

LEADS/DATA DELIVERY AGREEMENT

PREAMBLE

THIS LEADS/DATA DELIVERY AGREEMENT (this “Agreement”) is made and entered into at Tustin, California, by and between (1) Next Wave Marketing Strategies, Inc. (“NWMS”), a California corporation, and (2) that certain party whose [**LEGAL NAME**] (“Recipient”) and status [a _____ (*State*) _____ corporation/limited liability company/partnership/sole proprietorship/natural person] shall be furnished by such party when it completes filling out its contact and other information on a “Website” (as defined hereinbelow) operated and specified by NWMS, as part of registering to open an account with NWMS, in order to proceed to place an order for “Leads” and/or “Data” (as such terms are defined, respectively, hereinbelow) either (1) by an online means of communications through a Website operated by NWMS or (2) by an offline means of communication acceptable to NWMS. This Agreement is deemed made, entered into and effective immediately as of the date on which the following events have occurred: first Recipient has completed the above-described process of registering on such Website in order to open an account by clicking on the [“Agreement Accepted”] button displayed on such Website; and second, NWMS has accepted an initial “Insertion Order” (as defined hereinbelow) submitted by Recipient (the “Effective Date”), as concurrently confirmed by NWMS in its issuance to Recipient by e-mail of a corresponding and dated “Insertion Order Receipt” (as defined hereinbelow).

NWMS and Recipient are entering into this Agreement, by the online registration process described, hereinabove, for the purposes of setting forth the terms and conditions whereby NWMS is hereby granting certain nonexclusive rights to Recipient to use certain “Data Records” (as defined hereinbelow), and whereby in conjunction therewith, NWMS is conveying, delivering and transferring “Leads” and/or “Data”, which may comprise such Data Records, to Recipient—all in accordance with the terms and conditions of the sublicense and/or license, as the case may be, and the correlative rights thereto, which are provided for and granted under this

Agreement. Hereinafter, NWMS and Recipient are sometimes collectively referred to herein as the “Parties” or each individually as a “Party.”

RECITALS

A. WHEREAS, NWMS is commonly known as a “list broker,” and in recent years has been engaged principally in the business of, among other things, (1) acquiring, aggregating, compiling, categorizing, organizing and/or storing aged Leads and/or Data, which have been originally generated by multiple third parties through or from, for example, the Internet, telemarketing and/or public records, by means of purchase, license, sublicense, exchange or rental, as the case may be, and (2) then in turn marketing, conveying, distributing, delivering, transferring and sublicensing [re Data] or licensing [re Leads], as the case may be, Leads and/or Data comprised of various information about consumers (collectively or individually, “Consumer Information”), which are contained in individual sets of Data Records stored in one or more of the NWMS national databases (collectively or individually, the “Databases”). [As used hereinafter in this Agreement, the phrase “marketing, conveying, distributing, delivering, transferring and sublicensing, or licensing,” as the case may be, of Leads and/or Data, is sometimes referred to hereinafter, collectively or individually, as the case may be, as “conveying,” or a form of “convey” depending on the context.]

B. WHEREAS, when conducting its business of marketing and conveying Leads and/or Data, NWMS typically has marketed and conveyed sets of Data Records (1) mainly to various financial and insurance products services sales professionals, including, without limitation, mortgage brokers, finance companies, and insurance agents and/or brokers, and also to car dealers (collectively or individually, “Marketing Professionals”), and (2) also in addition, to a lesser extent, to so-called list brokers, list managers, lead brokers, call centers, and other professional financial service sales representatives (also, collectively or individually, “Marketing Professionals”); and currently, NWMS is expanding, or contemplating the expansion of, its business into other types of markets serving end-user consumers [*e.g.*, markets consisting of home business opportunity seekers, high net worth individuals, or new home buyers].

C. WHEREAS, the Consumer Information stored in the Databases generally consists of Data Records (as defined below in Subparagraph 2.3) containing personally identifiable information about individual, named end-user consumers (collectively or individually, “Consumers”), who potentially may have an interest in acquiring insurance products [*e.g.*, health insurance, life insurance, auto insurance, homeowner insurance], financial services products [*e.g.*, auto purchase financing, mortgage financing or refinancing, including, without limitation, home purchase financing, and home equity lines of credit], and/or other products [*e.g.*, new auto purchases, a range of products and services for new home buyers and/or new home/apartment renters (collectively or individually, “New Movers”)] (collectively or individually, such products are sometimes referred to hereinafter as the “Products”); and these Data Records are categorized as, and are comprised of, (1) Data (as defined below in Subparagraph 2.1), and (2) Leads (as defined below in Subparagraph 2.3). This personal identifiable information shall not include an individual’s FICO scores, Social Security Numbers, tax identification numbers, bank account numbers, credit card numbers, medical records, Medicare information, [confidential] medical insurance information or other sensitive personal information.

D. WHEREAS, Recipient is engaged in business for the principal purpose of either (1) functioning in the role of a Marketing Professional by directly itself commercially exploiting Consumer Information by the furnishing of certain Products or certain services to Consumers, or (2) functioning in the role of a so-called list broker (a “List Broker”) for purposes of the marketing and furnishing of Consumer Information, for fee compensation, to various Marketing Professionals, who are counted among its clients.

E. WHEREAS, NWMS has set up and currently maintains and operates a number of Websites in clauses (1) and (2), which function as a network of “online stores” for conducting its business, as such business generally is described in Paragraph A 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”).

Further, Recipient hereby acknowledges that NWMS reserves the right, in its sole discretion, to establish from time to time in the future additional “online stores” in the form of websites in order to supplement and/or replace its existing Websites. 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 Leads and/or Data acquired by NWMS may be aggregated, compiled, categorized and/or organized by NWMS, in its sole discretion, and then, again in the sole discretion of NWMS, either posted online and made accessible by NWMS, by instant download from one of the Websites *via* the Internet, or made accessible by NWMS *via* other means of communication [*e.g.*, *via* e-mail, or offline *via* telecommunication, computer disc, or other means], for commercial conveyance to NWMS’s customers, such as Recipient.

F. WHEREAS, the Parties wish to establish an ongoing business relationship, subject to the terms and conditions of this Agreement, including, without limitation, the sublicense [re Data] and/or the license [re Leads], as the case may be, and the correlative rights thereto, provided for and granted hereunder, (1) whereby NWMS from time to time during the Term will convey to Recipient, in exchange for fee compensation as provided for in Paragraph 4 below, and (2) whereby Recipient will order and accept from NWMS, and pay such fee compensation for, the conveyance to it by NWMS of various types and quantities of Leads and/or Data contained in Data Records, as described more specifically in Paragraph 2 below. Furthermore, the Parties hereby contemplate that by their entering into this Agreement, they hereby are setting forth the terms and conditions that generally will govern all transactions between them, from time to time during the Term (as defined in Paragraph 1 below), for the conveyance of certain Data Records, containing Leads and/or Data, to Recipient. In addition, the Parties hereby contemplate that such conveyance shall be effectuated under the sublicense [re Data] and/or the license [re Leads], as the case may be, and the correlative rights thereto, provided for and granted hereunder, pursuant to specific Insertion Orders (as defined hereinbelow), submitted hereunder from time to time during the Term by Recipient to NWMS, as may be accepted and filled by NWMS from time to time, in its sole discretion, and concurrently confirmed by NWMS in its issuance of corresponding and dated Insertion Order Receipts (as defined hereinbelow).

TERMS AND CONDITIONS

NOW, THEREFORE, in light of the premises, including, without limitation, the above Preamble and Recitals, and in consideration of the mutual agreements and covenants set forth herein, 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 described in the above Preamble, and shall thereafter remain in effect for a period of one (1) year until 11:59 P.M. [PST or PDST] on the day immediately before the anniversary of the Effective Date (the “Expiration Date”), unless earlier terminated or canceled, or unless extended or renewed, in accordance with the terms and conditions of this Agreement as provided for more specifically in Paragraph 11 below [the initial time period while this Agreement is in effect, and also any subsequent time period of extension or renewal of this Agreement (the “Renewal Term”), shall be referred to sometimes hereinafter as the “Term”].

