) with respect to the application of subsections (4) and (9) of section  
17 IV.B to the point of sale terminals in TJX's retail stores, that TJX has developed a reasonable  
18 and appropriate plan to evaluate the technological and operational feasibility of such  
19 provisions. If TJX has not achieved Compliance with any such provisions by that date, it shall  
20 provide written notice to the Attorneys General identifying: (a) the provision(s) with which it  
21 has not yet achieved Compliance; (b) the reason(s) that Compliance has not yet been achieved  
22 or cannot be achieved; and (c) a reasonable and appropriate plan and timetable for achieving  
23 Compliance with such provisions ("Compliance Plan"). After the submission by TJX of a  
24 Compliance Plan, and until such time as TJX submits a Compliance Certification with respect  
25 to each of the provision(s) identified in such Compliance Plan, TJX shall submit to the  
26 Attorneys General an updated Compliance Plan within the earlier of (i) thirty (30) business

1 days after the expiration of the latest timetable specified in the most recent Compliance Plan  
2 that TJX provided to the Attorneys General (or at such later time as TJX and the Attorneys  
3 General may agree) or (ii) one hundred eighty (180) days after the date of the submission of  
4 the most recent Compliance Plan that TJX submitted to the Attorneys General (or at such later  
5 time as TJX and the Attorneys General may agree).

6           2. If the Attorneys General dispute that any Compliance Certification or  
7 any Compliance Plan satisfies TJX's obligations under section IV.B, the Attorneys General  
8 shall send TJX a written notice of the dispute within sixty (60) days following receipt of TJX's  
9 submission of the Compliance Certification or Compliance Plan in question, pursuant to the  
10 Meet and Confer provisions set forth in section VIII.H of this Assurance.

11           3. If TJX has submitted a Compliance Certification under section IV.C.1  
12 and the Attorneys General have not disputed TJX's Compliance as set forth in section IV.C.2,  
13 then the provision(s) as to which TJX has certified Compliance in a Compliance Certification  
14 shall be fully and finally satisfied and TJX shall have no additional obligations with respect to  
15 such provision(s); however, TJX shall have the continuing responsibility, under section IV.A,  
16 to implement and maintain a comprehensive Information Security Program that is reasonably  
17 designed to protect the security, confidentiality, and integrity of Personal Information, as set  
18 forth therein.

19           4. Notwithstanding any other provision of this Assurance, TJX shall  
20 provide any documents under this section IV to the Attorney General for The Commonwealth  
21 of Massachusetts (the "Designated Representative Attorney General"), and the Designated  
22 Representative Attorney General shall treat such documents as exempt from disclosure under  
23 the relevant public records laws, pursuant to this Assurance or, as necessary, by employing  
24 other means to ensure confidentiality. These documents may contain sensitive information  
25 about the current state of TJX's security infrastructure and mechanisms, which could be  
26 harmful to TJX's ability to secure data if disclosed. The Designated Representative Attorney

1 General may provide a copy of documents received under this section IV to any other of the  
2 Attorneys General upon request, so long as the laws of the State represented by each such  
3 requesting Attorney General treat such documents as exempt from disclosure under the  
4 relevant public records laws and such requesting Attorney General agrees to so treat such  
5 documents.

6 D. Security Breach Notification. TJX shall notify the Attorneys General, within  
7 ten (10) business days, or earlier if required by applicable law, after mailing notice or  
8 providing substitute notice to resident Consumers pursuant to the requirements of any of the  
9 States' security breach notification laws, that TJX or any of its Subsidiaries provided such  
10 Consumer notice and shall in such notice to the Attorneys General include the following  
11 information to the extent then available: (a) the type of personal information accessed or  
12 acquired as a result of the breach; (b) the approximate date(s) on which the breach occurred;  
13 (c) a brief description of the nature of the breach; (d) a brief description of the steps TJX has  
14 taken or is planning to take to protect Consumers, if any, affected by the breach; (e) whether  
15 other law enforcement agencies have been notified and, if so, the contact information for such  
16 agencies; (f) TJX's plan to address any Consumer injuries arising from the breach; and (g) a  
17 copy or representative example of the notice provided to Consumers. This provision shall  
18 expire three (3) years after the Effective Date of this Assurance. Nothing in this provision  
19 alters any obligation under any state statute or regulation governing security breach  
20 notification.

