

GENERAL PROVISIONS

OF

NON-EXCLUSIVE LEADS VENDOR AGREEMENT

PREAMBLE

These General Provisions of Non-Exclusive Leads Vendor Agreement (these "General Provisions"), together with the foregoing Cover Sheet (the "Cover Sheet") to which these General Provisions are annexed and incorporated, constitute the entire NON-EXCLUSIVE LEADS VENDOR AGREEMENT (this "Agreement"), which is made and entered into effective as of the "**Effective Date**" appearing on the Cover Sheet, at the City of Irvine, Orange County, California, by and between (1) Next Wave Marketing Strategies, Inc. ("NWMS"), a California corporation, and (2) VENDOR, as identified on the Cover Sheet ("VENDOR"). NWMS and VENDOR may hereinafter be collectively referred to as the "Parties," and each individually as a "Party".

RECITALS

A. WHEREAS, NWMS is a marketing company based in the United States of America, which is commonly known as a "list broker," doing business in the online leads/data marketplace; and in recent years, NWMS has been engaged principally in the business of, among other things, (1) acquiring, aggregating, compiling, categorizing, composing, organizing and/or storing aged Data Records (inclusive of "Data" as defined below in Subparagraph 2.1 and "Leads" as defined below in Subparagraph 2.2), which contain various types of information about "Consumers" (as defined below in Subparagraph 2.4) with respect to insurance, financial and certain other consumer products (collectively or individually, "Consumer Information"), and which have been, *inter alia*, originally acquired, aggregated, compiled, composed, organized and/or generated by third parties through or from, for example, the Internet, telemarketing and/or public records, by means of purchase, license, sublicense, and/or exchange, and (2) then in turn marketing, conveying, distributing, delivering, transferring, and/or licensing or sublicensing, as the case may be, various types of Consumer Information comprised of and organized into discrete Data Records to NWMS's clients and other third parties. [The phrase "marketing, conveying, distributing, delivering, transferring, and/or licensing or sublicensing," as the case may be, of such Data Records is sometimes referred to hereinafter in this Agreement, collectively or individually, as "conveying," or a form of the word "convey," depending on the context.]

B. WHEREAS, NWMS stores and maintains the above-mentioned Data and/or Leads, as the case may be, in discrete "Data Records" (as defined below in Subparagraph 2.3), which are contained in one or more of the NWMS proprietary national databases (collectively or individually, the "Databases"); and such Data ordinarily is compiled, composed, organized and deliverable as a "field of Data" (as defined below in Subparagraph 2.1) and/or as a "Lead" (as defined below in Subparagraph 2.2), each of which pertains to a single Consumer.

C. WHEREAS, VENDOR is a marketing company based in the United States of America, and it is engaged in business as a lead generator, wholesale seller, licensor, sublicensor, broker and/or reseller, as the case may be, of various and distinct Data Records (as defined below in Subparagraph 2.3) consisting of compilations of the above-mentioned Data and/or Leads, which VENDOR, lawfully, *inter alia*, acquires, aggregates, collects, compiles, generates, categorizes, composes and/or organizes in large quantities [from time to time originally acquired as "raw" Data] and which VENDOR stores and maintains in its proprietary or other databases.

D. WHEREAS, as part of its business, VENDOR from time to time acquires a wide variety of Consumer Information in the form, for example, of the above-mentioned Data and/or Leads in large quantities, from various sources including, without limitation, Consumers who have requested information about acquiring insurance products [*e.g.*, health insurance, life insurance, auto insurance and homeowner insurance], financial services products [*e.g.*, auto purchase financing, mortgage financing or refinancing including, without limitation, home purchase financing, home equity lines of credit and student loan financing], and/or other consumer products [*e.g.*, home improvement materials and educational services]; and in addition, VENDOR from time to time acquires, aggregates, collects, compiles, generates, categorizes, composes and/or organizes Consumer Information for commercial purposes, as discrete Data Records consisting of (1) Data (as defined below in Subparagraph 2.1), and/or (2) Leads (as defined below in Subparagraph 2.2).

E. WHEREAS, these Data Records typically contain a wide variety of Consumer Information including fields of Data about different types of individual Consumers, for example, wealthy Consumers, business opportunity seekers, businesses and professions of all types (*e.g.*, realtors, insurance agents, doctors, lawyers), homeowners, new movers and/or various ethnic or national categories of people (*e.g.*, Hispanics), who may wish to purchase a range of consumer products and services (collectively or individually, the various consumer products and services referred to in this Paragraph E are sometimes referred to hereinafter as "Products").

F. WHEREAS, NWMS has set up and currently maintains and operates a number of websites which function as a network of "online stores" for conducting its business, as such business generally is described in Paragraphs A and B above, including, without limitation, the following websites:

(1) www.agedleadstore.com; and

(2) www.nextwavemarketingstrategies.com (the above-mentioned websites and any other NWMS websites are referred to herein, collectively or individually, as the "Websites"). In this connection, the Website known as www.agedleadstore.com, together with any other Websites, functions as a type of marketplace platform for certain information [*i.e.*, an "online store"] where any Data Records (as such term is defined, respectively, below) acquired by NWMS may be aggregated, compiled, categorized, composed, organized, updated, modified, enhanced, appended, validated, and/or stored by NWMS [*e.g.*, as Data Records], as determined in its sole discretion, and then, again as

The language and content of this Agreement are to be used solely to govern the business relationship between NWMS and VENDOR. Notwithstanding anything appearing to the contrary in this Agreement, NWMS expressly prohibits any person, including without limitation VENDOR or any other business, from adopting, using or appropriating the language and content of this Agreement for their own purposes without the express *written* consent of NWMS. © 2014 Next Wave Marketing Strategies, Inc.

determined in the sole discretion of NWMS, either posted online and made accessible by NWMS to its clients or other third parties, by instant download from one of the Websites *via* the Internet, or made accessible by NWMS to its clients or other third parties, by other means of communication [*e.g.*, *via* e-mail, and/or offline *via* telecommunication, computer disc and/or other means], for commercial conveyance to NWMS's clients or other third parties.

G. WHEREAS, the Parties hereby desire to establish an ongoing business relationship, subject to the terms, conditions and other provisions of this Agreement, (1) whereby VENDOR from time to time during the "Term" (as defined below in Paragraph 1) will convey various categories, qualities and quantities of Data Records to NWMS, in exchange for certain monetary fee "Compensation" (as defined and provided for below in Paragraph 4), and (2) whereby NWMS will order and accept from VENDOR, and pay such monetary fee "Compensation" for, the conveyance to it by VENDOR of those various categories, qualities and quantities of Data Records ordered by NWMS, in accordance with this Agreement, as described more specifically below.

H. WHEREAS, the Parties hereby acknowledge and intend that by entering into this Agreement, they hereby are setting forth the terms, conditions and other provisions that will govern all transactions between them, from time to time during the "Term", or any "Renewal Term" (as defined, respectively, below), for the conveyance of those certain Data Records which are ordered by NWMS.

I. WHEREAS, the Parties hereby acknowledge and intend that the conveyance hereunder of the Data Record (as defined below), described in Paragraph B above, shall be effectuated by sale, or by license or sublicense, to NWMS, as the case may be from time to time, as provided for hereunder, pursuant to (and except as may be modified by) specific "Insertion Orders" (as defined below in Subparagraph 3.1), which are submitted hereunder from time to time during the Term by NWMS to VENDOR, and which may be accepted and filled by VENDOR hereunder.

TERMS AND CONDITIONS

NOW, THEREFORE, in light of the premises, including, without limitation, the Cover Sheet to which these General Provisions are annexed and incorporated, and the above Preamble and Recitals, and in consideration of the mutual agreements, covenants, representations and warranties set forth in the Cover Sheet and these General Provisions, as well as for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree, covenant and contract as follows:

1. **TERM.** This Agreement shall come into effect for an initial term commencing on the Effective Date, as set forth on the Cover Sheet, and shall thereafter remain in effect for a period of a one (1) year, *i.e.*, until 11:59 P.M. [PST or PDST] on the first anniversary of the Effective Date (the "Expiration Date"), unless earlier terminated or canceled, or unless extended or renewed, in accordance with the terms, conditions and other provisions of this Agreement as provided for more specifically in Paragraph 12 below [the initial time period while this Agreement is in effect, and also any subsequent time period of extension or renewal of this Agreement (sometimes referred to hereinafter as a

"Renewal Term"), shall be referred to sometimes hereinafter simply as the "Term"].

2. **DEFINITIONS.** For the purposes of this Agreement, the terms set forth below shall have the following meanings:

2.1 **Data.** "Data" shall mean various types of information about Consumers in the public at large, including, without limitation, records, lists, facts and/or databases (collectively or individually, "Consumer Information"), which VENDOR has acquired, aggregated, collected, compiled, generated, categorized, composed, organized and/or otherwise processed, or may in the future acquire, collect, compile, generate, categorize, compose, organize and/or otherwise process [*e.g.*, validate], which have been derived from, *inter alia*, sources of information generated by or from the Internet, telemarketing, direct mail, courthouse files, government agencies, credit bureaus, public domain information, and other public sources of information [*e.g.*, databases containing vehicle identification numbers], which VENDOR stores and maintains, or will store and maintain, in its proprietary databases and which are to be conveyed to NWMS under this Agreement. Further, VENDOR hereby agrees and acknowledges that in order for Consumer Information to be deemed to constitute Data within the meaning of this Agreement, the Consumer Information must satisfy the following criteria: (a) such Consumer Information shall be aggregated and organized into multiple distinct compilations [*i.e.*, discrete Data Records], each pertaining to a certain named and specifically identifiable, individual and living Consumer, who satisfies the profile criteria described in clause (b) below of this Subparagraph 2.1, and each such compilation shall include the first and last name of such Consumer; (b) such Consumer, based upon reasonably acceptable industry standards and protocols for modeling, filtering, compiling and/or targeting, shall reasonably appear to fit the profile of an eligible prospective Consumer, who apparently is actually or potentially predisposed and/or prequalified in respect of desiring or obtaining one or more of the Products offered by NWMS's clients [*e.g.*, insurance and/or financial services Products], but for whom there may not necessarily exist written or other confirmation that he/she has requested, expressed a desire or "Opted-In" (as defined below) to be contacted by any "Marketing Professional(s)" (as defined below) about one or more of the Products; (c) such Consumer Information shall include various necessary types of identifying information reflecting distinct types of personally identifiable Consumer profile marketing information, including, without limitation, fields of Consumer Information containing contact and related information about such individually named Consumer, for example, his/her postal or residence address(es), telephone number(s) [*e.g.*, mobile phone(s), land line phone(s)], e-mail address(es), date of birth, and may also include optional types of Consumer Information such as lifestyle information and demographic information; and (d) such Consumer Information shall be stored and maintained in, and deliverable as, discrete Data Records pertaining to each such individual Consumer (as described in clause (a) above this Subparagraph 2.1). The discrete Data Record constituting a single file of Data sometimes is referred to herein as a "field of Data", and the plural thereof collectively as "fields of Data".

(A) **Data Conveyed**— The Parties hereby agree, acknowledge and intend that, pursuant to the terms, conditions and other provisions of this Agreement, VENDOR from time to time during the Term, or any Renewal Term, will convey certain

Data Records (as defined below in Subparagraph 2.3) containing fields of Data to NWMS. In addition, VENDOR hereby agrees, acknowledges and consents that upon or after its conveyance to NWMS hereunder of such Data Records [*i.e.*, Data], NWMS shall be authorized and permitted to import such Data Records [*i.e.*, Data] into one or more of its Databases, to maintain such Data Records [*i.e.*, Data] in its computer Database systems, and to aggregate, compile, categorize, compose, organize, merge, update, modify, enhance, append, test, validate and/or store the fields of Data [as part of and pursuant to its proprietary systems for managing fields of Data] in one or more of its Databases—all as determined in the sole discretion of NWMS. Each Data Record conveyed to NWMS hereunder shall contain multiple fields of Consumer Information about a certain named and specifically identifiable, individual and living Consumer [*i.e.*, with a single Data Record consisting ordinarily of about two (2) to eight (8) fields of Consumer Information, *e.g.*, name and postal address, name and e-mail address and/or name and telephone number], and the Data comprising such Data Records shall be readily adaptable to being made marketable and deliverable by NWMS to one or more of its clients or other third parties as a discrete Data Record.