2. DEFINITIONS. The terms “Data,” “Leads,” and “Data Records,” as used in this Agreement, shall have the following meanings, respectively:

2.1 Data. “Data” shall mean compilations of various fields of information comprising multiple individual sets of various Data Records, which NWMS has acquired, or may in the future acquire, from one or more third parties (typically, multiple suppliers; collectively or individually, “Suppliers”), who have originally generated or otherwise acquired, and who have supplied, such information to NWMS, which Data Records have been derived from internet leads, courthouse files, credit bureaus, public domain data, and other public sources. In addition, “Data” shall include Data Records, which after the acquisition thereof, NWMS has aggregated, compiled, categorized, organized and stored [as part of and pursuant to its proprietary systems] in one or more of its Databases, and which contain multiple fields or filters of personally identifiable information about individually named Consumers [of which typically up to eight (8) fields or filters of information, which shall not include an individual’s FICO scores, Social Security Numbers, tax identification numbers, bank account numbers, credit card numbers,

medical records, Medicare information, [confidential] medical insurance information or other sensitive personal information, will be deliverable by NWMS hereunder, as hereby acknowledged and agreed by Recipient]. Further, the Parties hereby acknowledge and agree that in order for a compilation of information, which comprises an individual set of Data Records contained within the Databases, to be deemed to constitute Data within the meaning of this Agreement, each such compilation must satisfy the following criteria: (a) such set of Data Records shall include the name of a certain specifically identifiable individual Consumer, who reasonably appears to be an eligible prospective customer who apparently is predisposed and/or prequalified in respect of obtaining one or more of the Products [*e.g.*, insurance or financial products and/or services], but for whom there may not necessarily be written confirmation that he/she has requested, or expressed a desire, to be contacted by any Marketing Professional(s) for information about one or more of the Products; and (b) such set of the Data Records shall include various types of information reflecting distinct types of personally identifiable consumer demographic and marketing information, including, without limitation, fields or filters containing personally and specifically identifiable 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)], and/or e-mail address(es), and his/her vital statistics, for example, age, gender, education and/or employment.

(A) Additional Discretionary Information—In addition, at the sole discretion of NWMS, each such set of Data may include other information insofar as reasonably available to NWMS about relevant geographic, cultural, marketing and consumer interest factors, which may tend to furnish a reasonably useful basis for consideration by, for example, a Marketing Professional, such as an insurance agent or broker or a mortgage broker (i) in determining whether each such individually named Consumer appears to be desirous of obtaining a certain Product and/or whether each such individually named Consumer is apparently eligible or disposed to acquire such Product (such eligibility shall not include credit worthiness), and (ii) in preparing a “quote” for the marketing of such Product to each such individually named Consumer.

2.2 Leads. “Leads” [*i.e.*, a subcategory and a form of Data] shall mean those certain more limited types of Data, which are commonly known and categorized as *aged leads* [as described more specifically in clause (B) below of this Subparagraph 2.2] and which have a content comprised of certain types of Data, which have been previously acquired or generated by Suppliers, reflecting requests by Consumers for or about financial “quotes” with respect to acquiring one or more Products. Each set of Data constituting a Lead typically will contain eight (8) to forty (40) fields or filters of information, which have been obtained by NWMS from a Supplier and which have been organized by NWMS into one or more categories of Leads [*e.g.*, insurance Products, finance Products, auto purchase Products]. The content of these fields or filters of information typically will consist of an individually named Consumer’s self-reported personally identifiable information about himself/herself, which shall not include an individual’s FICO scores, Social Security Numbers, tax identification numbers, bank account numbers, credit card numbers, medical records, Medicare information, [confidential] medical insurance information or other sensitive personal information; and all of this information shall constitute Data which has been organized [pursuant to NWMS’s proprietary systems] into a specific set of Data Records about each such individually named Consumer, who is among the persons listed by name within the Data described in Subparagraph 2.1 above. Further, the Parties hereby acknowledge and agree that in order for an individual set of Data to be deemed to constitute a Lead within the meaning of this Agreement, each specific set of Data must satisfy the following criteria: such set of Data shall correspond to a personally identifiable Consumer named in such set of Data and shall include, or be accompanied by, information tending to reflect that such named Consumer (a) has apparently requested, and/or expressed a desire or interest in obtaining, information regarding one or more Products, and (b) has apparently requested, or has apparently expressed a desire, to be contacted by a Marketing Professional about the prospective acquisition of one or more Products or receiving a “quote” in respect thereof—all by filling out and submitting an online or offline form reflecting such apparent request and/or desire, and/or by confirming such apparent request and/or desire in a telephonic conversation that has been confirmed in writing by the Supplier thereof (collectively or individually, the “Consumer Requests”).

(A) Origin of Leads—Recipient hereby acknowledges and agrees that NWMS has not originally generated any Leads, including, without limitation, any Consumer Requests, subject to this Agreement, but that instead one or more third party Suppliers to NWMS have generated such Leads either through the Internet [*i.e.*, online] and/or through offline means such as telemarketing [*e.g.*, over the telephone] or direct mail marketing.

(B) 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 or acknowledged his/her Consumer Request by filling out, submitting or otherwise confirming his/her Consumer Request, to a time about three (3) years thereafter.

(C) No Credit Applications—Recipient hereby acknowledges and agrees that Leads do not constitute applications for credit or for any credit, finance, or insurance services or Products, and that NWMS makes no representations or warranties about the credit worthiness, financial condition, eligibility or qualifications, or insurability of any Consumer who may be the subject of a Lead.

2.3 Data Records. “Data Records” shall mean those certain electronic Data Records which NWMS has acquired, or may in the future acquire, and which NWMS has aggregated, compiled, categorized, organized and/or stored in the Databases, which either are available or accessible on a Website by downloading *via* the Internet, or can be delivered or transmitted by e-mail, on a computer disc or by other means [as determined by NWMS in its sole discretion], and which contain various Leads and/or Data, which the Parties contemplate are potentially subject to being conveyed to Recipient under this Agreement--all subject to the terms and conditions of this Agreement.

(A) No Credit or Other Sensitive Information—Recipient hereby acknowledges and agrees that the Data Records subject to conveyance hereunder do not include, and will not include, any credit information [*e.g.*, FICO scores, Social Security Numbers, tax identification numbers, bank account numbers, credit card numbers, medical records, Medicare information, [confidential] medical insurance information or other sensitive

personal information], and that NWMS makes no representations or warranties that it will furnish any such information under this Agreement, or otherwise.

2.4 Format of Data Records. All Data Records containing Leads and/or Data, which are subject to conveyance to Recipient under this Agreement, ordinarily will be available to Recipient by instant online download *via* the Internet from a Website [currently and typically from www.agedleadstore.com], or if reasonably specified by Recipient, such Data Records will be set forth in a *CSV* format (*i.e.*, a comma separated value format) and e-mailed to Recipient as an attachment, or, upon Recipient's special written request, if approved and authorized by NWMS in its sole discretion, such Data Records will be transmitted by e-mail as an Excel file or as a Word file, which shall be set forth with one Data Record set of particular Consumer Information about an individually named Consumer (*e.g.*, a Lead) per page—all subject to the terms and conditions of this Agreement.