21 **V. PAYMENT CARD SYSTEM PILOT PROGRAMS AND ENHANCEMENTS**

22 The Attorneys General and TJX believe that the security of Cardholder Information  
23 collected in connection with retail transactions is an important priority. Protecting Cardholder  
24 Information is a dynamic challenge, because as security technologies available to retailers  
25 evolve, criminals attempt to develop more sophisticated ways of trying to circumvent such  
26 technologies. The Attorneys General and TJX therefore agree that possible improvements

1 within the payment card system could aid the protection of consumers. To further that goal,  
2 TJX agrees as follows:

3       A.     Pilot Programs. TJX will notify Visa and MasterCard in the United States and  
4 its acquiring bank(s) in the United States, simultaneous with the execution of this Assurance,  
5 that TJX desires to participate in pilot programs for testing new security-related payment card  
6 technology, such as the chip-and-PIN technology that is used in many other countries. TJX  
7 will participate in such program(s), if invited to do so, within two (2) years following the  
8 Effective Date of this Assurance, provided that any new security-related payment card  
9 technology and the terms and conditions of such participation are considered in good faith by  
10 TJX to be feasible and reasonable.

11       B.     New Encryption Technologies. TJX will take steps over the one hundred eighty  
12 (180) days following the Effective Date of this Assurance, to encourage the development of  
13 new technologies within the Payment Card Industry to encrypt Cardholder Information during  
14 some or all of the bank authorization process with a goal of achieving “end-to-end” encryption  
15 of Cardholder Information (i.e, from PIN pad to acquiring bank). Such methods may include  
16 but are not limited to encouraging the development of new technologies and seeking the  
17 cooperation of TJX's acquiring bank(s) in the United States and other appropriate third parties.  
18 TJX will provide the Attorneys General, within one hundred eighty (180) days following the  
19 Effective Date, with a report specifying its progress in this effort.

20                   **VI. SETTLEMENT COMPLIANCE ASSESSMENT**

21       A.     Report. TJX shall obtain an assessment and report from a third-party  
22 professional (“Third-Party Assessor”), using procedures and standards generally accepted in  
23 the profession (“Third-Party Assessment”), by no later than one hundred eighty (180) days  
24 after the Effective Date of this Assurance, and biennially thereafter during the term of this  
25 Assurance. The report shall:

1           1.       Set forth the specific administrative, technical, and physical safeguards  
2 that TJX and its Subsidiaries have implemented and maintained during the reporting period.

3           2.       Explain how such safeguards are appropriate in light of TJX's size and  
4 complexity, the nature and scope of TJX's activities, and the sensitivity of the Personal  
5 Information collected from or about Consumers.

6           3.       Explain how the safeguards that have been implemented meet the  
7 protections required by this Assurance.

8           4.       Certify that TJX's security program is operating with sufficient  
9 effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of  
10 Personal Information is protected and, for biennial reports, has been so operated throughout the  
11 reporting period.

12           B.       Third-Party Assessor Qualifications. The Third-Party Assessor shall be a  
13 person qualified as a Certified Information System Security Professional ("CISSP") or as a  
14 Certified Information Systems Auditor ("CISA"), or a similarly qualified person or  
15 organization with at least five (5) years of experience evaluating the effectiveness of computer  
16 systems or information system security.