2.2. Lead(s). “Leads” or “Lead” [*i.e.*, a particular category or a form of Data] shall mean those certain specific types of Consumer Information which are commonly known and categorized (in the Leads marketplace) as *aged* leads [as described more specifically in clause (A) below of this Subparagraph 2.2] and which have a content comprised of certain categories of previously generated [*i.e.*, *aged*] fields of Data reflecting, respectively, prior requests by certain named and specifically identifiable, individual and living Consumers for or about, *inter alia*, information with respect to acquiring one or more Products and/or financial “quotes” with respect to acquiring one or more Products. VENDOR hereby agrees and acknowledges that each Data Record constituting a Lead ordinarily shall contain six (6) to forty (40) fields of Consumer Information; and the content of these fields of Consumer Information shall consist of, *inter alia*, the Consumer’s self-reported and personally identifiable Consumer Information (as defined more specifically below in this Subparagraph 2.2) about himself/herself [all of which will constitute fields of Data comprising a discrete Data Record (as defined below in Subparagraph 2.3) qualifying as a Lead]. Further, VENDOR hereby agrees and acknowledges that in order for a discrete Data Record to be deemed to constitute and qualify as a Lead within the meaning of this Agreement, each discrete Data Record must satisfy the following criteria: (a) the discrete Data Record shall correspond to a certain named and specifically identifiable, individual and living Consumer named in such Data Record, who is among the persons listed, respectively, by name within the fields of Data described in Subparagraph 2.1 above; and (b) the discrete Data Record shall include, or be accompanied by, “Opt-In Information” (as defined below) reliably confirming and reflecting that the Consumer (i) has requested, and/or expressed a desire or interest in obtaining, information regarding one or more Products, and (ii) has requested, or expressed a desire, or consented, to be contacted by a Marketing Professional (as defined below) about the prospective acquisition of one or more Products or about receiving a “quote” in respect thereof (collectively or individually, the

“Consumer Request”). The discrete Data Record constituting a single Lead sometimes is referred to herein as a “Lead”, and the plural thereof collectively as “Leads”.

(A) Age of Leads—All Leads subject to conveyance under this Agreement shall range in age from a time within about twenty-four (24) hours after the Consumer named therein created, acknowledged or confirmed his/her personal Consumer Request by filling out, submitting or otherwise confirming such personal Consumer Request, to a time not later than twenty-six (26) months thereafter. This category of Leads is commonly known in the Leads marketplace as “aged” Leads (sometimes referred to herein as “aged Leads”).

(B) Leads Conveyed— The Parties hereby agree, acknowledge and intend that, pursuant to the terms, conditions and other provisions of this Agreement, VENDOR, from time to time during the Term, or any Renewal Term, will convey certain Data Records (as defined below in Subparagraph 2.3) containing and constituting multiple Leads to NWMS. In addition, VENDOR hereby agrees, acknowledges and consents that upon or after its conveyance to NWMS hereunder of such Data Records, NWMS shall be authorized and permitted to import such Data Records (*i.e.*, Leads) into one or more of its Databases, to maintain such Data Records (*i.e.*, Leads) in its computer Database systems, and to aggregate, compile, categorize, compose organize, merge, update, modify, enhance, append, test, validate and/or store the Leads [as part of and pursuant to its proprietary systems for managing Data] in one or more of its Databases—all as determined in the sole discretion of NWMS. Each Data Record conveyed to NWMS hereunder as a Lead shall contain multiple fields of Consumer Information about a certain named and specifically identifiable, individual and living Consumer [*i.e.*, with such Data Record consisting ordinarily of about six (6) to forty (40) fields of Consumer Information], and the Lead comprising such Data Record shall be readily adaptable to being made marketable and deliverable by NWMS to one or more of its clients or other third parties as a discrete Data Record, in the form of a Lead.

2.3 Data Records. “Data Records” (in the singular, “Data Record”) shall mean those certain composite and distinct aggregations of compiled information comprised of multiple fields of Consumer Information constituting numerous compilations of discrete fields of Data and/or discrete Leads, and/or combinations thereof, which have been, or may in the future be, acquired, collected and/or generated by VENDOR and then aggregated, compiled, categorized, composed, organized, otherwise processed [*e.g.*, validated], and/or stored or maintained by VENDOR in its storage hosting facilities [*i.e.*, its own database(s)], which are subject to conveyance to NWMS as Data and/or Leads, and/or combinations thereof, under this Agreement.

2.4 Consumer. “Consumer” shall mean a buyer or prospective buyer (other than for purposes of resale) of any consumer Product (as defined hereinabove), any person to whom such Product is transferred during the duration of, for example, a service contract applicable to the Product, any other

person who is entitled by the terms of, for example, such service contract or under applicable State law to enforce against the seller the obligations of, for example, the service contract, and/or any other person who is a customer of a client of NWMS or a customer of another third party to whom NWMS has delivered any Data Records [*i.e.*, Data and/or Leads] in a commercial transaction. Ordinarily, for the purposes of this Agreement, a Consumer will be a person who meets the profile and other criteria described in (a) clause (b) of Subparagraph 2.1 and/or (b) clauses (a) and (b) of Subparagraph 2.2.

2.5 Marketing Professional. “Marketing Professional” shall mean any person or agent of a company or business that provides insurance Products [*e.g.*, health insurance, life insurance, auto insurance and homeowner insurance], financial services Products [*e.g.*, auto purchase financing, mortgage financing or refinancing including, without limitation, home purchase financing, home equity lines of credit and student loan financing], and/or other Consumer Products [*e.g.*, home improvement and educational services], with the business purpose of becoming or remaining a client of NWMS, and/or with the professional qualifications to be eligible as a client of NWMS, for the purposes of acquiring Data Records [*i.e.*, Data and/or Leads] from NWMS and commercially exploiting such Data Records in order to market Products to Consumers.

2.6 Valid Data; Valid Lead. “Valid Data” and “Valid Lead” shall mean, respectively, any field of Data or any Lead that fully satisfies the validity criteria set forth below in this Subparagraph 2.6. In order for any field of Data or any Lead to satisfy such validity criteria and to be deemed “valid” under this Agreement, such field of Data or Lead must be lawfully acquired or generated at the outset by VENDOR in compliance with all applicable federal and state laws, rules and regulations, including, without limitation, those laws, rules and regulations described below in Paragraph 6, including its Subparagraphs; and such field of Data or Lead, at the time of VENDOR’s delivery thereof to NWMS hereunder, must not violate any such laws, rules or regulations and/or infringe upon or violate any Consumer’s or other third-party’s privacy, proprietary or other rights, by reason of its delivery and disclosure by VENDOR to NWMS, and/or the future delivery and disclosure thereof by NWMS to any NWMS client or other third party, of the Consumer Information contained within such field of Data or Lead. VENDOR hereby agrees and acknowledges that at all times during the Term, or any Renewal Term, or thereafter, NWMS reserves, and shall have, the sole right and discretion to determine, in good faith, the validity of any and all Data Records, and to conduct and/or otherwise undertake any and all validation tests and/or processes on any Data Records which NWMS determines, in its sole discretion, to be necessary and/or appropriate (as further described below in Subparagraph 3.6). **Further, VENDOR hereby agrees, covenants and acknowledges that, as a condition of this Agreement, any and all Data Records delivered by VENDOR to NWMS hereunder must be “valid” and must constitute Valid Data and/or Valid Leads (as defined or described in this Subparagraph 2.6, including Sections (A) and (B) hereof), as the case may be, in order to be properly conveyed to NWMS in accordance with this Agreement.**

(A) **Invalidity Circumstances re Data and Leads**—VENDOR hereby agrees and acknowledges that any field of Data or any Lead will **not** be considered valid, and will be deemed “invalid”, in the event of any of the following circumstances:

(1) the field of Data or the Lead is generated, delivered or conveyed in breach of any term, condition or other provision of this Agreement; (2) the field of Data or the Lead does not conform to all specifications set forth in a confirmed and issued Accepted Insertion Order approved by NWMS (as provided for below in Subparagraph 3.1); (3) the field of Data or Lead is on a federal or state “**Do Not Call**” (“DNC”) list, “**Do Not E-mail**” (“DNE”) list, or other applicable suppression list, and does not fall within any legally recognized safe harbor guidelines; (4) the field of Data or the Lead is a duplicate of any field of Data or any Lead already contained within the NWMS Databases; (5) the field of Data or the Lead contains erroneous Consumer names or other erroneous Consumer Information; (6) the field of Data or the Lead is acquired or generated from an unlawful, rogue, fraudulent, counterfeit or questionable source [*e.g.*, SPAM e-mail], from online surveys or from incentive-based advertisements or promotions, which may include, without limitation, free merchandise, cash, coupons, discounts, drawings, sweepstakes and/or contests; (7) the field of Data or the Lead is aggregated, collected, compiled, generated, categorized, composed and/or organized in a manner that violates any applicable federal or state laws, rules or regulations; (8) the field of Data or the Lead is not appropriate or suitable for importation into the NWMS Databases; (9) the field of Data or the Lead fails to pass various quality assurance tests which NWMS may select to run in order to determine, for example, age, missing Data, insufficient or defective scrubbing, duplication, excessive multiple uses and overall quality of such field of Data or such Lead; and/or (10) the Lead does not have, or is not accompanied by, adequate or proper “Opt-In Information” (as defined below) showing that the Consumer in question made an authentic Consumer Request and gave his/her requisite express consent to be contacted.

(B) **Compatibility and Content of Data Records**—Vendor hereby agrees and acknowledges that, in order for any and all Data Records, which are subject to conveyance by VENDOR to NWMS under this Agreement, shall be, in all events, in a proper format such that the Data Records will be compatible with the NWMS Databases, and hence will be appropriate and suitable for receipt by, importation into, and storage and maintenance within the NWMS Databases. In addition, unless the Parties agree and specify otherwise in an Accepted Insertion Order approved by NWMS, in order for such Data Records to be deemed “valid” under this Agreement, and not be deemed “invalid”, the Data Records shall include (1) at least those certain necessary fields of Consumer Information described above in Subparagraphs 2.1 [insofar as Data are concerned] and 2.2 [insofar as Leads are concerned] (collectively, the “Content Fields”), and (2) adequate source and origin information describing or reflecting, for example, the IP addresses of any transmitting computer systems, any

other IP addresses, the source URLs, date/time stamps, acquisition information, registration information and other relevant source information about such Consumer Requests (collectively or individually, "Source Data"), at least insofar as Leads are concerned.

(C) Deficient Delivery of Data Records—In the event that VENDOR does not deliver all necessary, complete and correct Content Fields and/or Source Data to NWMS at the time any Data Record is originally delivered by VENDOR to NWMS, such failure may be deemed by NWMS, in its sole discretion, to constitute a breach of VENDOR's obligation to properly convey Data Records to NWMS in accordance with this Agreement, unless VENDOR immediately cures the failure by delivering a replacement Data Record containing all necessary, complete and correct Content Fields and/or Source Data ("Replacement Record(s)"), to NWMS upon NWMS's request therefor. The failure of VENDOR to immediately deliver any such Replacement Records so requested by NWMS may be deemed a breach of this Agreement if NWMS, in its sole discretion, declares it to be a breach; and in any event, such failure will discharge and excuse NWMS from any obligation to pay monetary fee compensation (as provided for below in Paragraph 4, or otherwise) for any Data Record in respect of which VENDOR has not immediately delivered Replacement Records to NWMS as required by this Section (C).

2.7 Opt-In. With respect to the conveyance of any Lead under this Agreement, "Opt-In" shall mean that a Consumer, or other actual or prospective recipient of a communication from or a contact by a Marketing Professional (as defined above), has expressly consented to receiving such communication from and/or being contacted by a Marketing Professional and/or to having his/her contact information distributed to Marketing Professionals or other third parties, by completing a Consumer Request (as defined above). In order to properly complete a Consumer Request, the Consumer must fill out and submit an online or offline legally compliant form reflecting such express consent, and/or acknowledge or confirm such express consent in a telephone conversation that has been lawfully recorded in writing or audio medium and safely maintained in storage by VENDOR or its own supplier of Data Records. Further, in order for VENDOR to satisfy its obligation to furnish NWMS with necessary information about each Consumer's Opt-In under this Agreement, VENDOR must demonstrate, and hereby represents and warrants, that it obtained each Consumer's Opt-In directly from such Consumer or from a reliable supplier thereof, who has made substantially the same representations and warranties; and VENDOR must furnish NWMS with the corresponding Source Data for each Lead delivered hereunder (collectively or individually, "Opt-In Information"). VENDOR hereby agrees and covenants that it shall maintain and safeguard current and appropriate records of all Source Data with respect to Opt-In Information on each Consumer, including, without limitation, each Consumer's contact information, and date and time information as to each Consumer's Opt-In for at least four (4) years after the termination of this Agreement. VENDOR acknowledges and agrees that if it fails to provide adequate proof of Consumer's Opt-In information at the time of, or before,

conveying Data Records to NWMS, VENDOR hereby agrees and covenants to immediately furnish any missing Opt-In Information to NWMS upon NWMS's request.