3. ORDERING AND CONVEYING OF LEADS AND DATA. The Parties hereby contemplate, agree and acknowledge that from time to time during the Term, subject to the terms and conditions of this Agreement, NWMS will provide and grant to Recipient, on a case by case basis, a limited sublicense [re Data] and/or a limited license [re Leads], as the case may be, and the correlative rights thereto, to use certain Data Records in accordance with such sublicense [re Data] and/or such license [re Leads], and the correlative rights thereto [as described and limited more specifically in this Paragraph 3 and in Subparagraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8 below]. Further, the Parties hereby contemplate, agree and acknowledge that each such set of Data Records will correspond to and contain, respectively, specified types and quantities of Data and/or Leads as described in specific "Insertion Orders" (as defined in Subparagraph 3.1 below). In all events, any and all Insertion Orders placed by Recipient and submitted hereunder to NWMS during the Term shall be contingent upon acceptance and approval by NWMS, subject to the terms and conditions of this Agreement. Correlatively, in this connection, the Parties further hereby contemplate, agree and acknowledge that from time to time during the Term, Recipient, as desired by it, will submit specific Insertion Orders to NWMS hereunder for the purpose of acquiring a limited sublicense [re Data] and/or a limited license [re Leads], and the correlative rights thereto, to use certain Data Records, as provided for more specifically below in this

Paragraph 3. Recipient hereby acknowledges and agrees that the conveyance hereunder of any Data Records to Recipient, together with the related sublicense [re Data] and/or the related license [re Leads], as the case may be, and the correlative rights thereto, shall be conditioned upon Recipient's immediate payment therefor, as described more specifically in Paragraph 4 below.

3.1 Insertion Orders. Each order and conveyance of Data Records containing Leads and/or Data under this Agreement shall be made pursuant to an order *in writing* to acquire certain specified types and quantities of Data Records, which is submitted or confirmed by Recipient to NWMS as provided for herein (an "Insertion Order") [an online order placed by Recipient on one or more Websites shall be deemed as equivalent to being an Insertion Order *in writing* or a *written* Insertion Order as either of those italicized terms is used in this Agreement]. By clicking on the "sign-up" *button* displayed online at www.agedleadstore.com or at any other NWMS Website, which states in part, "Recipient has read and hereby accepts and agrees to all the terms and conditions of the Leads/Data Delivery Agreement referenced and accessible on this Website" [or words to similar effect], Recipient hereby acknowledges and agrees that it will be deemed to have submitted an initial offer [*i.e.*, an initial Insertion Order] *in writing* to acquire certain specified types and quantities of Data Records to NWMS, and to have agreed to and accepted all the terms and conditions of this Agreement. The Parties hereby contemplate that upon submitting the initial and any subsequent Insertion Order on a NWMS Website, the submission of each Insertion Order, if accepted by NWMS, will be confirmed immediately on such Website and promptly *via* an e-mail from NWMS (sometimes entitled, and referred to hereunder as, an "Insertion Order Receipt"); and such e-mail shall be deemed (a) to confirm and contain the essential terms of the Insertion Order, and (b) to constitute NWMS's acceptance of the Insertion Order (an "Accepted Insertion Order"). Further, Recipient hereby acknowledges and agrees that it also shall be deemed to have submitted an Insertion Order to NWMS, and to have accepted all the terms and conditions of this Agreement, whenever it initially downloads Data Records from one of the NWMS Websites and/or initially tenders payment of fees to NWMS in consideration of NWMS's conveyance to it of Leads and/or Data; and that this process also shall be deemed to constitute an "Insertion Order."

3.2 Conditions re Acceptance of Insertion Orders. Notwithstanding anything to the contrary appearing herein, Recipient hereby acknowledges and agrees that NWMS hereby reserves the right, at all times, to determine, in its sole discretion, whether it will accept and fill any Insertion Orders submitted by Recipient hereunder from time to time during the Term. In all events, as Recipient further acknowledges and agrees, NWMS will only consider accepting and filling Insertion Orders, subject to satisfaction of the following conditions: (a) that the specifications therein can be reasonably satisfied with Consumer Information either stored and reasonably available in the Databases, or readily available to NWMS for reasonable acquisition and reasonable inclusion, compilation, categorization and organization in the Databases; (b) that Recipient has performed and satisfied, and is willing and able to perform and satisfy, its covenants and other obligations under this Agreement; and (c) that such specifications also shall be in compliance with applicable law. Subject to the satisfaction of such conditions, NWMS hereby agrees and covenants to exercise its discretion in good faith when determining whether to accept and fill any Insertion Orders reasonably submitted by Recipient.

(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 and conditions of this Agreement, which shall govern such Accepted Insertion Orders, unless the Parties expressly agree otherwise in writing.

3.3 Grant of Limited Rights. Subject to the terms and conditions of this Agreement, on each occasion of an Accepted Insertion Order, and concurrently with the conveyance to Recipient of the Data Records specified in such Accepted Insertion Order, NWMS hereby agrees and covenants to provide and grant to Recipient a limited, non-exclusive, non-perpetual, revocable and worldwide sublicense [re Data] and/or license [re Leads], as the case may be, and the correlative rights thereto, but without the right to assign, convey, sell, transfer, sublicense, relicense, license, lease, rent, encumber, hypothecate, pledge or otherwise dispose of to third parties [except to Marketing Professional clients of Recipient as provided for in Subparagraph 3.4(B) below, or as NWMS, in its sole discretion, may expressly authorize in writing], to use the Data Records specified in each Accepted Insertion Order solely for the purposes expressly authorized and permitted under this Agreement. In this connection, Recipient hereby

acknowledges and agrees that, in accordance with this Agreement, it will only acquire a limited sublicense with respect to any Data conveyed hereunder, and a limited license with respect to any Leads conveyed hereunder, together with the respective correlative rights thereto as described in this Paragraph 3.

(A) Duration of Recipient's Use— Notwithstanding anything to the contrary appearing in this Agreement, Recipient hereby acknowledges and agrees (1) that with respect to any Data conveyed to Recipient hereunder, the sublicense [re Data] and the correlative rights thereto, to use such Data shall be limited to and only valid for a period of not more than thirty (30) days after the conveyance thereof to Recipient, and shall automatically expire and be canceled and terminated on the earlier to occur of either the first use thereof or the time of 11:59 P.M. [PST or PDST] on the 30th day after the date of NWMS's initial conveyance of such Data to Recipient (the "Use Duration Period"), and (2) that with respect to any Leads conveyed to Recipient hereunder, the license [re Leads], and the correlative rights thereto, to use such Leads shall be limited to and only valid for a period of not more than ninety (90) days after the conveyance thereof, and shall automatically expire and be cancelled and terminated on the earlier to occur of either the first use thereof or the time of 11:59 P.M. [PST or PDST] on the 90th day after the date of NWMS's initial conveyance of such Leads to Recipient (also, the "Use Duration Period")—unless NWMS has otherwise expressly authorized *in writing* an extension of the Use Duration Period, as the case may be. In the event the Term [or any "Renewal Term", as defined hereinbelow] of this Agreement expires or is earlier canceled or terminated before the expiration of the applicable Use Duration Period, the terms and conditions of this Agreement shall continue in effect and remain applicable with respect to any Data Records whose respective Use Duration Period has not expired and with respect to each Party's respective rights and obligations hereunder that pertain to such Data Records, until the expiration of such Use Duration Period.

3.4 Permissible Uses of Data Records; Limited Rights. Recipient hereby acknowledges and agrees that its permission hereunder to use the Data Records, including, without limitation, each of the Leads and/or Data contained therein, which are conveyed hereunder—given that such permission is limited and constitutes only a sublicense [re Data]

and/or license [re Leads], as the case may be, and the correlative rights thereto—does not involve a purchase, lease, rental, gift or lien of any kind whatsoever in respect of any such Leads and/or Data. In this connection, Recipient hereby further acknowledges and agrees that it is not hereunder acquiring or being vested with any legal or equitable title to or any type of ownership or proprietary interest, whatsoever, or any exclusive rights, in any of such Data Records, or any of the Leads and/or Data contained therein. Recipient hereby further acknowledges, agrees, covenants and represents that it may not assign, convey, sell, transfer, license, sublicense, relicense, lease, rent, encumber, hypothecate, pledge or otherwise dispose of any such Data Records, or any of the Leads and/or Data contained therein, to third parties except as expressly permitted as follows in clause (A) or (B) below of this Subparagraph 3.4 and/or in Subparagraph 3.5 below:

(A) One-Time Use re Consumers—Recipient itself, provided that it is operating solely in the role of a Marketing Professional, may directly use and exploit such Data Records, including, without limitation, any Leads and/or Data contained therein, for the sole purposes of lawfully preparing and transmitting, directly [*e.g.*, including through Recipient’s employees and/or expressly authorized agents], to Consumers its own “quotes” for the direct marketing of any Products to such Consumers, provided further that Recipient shall be authorized and permitted to so use and exploit each such set of Data Records [*i.e.*, each set thereof including a single Lead and/or a single set of Data, which may or may not correspond to such Lead, as the case may be], **only once on a single occasion for each such set**, and with respect to only **one** end-user Consumer; or

(B) One-Time Single Use re Marketing Professional—Alternatively, only in the event Recipient itself does not directly use or exploit any such Data Records, including, without limitation, any Leads and/or any Data contained therein as authorized and permitted in clause (A) above of this Subparagraph 3.4, Recipient itself, provided that it is operating solely in the role of a list broker, may otherwise use and exploit such Data Records, including, without limitation, any Leads and/or Data contained therein, for the sole purposes of lawfully marketing, brokering and/or conveying each such set of Data Records [*i.e.*, with each set thereof including a single Lead and/or a single set of Data,

which may or may not correspond to such Lead, as the case may be], **only once on a single occasion** for each such set, and with respect to only **one** of Recipient's clients, who must function as a Marketing Professional [*e.g.*, a retail insurance broker, a mortgage broker, a car dealer]. Accordingly, Recipient hereby further agrees and covenants to strictly and expressly prohibit such Marketing Professional from marketing, brokering, and/or conveying such Lead or such set of Data to any other list brokers, lead brokers or other Marketing Professionals.

Notwithstanding anything to the contrary appearing in this Agreement, Recipient's sublicense [re Data] and/or license [re Leads], as the case may be, and the correlative rights thereto, as may be expressly granted hereunder, to market, broker, convey or otherwise use and exploit, as the case may be, the Data Records conveyed to Recipient hereunder, as expressly provided for above in this Subparagraph 3.4, and as set forth alternatively in clauses (A) and (B) above, and in any other Subparagraphs of this Paragraph 3, shall be subject to and governed by all the other terms and conditions of this Agreement as may be applicable. In this connection, Recipient hereby acknowledges and agrees that any conveyances, as provided for in either such clause (A) or clause (B) above, shall be pursuant to and limited by, and shall not exceed in scope in any event, the grant hereunder of any sublicense [re Data] and/or license [re Leads], as the case may be, and the correlative rights thereto, to use and exploit the Data Records, including, without limitation, any Leads [*e.g.*, one or more individual Leads] and any Data [*e.g.*, one or more individual sets of Data] contained therein, which are described in Subparagraph 3.3 above. Any violation or default by Recipient of any of the above provisions of this Subparagraph 3.4, including, without limitation, clauses (A) and/or (B) above, shall constitute a material breach of this Agreement.

3.5 Permissible Methods of Communication and Restrictions Thereon re Data Records; Use of Websites. In addition to the other terms and conditions under this Agreement, the Parties hereby acknowledge and agree that the following permissible uses and restrictions, respectively, as set forth in clauses (A), (B) and (C), as the case may be, of this Subparagraph 3.5, shall govern their respective conduct and performance under this Agreement.

(A) Other Permissible Uses of Data Records by Recipient—The Parties hereby acknowledge and agree that during the Term, Recipient may use and exploit all Data

Records specified in Accepted Insertion Orders, for the purposes described in Subparagraph 3.4 above, by means of communicating *via* direct postal service mail, home visits to Consumers, office visits to Marketing Professionals, lawful and legally permissible telephone calls to land line telephones and cell phones [*e.g.*, legally permissible, manually dialed calls to land line telephones or cell phones, autodialed calls without prerecorded messages to land line telephones, other calls so long as they are compliant with the TCPA and other relevant federal and state laws], lawful e-mails [*e.g.*, those compliant with the CAN-SPAM Act], and also for the purposes of “social” media marketing and/or analysis – provided that any such means of communication are consistent with Recipient’s role as either a Marketing Professional or list broker as described above in Subparagraph 3.4, clause (A) or (B).

(B) Other Restrictions on Uses of Data Records by Recipient—Recipient hereby acknowledges, agrees and covenants that it may not, and shall not, at any time use or exploit, or attempt to use or exploit, any of the Data Records specified in Accepted Insertion Orders: (1) by means of communicating *via* facsimile, text, e-mail in violation of applicable laws [*e.g.*, CAN-SPAM Act, COPPA], or any unlawful or legally prohibited telephone calls to land line telephones or cell phones [*e.g.*, prerecorded messages or autodialed calls insofar as they are unlawful]; (2) in order to determine credit worthiness or financial eligibility or qualifications of any Consumers or for any purpose prohibited by the federal Fair Credit Reporting Act [15 U.S.C. § 1681, et seq.]; (3) in order to determine financial eligibility or qualifications for any financial services Products; (4) in order to underwrite or determine eligibility or qualifications for insurance Products for Consumers; (5) in order to investigate the background of prospective tenants; (6) in order to investigate the background of prospective employees; (7) by referring to NWMS, by name, in conjunction with any Data Records, in advertising, marketing or promotional materials; (8) in violation of any applicable federal, state and/or local laws; and (9) for any use or purpose not expressly permitted by this Agreement; (10) refer to any selection criteria or any presumed knowledge about the recipient in any direct mail, email, in person, or phone solicitation.

(C) Restrictions on Uses of Websites by Recipient—Recipient hereby acknowledges, agrees and covenants that: (1) it may not access or attempt to access any Website, shall not submit any Insertion Order, and shall not download any Data Records from any Website or use any downloaded or otherwise conveyed Data Records [e.g., conveyed *via* any offline means], in whole or in part, for any purpose that is unlawful or prohibited by this Agreement; (2) it may not, and shall not, modify, copy, distribute, transmit, display, reproduce, publish, license, sublicense, relicense, create derivative works from, frame in another web page, use on any other website, convey, exploit, transfer, sell, rent, lease, pledge or otherwise dispose of any information, software, lists of Consumers, Data Records, Leads or Data conveyed, provided through or obtained from one or more of the Websites or otherwise from NWMS or under this Agreement [e.g., conveyed *via* any offline means], except for purposes entirely in accordance with this Agreement; (3) it may not, and shall not, engage in the practices of screen scraping, database scraping, or any other activity for the purpose of obtaining lists of Consumers or other information contained within the Data Records or Databases; (4) it may not, and shall not, use any of the Websites in any manner that could damage, disable, overburden, or impair any of the Websites or interfere with NWMS's use and commercial operation of any of the Websites; (5) it may not, and shall not, obtain or attempt to obtain any Data Records or any information on the Databases through any means not intentionally made available or furnished by NWMS on one or more of the Websites or otherwise under this Agreement [e.g., conveyed *via* any offline means]; and (6) except with the written permission of NWMS, it may not, and shall not, access or attempt to access password protected, secure or non-public areas of any of the Websites. Further, Recipient hereby acknowledges and agrees that unauthorized individuals attempting to access prohibited areas of any of the Websites may be subject to prosecution.

3.6 Modifications to Data Records. Recipient hereby acknowledges and agrees: (a) that at all times prior to its acceptance of any “Insertion Order” (as defined in Subparagraph 3.1 above), NWMS reserves the right, in its sole discretion, to modify, add to and/or delete any Data or Leads, including, without limitation, the addition or deletion of any types of Leads, changes to

fields or filters for Leads, improvements to quality of Data or Leads, modifications to any age ranges for Leads, and/or modifications to any demographic or vital statistics information contained in Data; (b) that NWMS reserves the right, in its sole discretion, at any time to modify add to and/or delete the contents of some or all of the Leads and/or Data contained within any Data Records accessible or available at **agedleadstore.com** or **nextwavemarketingstrategies.com**, in order to maintain legal compliance, to remove Leads and/or Data found to be defective or erroneous in some way, or to satisfy a *bona fide* Consumer removal request; and (c) that Recipient has no right of replacement, refund, or other recourse if it fails to download each available Data Record, which is ready for conveyance to Recipient within twenty-four (24) hours after the Accepted Insertion Order for such Data Records has been confirmed by NWMS hereunder.