17           C.       Supporting Documentation. TJX shall provide to the Third-Party Assessor as  
18 part of the Third-Party Assessment the following materials that are within TJX's possession,  
19 custody, and control:

20           1.       TJX's most recently completed annual Report of Compliance ("ROC")  
21 with the Payment Card Industry's Data Security Standard ("PCI DSS") (or such other standard  
22 as subsequently may be adopted by Visa and/or MasterCard as the standard to be used in  
23 preparing a ROC), as prepared by a Qualified Security Assessor or an Approved Scanning  
24 Vendor (or such other person as subsequently may be accepted by Visa and/or MasterCard as  
25 the person authorized to prepare a ROC).

1           2.     Any final written assessment of information technology internal controls  
2 for the portions of TJX's computer system that store, process, or transmit Personal Information  
3 prepared by TJX's independent registered public accounting firm and submitted to TJX within  
4 the then preceding year as part of such firm's audit of TJX's financial statements.

5           D.     Submission to Attorneys General.

6           1.     A copy of the first Third-Party Assessment shall be provided, within one  
7 hundred eighty (180) days following the Effective Date of this Assurance, by TJX to the  
8 Designated Representative Attorney General, and the Designated Representative Attorney  
9 General shall treat such documents as exempt from disclosure under the relevant public records  
10 laws, pursuant to this Assurance or, as necessary, by employing other means to ensure  
11 confidentiality.

12          2.     All subsequent Third-Party Assessments shall be retained by TJX, and  
13 upon request of any of the Attorneys General, shall be provided to the Designated  
14 Representative Attorney General, as per the preceding subsection (1), within ten (10) business  
15 days following such request.

16          3.     The Designated Representative Attorney General may provide a copy of  
17 any Third-Party Assessment received from TJX under the preceding two subsections (1) and  
18 (2) to any other of the Attorneys General upon request, so long as the laws of the State  
19 represented by each such requesting Attorney General treat such Third-Party Assessment as  
20 exempt from disclosure under the relevant public records laws and such requesting Attorney  
21 General agrees to so treat such Third-Party Assessment.

22          E.     FTC Coordination. The Attorneys General acknowledge that TJX is subject to  
23 a Decision and Order issued by the United States Federal Trade Commission ("FTC"), FTC  
24 Docket No. C-4227 and File No. 072-3055, relating to the Intrusion (the "FTC Order"), under  
25 which TJX will obtain biennial assessments and reports from a third-party professional and  
26 provide to the FTC the initial report and, upon request, the subsequent reports. The Attorneys

1 General agree that, notwithstanding any other provision herein, the same assessments and  
2 reports undertaken and prepared pursuant to section II of the FTC Order shall be sufficient to  
3 satisfy the requirements of the Third-Party Assessments contemplated under section VI.A of  
4 this Assurance and the other requirements of sections VI.A-C. To coordinate the timetables for  
5 the assessments and reports required under the respective documents, and notwithstanding any  
6 other provision of this Assurance, the Attorneys General agree that the first assessment and  
7 report obtained by TJX pursuant to the FTC Order, whenever prepared (whether before or after  
8 the Effective Date of this Assurance) shall constitute the first Third-Party Assessment under  
9 this Assurance, and that the assessments conducted and reports prepared thereafter on a  
10 biennial basis under section II of the FTC Order shall constitute the Third-Party Assessments  
11 required under section VI.A of this Assurance on a biennial basis for twenty (20) years  
12 following entry of this Assurance. The requirements of sections VI.A-C of this Assurance  
13 shall expire upon the conclusion of the final assessment and report obtained by TJX under  
14 section II of the FTC Order, unless they have expired at an earlier date pursuant to the terms of  
15 this Assurance.