3. ORDERING AND CONVEYING OF DATA AND LEADS.

The Parties hereby agree and intend that from time to time during the Term, or any Renewal Term, subject to the terms, conditions and other provisions of this Agreement, NWMS, in its sole discretion, may submit specific orders (*i.e.*, "Insertion Orders," as defined below in Subparagraph 3.1) to VENDOR for the purpose of acquiring certain types of Data Records and certain rights thereto from VENDOR, and VENDOR, subject to its acceptance of such Insertion Orders as provided for herein, will convey Data Records to NWMS and certain rights to the Data and/or Leads contained therein—as described more specifically below in Subparagraph 3.3. With respect to those Insertion Orders accepted by VENDOR, the Parties hereby contemplate and intend that VENDOR shall grant to NWMS, in each case, either (a) a full and absolute ownership interest, together with all proprietary rights and title thereto [*i.e.*, by a "Sale"] (collectively, an "Ownership Interest"), or (b) alternatively, a license and/or sublicense, as the case may be, together with correlative usage rights thereto (collectively, a "License"), in and to those certain Data Records which are conveyed to NWMS hereunder either pursuant to such Sale, or alternatively pursuant to such License—as specified in an accepted Insertion Order (as described more specifically below in this Paragraph 3, including its Subparagraphs, for example, Subparagraph 3.3). Further, the Parties hereby agree, covenant and acknowledge that any such Data Records conveyed hereunder shall conform to a specific Insertion Order, and shall contain, respectively, specified types [*i.e.*, categories], qualities and quantities of Data Records as described in such Insertion Order. In all events, any and all Insertion Orders submitted by NWMS hereunder to VENDOR during the Term, or any Renewal Term, shall be transmitted pursuant to e-mail correspondence or telephone calls describing or setting forth the specifications of the Insertion Order that NWMS is submitting thereby to VENDOR as an offer, which VENDOR then may accept or reject, provided VENDOR does so in *writing* by issuing and returning to NWMS *via* e-mail or facsimile either an accepted Insertion Order ("Accepted Insertion Order") or a non-acceptance notification ("Non-Acceptance Notice"), as the case may be. Each such Accepted Insertion Order shall be subject to final approval by NWMS, and also shall be subject to the terms, conditions and other provisions of this Agreement, unless the Parties agree otherwise in *writing*.

(A) No Minimum Quantity, etc.—Notwithstanding anything appearing to the contrary in this Agreement, nothing herein shall obligate NWMS to submit Insertion Orders for any minimum quantity of Data Records [whether of any particular category or quality] on any given date or at any given time, or at all, or shall obligate VENDOR to accept and fill any Insertion Orders for any minimum quantity of Data Records [whether of any particular category or quality] submitted hereunder by NWMS on any given date or at any given time, or at all, or shall obligate VENDOR to convey any minimum quantity or any particular category or quality of Data Records to NWMS on any given date or at any given time, or at all, except as accepted by VENDOR in a duly issued Accepted Insertion Order which is approved by

NWMS (as provided for above in Paragraph 3). NWMS hereby confirms that it does not guarantee, warrant or represent, either expressly or by implication, that it will order a minimum quantity of Data Records [whether of any particular category or quality], through a Sale and/or a License, as the case may be, or otherwise, from VENDOR under this Agreement; and VENDOR hereby also agrees and acknowledges that NWMS does not make any such guarantee, warranty or representation and does not have any obligation to order any minimum quantity of Data Records [whether of any particular category or quality]— especially given, for example, fluctuations in market demand and variations as to the categories, qualities and quantities of Data and/or Leads available at any given time.

- (B) **Condition of Conveyance**—NWMS hereby agrees and acknowledges that the conveyance hereunder of any Data Records by VENDOR to NWMS, pursuant to either the corresponding Sale, or alternatively the corresponding License, shall be conditioned upon NWMS’s agreement to pay monetary fee “Compensation” (as defined below in Paragraph 4) therefor to VENDOR, in accordance with this Agreement (as provided for more specifically below in Paragraph 4, including its Subparagraphs).

3.1. Insertion Orders. The initial order and conveyance of certain Data Records containing specified categories, qualities and quantities of Data and/or Leads under this Agreement, as well as any subsequent orders for and conveyances of Data Records [*e.g.*, new, different or additional Data and/or Leads], shall be made in accordance with the procedures described in Paragraph 3 above. At the outset of the Term, by initially signing and submitting a copy of the Cover Sheet to this Agreement to NWMS, as well as issuing an Accepted Insertion Order to NWMS *via* e-mail or facsimile at about the same time, VENDOR hereby agrees and acknowledges that it will be deemed to have accepted, in *writing*, NWMS’s initial offer pursuant to its initial Insertion Order to acquire by conveyance certain Data Records, and to have agreed to and accepted all terms, conditions and other provisions of this Agreement. The Parties hereby agree and acknowledge that upon VENDOR’s issuing its acceptance of an Insertion Order [whether it be either the initial or any subsequent Insertion Order hereunder], such acceptance shall be deemed (a) to accept and agree to incorporate and contain the terms, conditions and other provisions of the specific Insertion Order submitted by NWMS, and (b) to constitute VENDOR’s binding agreement and obligation to satisfy and fill the Accepted Insertion Order in accordance with its terms, conditions and other provisions.

- (A) **Incorporation of this Agreement**—The Parties hereby agree and acknowledge that any and all Accepted Insertion Orders shall be deemed to fully incorporate the terms, conditions and other provisions of this Agreement, which shall apply to and govern such Accepted Insertion Orders, unless the Parties expressly agree otherwise in *writing*.

3.2 Time of Conveyance. Subject to the terms, conditions and other provisions of this Agreement, (a) for a conveyance payable on a “**Flat Fee**” basis (as described below in Subparagraph 4.1), on each occasion when VENDOR accepts an Insertion Order submitted by NWMS by issuing an Accepted Insertion Order, VENDOR hereby agrees and covenants that it shall convey the Data Records specified therein [*i.e.*, as to respective categories, qualities and quantities] to NWMS on the same day when NWMS confirms its final approval of such Accepted Insertion Order, unless otherwise agreed by NWMS in *writing*; but (b) on each occasion when VENDOR accepts an Insertion Order submitted by NWMS by issuing an Accepted Insertion Order for a conveyance hereunder payable on a “**Contingent Fee**” basis (as described below in Subparagraph 4.2), VENDOR hereby agrees and covenants that it shall convey the Data Records specified therein [*i.e.*, as to respective categories, qualities and quantities] to NWMS on whatever time schedule is agreed to by both Parties in the Accepted Insertion Order or otherwise in *writing*. Further, with respect to any Accepted Insertion Order issued by VENDOR, NWMS may initially give its approval under this Subparagraph 3.2 either by a telephone call or a telephone message to VENDOR, provided that NWMS thereafter promptly confirms its approval in an e-mail or facsimile transmitted to VENDOR.

3.3 Grant of Rights. Subject to the terms, conditions and other provisions of this Agreement, on each occasion of VENDOR’s issuance of an Accepted Insertion Order to NWMS, and concurrently with the conveyance to NWMS of those certain Data Records specified in such Accepted Insertion Order, VENDOR hereby acknowledges, and further agrees and covenants, that it shall grant, assign and transfer to NWMS either (a) a full and absolute Ownership Interest (as described above in Paragraph 3), or (b) a License (as described above in Paragraph 3), in and to all such specified Data Records. In the event of a Sale, VENDOR hereby agrees and covenants that the Sale shall grant, assign and transfer clear and unencumbered title vesting NWMS with an absolute Ownership Interest in and to those certain Data Records which are conveyed to NWMS hereunder. Alternatively, in the event of a License, VENDOR hereby agrees and covenants that the License shall constitute and also grant, assign and transfer a non-exclusive, perpetual, transferable and worldwide license and/or sublicense, as the case may be, together with the correlative usage rights [*e.g.*, unlimited rights to access, use, manage, market, convey, deliver, append and otherwise dispose of] in and to those certain Data Records specified in such Accepted Insertion Order, which are conveyed to NWMS hereunder— all in accordance with the specific terms, conditions and other provisions set forth in any such Accepted Insertion Order. Notwithstanding anything appearing to the contrary in this Agreement, the Parties hereby agree that each Accepted Insertion Order shall expressly include a statement as to whether VENDOR will grant, assign and transfer to NWMS **either** an above-described Ownership Interest [*i.e.*, by a Sale], or alternatively, an above-described License, in and to those certain Data Records specified in such Accepted Insertion Order, which are conveyed to NWMS hereunder in accordance with either a Sale of such Ownership Interest, or alternatively, a grant, assignment and transfer of such License, as the case may be.

- (A) **Duration of NWMS’s Use**— Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that with respect to any Data Records conveyed to NWMS hereunder, pursuant either to the Sale of an Ownership Interest, or the grant, assignment and transfer of a

License, as the case may be, NWMS's rights to such Data Records shall not be limited in time and shall be perpetual after the conveyance thereof to NWMS (the "Use Duration Period"), unless otherwise expressly agreed by NWMS in *writing* with respect to a License. In the event the Term, or any Renewal Term, of this Agreement expires without extension or renewal or is canceled or terminated, the terms, conditions and other provisions of this Agreement shall continue in effect and remain applicable (1) with respect to any Data Records whose respective Use Duration Period will not expire, has not expired or has not been canceled or terminated, and (2) with respect to each Party's respective rights and obligations hereunder that pertain to any such Data Records, until the expiration, cancellation or termination of the applicable Use Duration Period, in such event.

3.4 Permissible Uses of Data Records. VENDOR hereby agrees and acknowledges that it hereby fully and without qualification authorizes and permits NWMS, in its sole and absolute discretion, to use all the Data Records, which are conveyed hereunder, as follows: (a) for any of the business purposes described in Paragraph A above of the Recitals to this Agreement, and for any other lawful business purposes, as elected by NWMS in its sole discretion; (b) for purposes of sale, re-sale, licensing, re-licensing, sub-licensing, assignment, leasing, renting, sharing, exporting and/or forwarding of any such Data Records, as the case may be, to NWMS's clients or other third parties [depending upon whether NWMS obtains an Ownership Interest or a License from VENDOR]; (c) for purposes of enhancing, improving, merging [with other Data], modifying, appending and/or updating the Data Records contained within the NWMS Databases or within the databases of any of NWMS's clients or those of any other third parties; (d) for purposes of encumbering, hypothecating, pledging, financing, transferring and/or otherwise disposing of any such Data Records [e.g., transferring Data Records to any NWMS clients or other third parties], unless expressly prohibited by VENDOR in accordance with this Agreement; (e) for purposes of NWMS's lawfully accessing any such Data Records on VENDOR's website and/or databases for management or maintenance of such Data Records, or the importation of such Data Records into the NWMS Databases, subject to the terms, conditions and other provisions of this Agreement; (f) for the purposes of listing the availability of any Data Records on Marketing Information Network ("MIN"), Standard Rate and Data Source ("SRDS"), and/or NextMark; and/or (g) for the purposes of creating *data cards* promoting and marketing any Data Records on any of NWMS's Websites with the objective of enlisting clients for NWMS who have an interest in the direct mailing [via USPS] of any such Data Records.

3.5 Restrictions on VENDOR'S Use of NWMS Websites. VENDOR hereby agrees, acknowledges and covenants that: (a) it may not, and shall not, access, exploit or use or attempt to access, exploit or use any NWMS Website for its own commercial purposes, except to facilitate the conveyance of Data Records to NWMS in accordance with this Agreement; (b) it may not, and shall not, dispose of or use any Insertion Order, or any acceptance thereof, download any Data Records from any NWMS Website, and/or use any downloaded or otherwise conveyed Data Records, in whole or in part, for any purpose that is unlawful, or is unauthorized or prohibited by or in accordance with this Agreement; (c) it may not, and shall not, modify, copy, distribute, transmit, display, reproduce, publish, license, re-license, sub-license,

create derivative works from, frame in another webpage, use on any other website, convey, exploit, transfer, sell, re-sell, rent, lease, encumber, hypothecate, pledge, finance, transfer and/or otherwise dispose of any NWMS lists of Consumers, any NWMS lists of its clients, any NWMS Data Records acquired by NWMS from any other vendor or third-party supplier, and/or any other NWMS Consumer Information generated or originated by NWMS independently of VENDOR or acquired by NWMS from any other vendor or third-party supplier, that has been furnished through or obtained from, or become accessible on, one or more of the NWMS Websites, or otherwise obtained from NWMS or under this Agreement, except with the express authorization of NWMS in *writing* and for purposes entirely in accordance with this Agreement; (d) it may not, and shall not, engage in the practices of screen scraping, database scraping, and/or any other activity for the purpose of obtaining any NWMS lists of Consumers, any NWMS lists of its clients and/or any other NWMS Consumer Information contained within any NWMS Data Records and/or any NWMS Databases; (e) it may not, and shall not, use any of the NWMS Websites in any manner that could corrupt, damage, disable, overburden, or impair any of the NWMS Websites or interfere with NWMS's use and commercial operation of any of the NWMS Websites; (f) except with the express authorization of NWMS in *writing*, it may not, and shall not, access or attempt to access password protected, secure and/or non-public areas of any of the NWMS Websites; and (g) it may not, and shall not, copy, infringe, appropriate, violate and/or use unlawfully any proprietary or trade secret information embodied within and/or constituting any NWMS Website.