3.7 Breach or Default by Recipient. Upon a breach or default of any of Recipient's covenants and/or other obligations under this Paragraph 3, including, without limitation, any of the Subparagraphs of this Paragraph 3 [*e.g.*, a violation of Subparagraph 3.4, clause (A) or (B)], the sublicense [re Data] and/or license [re Leads], as the case may be, and any and all correlative rights thereto, of Recipient to use Data Records, including, without limitation, any Leads and/or Data contained therein, shall terminate immediately. Upon such termination, Recipient hereby agrees and covenants (a) that it immediately shall cease and desist from any and all use, marketing, transfers and/or deliveries of the Data Records to third parties, including, without limitation, any and all Leads and/or Data contained therein, (b) shall promptly and permanently destroy or cause to be permanently destroyed all copies of the Data Records, including, without limitation, the Leads and/or Data contained therein, (c) shall promptly delete or cause to be deleted from all computers and all other storage systems [electronic or otherwise], the Data Records, including, without limitation, all Leads and/or Data contained therein, and (d) promptly shall verify *in writing* such destruction and deletion to NWMS.

3.8 No Further Rights. Except as expressly set forth in this Agreement, no additional, further or different rights or sublicense [re Data] and/or license [re Leads], as the case may be, are granted, provided or implied under this Agreement or otherwise.

3.9 Survival of Recipient's Obligations. Upon the termination of the rights or sublicense [re Data] and/or license [re Leads], as the case may be, under this Agreement, and any and all correlative rights thereto, of Recipient to use any and all Data Records, including, without limitation, any and all Leads and/or Data contained therein, such termination shall not affect Recipient's obligations under this Agreement as provided for in the Subparagraphs of this Paragraph 3, as the case may be, and all such obligations shall survive any termination of such sublicense [re Data] and/or license [re Leads], as the case may be, and such correlative rights thereto, of Recipient under this Agreement.

4. PAYMENT OF FEES. The Parties hereby contemplate, agree and acknowledge that, as consideration for any Data Records conveyed by NWMS to Recipient from time to time during the Term pursuant to the sublicense [re Data] and/or license [re Leads], as the case may be, and the correlative rights thereto, granted and provided for under this Agreement, Recipient shall pay fees to NWMS in accordance with the following Subparagraphs of this Paragraph 4.

4.1 Fees. Recipient hereby agrees and covenants to pay NWMS a fee per each set of the Data Records, corresponding to the category and quantity of Leads and/or Data contained therein [*i.e.*, also on a fee per Lead and/or fee per set of Data basis], which conforms to specifications in each respective Insertion Order submitted hereunder during the Term by Recipient and which are accepted and filled by NWMS hereunder from time to time during the Term, as confirmed in each respective Accepted Insertion Order. Notwithstanding anything to the contrary appearing herein, nothing in this Agreement shall obligate Recipient to submit Insertion Orders for a minimum quantity of Data Records, or shall obligate NWMS to accept and fill any minimum quantity of Insertion Orders submitted hereunder by Recipient for a minimum quantity of Data Records, or shall obligate NWMS to convey any minimum quantity or any particular category of Leads and/or Data to Recipient, except as confirmed by NWMS in an Accepted Insertion Order. In the event Recipient desires to submit an Insertion Order, and so notifies NWMS, the Parties hereby agree and covenant that they shall deal on a case by case basis about (a) the categories of Data Records, containing Leads and/or Data, as the case may be, (b) the quantity thereof, and (c) the fee price therefor, which Recipient may order from time to time during the Term pursuant to an Insertion Order submitted on one of the Websites; and any

agreement by the Parties thereon shall be immediately confirmed by NWMS, in the form of an Accepted Insertion Order simultaneously posted on such Website and/or by an e-mail or other means of confirmation selected by NWMS in its sole discretion.

(A) Method of Payment— Concurrently with submitting an Insertion Order, pursuant to Subparagraphs 3.1 and 3.2 above [*i.e.*, placing an online order online at www.agedleadstore.com or any at other Websites], Recipient hereby agrees and covenants that it shall immediately issue full payment in U.S. Dollars for each Accepted Insertion Order to NWMS by credit card [*i.e.*, VISA, MasterCard or American Express], by PayPal, or by wire transfer of funds directly to NWMS’s bank account. Further instructions for remitting payments are set forth on one or more of the Websites. Concurrently upon confirmed receipt of payment for an Accepted Insertion Order, NWMS hereby agrees and covenants that it shall provide Recipient with immediate access to the ordered Leads and/or Data, which shall be retrievable by Recipient in the “orders” sections of the corresponding Website, and which shall conform to the specifications as set forth in each respective Accepted Insertion Order.

(B) Adjustments for Errors—The Parties hereby acknowledges and agrees that the Recipient shall have five (5) days after the receipt of any Data Records conveyed hereunder to notify NWMS of any nonconforming Data Records and/or any errors therein [*e.g.*, disconnected phone number, wrong phone number, leads not matching desired filters, bogus Data] regarding either Leads or Data. However, Recipient’s failure to give NWMS timely notice of a claim for nonconforming Data Records, or for errors therein, or for nonconveyance or nondelivery of Data Records ordered pursuant to an Accepted Insertion Order, within five (5) days after the date of the Accepted Insertion Order, or the date set for the conveyance of such Data Records, as the case may be, shall constitute an irrevocable waiver by Recipient of any and all claims or objections related to such Data Records. In the event of such a waiver, Recipient hereby acknowledges and agrees that it may not in the future seek recovery of any kind of damages, whatsoever, for any such nonconforming Data Records and/or for any such errors, or seek a refund of any fees it had already paid by reason of any such nonconforming Data Records and/or any such

errors regarding such Data Records. Upon receipt of timely notice from Recipient of any such nonconforming Data Records and/or any such errors, the Parties hereby acknowledge and agree that NWMS shall have five (5) days to cure any 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 the money paid for the nonconforming or erroneous Data Records.

5. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.

5.1 Mutual Representations and Warranties. Each Party, respectively, hereby agrees, and represents and warrants to the other Party that: (a) this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with the terms and conditions thereof; (b) it has full power and authority to enter into this Agreement and to perform its 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 properties or other assets; (d) any and all Data Records, which are conveyed to Recipient hereunder, are not and will not be compiled, categorized, organized or intended, as the case may be, and will not be used, to promote sexually explicit materials, child pornography, violence, invidious or unlawful discrimination 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 5.1; (f) to the best of its actual knowledge, it will not transmit to the other Party anything containing any viruses, “Trojan horses,” “worms,” “time bombs,” “cancelbots,” or other computer codes that will tend to, or are intended to, damage, 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 Recipient’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 Recipient 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, Recipient 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 5.1.

5.2 Representation and Warranties re Data Records by Recipient. Recipient hereby agrees, and represents and warrants to NWMS that it shall not at any time use or exploit, or attempt to use or exploit, any of the Data Records specified in Accepted Insertion Orders: (a) by means of communicating *via* facsimile, texting or e-mail in violation of applicable laws [*e.g.*, CAN-SPAM Act, COPPA], or any unlawful or legally prohibited telephone calls to land line telephones or cell phones [*e.g.*, prerecorded messages or autodialed calls insofar as they are unlawful]; (b) in order to determine credit worthiness 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) in order to determine financial eligibility for any financial services Products; (d) in order to underwrite or determine eligibility for insurance Products for Consumers; (e) in order to investigate the background of prospective tenants; (f) in order to investigate the background of prospective employees; (g) by referring to NWMS, by its name, in conjunction with any Data Records, in any advertising, marketing or promotional materials; (h) in violation of any applicable federal, state and/or local laws; and (i) for any use or purpose not expressly authorized by this Agreement.