## 16 VII. MONETARY PAYMENTS

17 A. Payment to the States. TJX shall pay to the States, collectively, a total amount  
18 of \$9.75 million, by electronic fund transfer to the Office of the Massachusetts Attorney  
19 General, to be distributed to the States in a manner agreed to by the States. This amount  
20 comprises:

21 1. Settlement Amount. \$5.5 million to be distributed as designated by and  
22 in the sole discretion of the Attorneys General as part of the resolution of their respective  
23 investigations under the state consumer protection laws regarding the Subject Matter of this  
24 Assurance. Said payment shall be used by the Attorneys General to fund or assist in funding,  
25 consumer education, outreach, prevention or monitoring programs, consumer protection  
26 enforcement, litigation, local consumer aid funds, consumer protection enforcement funds and

1 public protection funds including without limitation, developing, implementing or enforcing  
2 data security protection programs and protecting consumers' personally identifiable  
3 information, or for other uses permitted by state law, at the sole discretion of each Attorney  
4 General;

5           2.       Data Security Fund. \$2.5 million payable to the Massachusetts Office of  
6 the Attorney General, to be distributed as designated by and in the sole discretion of the  
7 Attorneys General for the purposes of initiatives by the States to research the benefits of data  
8 security technology and develop best practices, protocols, policies or model legislation or  
9 regulations concerning data security or data security technology; and develop and implement  
10 programs, education and outreach for consumers with respect to data security; for other efforts  
11 to examine data security matters and to protect consumer privacy; and for other uses permitted  
12 by state law. This payment (\$2.5 million) to the Data Security Fund shall be held in trust by  
13 the Massachusetts Office of the Attorney General for the benefit of the Attorneys General of  
14 the States consistent with this paragraph VII.A.2. Distributions from the Data Security Fund  
15 may come from interest or principal and shall be made only pursuant to instructions from a  
16 majority of the five State Attorneys General that comprise the Data Security Fund Committee,  
17 namely, the Attorneys General of California, Florida, Massachusetts, Pennsylvania and  
18 Tennessee; and,

19           3.       Attorney Fees and Costs. \$1.75 million in fees and costs associated with  
20 the States' investigation. Said payment shall be used by the States for attorneys' fees and other  
21 costs of investigation and litigation, or to be placed in, or applied to, the consumer protection  
22 enforcement fund, including future consumer protection enforcement, consumer education,  
23 litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry  
24 leading hereto or for other uses permitted by state law.

1 B. No Tax Characterization. Nothing in this Assurance constitutes an agreement  
2 by the Attorneys General concerning the characterization of the amounts paid hereunder for  
3 purposes of any proceeding under the Internal Revenue Code or any state tax laws.

#### 4 VIII. ENFORCEMENT

5 A. Enforceable Under State Law. TJX and the Attorneys General agree that this  
6 Assurance constitutes a legally enforceable agreement. This Assurance and the rights and  
7 obligations of the parties hereunder shall be governed within each of the respective States by  
8 the laws of such States in which any enforcement of this Assurance or any action to determine  
9 the rights and obligations hereunder is attempted.

10 B. Enforceable By Parties Only. This Assurance may be enforced only by the  
11 parties hereto. Nothing in this Assurance shall provide any rights to or permit any person or  
12 entity not a party hereto, including any state or attorney general not a party hereto, to enforce  
13 any provision of this Assurance. No person or entity not a signatory hereto is a third-party  
14 beneficiary of this Assurance. Nothing in this Assurance shall be construed to affect, limit,  
15 alter, or assist any private right of action that a consumer or other third party may hold against  
16 TJX.

17 C. Application. This Assurance shall be binding on TJX, its successors and  
18 assigns, and its officers and employees. Notwithstanding any other provision in this  
19 Assurance, the obligations herein undertaken by TJX shall not apply to any act or omission by  
20 TJX within any state that has not signed this Assurance.

21 D. Duration. The obligations and other provisions of this Assurance shall expire at  
22 the conclusion of the twenty (20) year period after the Effective Date of this Assurance, unless  
23 they have expired at an earlier date pursuant to their specific terms.