3.6 Data/Leads Validation. With respect to any Data Records delivered by VENDOR to NWMS under this Agreement, VENDOR hereby agrees and acknowledges that NWMS shall have the right, with or without prior notice to VENDOR, to elect, in its sole discretion, to put any such Data Records through a validation test and/or process during the Term, or any Renewal Term, or thereafter. If NWMS so elects, the validation test and/or process shall be conducted and/or directed solely by NWMS, in accordance with its own proprietary systems, standards and practices, or in accordance with a reasonably accurate validation test and/or process conducted by any third party validator under contract with NWMS. Further, VENDOR hereby agrees and acknowledges that upon completion of any such validation test and/or process, NWMS reserves, and shall have, the sole right and discretion to determine, in good faith, whether any Data constitutes Valid Data and/or whether any Lead constitutes a Valid Lead. If NWMS determines, in its sole discretion, that any Data or any Lead does **not** satisfy its validity criteria (as described above in Subparagraph 2.6) for constituting Valid Data or a Valid Lead, NWMS shall have the right to elect, in its sole discretion, to reject any such Data and/or any such Lead, as provided for below in Sections (A), (B), (C) and (D) of this Subparagraph 3.6.

(A) Rejection Reports for "Flat Fee" Transactions—This Section (A) shall be applicable to each case where a Data Record in question has been delivered to NWMS during the Term, or any Renewal Term, on a "Flat Fee" basis (as defined below in Subparagraph 4.1). In the event NWMS elects to put a Data Record through a validation test and/or process (as described above in Subparagraphs 2.6 and 3.6; usually in combination with multiple fields of Data and/or multiple Leads), and then determines that it does **not** satisfy NWMS's

validity criteria (as described above in Subparagraph 2.6) for constituting Valid Data and/or a Valid Lead, as the case may be, NWMS may elect, in its sole discretion, whether to reject the Data Record in question. Upon any such rejection, insofar as NWMS has the technical capability at the time, NWMS shall promptly issue and e-mail a rejection report to VENDOR (1) setting forth the quantity of the rejected Data and/or the rejected Leads, together with a corresponding identification by each general category [e.g., life insurance, mortgage financing] of the rejected Data Records in question, pursuant to a Flat Fee transaction, and (2) also containing a brief description of the reason for the rejection (a “Rejection Report”). Ordinarily in such a Flat Fee transaction, whenever NWMS issues a Rejection Report to VENDOR, NWMS will endeavor to issue and e-mail the Rejection Report to VENDOR within 30 minutes after making its election to reject the Data and/or the Lead in question, on the same day when VENDOR delivered the Data Records in question, which were rejected by NWMS on such day. However, in all events in the case of a rejection, insofar as NWMS has the technical capability at the time, NWMS shall exercise best efforts to issue a Rejection Report to VENDOR and to return any rejected fields of Data and/or any rejected Lead to VENDOR, not later than twenty-four (24) hours after making its election to reject. In addition, at or about the end of each month of the Term, or any Renewal Term, insofar as NWMS has the technical capability at the time, NWMS ordinarily shall issue and e-mail a monthly Rejection Report to VENDOR summarizing any and all information contained in whatever Rejection Reports that may have been issued to VENDOR during such month just ended (a “Periodic Rejection Report”). Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that NWMS reserves, and shall have, the sole right and discretion to elect to periodically issue and e-mail Periodic Rejection Reports to VENDOR either less frequently or more frequently than each month of the Term, or any Renewal Term, provided that in the event NWMS elects to issue any Periodic Rejection Report less frequently than each such month, NWMS shall give *written* notice of such election to VENDOR at the end of each such month in question.

- (B) Rejection Reports for “Contingent Fee” Transactions—** This Section (B) shall be applicable to each case where a Data Record in question has been delivered to NWMS during the Term, or any Renewal Term, on a “Contingent Fee” basis (as defined below in Subparagraph 4.2). In the event NWMS elects to put a Data Record through a validation test and/or process (as described above in Subparagraphs 2.6 and 3.6; usually in combination with multiple fields of Data and/or multiple Leads), and then determines that it does **not** satisfy NWMS’s validity criteria (as described above in Subparagraph 2.6) for constituting Valid Data and/or a Valid Lead, as the case may be, NWMS may elect, in its sole discretion, whether to reject the Data Record in question. Upon any such rejection,

insofar as NWMS has the technical capability at the time, NWMS shall ordinarily issue and e-mail a monthly Rejection Report [without the necessity of describing any reason for the rejection] to VENDOR at or about the end of the month of the Term, or any Renewal Term, during which NWMS received such Data Record in question (also, a “Periodic Rejection Report”). This Periodic Rejection Report shall summarize any and all information about the quantity and general category of any and all rejected Data Records, respectively, which is similar to the kind of information described in clause (1) of Section (A) above with respect to any Data Records, which were rejected by NWMS during the same month in question when such Data Records were delivered by VENDOR to NWMS. Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that NWMS reserves, and shall have, the sole right and discretion to elect to periodically issue and e-mail Periodic Rejection Reports to VENDOR either less frequently or more frequently than each month of the Term, or any Renewal Term, provided that in the event NWMS elects to issue any Periodic Rejection Report less frequently than each such month, NWMS shall give *written* notice of such election to VENDOR at the end of each such month in question.

- (C) Rejection Reports re Multiple Data Records—**This Section (C) shall be applicable to both “Flat Fee” and “Contingent Fee” transactions (as described above in Sections (A) and (B), respectively), in the event that NWMS elects to reject any Data Records as provided for above in Section (A) and/or Section (B), as the case may be. Insofar as NWMS has the technical capability at the time, NWMS ordinarily shall issue and e-mail each Rejection Report to VENDOR [whether ordinarily issued only on the same day as the conveyance (per Section (A)) or ordinarily issued monthly during the same month as the conveyance (per either Section (A) or (B))] in combination with, and as part of a group of, multiple Rejection Reports [*i.e.*, reports collectively covering multiple rejected Data Records]. In addition, insofar as NWMS has the technical capability at the time, NWMS from time to time [whether ordinarily daily for only Flat Fee transactions, or whether ordinarily monthly for either Flat Fee or Contingent Fee transactions], ordinarily shall aggregate and group any such combination of daily or monthly multiple Rejection Reports, as the case may be, into a discrete and comprehensive electronic summary, as determined by NWMS, in its sole discretion, setting forth information about both the quantity and general category of any and all rejected Data Records, respectively, which is similar to the kind of information described in clause (1) of Section (A) above, but on a grouped basis for multiple rejected Data Records (collectively or individually, sometimes referred to herein as a “Group Rejection Report”). Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that NWMS reserves, and shall have, the sole

right and discretion to elect to issue and e-mail Group Rejection Reports to VENDOR less frequently than daily (per Section (A)), or either less frequently or more frequently than monthly (per either Section (A) or (B)) during the Term, or any Renewal Term, as the case may be.

(D) **Acceptance/Rejection Reports**—With respect to each case where a Data Record has been delivered to NWMS during the Term, or any Renewal Term, whether on a “Flat Fee” basis (as defined below in Subparagraph 4.1), or on a “Contingent Fee” basis (as defined below in Subparagraph 4.2), NWMS may elect, in its sole discretion, whether to accept such Data Record if it constitutes Valid Data and/or a Valid Lead that satisfies NWMS’s validity criteria (as described above in Subparagraph 2.6). In the event of any such acceptance, insofar as NWMS has the technical capability at the time, NWMS ordinarily shall prepare a monthly acceptance report at or about the end of each month of the Term, or any Renewal Term, in conjunction with each Periodic Rejection Report, which shall generally describe the respective quantities and categories of any and all Data Records accepted by NWMS during the month in question (a “Periodic Acceptance Report”). Further, in its sole discretion, NWMS may consolidate each Periodic Rejection Report and each Periodic Acceptance Report into a single comprehensive monthly report for each month in question, generally summarizing and listing any and all rejections and acceptances with respect to such month (a “Periodic Acceptance/Rejection Report”). Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that (1) in lieu of issuing a Periodic Rejection Report to VENDOR for each month of the Term, or any Renewal Term, NWMS may, in its sole discretion, issue and e-mail a Periodic Acceptance/Rejection Report to VENDOR at or about the end of any month of the Term, or any Renewal Term, during which VENDOR conveyed Data Records to NWMS, which NWMS made its election to accept, and (2) NWMS reserves, and shall have, the sole right and discretion to elect to periodically issue and e-mail Periodic Acceptance/Rejection Reports to VENDOR either less frequently or more frequently than each month of the Term, or any Renewal Term.

(E) **NWMS’s Reserved Acceptance Discretion**—Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that NWMS reserves, and shall have, the sole right and discretion to determine whether to accept or reject any Data Record, regardless of whether the Data Record has satisfied NWMS’s validity criteria (as described above in Subparagraph 2.6) pursuant to any validation tests and/or processes conducted and/or otherwise undertaken in accordance with this Agreement—unless otherwise specified in an Accepted Insertion Order approved by NWMS in accordance with this

Agreement.

3.7 Delivery Protocols For Data Records. VENDOR hereby agrees and covenants that all Data Records, which are subject to conveyance to NWMS pursuant to an Accepted Insertion Order under this Agreement, shall be delivered or otherwise made readily available to NWMS for import into its Databases by one or more of the following channels of communication: (a) by delivery *via* e-mail as an attachment; (b) by ready accessibility *via* a link to an FTP location [thereby permitting an instant download of the Data Records therefrom]; (c) by ready accessibility online through a file hosting or file sharing application service [*e.g.*, www.dropbox.com, www.hightail.com, www.box.com, www.sharefile.com]; and/or (d) by delivery *via* a commercial carrier or the United States Postal Service (“USPS”) in an external hard drive container. Further, VENDOR hereby agrees and covenants that it shall format all such Data Records in a .CSV format [*i.e.*, a comma separated value format], or in an .XLS format [*i.e.*, an Excel spreadsheet file].

4. PAYMENT OF MONETARY FEE COMPENSATION. Subject to the terms, conditions and other provisions of this Agreement, the Parties hereby agree, contemplate and intend that, as consideration for any Data Records conveyed by VENDOR to NWMS from time to time during the Term, or any Renewal Term, in accordance with this Agreement, and the rights thereto which are set forth in, and granted, assigned and transferred to NWMS in accordance with this Agreement, NWMS will pay monetary fee compensation in U.S. Dollars to VENDOR (“Compensation”). The Compensation shall be either a “Flat Fee” or a “Contingent Fee” (as defined, respectively, below in Subparagraphs 4.1 and 4.2), as may be agreed by the Parties and as indicated on the Cover Sheet, pursuant to the following Subparagraphs of this Paragraph 4 as may be applicable. It shall be a condition precedent of payment of any Compensation for a conveyance of Data Records hereunder that the applicable Accepted Insertion Order must be properly issued hereunder by VENDOR in response to an Insertion Order properly issued hereunder by NWMS, and must be approved by NWMS in accordance with this Agreement during the Term, or any Renewal Term. Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby acknowledges and agrees that only Valid Data and only Valid Leads, as determined by NWMS in accordance with this Agreement, shall be eligible for Compensation hereunder.

4.1. Flat Fee Compensation. In the event NWMS initially submits any Insertion Order hereunder on or about the Effective Date, payable on the basis of a specific Flat Fee per Data Record, or any combination thereof, NWMS hereby agrees and covenants to pay VENDOR fixed Compensation in the form of a Flat Fee [*i.e.*, a fixed price fee] (“Flat Fee”) per Data Record conveyed to NWMS [*i.e.*, on a specific Flat Fee per Data Record basis] — provided the Data Records being delivered to NWMS hereunder conform to the specifications as to the category, quality and quantity set forth in the applicable corresponding Accepted Insertion Order (as provided for above in Paragraph 3) and otherwise satisfy NWMS’s validity criteria (as described above in Subparagraph 2.6). In the event NWMS desires to order additional Data Records and to submit any additional Insertion Orders to VENDOR on a Flat Fee basis after the Effective Date, and so notifies VENDOR, the Parties hereby agree and covenant that the above provisions of this Subparagraph 4.1 generally shall govern NWMS’s obligation to pay Compensation to VENDOR and that they shall negotiate with each other promptly on a case-by-case basis about reaching

a mutual agreement on any such Insertion Orders regarding (a) the categories of the additionally ordered Data Records, (b) the quality thereof, (c) the quantity thereof, (d) the specific Flat Fee price charged therefor, and (e) any specifications, terms or other provisions which otherwise may be set forth and confirmed in any Accepted Insertion Order issued by VENDOR and approved by NWMS.