5.3 Representations and Warranties re Websites by Recipient. Recipient hereby agrees, and represents and warrants to NWMS that: (a) it shall not access or attempt to access any Website, shall not submit any Insertion Order, and shall not download any Data Records from any Website or use any downloaded or otherwise conveyed Data Records, in whole or in part, for any purpose that is unlawful or prohibited by this Agreement; (b) it shall not modify, copy, distribute, transmit, display, reproduce, publish, license, sublicense, create derivative works from, frame in another web page, use on any other Website, convey, exploit, transfer, sell, rent, lease or otherwise dispose of any information, software, lists of Consumers, Data Records,

Leads or Data conveyed from, provided through or obtained from one or more of the websites or otherwise from NWMS under this Agreement, except for purposes entirely in accordance with this Agreement; (c) it shall not engage in the practices of screen scraping, database scraping, or any other improper or unlawful activity with the purpose of obtaining lists of Consumers or other information contained within the Data Records or Databases; (d) it shall not use any of the Websites in any manner that could damage, disable, overburden, or impair any of the Websites or interfere with NWMS's use and commercial operation of any of the Websites; (e) it shall not obtain or attempt to obtain any Data Records or any information on the Databases through any means not intentionally made available or furnished by NWMS on one or more of the Websites or otherwise by or from NWMS under this Agreement; and (f) except with the written permission of NWMS, it shall not access or attempt to access password protected, secure or non-public areas of any of the Websites.

5.4 Representations and Warranties re Websites by NWMS. NWMS hereby agrees, and represents and warrants to Recipient that: (a) it is the sole and exclusive owner of or has the rights to use each of the Websites operated by it under this Agreement; (b) it has the right and power to grant to Recipient the rights and authorization to access such Websites; and (c) such access does not and will not infringe upon any propriety rights of any other person.

5.5 Representations and Warranties re Data Records by NWMS. NWMS hereby agrees, and represents and warrants to Recipient that, generally, each of the Data Records, containing Leads and/or Data, which are subject to conveyance under this Agreement, shall be as reasonably free from defects and errors (a) as is commercially practical and (b) as is consistent with customary and regularly observed commercial practice, standards, and usage in the leads/data marketing industry.

5.6 Acknowledgements by Recipient. Recipient hereby acknowledges and agrees that: (a) NWMS has acquired any and all Data Records, including, without limitation, any and all Leads and/or Data contained therein, from Suppliers who are third-party independent contractors *vis a vis* NWMS and who are not affiliated or related to NWMS by corporate parent/subsidiary or affiliate relationship, partnership, joint venture, agency, franchise, sales representative

relationship, employment relationship or any relationship other than by supply contract; (b) NWMS does not and will not at any time represent, warrant, assure or guarantee that any Leads or other Data conveyed to Recipient under this Agreement will contain, include, reflect, and/or have appended thereto, and/or will 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 Recipient or Recipient'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; (c) in the event Recipient 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 or regulations, Recipient 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 (b) of this Subparagraph 5.6, 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 or regulations [NWMS shall not have any responsibility *vis a vis* Recipient in this regard]; (d) NWMS does not and will not represent, warrant, ensure or guarantee that any and all Leads or any and all other Data conveyed to Recipient under this Agreement will be absolutely and completely free of defects or errors [e.g., incorrect Consumer e-mail addresses, incorrect Consumer telephone numbers], will have undergone complete and entirely effective data hygiene, enhancing or updating processes, will have undergone complete and entirely effective "scrubbing" and removal of telephone numbers listed on the Do Not Call Registry ("the DNC"), as may be required by applicable law; (e) Recipient shall be solely responsible to ensure that its own use and exploitation, or conveyance to its permissible clients or other persons, of any Data Records, containing Leads and/or Data therein, which are conveyed to it under this Agreement, will be compliant with all applicable federal, state and local laws or regulations and that Recipient hereby assumes the entire risk of any such non-compliance *vis a vis* NWMS; and (f) NWMS has conveyed, or shall have an unfettered right hereunder to convey, even if not yet conveyed, any and all Data Records, containing Leads and/or Data therein, which are subject to conveyance under this Agreement, on a non-exclusive basis on multiple occasions to multiple persons who are third parties.

6. 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 LEADS AND/OR DATA CONTAINED WITHIN SUCH DATA RECORDS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY REPRESENTATIONS OR WARRANTIES REGARDING TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ANY ECONOMIC OR OTHER BENEFIT THAT MIGHT BE GENERATED AS A RESULT OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND/OR ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE, AND THEIR EQUIVALENT REPRESENTATIONS AND WARRANTIES UNDER THE LAWS OF ANY JURISDICTION. FURTHER, RECIPIENT HEREBY ACKNOWLEDGES AND AGREES THAT (A) ANY AND ALL DATA RECORDS CONVEYED HEREUNDER, AND ANY AND ALL LEADS AND/OR DATA CONTAINED WITHIN SUCH DATA RECORDS, ARE CONVEYED AND ACQUIRED “AS IS,” “WHERE IS,” AND “WITH ALL ERRORS, FAULTS AND DEFECTS” – EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND (B) NWMS HAS NOT UNDERTAKEN, AND SHALL NOT BE OBLIGATED UNDER THIS AGREEMENT OR OTHERWISE, TO ENSURE OR GUARANTEE THAT ANY OF THE DATA RECORDS, INCLUDING, WITHOUT LIMITATION, ANY OF THE LEADS AND/OR DATA CONTAINED THEREIN, ARE IN COMPLIANCE WITH ANY OR ALL APPLICABLE FEDERAL, STATE AND/OR LOCAL LAWS OR REGULATIONS.

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

7.1 Non-Solicitation. Recipient 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 or entity other than NWMS, at any time during the 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 consent NWMS may withhold in its sole discretion, (a) attempt in any manner to deal directly or indirectly with, or solicit any of the Suppliers or other third-party individual persons or entities related to the supplying, acquisition and/or preparation of any Data Records by NWMS [*e.g.*, hygiene process, DNC scrubbing, enhancing, appending], including, without limitation, by having any part of or deriving any benefit, from such supplying, acquisition and/or preparation or any aspect thereof, or (b) by-pass, compete with, avoid, circumvent or attempt to circumvent NWMS with respect to such supplying, acquisition and/or preparation of Data Records, including, without limitation, by utilizing any Confidential Information (as defined in Subparagraph 7.2 below), or by otherwise exploiting or deriving any benefit from any Confidential Information. Further, in this connection, Recipient hereby agrees, covenants and represents that, for example, it shall not at any time during the Non-Solicitation Period, without the prior written consent of NWMS, which consent NWMS may withhold in its sole discretion, knowingly solicit, retain, employ or engage any persons who performed services as independent contractors or employees for NWMS at any time prior to and/or during the Term, with respect to NWMS’s acquisition, aggregating, compiling, categorizing, organizing, storing, cleaning, scrubbing, enhancing and/or appending any Leads and/or Data.

7.2 Confidential Information Defined. As used in this Agreement, as hereby acknowledged and agreed by Recipient, the term “Confidential Information” shall mean and refer to: (a) the terms and conditions of specific 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 personnel, Suppliers, services, products, future business plans, and/or methods and processes for acquiring, aggregating, compiling, categorizing, organizing, bundling and/or storing Leads and/or Data.

(A) Exceptions—Notwithstanding anything to the contrary appearing in Subparagraph 7.2 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 Recipient; (2) information that is known to Recipient without restriction, prior to receipt from NWMS under this Agreement, from Recipient's own independent sources as evidenced by Recipient's written records, and which was not acquired, directly or indirectly, from NWMS; (3) information that Recipient receives from any third party reasonably and in good faith known by Recipient 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 Recipient's employees or agents, provided that Recipient can demonstrate that those same employees or agents had no access to the Confidential Information received hereunder.