24 E. Modifications or Amendments. This Assurance may be modified or amended  
25 solely in writing by TJX and the Attorneys General for the States to be bound by the  
26 amendment or modification in question. If TJX believes that modification or amendment of

1 this Assurance becomes warranted or appropriate for any reason, including, but not limited to,  
2 changes in the risks to the security, confidentiality, and integrity of Personal Information or to  
3 the relevant security procedures, practices, or tools used to protect against those risks, TJX  
4 may submit to the Attorneys General the proposed written modification or amendment and, if  
5 TJX considers it appropriate, a statement from an independent expert supporting the proposed  
6 modification or amendment. Should the Attorneys General object to the modification or  
7 amendment, they shall, within sixty (60) days after delivery of TJX's written modification or  
8 amendment notice, initiate the Meet and Confer process as set forth in section VIII.H below. If  
9 the objection is not resolved through the Meet and Confer process, then (i) the Attorney  
10 General reserves the right to seek to enforce the terms of this Assurance notwithstanding the  
11 modification requested by TJX; and (ii) TJX reserves the right to modify or amend the terms of  
12 this Assurance in the appropriate state court with jurisdiction.

13 F. Monitoring. Upon the written request of the Attorneys General, TJX agrees to  
14 provide responsive, non-privileged information, books, records, documents, or testimony  
15 (formal or informal) to the Attorneys General for the purpose of monitoring TJX's compliance  
16 with this Assurance. TJX shall make the requested information available, within sixty (60)  
17 calendar days of the request, at the office of the Designated Representative Attorney General,  
18 or at such other time and/or place as is mutually agreed to in writing by TJX and the requesting  
19 Attorneys General. This section shall in no way limit (1) any right of the Attorneys General to  
20 obtain documents, records, testimony, or other information pursuant to any law, regulation, or  
21 rule, or (2) the effect of the provisions set forth in sections IV.C and VI.D of this Assurance.  
22 The parties agree that any dispute arising under this section shall be resolved through the Meet  
23 and Confer process set forth in section VIII.H below.

24 G. Conflicts. Nothing in this Assurance shall be construed as preventing or  
25 exempting TJX from complying with any law, rule, or regulation, nor shall any of the  
26

1 provisions of this Assurance be deemed to authorize or require TJX to engage in any acts or  
2 practices prohibited by such law, rule, or regulation.

3           1.       If TJX believes that any provision in this Assurance conflicts in whole  
4 or in part with (a) any law, rule, or regulation as modified, enacted, promulgated, or interpreted  
5 by the state or federal governments or any state or federal agency; (b) any order or directive by  
6 the FTC or other federal regulatory agency; (c) the PCI DSS (or such other standard accepted  
7 by the industry as the prevailing standard); (d) any direction or recommendation of the Third-  
8 Party Assessor; or (e) any other legal obligation owed to a third party, then TJX may provide a  
9 written proposal to the Attorneys General relative to the believed conflict, identifying the  
10 nature of the conflict and the manner in which TJX proposes to proceed in light of the  
11 purported conflict.

12           2.       If the Attorneys General object to a proposal submitted by TJX pursuant  
13 to the preceding subsection VIII.G.1, they shall follow the Meet and Confer obligations set  
14 forth in section VIII.H below. If the objection is not resolved through the Meet and Confer  
15 process, then (i) the Attorney General reserves the right to seek to enforce the terms of this  
16 Assurance notwithstanding the modification requested by TJX; and (ii) TJX reserves the right  
17 to modify or amend the terms of this Assurance in the appropriate state court with jurisdiction.

18           H.       Meet and Confer. For any dispute between an Attorney General and TJX  
19 arising under or relating to this Assurance, including a purported conflict with other law or  
20 proposed modification, the party raising the dispute shall give particularized written notice to  
21 the other party of the issue(s) in dispute and shall make an appropriate representative available  
22 either in person, via phone, or via video conference to discuss the dispute prior to initiating any  
23 court proceeding relating to the dispute. If the dispute is not resolved through this discussion  
24 (or such further discussions as the parties may agree), either party may initiate a court  
25 proceeding relative to such dispute pursuant to applicable state laws; provided, however, that  
26 any Attorney General intending to initiate any court action alleging violation(s) of this