(A) Method and Time of Payment— On or about the same day [insofar as practical] as specified in a given Accepted Insertion Order issued by VENDOR to NWMS for a Flat Fee transaction which has been approved by NWMS, all to be in accordance with Paragraph 3 above, and for which VENDOR has conveyed Data Records to NWMS in order to fill and satisfy the specifications of such Accepted Insertion Order, NWMS hereby agrees and covenants that it shall issue full payment in U.S. Dollars to VENDOR as Compensation for all Data Records conveyed hereunder and conforming to such Accepted Insertion Order; but the payment shall be subject to a deduction for any Data Records rejected or not accepted by NWMS in accordance with this Agreement. NWMS, in its sole discretion, may remit such payment by check, by credit card [*i.e.*, VISA, MasterCard or American Express], by PayPal, by wire transfer or by direct deposit of funds to VENDOR’s bank account, by money gram, and/or through Western Union, unless otherwise reasonably specified by VENDOR in *writing*. Ordinarily, NWMS anticipates that it will remit payment on or before two (2) business days after its issuance to VENDOR of a “Rejection Report” (as defined above in Section (A) of Subparagraph 3.6), unless otherwise specified in the relevant Accepted Insertion Order, as approved by NWMS in accordance with this Agreement. In all events, notwithstanding anything appearing to the contrary in this Agreement, it shall be a condition precedent of payment of Flat Fee Compensation for any Data Records delivered hereunder to NWMS that they shall conform to the specifications as set forth in each such Accepted Insertion Order, as approved by NWMS in accordance with this Agreement.

4.2 Contingent Fee Compensation. In the event NWMS initially submits any Insertion Order hereunder on or about the Effective Date, payable on the basis of a Contingent Fee per Data Record, or any combination thereof, NWMS hereby agrees and covenants to pay VENDOR Compensation in the form of a Contingent Fee [*i.e.*, a revenue sharing fee] (“Contingent Fee”), per Data Record conveyed to NWMS [*e.g.*, on a specific Contingent Fee per Data Record basis], in the amount of fifty percent (50%) of the “Net Revenues” (as defined below in this Subparagraph 4.2) actually earned thereby and actually received by NWMS, which directly arise from or are directly generated by each and every completed and final transaction whereby NWMS actually has realized revenues from conveying such Data Records to its clients or other third parties (*i.e.*, “*monetized*” Data Records) — provided the Data Records being delivered to NWMS hereunder conform to the specifications as to the category, quality and quantity set forth in the applicable corresponding Accepted Insertion Order (as provided for above in Paragraph 3) and otherwise satisfy NWMS’s validity criteria (as described above in Subparagraph 2.6). “Net Revenues” shall be defined as the remainder balance left after deducting (a) any direct costs actually incurred by NWMS in trying to assure that each such Data Record conveyed by

NWMS is in compliance with applicable law [*e.g.*, scrubbing of DNC Consumer Information from any Data Record being conveyed; attorney fees and other legal expenses resulting from or for dealing with illegitimate or otherwise invalid Data Records], and (b) any refunds that NWMS makes to its clients or any other third parties on any such Data Records for any reason whatsoever. Notwithstanding anything appearing to the contrary in this Subparagraph 4.2 or elsewhere in this Agreement, NWMS shall not be obligated to pay any Contingent Fee Compensation hereunder on a particular transaction with one of its clients or other third party unless and until NWMS has closed it as a completed and final *monetized* Data Records transaction for the delivery of Data Records, whereby NWMS actually has been paid in full in U.S. Dollars for such delivery by NWMS’s client or other third party. [For example, if NWMS receives \$20.00 in Net Revenues for the delivery of a Lead (previously conveyed by VENDOR to NWMS hereunder) to one of its clients, or other third party, NWMS then would be obligated to remit \$10.00 to VENDOR pursuant to this Subparagraph 4.2 if, and only if and after, NWMS actually has received the proper revenue amount due from its client or other third party and such amount is not subject to refund or any other reduction adjustment]. VENDOR hereby agrees and acknowledges that NWMS is only obligated to pay VENDOR Contingent Fee Compensation for Net Revenues actually earned and received by NWMS within (i) a period of six (6) months after the date when the Data Records were conveyed hereunder to NWMS; or (ii) six (6) months after the last date when VENDOR has provided NWMS with an update of any of the Opt-In Information or other relevant Consumer Information for the relevant Data Records, which VENDOR had previously conveyed to NWMS. In the event NWMS desires to order additional Data Records and to submit any additional Insertion Orders to VENDOR on a Contingent Fee basis after the Effective Date, and so notifies VENDOR, the Parties hereby agree and covenant that the above provisions of this Subparagraph 4.2 generally shall govern NWMS’s obligation to pay Compensation to VENDOR and that they shall negotiate with each other promptly on a case-by-case basis about reaching a mutual agreement in respect of any such Insertion Orders regarding (a) the categories of the additionally ordered Data Records, (b) the quality thereof, (c) the quantity thereof, and (d) any specifications, terms or other provisions which otherwise may be set forth and confirmed in any Accepted Insertion Order issued by VENDOR and approved by NWMS.

(A) No Minimum Monetization—With respect to Data Records which VENDOR has conveyed to NWMS on a Contingent Fee basis pursuant to the above Subparagraph 4.2, notwithstanding anything appearing to the contrary above in Subparagraph 4.2 or elsewhere in this Agreement, nothing herein shall obligate NWMS to *monetize*, market, promote, distribute, deliver, transfer, sell, re-sell, license, re-license or sublicense, and/or otherwise dispose of (sometimes referred to collectively, or individually, as “Market”) any minimum quantity of Data Records, on any given date or at any given time, or at all, to its clients or other third parties. Further, VENDOR hereby agrees and acknowledges that NWMS is not required hereunder to guarantee or represent, and NWMS hereby does not guarantee or represent, either expressly or by implication, that it will Market, with the intent and goal to *monetize*, any minimum quantity of such Data Records, on any given date or at any given time, or at all, to its clients or other third parties. In this

connection, VENDOR hereby also agrees and acknowledges that NWMS does not have any obligation to Market or monetize any minimum quantity of such Data Records, in order to realize any certain minimum amount of Net Revenues.

(B) Method and Time of Payment—As specified in a given Accepted Insertion Order issued by VENDOR to NWMS for a Contingent Fee transaction which has been approved by NWMS, all to be in accordance with Paragraph 3 above, and for which VENDOR has conveyed Data Records to NWMS in order to fill and satisfy the specifications of such Accepted Insertion Order, NWMS hereby agrees and covenants that it shall issue full payment in U.S. Dollars to VENDOR as Contingent Fee Compensation [as provided for above in Subparagraph 4.2] for all Data Records conveyed hereunder and conforming to such Accepted Insertion Order; but the payment shall be subject to a deduction for any Data Records rejected or not accepted by NWMS in accordance with this Agreement. NWMS, in its sole discretion, may remit such payment by check, by credit card [*i.e.*, VISA, MasterCard or American Express], by PayPal, by wire transfer or by direct deposit of funds to VENDOR’s bank account, by money gram, and/or through Western Union, unless otherwise reasonably specified by VENDOR in *writing*. Ordinarily, NWMS will remit payment of Contingent Fee Compensation to VENDOR on or before the fifth (5th) business day after the end of each monthly or bimonthly period, which NWMS has elected for payment remittance purposes with respect to Data Records monetized during each such period, unless otherwise specified in the relevant Accepted Insertion Order, as approved by NWMS in accordance with this Agreement. In all events, notwithstanding anything appearing to the contrary in this Agreement, it shall be a condition precedent of payment of Contingent Fee Compensation for any Data Records delivered hereunder to NWMS that they shall conform to the specifications as set forth in each such Accepted Insertion Order, as approved by NWMS in accordance with this Agreement.

(C) Exception for Samples—Notwithstanding anything appearing to the contrary in this Agreement, NWMS hereby reserves the right, at any time, to furnish, loan, deliver and/or otherwise transfer *free* samples of certain Data Records, which previously were conveyed to NWMS by VENDOR on a Contingent Fee basis in accordance with this Subparagraph 4.2 and which have been selected by NWMS in its sole discretion (individually or collectively, “Samples”), to current or prospective NWMS clients or other third parties—without payment of any monetary or other consideration to NWMS, for the principal purposes of (1) marketing and promoting the eventual monetization of Data Records and/or (2) reasonably demonstrating or supporting the commercial use of Data Records. VENDOR hereby agrees and acknowledges that NWMS is not obligated to require or receive any monetary or

other consideration in exchange for furnishing, loaning, delivering and/or otherwise transferring such Samples as described in this Section (C); and as such, VENDOR further hereby agrees and acknowledges that NWMS shall not be obligated to pay VENDOR any Contingent Fee or other Compensation for so furnishing, loaning, delivering and/or otherwise transferring such Samples.

4.3 Adjustments for Errors. The Parties hereby acknowledge and agree that NWMS, at any time within thirty (30) calendar days after VENDOR’s delivery of any Data Records to NWMS hereunder, shall have the right and discretion to notify VENDOR in a *written* report of any nonconforming Data Records [*e.g.*, Data Records which do not conform to specifications in their respective Accepted Insertion Orders, as approved by NWMS], any Data errors [*e.g.*, any disconnected phone number, any wrong phone number, any Leads not matching desired filters, any bogus Data] regarding either these nonconforming or erroneous Data and/or Leads contained, respectively, within such Data Records (sometimes referred to herein as a “Rejection Report”). The submission by NWMS of a Rejection Report to VENDOR pursuant to this Subparagraph 4.3 shall be deemed to conclusively constitute such Notice (see definition below in Paragraph 16) of a rejection. After VENDOR’s receipt of such Notice from NWMS of any such nonconforming Data Records and/or any such errors, the Parties hereby acknowledge and agree that VENDOR shall have five (5) calendar days (the “Cure Period”) to make appropriate adjustments in order to cure or correct [without itself incurring cost, liability or penalty] any such nonconformity or error by, for example, correcting any such nonconforming Data Records or any such errors therein and/or by replacing the nonconforming or erroneous Data Records, and/or by refunding any Compensation actually paid by NWMS for the nonconforming or erroneous Data Records. In the event that VENDOR does not cure or correct such nonconformity or error within the Cure Period, NWMS shall be entitled to all available rights and remedies resulting from such nonconformity or error, as are permissible under this Agreement.

5. RIGHT TO AUDIT AND RECORD KEEPING.

5.1 Record Keeping: Right to Audit. Notwithstanding anything appearing to the contrary in this Agreement, the Parties hereby acknowledge and agree that the audit rights and procedures set forth in this Subparagraph 5.1 shall only be applicable to those Data Records, which are conveyed by VENDOR to NWMS hereunder on a Contingent Fee basis (as provided for above in Subparagraph 4.2). In this connection, NWMS hereby agrees and covenants to keep and maintain at its business office(s) during the Term, and any Renewal Term, and for at least twenty-four (24) calendar months after the conveyance of any Data Records to NWMS hereunder, proper, accurate and usual (*i.e.*, usual for the data/leads marketing and monetization industry) books, accounts, records and other materials (collectively, “Transaction Records”) covering transactions during the Term, and any Renewal Term, pursuant to this Agreement between VENDOR and NWMS and between NWMS and its clients or other third parties, which pertain to such Data Records. These Transaction Records shall include, without limitation, the following documents [either in electronic or hard copy form]: (a) copies of Accepted Insertion Orders that reflect the general category, quality and quantity of Data

Records conveyed hereunder to NWMS by VENDOR, which NWMS actually has delivered to its clients or other third parties in exchange for monetary compensation; and (b) copies of NWMS's invoices, receipts and other financial records, and also NWMS's correspondence, files and other materials with its clients or other third parties, which pertain to and reflect the gross revenues and Net Revenues actually earned and received by NWMS from the delivery of any such Data Records to its clients and/or other third parties (collectively, the records in clauses (a) and (b) are sometimes also referred to herein, collectively, as the "Transaction Records").

