TOWERDATA DATA SERVICES AGREEMENT

 This Data Services Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 20\_\_\_ (“**Effective Date**”) by and between TowerData, Inc. (“**TowerData**”) and the undersigned (“**Client**”). The terms and conditions of this Agreement shall be deemed incorporated by reference into any schedule hereto or any order form or other agreement between the parties referring to this Agreement or the license and service described herein (each a "**Data Services Order**"). In the event of any conflict between the terms of this Agreement and any Data Services Order, the terms of this Agreement shall govern in the absence of a written consent by TowerData. All Data Services Orders together with this Data Services Agreement shall be collectively known as the "Agreement."

 WHEREAS, TowerData is in the business of providing services pertaining to consumer and business data, including the data specifically identified on the attached Data Services Order; and

 WHEREAS, Client wishes to engage TowerData for data services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises set forth above and the mutual promises, agreements and conditions stated herein, the parties agree as follows:

1. Grant of License. Except as specifically provided herein, TowerData hereby grants to Client a nontransferable, non-exclusive license to the Licensed Data (as defined below) appended to the Client File (as defined below) and to use such appended Licensed Data for lawful marketing purposes in accordance with the terms of this Agreement, which terms shall survive any termination or expiration of this Agreement. As used herein, “**Licensed Data**” means the information appended to records in the Client File (as defined below). The license granted hereunder shall automatically terminate upon the breach by Client of any material term or provision of this Agreement.
2. Services. Client shall provide to TowerData a copy of its data file (the “**Client File**”) for the purpose of appending Licensed Data to such file. The appending of Licensed Data to the Client File (the “**Services**”) shall be performed by TowerData or its contractor or agent at the computer facilities of TowerData or such authorized contractor or agent.
3. Ownership. Client acknowledges that the Licensed Data is owned or licensed by TowerData or the licensor who provided the Licensed Data to TowerData (collectively the “**Data Suppliers**”), and that Client has no proprietary rights in the Licensed Data other than those granted hereunder. Subject to the license grant in Section 1, the Client File shall remain the exclusive property of Client. Except as otherwise provided herein,TowerData will never share or disclose Client’s data to any third party; ~~however, TowerData may use Client's data for internal data indexing, data linkage, and data inferencing (including making inferences about a data subject's demographic data), in order to improve TowerData's products and services. For example, Client’s data may reveal that two email addresses that already exist in TowerData's database belong to the same individual. TowerData may retain that association.~~ TowerData will delete the client’s file and data after 30 days to ensure membership privacy.
4. Limitations on Use of the Licensed Data. Client may use the Licensed Data in accordance with the following permitted uses, subject to the restrictions set forth herein:
	1. Client shall use the Licensed Data in compliance with applicable Direct Marketing Association (“**DMA**”) guidelines, and all applicable federal, state and local laws, statutes, rules and regulations. Client agrees and warrants that it is Client’s sole responsibility to honor all applicable Do Not Call, Do Not Mail, and similar Do Not Solicit federal, state, county and local regulations.
	2. If Client receives consumer “lifestyle” data with the Licensed Data, such lifestyle data shall not be used in connection with any telemarketing activities.
	3. All marketing communications used in connection with any Licensed Data shall (i) be devoid of any reference to the source of the recipient’s name and address or to any selection criteria or presumed knowledge concerning the intended recipient of such solicitation; (ii) comply with all applicable federal and state laws, rules and regulations; (iii) comply with all applicable privacy policies, ethical use and Fair Information Practices published by the DMA; and (iv) not contain sexually explicit or obscene materials, or materials that are otherwise deemed offensive.
	4. Client may not use the Licensed Data, in whole or in part, in the development of any data products or services to be provided to third parties including, without limitation, any list enhancement or data appending service or product.