1 Assurance by TJX must notify TJX in writing in advance of filing any such action and provide  
2 TJX a reasonably practicable period of at least sixty (60) days to attempt to cure the claimed  
3 violation(s). TJX may request, and the Attorneys General may grant, any extension to the sixty  
4 (60) day period to attempt to cure set forth herein. Notwithstanding the foregoing, the  
5 Attorneys General may initiate a court action alleging a violation of this Assurance upon  
6 reasonable notice to TJX, but without affording TJX the cure period called for by the second  
7 sentence of this section VIII.H, if they reasonably conclude that there exists an immediate  
8 threat to the public's safety, health, or welfare because of the specific TJX practice(s) alleged to  
9 be in violation of this Assurance.

10 I. Coordination of Enforcement. The Attorneys General will use their best efforts,  
11 in cooperation with TJX, to coordinate (i) their Meet and Confer activities under section  
12 VIII.H, (ii) any enforcement and interpretation of this Assurance, and (iii) to resolve any  
13 inconsistent enforcement or interpretation (and the effects thereof) as to any matter that is not  
14 exclusively local in nature.

## 15 IX. GENERAL PROVISIONS

16 A. Release. This Assurance constitutes a full and final settlement and release by  
17 the Attorneys General of the States that are parties to this Assurance, on behalf of their  
18 respective states, from any and all civil claims and causes of action against TJX and its  
19 successors, assigns, and subsidiaries, including any of their officers, agents, directors, and  
20 employees, arising out of the subject matter of this Assurance (including without limitation the  
21 Intrusion, the Investigation, TJX's data security systems, programs, procedures, practices, and  
22 policies, and any actions taken or not taken in connection with the events relating to the  
23 Intrusion), which were or could have been asserted by the Attorneys General, whether under  
24 their respective consumer protection statutes and/or security breach notification statutes, or  
25 under any other similar laws which give the Attorneys General the authority to assert any such  
26

1 claim or cause of action based on any thing, matter, or event occurring up to the Effective Date  
2 of this Assurance (the "Released Claims").

3 B. Preservation of Authority. Nothing in this Assurance shall be construed to limit  
4 the authority of the Attorneys General to protect the interests of their respective States or the  
5 people of their respective States; provided, however, the Attorneys General agree that this  
6 Assurance is sufficient to protect those interests as they relate to the subject matter of this  
7 Assurance and as to the Released Claims and that nothing in this sentence shall be interpreted  
8 to limit the provisions of section IX.A. This Assurance shall not bar the Attorneys General or  
9 any other governmental entity from enforcing laws, regulations, or rules against TJX for  
10 conduct subsequent to or otherwise not covered by section IX.A.

11 C. No Admissions. This Assurance is not intended to be and shall not in any event  
12 be construed or deemed to be, or represented or caused to be represented as, an admission or  
13 concession or evidence of any liability or wrongdoing whatsoever on the part of TJX or of any  
14 fact or any violation of any law, rule, or regulation. This Assurance is made without trial or  
15 adjudication of any alleged issue of fact or law and without any finding of liability of any kind.  
16 TJX believes that its conduct has been lawful and has not violated any consumer protection or  
17 other laws of the States and enters into this Assurance for settlement purposes only. The States  
18 believe that TJX's conduct may have violated the States' respective consumer protection  
19 statutes. TJX's agreement to undertake the obligations described in this Assurance shall not be  
20 construed as an admission of any kind or type.

21 D. Not an Approval. Other than as set forth herein, this Assurance shall not be  
22 deemed an approval by the Attorneys General of any of TJX's advertising, business, or  
23 consumer data protection practices.