- (A) **Requesting an Audit**—VENDOR may request an audit of Transaction Records ("Audit") for a period of time of up to six (6) calendar months during the Term, or any Renewal Term, immediately prior to the Audit request, including the calendar month just ended before such request (the "Audited Period"). As a condition precedent to having an Audit performed under this Agreement, VENDOR must request the Audit in *writing* and in good faith (i) within fifteen (15) calendar days after the issuance by NWMS of the monthly Revenue Report to VENDOR, for the immediately prior calendar month then ended during the Term, or any Renewal Term, or (ii) within thirty (30) calendar days after the expiration, cancellation or termination of this Agreement. ["Revenue Report" shall mean a monthly report prepared by NWMS which reflects the Net Revenues, together with a listing as to the general category and corresponding quantity of all Data Records conveyed to NWMS by VENDOR pursuant to this Subparagraph 4.2, that were monetized through transactions between NWMS and its clients or other third parties, during such immediately prior calendar month during the Term, or any Renewal Term.] Upon the timely delivery to it of VENDOR's request for an Audit hereunder, NWMS shall promptly make Transaction Records for the calendar month(s) in question constituting the Audited Period, reasonably available for an Audit to be performed by an independent third party accounting firm (the "Auditor") mutually agreed upon by the Parties. VENDOR may not request an Audit, or have an Audit performed, more than two (2) times per a given calendar year during the Term, or any Renewal Term. **Notwithstanding anything appearing to the contrary in this Agreement (e.g., Subparagraph 5.1, Sections (A) and (B)), (1) VENDOR shall not have any right to request an Audit or to have an Audit performed unless the total Net Revenues, which VENDOR would be entitled to receive hereunder for each calendar month of the Audited Period which is to be audited, reasonably appear to be and are more than \$5,000.00; but (2) VENDOR shall not have any right to request an Audit during the first four (4) full calendar months of the Term following the Effective Date.**

- (B) **Method of Audit**—In any Audit hereunder, the Auditor shall have the right to access, inspect and copy only such Transaction Records that pertain to, contain and/or reflect the

general category and corresponding quantity of, and gross revenues and Net Revenues actually earned and generated from, any and all Valid Data and/or Valid Leads, which were conveyed by VENDOR to NWMS during the calendar month(s) constituting the Audited Period and which NWMS has delivered to its clients or other third parties. Such Transaction Records shall be reasonably sufficient to allow the accurate calculation of the total amount payable to VENDOR as Contingent Fees for such Audited Period, as provided for by this Agreement. The Audit shall be performed on at least five (5) business days *written* notice to NWMS and only during NWMS's ordinary business hours and in such a manner as not to disrupt NWMS's ordinary business operations. At the conclusion of the Audit, the Auditor shall disclose to VENDOR and NWMS whether a monthly Revenue Report in question is correct or incorrect. If any such Revenue Report is found to be correct, the Audit report shall be limited to a *written* confirmation of the same. However, if any such Revenue Report is found to be incorrect, the Audit report shall state whether the Revenue Report was understated or overstated, and shall also indicate the amount of any overpayment or underpayment of Contingent Fees owed to VENDOR for the Audited Period. In the event the Audit reveals an underpayment of Contingent Fees owed to VENDOR, NWMS hereby agrees and covenants that shall remit payment in an amount equal to such underpayment of Contingent Fees to VENDOR within seven (7) business days thereafter; but in the event the Audit reveals an overpayment of Contingent Fees to VENDOR, VENDOR hereby agrees and covenants that it shall remit a refund payment in an amount equal to such overpayment to NWMS within seven (7) business days thereafter. The entire cost of any such audit shall be paid upfront by VENDOR prior to commencement of such audit, and shall be borne solely by VENDOR if there has been any overpayment of Contingent Fees. If NWMS has underpaid Contingent Fees owed to VENDOR hereunder by more than 15% of the amount owed for the Audited Period and if the amount of such underpayment is more than the costs of such audit, NWMS will reimburse VENDOR in full for the amount that VENDOR paid upfront for the cost of such audit; but otherwise, VENDOR shall be responsible for paying the entire cost of such audit.

- (C) **Limited Purpose of Audit**—Notwithstanding anything appearing to the contrary in this Agreement, VENDOR hereby agrees and acknowledges that the sole purpose of any Audit performed under this Paragraph 5 shall be to verify NWMS's compliance with the Contingent Fee provisions of this Agreement (as provided for above in Subparagraph 4.2). Accordingly, Auditor shall not provide or disclose to VENDOR any of NWMS's Confidential Information (as defined in Subparagraph 8.2) relating to the identities of NWMS's clients, NWMS's bank account statements,

NWMS's tax documents and/or any other NWMS financial information that NWMS informs the Auditor it ordinarily maintains in confidence. Any Transaction Records or other NWMS information inspected, reviewed, copied and/or obtained during the course of an Audit performed hereunder shall be used solely for the purposes of (1) determining whether NWMS has paid the proper amount of Contingent Fees for the Audited Period in question in compliance with this Agreement, and (2) enforcing VENDOR's rights to be paid the proper amount of Contingent Fees due for the Audited Period in question in compliance with this Agreement. Except insofar as necessary to enforce VENDOR's above-described rights to be paid the proper amount of Contingent Fees, VENDOR hereby agrees and covenants that it and the Auditor shall maintain, keep and hold all such Transaction Records and such other information in strict confidence, and VENDOR is prohibited from disclosing such Transaction Records to any third parties or from using them for any other purpose.

6. WARRANTIES AND REPRESENTATIONS.

6.1. Mutual Representations and Warranties. Each Party, respectively, hereby agrees, represents and warrants to the other Party, that: (a) this Agreement has been duly and validly executed and delivered and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms, conditions and other provisions hereof; (b) it has full power and authority to enter into this Agreement and to perform its respective obligations hereunder; (c) the execution and performance by it of this Agreement and the consummation by it of the transactions contemplated hereby will not, with or without the giving of notice, the lapse of time, or both, conflict with or violate any other agreement applicable to it or binding upon its respective properties and/or other assets; (d) any and all Data Records, which are conveyed or delivered by VENDOR hereunder, have not and will not be used, to promote sexually explicit materials, child pornography, violence, invidious or unlawful discrimination [e.g., racial, ethnic, religious or gender bigotry] or any other kind of unlawful activity; (e) its websites, as the case may be, are not designed or intended to promote, and will not operate or maintain any of its website in order to undertake or do thereon, any of the things or activities described in clause (d) above of this Subparagraph 6.1; (f) to the best of its actual knowledge, VENDOR will not transmit to NWMS anything containing any viruses, "Trojan horses," "worms," "time bombs," "cancelbots," or other computer codes that will tend to, or are intended to, damage, corrupt, detrimentally interfere with, misappropriate, "hack" into or surreptitiously disrupt, interrupt or degrade any system, databases [e.g., NWMS's Databases], data [e.g., NWMS's Data Records or VENDOR's counterparts thereof] or personal information; (g) to the best of its actual knowledge, its website and databases, as the case may be, do not contain or include any content [e.g., NWMS's Data Records] that is unlawful, threatening, defamatory, disparaging, obscene, pornographic, racially or ethnically offensive or objectionable, or invidiously or unlawfully discriminatory based upon race, ethnicity, religion, gender, nationality or orientation; and (h) with respect to VENDOR only, during the Term and at any time thereafter when it is using or exploiting Data Records

conveyed or to be conveyed, as the case may be, under this Agreement, VENDOR will exercise reasonable efforts to effectuate the agreements, representations and warranties, as the case may be, which are set forth above in clauses (f) – (g) of this Subparagraph 6.1.

6.2 Representations and Warranties Regarding Data Records by VENDOR. VENDOR hereby agrees, represents and warrants to NWMS that it shall not, at any time, convey, or attempt to convey, any of the Data Records that: (a) when used *via* texting or e-mail will constitute a violation of applicable laws [e.g., CAN-SPAM Act, COPPA], or when dialed to land line telephones or cell phones [e.g., prerecorded messages or autodialed calls insofar as they are unlawful], will constitute unlawful or legally prohibited telephone calls; (b) are compiled, categorized, organized or intended to determine credit worthiness and/or financial eligibility of any Consumers or for any purpose prohibited by the federal Fair Credit Reporting Act [15 U.S.C. § 1681, et seq.]; (c) are compiled, categorized, organized or intended to determine financial eligibility for any financial services Products; (d) are compiled, categorized, organized or intended to underwrite or determine eligibility for insurance Products for Consumers; (e) are compiled, categorized, organized or intended to investigate the background of prospective tenants; (f) are compiled, categorized, organized or intended to investigate the background of prospective employees; (g) refer to NWMS, by its name, in conjunction with any Data Records, in any advertising, marketing or promotional materials; (h) are in violation of any applicable federal, state and/or local laws; and (i) are not expressly authorized for any use or purpose by this Agreement.

6.3 Acknowledgements by VENDOR. VENDOR hereby agrees, acknowledges, represents and/or warrants that: (a) any Data Records conveyed by VENDOR to NWMS under this Agreement shall contain, include, reflect, and/or have appended thereto, and/or shall satisfy the pre-conditions necessary for obtaining written proof of prior consent by personally identifiable and individual Consumers, who may be directly or indirectly contacted by NWMS or by NWMS's permissible clients, as the case may be, which are compliant with the Telephone Consumer Protection Act [47 U.S.C. § 227] [as amended] (the "TCPA") and with any other applicable federal, state or local laws or regulations; (b) in the event VENDOR elects to contact Consumers in a manner requiring prior disclosure and consent in compliance with the TCPA and/or with any other applicable federal, state or local laws and/or regulations, VENDOR shall be solely responsible and bear the entire burden of proof for demonstrating that appropriate disclosures have been made to any such Consumers, who have been contacted as described in clause (a) of this Subparagraph 6.3, and that any such Consumers have satisfactorily given prior consent to being contacted, in a manner that is compliant with the TCPA and with any other applicable federal, state and local laws and/or regulations [NWMS shall not have any responsibility *vis a vis* VENDOR in this regard]; (c) at all times relevant hereunder, VENDOR has had, or shall have in the future, an unrestricted, unqualified, independent and absolute right hereunder to convey any and all Data Records, which are subject to conveyance to NWMS hereunder, on a non-exclusive basis on multiple occasions to multiple persons who are third parties; (d) unless specifically prohibited in this Agreement, NWMS reserves the unrestricted, unqualified, independent and absolute right to resell, license, sublicense and/or otherwise convey or deliver the Data Records, which VENDOR has conveyed to NWMS under this Agreement, on a non-exclusive basis on multiple occasions to multiple persons who are clients and other third parties for various purposes,

including without limitation, the use thereof to append, improve, update its own Data Records or the Data Records of others; (e) VENDOR has good, full and marketable title and ownership, free and clear of all liens and encumbrances, in and to any and all Data Records, and/or has all necessary and lawful right, title and authorization to sell, resell, license, sublicense or otherwise convey any and all Data Records, which are subject to conveyance to NWMS hereunder; (f) there is nothing that would constitute a legal impediment to, or prohibition or restriction on, VENDOR's right to convey, and/or VENDOR's conveyance of, any such Data Records to NWMS [under this Agreement]; and (g) any and all Data Records, shall be and are in conformance with all implied warranties of merchantability and fitness for a particular purpose under the laws of any jurisdiction.

7. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY MAKES, AND EACH PARTY EXPRESSLY DISCLAIMS, ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER WITH RESPECT TO THIS AGREEMENT, ANY DATA RECORDS CONVEYED HEREUNDER, AND ANY AND ALL DATA AND/OR LEADS CONTAINED WITHIN SUCH DATA RECORDS. FURTHER, VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT NWMS HAS NOT UNDERTAKEN, AND SHALL NOT BE OBLIGATED UNDER THIS AGREEMENT OR OTHERWISE, TO REPRESENT OR WARRANT THAT ANY OF THE DATA RECORDS, INCLUDING, WITHOUT LIMITATION, ANY OF THE DATA AND/OR LEADS CONTAINED THEREIN, SHALL BE OR ARE IN COMPLIANCE WITH ANY OR ALL APPLICABLE FEDERAL, STATE AND/OR LOCAL LAWS OR REGULATIONS. FOR THE PURPOSES OF CLARIFICATION, FOR EXAMPLE, NWMS SHALL NOT BE OBLIGATED TO SCREEN OR TEST THE VALIDITY OF SUCH DATA AND/OR LEADS CONVEYED TO NWMS BY VENDOR UNDER THIS AGREEMENT.

8. NON-SOLICITATION; CONFIDENTIAL INFORMATION; NON-DISCLOSURE.

8.1 Non-Solicitation. VENDOR hereby agrees, covenants and represents that it shall not, whether on its own behalf or on behalf of or in conjunction with any individual person and/or entity other than NWMS, at any time during the Term, or any Renewal Term, and for a two-year period after the date of the termination or expiration of this Agreement (the "Non-Solicitation Period"), without the prior written consent of NWMS, which NWMS may withhold in its sole discretion, attempt in any manner to utilize any Confidential Information (as defined below in Subparagraph 8.2) (a) to deal directly or indirectly with, or solicit any of NWMS's clients or other third parties for the purpose of commercially exploiting any Data Records by, for example, delivering and/or otherwise conveying any Data Records to any NWMS clients

to other third parties or applying any hygiene process to [e.g., DNC scrubbing], or enhancing, or appending any such Data Records, or (b) to by-pass, compete with, avoid, circumvent or attempt to circumvent NWMS with respect to the delivery and/or conveyance otherwise of such Data Records to any NWMS clients or other third parties in any manner that commercially exploits and/or derives any economic benefit from any such Confidential Information. Further, in this connection, VENDOR hereby agrees, covenants and represents that, without the prior written consent of NWMS, which NWMS may withhold in its sole discretion, VENDOR shall not, at any time during the Non-Solicitation Period, utilize any Confidential Information to solicit, retain, employ or engage any persons who performed services as independent contractors or employees for NWMS at any time prior to, during and/or after the Term, or any Renewal Term.

8.2 Confidential Information Defined. As used in this Agreement, as hereby acknowledged and agreed by VENDOR, the term "Confidential Information" shall mean and refer to: (a) the terms, conditions and other provisions of any Accepted Insertion Orders; (b) NWMS's trade secrets, business plans, techniques, strategies, methods, procedures, processes and/or practices; and (c) any other information relating to NWMS that is not generally known to the public, including, without limitation, information about NWMS's employees, personnel, suppliers, clients, customers, services, products, future business plans, and/or methods and processes for acquiring, aggregating, compiling, categorizing, organizing, bundling, storing, delivering, selling, renting, licensing and/or sublicensing of Data Records.