5. Email Services. In addition to Clients other obligations and use restrictions hereunder, the following terms apply to Client when Client receives email addresses from TowerData as part of the Services:
	1. Unless otherwise provided in the Data Services Order, Client hereby consents to and authorizes TowerData to transmit an email to each email address appended to the Client File pursuant to this Agreement which will notify the recipient that Client will be making email solicitations to the recipient (the “**Introductory Email**”). In such case, Licensed Data shall only include those email address records that are appended to the Client File who have not opted out of receiving emails from Client. Client shall provide the content of the Introductory Email the content of which shall be reasonably acceptable to TowerData. Notwithstanding the foregoing, Client shall be solely responsible for all content contained in the Introductory Email. Each Introductory Email will include unsubscribe information and instructions.
	2. Client acknowledges that, if Client will be emailing marketing solicitations regarding products prohibited by law to be advertised to or used by minors, applicable law may require suppression processing to be run against Client’s files in order to suppress all email addresses accessible to minors from such marketing solicitations. Client warrants that Client will apply such suppression processing as required by law prior to utilizing email address data provided herein. Client will indemnify and hold TowerData, its agents and employees harmless from and against any claim, action or liability (including damages, costs, expenses and reasonable attorneys’ fees), that may arise against TowerData as a result of Client’s failure to comply with the foregoing requirement.
	3. Client represents that no consumer included in the Client File has requested not to receive solicitations from Client.
	4. Client shall use the Licensed Data for marketing and management purposes only and shall not transfer possession, right or title of or to such data for any other purpose whatsoever.
	5. Additional Terms Regarding Business Email Append Services: Client acknowledges and agrees that the email addresses provided by business email appending will include addresses constructed using algorithmic rules based on corporate email address patterns. Any email addresses appended by TowerData in connection with these services will be the property of Client, ~~except that TowerData shall retain the right to use domain names and email patterns obtained in connection with the services solely for the purpose of providing email append services to other clients.~~
6. Phone Services. In addition to Clients other obligations and use restrictions hereunder, the following terms apply to Client when Client submits or receives telephone numbers as part of the Services:
	1. TowerData may provide Client with telephone numbers of consumers who have registered under one or more “Do Not Call” lists maintained by the Federal Trade Commission, a state agency, and/or the DMA (the “**DNC Lists**”). In using the materials supplied by TowerData, Client represents and warrants that Client will comply with any and all federal and state laws, rules, and regulations regarding telephone solicitations and Do Not Call requirements.
	2. TowerData disclaims any warranty, express or implied, that any telephone numbers on DNC Lists have been identified or deleted from the information supplied to Client by TowerData. Furthermore, TowerData disclaims all responsibility for ensuring that Client complies with the laws establishing the DNC Lists. In the event that Client fails to fulfill any compliance requirement or obligation of Client under any applicable federal or state law, rule, or regulation relating to telephone solicitations or Do Not Call requirements, Client shall defend, indemnify and hold harmless TowerData as set forth in Section 13.
7. Postal Services. If Client receives National Change of Address (“NCOA”) or Delivery Sequence File Second Generation (“DSF2”) as part of the Services, Client agrees that the sole permitted use of these services is to process address lists in the preparation of mail that will be submitted to the USPS for acceptance and delivery. In connection therewith, Client warrants that it is an entity located or operating within the United States and that it will only use mailing lists processed through these services for mailing to addresses located within the United States. Client acknowledges and agrees that: (a) Client must complete and execute a USPS Processing Acknowledgment Form (“PAF”) prior to use of NCOALink and DSF2, and (b) a minimum of 100 records per use is required by the USPS.
8. Demographic Services. In addition to Clients other obligations and use restrictions hereunder, the following terms apply to Client when Client submits or receives demographic information as part of the Services:

* 1. The license granted to Client hereunder, and the right to use the demographic data provided as part of the Licensed Data, is for a period of one year from the Effective Data. The license shall automatically renew at the end of the year for an additional year at a twenty percent (20%) discount to the initial pricing terms set forth in the Data Services Order. Client may terminate the license with written notice at least thirty (30) days prior to the end of any term year. If this Agreement is terminated for any reason, Client shall remove all Licensed Data generated as part of the demographic services from its systems and devices under its control or in its possession and, upon TowerData’s request, shall provide written certification to TowerData that it has removed the demographic Licensed Data. If Client fails to fulfill the foregoing obligations, Client shall pay to TowerData the amount for the demographic Licensed Data identified in the Data Services Order pro-rated (if necessary) on a monthly basis for each month, or partial month, that the demographic Licensed Data is not removed. Client shall pay such monthly amounts within thirty (30) days of the date the fees are due to Licensee.
	2. Client shall use the Licensed Data for marketing and management purposes only and shall not transfer possession, right or title of or to such data for any other purpose whatsoever.
1. Pricing; Payment.
	1. Client shall pay to TowerData the fees as set forth in the Data Services Order executed by Client for the services identified therein. TowerData shall deliver to Client an invoice (the “**Invoice**”) specifying the amount due TowerData by Client and the due date of the payment by whatever means it may choose (including by mail, email, or fax). Cancellations prior to delivery of results are subject to work-in-process charges, and changes in specifications, schedules or materials are subject to additional charges as determined by TowerData and will be added to the Invoice.
	2. Amounts not paid within thirty (30) days of the due date on the Invoice will incur a finance charge at the rate of one and one-half percent (1.5%) per month or equal to the highest rate permitted by law (whichever is less) on any outstanding overdue balance. Client may not withhold payment of any invoiced amount even if the subject of a good faith dispute. Client shall also pay TowerData’s costs of collection of such outstanding sums, including without limitation, attorneys’ fees. All payments due hereunder are in U.S. dollars and are exclusive of any applicable taxes. Client shall be responsible for all applicable taxes.
2. Client Representations. Client represents and warrants that (i) the provision of the Client File to TowerData does not violate any laws, intellectual property rights or any agreements with third parties; and (ii) the use and disclosure of the Client File pursuant to the Agreement is in accordance with Client’s privacy policies
3. LIMITATION OF LIABILITIES. TowerData’s liability for any claim, regardless of the form of action, whether in contract, tort or negligence, for any damages resulting from or in any manner connected with the Licensed Data or the Services, if any, shall be limited to the amount of the fees paid OR PAYABLE by Client for the Licensed Data or Services which are in error. In no event shall TowerData be liable for any other damages whether indirect, incidental, special or consequential including, but not limited to, lost business and lost profits, whether foreseeable or not, even if advised of the possibility of such damages. except for an action of non-payment, no action, regardless of form, arising out of this agreement, may be brought by either party more than one (1) year after the cause of action has accrued.
4. WARRANTIES.