7.3 Non-Disclosure Agreement. Recipient 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, Recipient 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, Recipient hereby acknowledges, agrees and covenants that, during the Term of this Agreement and thereafter [but then only as permitted herein], Recipient shall use and reproduce NWMS's Confidential Information, as may be furnished to it by NWMS in its sole discretion, solely for purposes of this Agreement and 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 consent NWMS may withhold in its sole discretion. Notwithstanding anything to the contrary appearing in this Subparagraph 7.3 above, it shall not be a breach of this Agreement for Recipient to disclose Confidential Information of NWMS if required to do so under applicable law, in response to a valid and enforceable judicial proceeding, subpoena or an investigation or proceeding before a governmental or regulatory agency, provided that NWMS has been given prompt prior notice and Recipient has sought all reasonably available safeguards against public disclosure or widespread dissemination of the Confidential Information prior to such disclosure. Further, Recipient 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 level of care, that it shall disclose it within its own organization or business only on a

need-to-know basis, and then 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, Recipient hereby acknowledges and agrees 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, including, without limitation, any Leads and/or Data contained therein, 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 constitute NWMS's trade secrets. Further, Recipient hereby 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, shall disclose it within its own organization or business only on a need-to-know basis, and then 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 then performances of individual contractor services.

(A) Non disclosure of Source of Licensed Data or Relationship: Client shall not disclose to any other party that NWMS is the source the licensed leads or data without prior written consent of NWMS, which consent will be issued only on a case by case basis, and shall not be issued in the form of a blanket consent

7.4 Continuing Confidentiality Duties. The non-solicitation, confidentiality and non-disclosure covenants and other obligations described above in this Paragraph 7, including its Subparagraphs, shall survive and continue in effect after any termination or expiration of this Agreement. Further, Recipient hereby agrees and covenants not to use any Confidential Information of NWMS except as expressly permitted in this Agreement.

8. INDEMNIFICATION.

8.1 Indemnity by NWMS. NWMS hereby agrees and covenants that it shall, from and after the Effective Date, defend, indemnify and hold harmless Recipient, 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 Subparagraphs 5.1, 5.4 and 5.5]; and/or

(B) Failure to Convey Data Records—Any willful and bad faith failure by NWMS to perform any covenants or obligations on its part to convey Data Records to Recipient in accordance with Paragraph 3 of this Agreement [*e.g.*, as described in Subparagraphs 3.2 and 3.3].

8.2 Indemnity by Recipient. Recipient 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 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 Recipient set forth in this Agreement [*e.g.*, as described in Subparagraphs 5.1, 5.2, and 5.3];

(B) Failure to Perform Covenants—Any failure by Recipient to perform any covenants or obligations on its part under this Agreement [*e.g.*, as described in Subparagraphs 3.4, 3.5, 7.1 and 7.3];

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

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

(E) Use of Websites—Any misuse or improper or unlawful access by Recipient 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 or local laws or regulations by Recipient 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 conveyed under this Agreement.

9. REMEDIES.

9.1 Liquidated Damages. The Parties hereby acknowledge and agree that for each and every breach, default or violation by Recipient of Subparagraph 3.4, including, without limitation, clause (A) and/or clause (B) thereof, given the inherent uncertainties of calculating damages suffered by NWMS resulting from any such breach, default or violation, it would be impracticable or extremely difficult to determine the amount of actual damages suffered by NWMS. Accordingly, the Parties hereby acknowledge and agree that Recipient shall pay to NWMS as liquidated damages [and not as a penalty] the sum of \$2,500.00 (“Liquidated Damages”) for each incident of such breach, default or violation, and that NWMS shall not be entitled to recover any additional damages above the amount of Liquidated Damages for any incident of such breach, default or violation. The Parties further hereby acknowledge and agree that they intend this Subparagraph 9.1 to provide for and authorize Liquidated Damages pursuant to Section 1671 of the California Civil Code and any other applicable statutory and/or case law; and therefore, Recipient hereby acknowledges and agrees that the Liquidated Damages are a fair

and reasonable estimate of any actual damages that may be suffered by NWMS under the circumstances and that Recipient hereby fully and finally waives any argument, claim or contention that the Liquidated Damages are void or invalid for any reason, or constitute an unlawful or unenforceable assessment of a penalty. Notwithstanding the above provisions for Liquidated Damages in this Subparagraph 9.1, the Parties hereby acknowledge and agree that nothing in this Subparagraph 9.1 shall prevent, limit or restrict NWMS from seeking and recovering indemnity from Recipient in connection with any third-party claims as provided for in Paragraph 8 above.

9.2 Injunctive Relief. Recipient hereby acknowledges and agrees that a breach, default or violation, or a threatened breach, default or violation, by Recipient of (a) Subparagraphs 3.3, 3.4, 3.5 and/or 3.7, including, without limitation, any of the clauses thereof [*e.g.*, Subparagraph 3.4, clauses (A) and/or (B)], regarding, for example, limitations and restrictions on the permissible uses of Data Records and/or Websites, and/or (b) Paragraph 7, Subparagraphs 7.1, 7.2 and 7.3, regarding, for example, non-solicitation of any Suppliers and/or the non-disclosure of Confidential Information, will or may cause irreparable harm and injury to NWMS. Therefore, notwithstanding NWMS's entitlement to Liquidated Damages as provided for in Subparagraph 9.1, Recipient hereby acknowledges and agrees that NWMS also shall have the right, without the necessity of posting bond or other security and without the necessity of having to affirmatively show that monetary damages would be an insufficient remedy, to file an action in a court of competent jurisdiction to apply for and obtain a temporary restraining order or preliminary or permanent injunction or other equitable remedy or relief (collectively or individually, "Injunctive Relief") in order to stop or prevent, as the case may be, such a breach, default or violation, or a threatened breach, default or violation, of any such above-listed Paragraphs and Subparagraphs of this Agreement, and that it will not be a defense to any application for such relief that NWMS has an adequate remedy at law. Further, Recipient hereby acknowledges and agrees that the rights, remedies and relief in respect of Injunctive Relief as described for in this Subparagraph 9.2 are cumulative and in addition to any other rights, remedies or relief available to NWMS at law or in equity.

9.3 Cumulative Remedies. Except where expressly limited under this Paragraph 9, the rights and remedies of the Parties, respectively, for breach, default or violation of this Agreement, or for any other disputes, actions or claims between the Parties arising out of, relating to or in connection with this Agreement [including, without limitation, any Data Records, Data and/or Leads] are in addition to any other rights and/or remedies available at law or in equity; and the selection of one right or remedy by a Party shall not prejudice such Party's ability or opportunity to select another right or remedy. Notwithstanding anything to the contrary appearing in this Agreement, the cumulative rights and remedies as described in this Subparagraph 9.3 [except for Injunctive Relief] shall not be available for or apply to any matter subject to Liquidated Damages as provided for in Subparagraph 9.1, which shall be deemed to constitute an express limitation on the amount of damages available for recovery by NWMS for a breach, default or violation of Subparagraph 3.4 including, without limitation, clause (A) and/or clause (B) thereof.

9.4 Limitation of Liability. To the maximum extent permissible under applicable law, and notwithstanding anything to the contrary appearing in this Agreement, with the exception of, as the case may be, (a) any third-party indemnity claims whereby a Party is entitled to indemnity from the other Party under Paragraph 8 above, (b) Recipient's payment obligations under Paragraph 4 above, and (c) the provisions for Liquidated Damages under Subparagraph 9.1 above, neither Party shall be liable to the other Party for any punitive, exemplary, compensatory, general, special, consequential, indirect or incidental damages whatsoever, regardless of the nature of the action or claim, whether based upon contract, tort [*e.g.*, fraud], strict product liability, statute or otherwise, and regardless of whether such Party has been advised of the possibility of such damages or whether such damages are foreseeable. Subject to the exceptions set forth in clauses (a), (b) and (c) of this Subparagraph 9.4 above, each Party's exclusive and maximum remedy at law for any and all damages, and each Party's maximum limit of liability at law for any and all damages, which may result from any breach, default or violation of this Agreement [*e.g.*, from any nonconforming, defective or erroneous Data Records, from any nonconforming conveyances of Data Records, or for any other cause], shall not exceed the total amount of the contract price [*i.e.*, fees] for the conveyance of particular Data Records, as set forth in the applicable Accepted Insertion Order and as provided for in Paragraph 4 above, with

respect to which the damages were suffered. Such remedy shall be in lieu of any claims for additional or other damages, including, without limitation, incidental and consequential damages. For the reason that some states and jurisdictions do not permit the exclusion or limitation of liability for incidental or consequential damages, the limitations described in this Subparagraph 9.4 above may not be applicable to the Parties; and in that event, if a Party is dissatisfied with the other Party's performance under this Agreement, such dissatisfied Party's sole and exclusive remedy, in addition to Injunctive Relief pursuant to Subparagraph 9.2, shall be to immediately terminate this Agreement for "cause" under Subparagraph 10.3 below and to immediately cease from conveying or ordering Data Records, as the case may be.