(A) **Exceptions**—Notwithstanding anything appearing to the contrary in Subparagraph 8.2 above, as hereby acknowledged and agreed by the Parties, the term "Confidential Information" specifically excludes and does not include: (1) information that is now in the public domain or subsequently enters the public domain by publication or otherwise through no action or fault of VENDOR; (2) information that is known to VENDOR without restriction, prior to receipt from NWMS under this Agreement, from VENDOR's own independent sources as evidenced by VENDOR's written records, and which was not acquired, directly or indirectly, from NWMS; (3) information that VENDOR reasonably and in good faith receives from any third party that is known by VENDOR to have a legal right to possess and transmit such information, and not under any obligation to keep such information confidential; and (4) information independently developed by VENDOR's employees or agents, provided that VENDOR can demonstrate that those same employees or agents had no access to the Confidential Information received hereunder.

8.3 Non-Disclosure Agreement. VENDOR hereby acknowledges and agrees that as a result of dealing and/or negotiating with respect to Insertion Orders and/or entering into and performing this Agreement, VENDOR has had, may have, and/or will have access to certain Confidential Information of NWMS, and that the misuse and/or disclosure of that Confidential Information could adversely affect NWMS's business.

Accordingly, VENDOR hereby acknowledges, agrees and covenants that, during the Term, or any Renewal Term, and thereafter [but then only as permitted herein], VENDOR may and shall use and reproduce NWMS's Confidential Information, as may be permissible furnished to it by NWMS in its sole discretion, solely for purposes of performing under this Agreement and then only to the extent necessary for such purpose and shall not disclose NWMS's Confidential Information to any other individual person or entity that is a third party without the prior *written* consent of NWMS which NWMS may withhold in its sole discretion. Notwithstanding anything appearing to the contrary in this Subparagraph 8.3, it shall not be a breach of this Agreement for VENDOR to disclose Confidential Information of NWMS if required to do so under applicable law, in response to a valid and enforceable judicial proceeding, subpoena and/or an investigation or proceeding before a governmental or regulatory agency with competent jurisdiction thereof, provided that NWMS has been given prompt prior notice and VENDOR has sought all reasonably available safeguards against public disclosure or widespread dissemination of the Confidential Information prior to such disclosure. Further, VENDOR hereby acknowledges, agrees and covenants that it shall treat NWMS's Confidential Information with the same level of care as it treats its own confidential information of the like import, but not less than a reasonable standard of care, that it shall disclose such information within its own organization or business only on a need-to-know basis, and that it shall only disclose it to employees and independent contractors who have agreed to keep secret all Confidential Information coming into their knowledge or possession during the course of their employment or their performances of independent contractor services. For the avoidance of all doubt about confidentiality as required hereunder, VENDOR hereby agrees and acknowledges that the Databases of NWMS and its methods, processes and techniques for, among other things, acquiring, aggregating, compiling, categorizing, organizing, storing and conveying Data Records, are confidential and sensitive, and that the value thereof depends on the continued preservation of their confidentiality and sensitivity, and that NWMS's Databases and such methods, processes and techniques shall also constitute trade secrets of NWMS.

8.4 Continuing Confidentiality Duties. The non-solicitation, confidentiality and non-disclosure covenants and other obligations described above in this Paragraph 8, including its Subparagraphs, shall survive and continue in effect after any termination or expiration of this Agreement. Further, VENDOR hereby agrees and covenants not to use any Confidential Information of NWMS except as expressly permitted in this Agreement.

9. INDEMNIFICATION.

9.1 Indemnity by NWMS. NWMS hereby agrees and covenants that it shall, from and after the Effective Date, defend, indemnify and hold harmless VENDOR and its officers, directors, employees, affiliates, agents, representatives, attorneys, shareholders, successors and assigns, and each of them, from and against any and all demands, claims, causes of action, actions, suits, allegations, arbitrations, investigations, liabilities, damages [exclusive of and not including punitive or exemplary damages], judgments, assessments, charges, settlements, losses or deficiencies, interest, costs and expenses [including, without limitation, reasonable attorneys' fees actually incurred whether at arbitration, trial or on appeal] (collectively or individually,

"Claims"), initiated, filed, asserted or obtained by any third party, as the case may be, arising out of, relating to or in connection with:

(A) **Breach of Warranty**—Any breach, default or violation of any representation or warranty by NWMS set forth in this Agreement [*e.g.*, as described in Subparagraph 6.1].

9.2 Indemnity by VENDOR. VENDOR hereby agrees and covenants that it shall, from and after the Effective Date, defend, indemnify and hold harmless NWMS and its officers, directors, shareholders, employees, affiliates, agents, representatives, attorneys, successors and assigns, and each of them, from and against any and all Claims [exclusive of and not including punitive or exemplary damages] initiated, filed, asserted or obtained by any third party, as the case may be, arising out of, relating to or in connection with:

(A) **Breach of Warranty**—Any breach, default or violation of any representation or warranty by VENDOR set forth in this Agreement [*e.g.*, as described in Subparagraphs 6.1, 6.2 and 6.3];

(B) **Failure to Perform Covenants**—Any failure by VENDOR to perform any covenants or obligations on its part under this Agreement;

(C) **Infringement of Third Party Rights**—Any infringement or violation of any intellectual property rights, other proprietary rights or trade secrets of any third party, which involves any conveyed Data Records including, without limitation, any Data and/or Leads contained therein;

(D) **Use of Data Records**—Any acquisition, use, exploitation, conveyance, delivery, transfer or other disposition by VENDOR, whether or not permissible under this Agreement, of any conveyed Data Records, including, without limitation, Data and/or Leads contained therein;

(E) **Use of Websites**—Any misuse or improper or unlawful access by VENDOR in respect of any of the Websites operated and maintained by NWMS [*e.g.*, unauthorized downloading of Data Records]; and/or

(F) **Violation of Law**—Any violations of applicable federal, state and/or local laws or regulations by VENDOR arising out of, relating to or in connection with its acquisition, use, exploitation, conveyance, delivery, transfer or other disposition of any of the Data Records delivered or conveyed to NWMS under this Agreement.

10. LIMITATION OF LIABILITY. IN THE EVENT OF A BREACH OF ANY OF THE TERMS, CONDITIONS OR OTHER PROVISIONS OF THIS AGREEMENT BY A PARTY, THE PARTIES HEREBY AGREE AND ACKNOWLEDGE THAT THE LIABILITY OF THE BREACHING PARTY TO THE OTHER PARTY FOR ANY TYPE OF DAMAGES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF VENDOR'S TOTAL UNPAID FEE COMPENSATION DUE UNDER THIS AGREEMENT PURSUANT TO PARAGRAPH 4 ABOVE, AND ITS APPLICABLE SUBPARAGRAPHS. NEITHER PARTY SHALL HAVE ANY

LIABILITY TO THE OTHER PARTY [OR ANY THIRD PARTY CLAIMING RIGHTS DERIVED FROM THE RIGHTS OF THE OTHER PARTY HERETO] WITH RESPECT TO ITS RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, WHETHER BASED ON BREACH OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT THE NON-BREACHING PARTY HAD BEEN ADVISED, HAD REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY OR FORESEEABILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING APPEARING TO THE CONTRARY IN THIS PARAGRAPH 10 OR ELSEWHERE IN THIS AGREEMENT, THE LIMITATIONS ON LIABILITY SET FORTH IN THIS PARAGRAPH 10 SHALL NOT APPLY TO OR LIMIT (a) THE LIABILITY OF VENDOR TO NWMS FOR ANY VIOLATION OR INFRINGEMENT OF, OR INJURY TO, NWMS'S CONFIDENTIAL INFORMATION (AS DEFINED ABOVE IN SUBPARAGRAPH 8.2) AND/OR ANY OF NWMS'S OTHER RIGHTS AS PROVIDED FOR OR ARISING UNDER PARAGRAPH 8 ABOVE AND ITS SUBPARAGRAPHS, OR (b) EITHER PARTY'S RESPECTIVE RIGHTS TO INDEMNITY AS PROVIDED FOR OR ARISING UNDER PARAGRAPH 9 ABOVE AND ITS SUBPARAGRAPHS, OR (c) THE LIABILITY OF VENDOR TO NWMS FOR ANY DAMAGES ARISING FROM OR RELATED TO INJURIES TO, AND/OR DISRUPTION, DEGRADING OR CORRUPTION OF, NWMS'S WEBSITES, DATABASES, DATA RECORDS [E.G., DATA, LEADS] COMPUTERS, HARDWARE, SOFTWARE, EQUIPMENT AND/OR OTHER PROPERTY. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THIS PARAGRAPH 10 IS INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

11. TERMINATION.

11.1 Termination Without Cause. At any time during the Term, or any Renewal Term, either Party may, by giving written notice to the other Party at least thirty (30) calendar days in advance of the effective date of the termination, terminate and cancel this Agreement, without any reason or cause, effective at 11:59 P.M. on such date of termination. If, at any time during the Term, either Party terminates without cause, NWMS agrees to pay Contingent Fees on NWMS's Net Revenues generated, earned and received for three (3) months after termination, and VENDOR acknowledges that, notwithstanding such limitation, NWMS may maintain possession of the Data Records conveyed to it hereunder and may continue to convey any and all Data Records to its clients and/or other third parties in perpetuity, not subject to any time limits.

11.2 Covenant Not to Sue. The Parties hereby agree and covenant that neither Party shall hold the other Party liable for, or sue the other Party for, any damages or losses of any kind [e.g., losses for expected revenues or profits, or losses from any investments, expenditures or commitments made by a Party, or any special, consequential, incidental, punitive or exemplary damages of any kind] arising out of, relating to or in connection with this Agreement, in the event that (a) the other Party elects not to continue, extend or renew this Agreement as provided for in Paragraphs 1 and 12 of this Agreement,

or (b) the other Party terminates or cancels this Agreement as provided for in Subparagraph 11.1 above.

11.3 Termination for Cause. At any time during the Term, either Party may terminate this Agreement for "Cause," immediately upon the giving of written notice to the other Party or as otherwise provided for below, on or after the date of the occurrence of any one or more of the following events listed in clauses (A), (B) and/or (C) of this Subparagraph 11.3 (which shall be deemed "Cause" for termination):

- (A) **Incapacity** – The other Party ceases to conduct business or, in the case of an individual person who is a Party or the principal of a Party, such person dies, is permanently incapacitated or retires, or, in the case of an entity which is a Party, such entity is dissolved or liquidated; and/or
- (B) **Insolvency** – The other Party becomes insolvent or is unable to pay its debts as they mature or ceases to pay its debts in the ordinary course of business as they mature; or the other Party makes an assignment for the benefit of its creditors; or a receiver, liquidator, custodian, trustee or the like is appointed for the other Party or its property; or the other Party commences a voluntary case under any applicable bankruptcy or insolvency law or consents to the entry of an order for relief in any involuntary bankruptcy or insolvency case, or a court with jurisdiction thereof enters a decree for relief in any involuntary bankruptcy or insolvency case involving the other Party; and/or
- (C) **Breach** – The other Party fails to cure, within ten (10) calendar days after receiving written notice, a material breach, default or violation of this Agreement or other cause for termination which is reasonably described in such notice; provided, however, that a Party may terminate this Agreement immediately, without giving such ten (10) calendar days notice, in the event the breach, default, violation or other cause for termination cannot reasonably be cured within such ten (10) calendar days notice period or the other Party has made any material misrepresentation or acted fraudulently, or acted in willful and material violation of applicable federal, state and/or local law, or acted in bad faith in connection with this Agreement, or is convicted of any felony crime involving an act of moral turpitude, violence or dishonesty.

11.4 Special Immediate Termination Rights of NWMS. Notwithstanding anything appearing to the contrary in this Agreement, in the event that any of the following conditions or circumstances should occur, such occurrence shall constitute a material breach, default or violation of this Agreement by VENDOR, and NWMS shall be entitled to terminate this Agreement for cause, immediately without any opportunity for VENDOR to cure, and without waiver of any rights or remedies NWMS may have:

(A) **Consumer Complaints** – If NWMS receives any credible complaint(s) of a material nature from one or more of NWMS’s clients or from one or more of any such client’s or clients’ other customers or clients, or from an agent for any of them, or from any federal, state and/or local government law enforcement officials regarding any Data Records transferred and delivered to NWMS by VENDOR hereunder and thereafter conveyed or otherwise delivered by NWMS; and/or

(B) **Evidence of SPAM, DNC and Privacy Violations** – If NWMS receives any credible information that any Data Records conveyed or otherwise delivered by VENDOR to NWMS hereunder is in violation of applicable criminal and/or civil laws, including, without limitation, the use of e-mail marketing in violation of the CAN-SPAM Act, the TSR of 2003 [Public Law 108-187] and/or other applicable anti-spam laws or regulations and/or in violation of the DNC Act [including, without limitation, any DO NOT CALL (“DNC”) Registry], the CAL Online Privacy Act and/or any other privacy laws; and/or

(C) **Privacy Policy Publication Violation** – If NWMS determines, in its sole discretion, that VENDOR, insofar as required by applicable law, has failed to publish, at relevant times during the Term, an appropriate privacy policy [either through a publicly accessible website or through other reasonably accessible means of publication or disclosure] or has failed to maintain such privacy policy in accordance with applicable federal, state and/or local laws and regulations, including, without limitation, the California Privacy Act of 2003, or has failed to comply with or implement such privacy policy.