* 1. Client understands that the Services contemplated herein shall be of a quality conforming to generally accepted industry standards and practices. Upon receipt of written notice from Client describing a breach of the foregoing warranty in such reasonable detail as is requested by TowerData, TowerData shall, at TowerData’s expense, and as Client’s sole remedy hereunder for such Services, have the Services described in such written notice reperformed so as to conform to the foregoing remedy or refund any fees paid by Client, if any, for the noncompliant Services. THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES WITH RESPECT TO THE SERVICE. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.
	2. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, TOWERDATA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, HEREUNDER WITH RESPECT TO THE LICENSED DATA, OR THE MEDIA ON WHICH THE LICENSED DATA IS PROVIDED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
1. Indemnification. Each party hereto shall indemnify and hold harmless the other party and its respective agents, directors, officers and employees, and Data Suppliers (an “**Indemnified Party**”) from and against all claims, causes of action, actions, damages, fines, penalties, losses, judgments, costs and expenses sustained, suffered, paid or incurred by the Indemnified Party (“**Losses**”) arising, directly or indirectly, now or hereafter, as a result of, or in connection with any claims brought by any third party based upon any act or omission by such party (the “**Indemnifying Party**”) which constitutes a breach by the Indemnifying Party of any of its agreements, covenants, representations, or warranties herein. Any Indemnified Party hereunder shall give the Indemnifying Party notice of any action to which the foregoing indemnity applies, and the Indemnifying Party may participate in the defense of same, at its expense, through counsel of its own choice, provided that the Indemnifying Party may not settle any such action without the consent of the Indemnified Party except for a settlement only for payment of money damages that are paid by the Indemnifying Party and provide a full written release to the Indemnified Party. Without limiting the generality of the foregoing, Client agrees to indemnify and hold harmless TowerData from and against any and all Losses arising out of or resulting from Client’s misuse or unauthorized use of the Licensed Data or Client’s request for TowerData to investigate and assist Client in responding to regulatory or other third party inquiries into Client’s use of the Licensed Data or the Services TowerData performs for Client. The obligations of the parties under this Section shall survive any termination or expiration of this Agreement.
2. Confidentiality. The parties hereto agree that the terms and conditions of this Agreement including all riders or schedules hereto and any policies, business practices, plans and methods not in the public domain which are disclosed to the parties to this Agreement as a result of this Agreement will be held in confidence and not disclosed to any third party except as expressly permitted under this Agreement. In addition, TowerData shall hold the Client File supplied to it under this Agreement in confidence by exercising the same degree of care that it would use to protect its own confidential information of the type delivered to such party, but in any case no less than the degree of care that a reasonably prudent business would exercise under similar circumstances. Client acknowledges that TowerData may disclose the Client File to its employees, contractors and agents as required for use hereunder, but that such disclosure and use of the Client File shall be only in connection with the Services performed hereunder. Each party’s obligations under this Section shall survive any termination of this Agreement.
3. FCRA. TowerData is not a consumer-reporting agency ("Consumer Reporting Agency") as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA") and TowerData’s Licensed Data, data services and reports do not constitute “Consumer Reports”, as that term is defined in the FCRA. Client will not use or provide TowerData services or data for any purposes enumerated in the FCRA in lieu of obtaining a Consumer Report. Client will not use or provide any Licensed Data, data services or reports:

a. in connection with establishing a consumer’s eligibility for credit or insurance to be used primarily for personal, family or household purposes, or in connection with assessing risks associated with existing credit obligations of a consumer;

b. for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee;

c. for any tenancy verification or in connection with any application to rent real property;

d. in connection with a determination of a consumer’s eligibility for a license or other benefit that depends on an applicant's financial responsibility or status;

e. as a potential investor or servicer, or current insurer, in connection with a valuation of, or assessment of credit or prepayment risks associated with, an existing credit obligation;

f. in connection with any information, service or product sold or delivered to a “Consumer” (as that term is defined in the FCRA) that constitutes or is derived in substantial part from a Consumer Report; or

g. for any other purpose under the FCRA.

Client will not use or provide TowerData services or data for the preparation of a Consumer Report or in such a manner that may cause such data to be characterized as a Consumer Report. Client agrees that it will not take any “Adverse Action” (as that term is defined in the FCRA), which is based in whole or in part on TowerData services or data, against any Consumer.

1. Publicity. TowerData may list Client in its marketing materials (in any format or media) mentioning Client as a customer subject to the terms and conditions of this Agreement. TowerData may not list or refer to Client for any other purpose without prior written approval from Client.
2. Governing Law. The Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles, and shall benefit and be binding upon the parties hereto and their respective successors and assigns. Any dispute arising from this contract shall be decided solely and exclusively by a court of competent jurisdiction located in New York City, New York.
3. Attorneys’ Fees. If any party to this Agreement brings any action or proceeding relating to or arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party attorneys’ fees, costs and expenses incurred in such action or proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

 CLIENT:

TOWERDATA \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Company Name)

By: By:

 (Signature) (Signature)

 (Print or Type Name) (Print or Type Name)

 (Title) (Title)