24 E. No Limitation of Defenses. This Assurance shall not be construed or used as a  
25 waiver or any limitation of any defense otherwise available to TJX in any pending or future  
26 legal or administrative action or proceeding relating to TJX's conduct prior to the Effective

1 Date of this Assurance or of TJX's right to defend itself from, or make any arguments in, any  
2 individual or class claims or suits relating to the existence, subject matter, or terms of this  
3 Assurance

4 F. Non-Admissibility. The settlement negotiations resulting in this Assurance  
5 have been undertaken by TJX and the Attorneys General in good faith and for settlement  
6 purposes only, and no evidence of negotiations or communications underlying this Assurance  
7 shall be offered or received in evidence in any action or proceeding for any purpose. Neither  
8 this Assurance nor any public discussions, statements, or comments with respect to this  
9 Assurance by the Attorneys General or TJX shall be offered or received in evidence in any  
10 action or proceeding for any purpose other than in an action or proceeding between the parties  
11 arising under this Assurance. Any documents provided to any party under the Meet and  
12 Confer provision set forth in section VIII.H shall be for settlement purposes only, and no  
13 evidence of negotiations or communications occurring in connection with that section shall be  
14 offered or received in evidence in any action or proceeding for any purpose. Nothing in this  
15 Assurance shall be used as any basis for the denial of any license, authorization, approval, or  
16 consent that TJX may require under any law, rule, or regulation.

17 G. No Waiver of Privilege. Nothing contained in this Assurance, and no act  
18 required to be performed hereunder, including, but not limited to, the provision of information  
19 and/or material, is intended to require the disclosure by TJX of any communication by and  
20 between any officer, director, employee, agent, consultant, or representative of TJX and any  
21 person retained directly or indirectly to provide TJX with legal advice or, otherwise, to  
22 constitute, cause, or effect any waiver (in whole or in part) of (a) any attorney-client privilege,  
23 work-product protection, or common interest/joint defense privilege, or (b) confidential,  
24 proprietary, or trade secret exception under the States' public records laws. The Attorneys  
25 General agree that they shall not make or cause to be made in any forum any assertion to the  
26

1 | contrary.

2 | H. Confidentiality.

3 | 1. The Attorneys General agree that any information, records, or  
4 | documents received directly or indirectly in connection with this Assurance that contain  
5 | Confidential Information, or are otherwise designated as confidential by TJX, shall be kept  
6 | strictly confidential to the fullest extent permitted by law and publicly disclosed only as  
7 | required by law, except that such information, records, or documents may be used by the  
8 | Attorneys General in investigations of, or proceedings resulting from, possible violations of  
9 | this Assurance. To the extent permitted by law, the Attorneys General shall notify TJX of  
10 | (a) any legally enforceable demand for, or (b) the intention of any Attorney General to disclose  
11 | to a third party, such information, records, or documents at least thirty (30) business days, or  
12 | such shorter period as required by state law, in advance of complying with the demand or  
13 | making such disclosure, in order to allow TJX the reasonable opportunity to intervene and  
14 | assert any legal exemptions or privileges it believes to be appropriate.

15 | 2. The Attorneys General shall ensure that any expert that they may consult  
16 | or retain in connection with this Assurance agrees in a writing, before performing any work in  
17 | connection with this Assurance, to maintain as strictly confidential any information, records, or  
18 | documents relating to TJX received directly or indirectly in connection with this Assurance  
19 | and to use such information, records, or documents solely for the purposes authorized by this  
20 | Assurance. Such writing shall contain an express provision giving TJX the right to enforce the  
21 | confidentiality commitments required by the preceding sentence, and the Attorneys General  
22 | agree to provide a copy of such writing to TJX within thirty (30) days of its execution.

23 | I. Entire Agreement. This Assurance is entered into by the parties as their own  
24 | free and voluntary act and with full knowledge and understanding of the nature of the  
25 | proceedings and the obligations and duties imposed by this Assurance. This Assurance sets  
26 | forth the entire agreement between the parties. There are no representations, agreements,

1 | arrangements, or understandings, oral or written, between the parties relating to the subject  
2 | matter of this Assurance that are not fully expressed herein or attached hereto, except for the  
3 | agreement dated January 19, 2007, by and among the parties hereto, which shall remain in full  
4 | force and effect.

5 | J. Counterparts. This Assurance may be executed in one or more counterparts,  
6 | each of which shall be deemed an original, but all of which shall together constitute one and  
7 | the same instrument.