12. RENEWAL OF AGREEMENT. Upon the Expiration Date of the initial Term of this Agreement on the first anniversary of the Effective Date, unless this Agreement has been earlier terminated and canceled pursuant to Subparagraph 11.1, 11.3 or 11.4 above, the Term of this Agreement shall automatically and perpetually be renewed and extended on each anniversary hereof on a year-to-year basis (a “Renewal Term,” with each year being defined as 365 calendar days), subject to termination under Paragraph 11 above, and the Subparagraphs thereof. Each Renewal Term of this Agreement, together collectively with the initial Term of this Agreement, shall also be referred to sometimes as the “Term.”

12.1 Non-Renewal of Agreement. Notwithstanding anything appearing to the contrary in Paragraph 12 above, the initial Term of this Agreement shall not be renewed or extended for a first Renewal Term, or, as the case may be, any later Renewal Term of this Agreement shall not be renewed or extended for a subsequent Renewal Term if either Party gives the other Party written notice of non-renewal and non-extension at least thirty (30) calendar days in advance of the expiration of the then current initial Term, or Renewal Term, as the case may be. In the event such notice is not given at least thirty (30) calendar days in advance of such expiration, such notice will not effectuate

a termination of this Agreement at the expiration of the then current initial Term, or Renewal Term, as the case may be, but instead will only operate to prevent a renewal and extension of the Term after the expiration of the next immediately subsequent Renewal Term.

13. ARBITRATION AGREEMENT. The Parties hereby agree and covenant that any dispute, action, claim or controversy arising out of, relating to or in connection with this Agreement, or the breach, default, violation, termination, enforcement, interpretation or validity hereof, including, without limitation, the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration before one (1) arbitrator, which shall be conducted at the offices of JAMS in Irvine, California, or at JAMS’s next nearest office location in Orange County, California, if such Irvine office is no longer open at the time of the arbitration. The arbitration shall be administered by JAMS pursuant to JAMS’s Streamlined Arbitration Rules and Procedures. Judgment on the arbitral award may be entered in any court having jurisdiction thereof. This agreement to arbitrate shall not preclude the Parties from seeking provisional remedies [e.g., injunctive relief] in aid of arbitration from a court of competent jurisdiction. The Federal Arbitration Act shall govern the determination of the scope, applicability, interpretation, enforcement and validity of this agreement to arbitrate, notwithstanding anything appearing to the contrary in this Agreement.

14. RELATIONSHIP OF PARTIES. The Parties hereby agree and acknowledge that this Agreement is non-exclusive and that they are independent contractors. Nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative relationship or employment relationship between the Parties. Neither Party shall have the authority or power to make or accept offers or make representations or warranties on behalf of the other Party; and neither Party shall have the authority or power to bind or obligate the other Party by contract, representation, warranty or otherwise with any other persons. Each of the Parties hereby agrees and covenants that it shall not make any statement, whether on any of such Party’s websites [e.g., one of NWMS’s Websites] or otherwise, that could reasonably be understood to violate or contradict anything in this Paragraph 14. In connection with the performance of this Agreement by the Parties, VENDOR hereby agrees and acknowledges (a) that NWMS and its personnel [*vis a vis* VENDOR] are acting solely as independent contractors and not as employees or agents of VENDOR, and (b) that NWMS and VENDOR respectively, shall be solely responsible for the payment of compensation and benefits to any of their respective personnel assigned to perform services hereunder.

15. NON-DISPARAGEMENT. Each of the Parties hereby agrees and covenants that it shall not make any representation, statement, comment or any other form of communication, whether written or oral, to any third party [including, without limitation, to principals, shareholders, distributors, licensors, licensees, customers, suppliers and competitors of the other Party, and/or to any investor or potential investor in any business involving the other Party], which disparages, defames, demeans, denigrates, criticizes or otherwise reflects negatively on such other Party or its performance, or lack thereof, under this Agreement, or any other matter arising out of, relating to or in connection with this Agreement, or such other Party’s services, products, officers, directors, agents, shareholders, affiliates, employees, suppliers, vendors or investors. Notwithstanding anything appearing to the contrary in this Paragraph 15,

nothing in this Agreement shall limit or prohibit a privileged communication made in a court action or arbitration, or in any proceeding which is a part thereof.

16. NOTICES. Unless otherwise specifically provided in this Agreement, any notice, request, consent, approval, order [e.g., an Insertion Order or Accepted Insertion Order], report [e.g., a Rejection Report or an Acceptance Report], or other communication given under, related to or connected with this Agreement (each sometimes referred to hereinafter as a "Notice" or a "notice") must be *in writing* and must be (a) delivered personally by hand, or (b) delivered by a commercial overnight courier providing confirmation of receipt by the recipient [e.g., delivered by FedEx], or (c) delivered by United States certified mail with return receipt requested and postage prepaid, or (d) delivered electronically by e-mail.

16.1 Current Notice Addresses. Each Notice hereunder must be addressed to the applicable other Party as follows:

If to VENDOR: At a valid postal/street address and/or e-mail address listed by VENDOR on the Cover Sheet to this Agreement.

If to NWMS: Next Wave Marketing Strategies, Inc.
6789 Quail Hill Pkwy, Ste #118
Irvine, CA 92603
Attn: Troy Wilson, President, or at
Troy@nextwavemarketingstrategies.com

16.2 Change of Address. Either Party may change its Notice address as listed above in Subparagraph 16.1, by giving Notice of the change to the other Party; however, notwithstanding anything appearing to the contrary elsewhere in this Paragraph 16 and its subparagraphs, the change will not become effective until the other Party receives Notice of the change.

17. MISCELLANEOUS TERMS.

17.1 Entire Agreement. This Agreement [which consists, by way of limitation, of the Cover Sheet and these General Provisions] constitutes the final, entire, integrated and exclusive agreement between the Parties, including the complete and exclusive expression of the terms, conditions and other provisions of their agreement and understanding, pertaining to the subject matter hereof, and supersedes any and all prior agreements, letters, understandings or other communications, either oral or in writing, pertaining to the subject matter hereof. The Preamble and Recitals to these General Provisions are integral parts of this Agreement and are fully incorporated within this Agreement, including these General Provisions. This Agreement cannot be amended or modified in whole or in part, except by an instrument in *writing* signed by both Parties, or pursuant to Subparagraph 17.13 below.

17.2 No Third-Party Beneficiaries. The Parties hereby acknowledge and agree that nothing set forth in this Agreement, expressed or implied, confers, nor will be deemed to confer, any legally enforceable rights or remedies upon any third party to this Agreement [except for any indemnified

third parties, as provided for in Paragraph 9], regardless of whether such third party benefits by the performance of this Agreement.

17.3 Waivers. No Party shall be deemed to have waived by its act or omission any provision herein or right hereunder unless that Party has executed a document *in writing* setting forth the item waived, and a waiver shall not be continuing and shall be effective only for the matter and on the occasion given.

17.4 Assignment. This Agreement may not be assigned by either Party without the express prior *written* consent of the other Party; provided that either Party may assign this Agreement to a parent corporation, or a wholly owned subsidiary corporation, or to the purchaser of or successor to all or substantially all of its assets and business. Further, NWMS shall be permitted to subcontract any of the services, products and/or work which are performed or undertaken by it under this Agreement, including, without limitation, any services, products or work regarding any Data Records which are the subject of this Agreement, for example, the generation, acquisition, aggregation, compilation, categorization, organization and/or storage of any Data Records.

17.5 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to constitute an original of this Agreement, and all of which taken together shall constitute one and the same instrument and Agreement; provided, however, that this Agreement will not be effective until each Party has executed and delivered to the other Party at least one counterpart of this Agreement executed by that Party on the Cover Sheet hereto as provided for in Paragraph 18 below.

17.6 Drafting. This Agreement shall not be interpreted for or against either of the Parties based upon any statute or rule of law on the ground that a Party drafted this Agreement or any part hereof.

17.7 Headings. The headings, captions, titles and subtitles within this Agreement are for convenience of reference only, and shall not control or affect the interpretation or meaning of this Agreement or any Paragraph, Subparagraph, Section, clause or other provision or part hereof.

17.8 Interpretation. The words "person" and "it", as the context may require, shall include a corporation, partnership, joint venture, limited liability company, firm or other form of association or entity or governmental body, as well as a natural person of either gender. "Including" means "including without limitation"; the word "or" is inclusive and includes "and"; the singular shall include the plural and vice versa; and each word of gender shall include each other word of gender as the context may require.

17.9 Force Majeure. Neither Party shall be held responsible for any loss, damage or delay suffered by the other Party as a result of any cause or condition which is beyond the reasonable control of the defaulting Party and which cannot be attributed to negligence or willful nonperformance of its obligation(s) under this Agreement (hereinafter, "Force Majeure Conditions"). Force Majeure Conditions include, without limitation, wars, embargoes, riots, civil disturbances, fires, storms, floods, typhoons, earthquakes and other natural calamities, strikes and labor disputes within or affecting the organization of one or both of the Parties, transportation and public utility strikes, governmental acts

and restrictions, and all other causes and/or conditions of like nature which cannot be overcome or prevented by due diligence of the defaulting Party. A Party wishing to invoke this Paragraph 17.9 shall give written Notice to the other Party, as described above in Paragraph 16 of this Agreement, stating the relevant Force Majeure Condition(s) (hereinafter, the "Force Majeure Notice"). The defaulting Party shall promptly resume performance of its obligation(s) under this Agreement as soon as the Force Majeure Condition(s) should cease to operate or exist; provided, however, that if any such Force Majeure Condition(s) should continue with respect to either Party for a period of more than thirty (30) calendar days after the date of the Force Majeure Notice, the non-defaulting Party shall have the right to terminate this Agreement immediately upon giving written notice of termination.

17.10 Survival. All agreements, covenants, representations and warranties made in this Agreement shall survive after the Effective Date in accordance with their respective terms, conditions and other provisions, but shall not survive the expiration or termination of this Agreement except for the following provisions: Subparagraphs 3.4, 3.5, 3.6, 3.7, Paragraphs 4, 5, 6, 7, 8, 9, 10, 13, 14, 15 and 16—as each such provision is applicable as the circumstances may require.

17.11 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, exclusive of its choice of laws provisions.

17.12 Effectiveness of Notices. In addition to the then permissible methods of delivering Notice as provided for above in Paragraph 16, the Parties hereby expressly agree that the electronic delivery of all Notices, including, without limitation, all orders [e.g., an Insertion Order or an Accepted Insertion Order], all reports [e.g., a Rejection Report or an Acceptance Report], and all records of transactions [whether or not completed], shall be fully effective—notwithstanding anything appearing to the contrary in this Agreement or notwithstanding any contrary rights or requirements created by law which may lawfully be waived, and which hereby are waived to the maximum extent permitted by law. Any Notice provided pursuant to this Agreement shall be effective upon physical receipt if by personal hand delivery or if by commercial overnight courier, or upon electronic receipt if *via* e-mail, or five (5) business days after mailing via United States certified mail with return receipt requested and postage prepaid.

17.13 Severability. If any provision(s), Paragraph(s), Subparagraph(s) or Section(s) of this Agreement is(are) declared invalid, illegal or unenforceable it(they) shall be deemed amended to conform to the legal requirements, or if no amendment can be made, the provision(s), Paragraph(s), Subparagraph(s) or Section(s) shall be deleted and severed herefrom, unless such amendment, deletion or severance materially frustrates the purpose of the Parties in entering into this Agreement, and the validity and enforceability of the other provisions, Paragraphs, Subparagraphs and Sections of this Agreement shall not be affected thereby.

18. SIGNING. By executing the Cover Sheet to this Agreement [including, without limitation, a Party's execution *via* a facsimile transmission of its signature in the appropriate indicated space, or a Party's execution *via* an e-mail transmission of its electronic signature in the appropriate indicated

space—each of which is deemed to have the same force and effect as an original signature by a Party], each Party's respective representative warrants and represents to the other Party that, in addition to his or her Party's execution warranties and representations set forth on the Cover Sheet to this Agreement, he or she is authorized to bind the Party he or she represents to the terms, conditions and other provisions of this Agreement. Further, each Party hereby acknowledges and agrees that if it submits its electronic or facsimile signature hereunder, such submission will constitute a legally binding electronic or facsimile signature and also will constitute its agreement and intent to be bound by this Agreement and all its terms, conditions and other provisions contained herein.

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