9.5 Attorneys' Fees. In the event either Party initiates an arbitration or court action against the other Party in order to enforce, interpret or terminate this Agreement, or to establish rights hereunder, or to resolve any dispute, claim or controversy arising out of, relating to or in connection with this Agreement, the prevailing Party in such arbitration or court action shall be entitled to recover its reasonable attorneys' fees and costs incurred in the matter from the non-prevailing Party. Notwithstanding anything to the contrary appearing above in this Paragraph 9 [e.g., Subparagraphs 9.1 and 9.4], nothing in this Agreement shall limit or prejudice a prevailing Party's right to recover its reasonable attorneys' fees and costs as provided for above in this Subparagraph 9.5.

10. TERMINATION OF AGREEMENT

10.1 Early Termination without Cause. At any time during the Term, either Party may, by giving written notice to the other Party at least thirty (30) 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.

10.2 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 earnings, revenues or profits, or losses from any investments, expenditures or commitments made by a Party, or any consequential or incidental damages]

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 11 of this Agreement, or (b) the other Party terminates or cancels this Agreement as provided for in Subparagraph 10.1 above.

10.3 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 10.3 (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 or 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 in the ordinary course of business its debts 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 case, or a court with jurisdiction thereof enters a decree for relief in any involuntary case involving the other Party; and/or

(C) Breach – The other Party fails to cure, within ten (10) days after 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) days’ notice, in the event the breach, default, violation or other cause for termination cannot reasonably be cured within such ten (10) day 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.

10.4 Special Immediate Termination Rights of NWMS. Notwithstanding anything to the contrary appearing 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 Recipient, and NWMS shall be entitled to terminate this Agreement for cause, immediately without any opportunity for Recipient to cure, and without waiver of any rights or remedies NWMS may have:

(A) Impermissible Transfers – If NWMS determines, in its sole discretion, that Recipient has transferred or delivered, or attempted to transfer or deliver, any Leads and/or Data subject to this Agreement to any third party in violation of Subparagraphs 3.4 and/or 3.5 above and/or otherwise without permission under this Agreement or NWMS’s express consent; and/or

(B) Consumer Complaints – If NWMS receives any credible complaint(s) of a material nature from one or more of Recipient’s Consumers or from one or more of Recipient’s 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 Leads and/or Data transferred and delivered by NWMS to Recipient hereunder and thereafter re-transferred or re-delivered by Recipient, which NWMS, in its sole discretion, determines to have merit; and/or

(C) Evidence of SPAM, DNC and Privacy Violations – If NWMS receives any credible information that any Leads and/or Data transferred or delivered by NWMS to Recipient hereunder have been used in violation of applicable criminal 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

(D) Privacy Policy Publication Violation – If NWMS determines, in its sole discretion, that Recipient, insofar as required by applicable law, has failed to publish at all 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.

11. RENEWAL OF AGREEMENT. Upon the Expiration Date of the initial Term of this Agreement, unless this Agreement has been earlier terminated and canceled pursuant to Subparagraph 10.1, 10.3 or 10.4 above, the Term of this Agreement shall automatically and perpetually be renewed and extended on a year-to-year basis (a “Renewal Term,” with each year being defined as 365 days), subject to termination under Paragraph 10 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.”

11.2 Non-Renewal of Agreement. Notwithstanding anything to the contrary appearing in Paragraph 11 above, the initial Term of this Agreement shall not be renewed or extended for a first Renewal Term, or if 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) 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) 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.

12. RELATIONSHIP OF PARTIES. This Agreement is non-exclusive. The Parties 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 12. In connection with the performance of this Agreement by the Parties, Recipient hereby agrees and acknowledges (a) that NWMS and its personnel are acting solely as independent contractors and not as employees or agents of Recipient, and (b) that NWMS shall be solely responsible for the payment of compensation and benefits of any NWMS personnel assigned to perform services hereunder.

13. NON-DISPARAGEMENT. Each of the Parties hereby agrees and covenant 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 to the contrary appearing in this Paragraph 13, 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.

14. NOTICES. Unless otherwise specifically provided in this Agreement, any notice, request, consent, approval or other communication given under, related to or connected with this Agreement (each a "Notice" or a "notice") must be *in writing* and must be (a) delivered personally by hand, (b) sent by a nationally recognized overnight air courier providing confirmation of receipt by the recipient [*e.g.*, FedEx], or (c) sent by United States certified mail, return receipt requested, postage prepaid.

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

If to Recipient: At a valid postal/street address given by Recipient as part of the process of registering for an online account with NWMS at one of its Websites

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

14.2 Change of Address. Either Party may change its Notice addressee and Notice address by giving Notice of the change to the other Party; however, notwithstanding anything to the contrary appearing elsewhere in this Paragraph 14, the change will not become effective until the other Party receives Notice of the change.

14.3 Effectiveness of Notices. Any Notice provided pursuant to this Agreement shall be effective upon actual receipt if by hand delivery or by overnight courier, or three (3) business days after mailing via United States certified mail, return receipt requested, postage prepaid.

15. 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 to the contrary appearing in this Agreement.

16. MISCELLANEOUS TERMS.

16.1 Entire Agreement. This Agreement [together with any NWMS Websites insofar as referred to herein] constitutes the final, entire, integrated and exclusive agreement between the Parties, including the complete and exclusive expression of the terms, conditions, covenants 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 this Agreement are integral parts of this Agreement and are fully incorporated within this Agreement. This Agreement cannot be amended or modified in whole or in part, except by an instrument in writing signed by the Party to be charged or bound thereby.

16.2. 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 8], regardless of whether such third party benefits by the performance of this Agreement.

16.3 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 *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.

16.4 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 furnished or provided 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 Leads and/or Data.

16.5 Counterparts. This Agreement may be executed in any number of counterparts [including, without limitation, execution *via* facsimile transmission of signatures in the spaces indicated below, or execution *via* e-mailing transmissions, or execution *via* clicking the designated “sign-up” button on an NWMS Website -- each of which is deemed to have the same force and effect as an original of signature by a Party], 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 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 signed by that Party as provided for hereinbelow or on an NWMS Website.

16.6 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.

16.7 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, clause or other provision or part hereof.

16.8 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.

16.9 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 16.9 shall give written Notice to the other Party, as described below in Paragraph 14 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) days after the date of the Force Majeure Notice, the nondefaulting Party shall have the right to terminate this Agreement immediately upon giving written notice of termination.

16.10 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, 3.8, 3.9, Paragraphs 4, 5, 6, 7, 8, 9, Subparagraph 10.2, and Paragraphs 13, 14, 15 and 16 -- as each such provision is applicable as the circumstances may require.

16.11 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.

IN WITNESS HEREOF, the Parties have executed this Agreement on Effective Date. By signing below or as otherwise provided in this Agreement [*e.g.*, by clicking on a designated

“sign-up” button on an NWMS Website, by an e-mailing transmission], each representative of each Party, respectively, affirms to the other Party that he or she is authorized to bind the Party he or she represents to the terms and conditions of this Agreement.

NWMS:

Next Wave Marketing Strategies, Inc.,
a California corporation

By: _____

Print Name: _____

Title: _____

Recipient:

[Name]

[Entity Status or Natural Person]

By: _____

Print Name: _____

Title: _____