8 | K. Mutually Drafted. This Assurance shall be deemed to have been mutually  
9 | drafted by TJX and the Attorneys General and shall not be construed against either party as the  
10 | author thereof.

11 | L. Titles and Headers. The titles and headers in this Assurance are for  
12 | convenience purposes only and are not intended by the parties to lend meaning to the actual  
13 | provisions of the document.

14 | M. References to Attorneys General. Any references in this Assurance to the  
15 | "Attorneys General" shall mean each and all Attorneys General, unless otherwise expressly  
16 | provided.

17 | N. Distribution. Within thirty (30) business days following the Effective Date of  
18 | this Assurance, TJX shall deliver a copy of this Assurance to each of its current officers of the  
19 | rank of executive vice president or above and each member of its Board of Directors.

20 | O. Notices/Delivery of Documents. Whenever TJX shall provide notice to the  
21 | Attorneys General under this Assurance, that requirement shall be satisfied by TJX's sending  
22 | notice to the Designated Representative Attorney General, who shall be responsible for  
23 | distributing such notice consistent with the terms of this Assurance to the other Attorneys  
24 | General as they may agree. Any notices or other documents sent to TJX pursuant to this  
25 | Assurance shall be sent to the following address: The TJX Companies, Inc., 770 Cochituate  
26 | Road, Framingham, Massachusetts 01701, Attn.: General Counsel, Ann McCauley, Esq., with

1 a copy to Ropes & Gray LLP, Attn.: Harvey Wolkoff, Esq. and Lisa M. Ropple, Esq., One  
2 International Place, Boston, Massachusetts 02110 (after August 2010, 800 Boylston Street, The  
3 Prudential Center, Boston, Massachusetts 02199-8103). Any notices or other documents sent  
4 to the Attorneys General pursuant to this Assurance shall be sent to the following address:  
5 Chief, Consumer Protection Division, Office of the Attorney General for the Commonwealth  
6 of Massachusetts, One Ashburton Place, Boston, Massachusetts 02108. All notices or other  
7 documents to be provided under this Assurance shall be sent by United States mail, certified  
8 mail return receipt requested, or other nationally recognized courier service that provides for  
9 tracking services and identification of the person signing for the notice or document, and shall  
10 have been deemed to be sent upon mailing, as defined in the prior two sentences. Any party  
11 may update its address by sending written notice to the other parties.

12 P. Changes in Corporate Structure. For three (3) years following the Effective  
13 Date of this Assurance TJX agrees to notify the Attorneys General in writing of any changes in  
14 the corporate structure of TJX and its Subsidiaries that may affect its compliance with the  
15 obligations arising out of this Assurance within sixty (60) business days of such change. TJX  
16 will not, directly or indirectly, form a separate entity or corporation for the purpose of  
17 engaging in acts prohibited by this Assurance or for the purpose of circumventing this  
18 Assurance.

19 Q. Court Costs. To the extent there are any, TJX agrees to pay all court costs  
20 associated with the filing (if legally required) of this Assurance. No court costs, if any, shall be  
21 taxed against the Attorney General.

22 **APPROVED IN OPEN COURT** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

23  
24  
25 \_\_\_\_\_  
26 JUDGE/COURT COMMISSIONER

1 Approved for Entry and Presented by:

2 ROBERT M. MCKENNA  
3 Attorney General

4   
5 SHANNON E. SMITH, WSBA #19077  
6 Assistant Attorney General  
7 Attorneys for the State of Washington

4   
5 ALFRED A. DAY, WSBA # 34926  
6 Attorney for Respondent  
7 The TJX Companies, Inc.

8 **IN WITNESS WHEREOF**, TJX and the States, through their fully authorized  
9 representatives, have agreed to this Assurance:

10 THE TJX COMPANIES, INC.

11 By: Ann McCauley

12 Name: Ann McCauley

13 Title: Executive Vice President, General Counsel

14 Date: 6/22/09