

## Standard Provisions For Purchase Request Referral Agreements

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

“**AWEB Affiliate**” means any person or entity controlled by, controlling, or under common control with AWEB.

“**AWEB Designated URL**” means a URL or URL(s) designated by AWEB and provided to Purchase Request Referrer from time to time for the purpose of submitting Form Purchase Requests.

“**AWEB Marks**” means any entity names, trademarks, trade names, logos, domain names of any AWEB Sites, branded materials and other company identifiers of AWEB and any AWEB Affiliate that AWEB or any AWEB Affiliate may adopt from time to time during the Term. AWEB Marks shall include any misspelling or abbreviation thereof or typographical variation thereof; or any word, term, phrase or expression that incorporates any of the foregoing.

“**AWEB Representative**” means AWEB’s Director of Lead Management or such other representative of AWEB as may be designated by AWEB to Purchase Request Referrer by email notification from time to time.

“**AWEB Sites**” means any Internet website owned by AWEB.

“**Confidential Information**” means the existence and terms and conditions of this Agreement; the data and information contained in Valid Purchase Requests; AWEB’s Purchase Request coverage and volume; information regarding other AWEB Purchase Request referral sources; and all performance metrics provided by AWEB to Purchase Request Referrer.

“**Consumer**” means an individual consumer submitting a Purchase Request.

“**Cover Page Provisions**” means the cover page to this Agreement.

“**Dealer Select Purchase Requests**” means Direct Link Dealer Select Purchase Requests and Form Feed Dealer Select Purchase Requests.

“**Direct Link Dealer Select Purchase Request**” means a Direct Link Purchase Request that displays Vehicle Dealers to the Consumer for the Consumer to select the Vehicle Dealer to which the Consumer’s Form Purchase Request will be delivered.

“**Direct Link Purchase Request**” means a Form Purchase Request that is completed by a Consumer on, and collected by AWEB from, an AWEB Site after the Consumer has clicked on a link on the Purchase Request Referrer Site and is redirected to an AWEB Site to complete and submit the Form Purchase Request.

“**Duplicate Form Purchase Request**” means a Form Purchase Request received from a Consumer (identified by (i) the same last name; and (ii) same phone number or the same email address) for whom a Form Purchase Request has been received by AWEB from any origination source within the thirty (30) day period preceding AWEB’s receipt of the later Form Purchase Request.

“**Form Feed Dealer Select Purchase Request**” means a Form Feed Purchase Request that displays Vehicle Dealers to the Consumer for the Consumer to select the Vehicle Dealer to which the Consumer’s Form Purchase Request will be delivered.

“**Form Feed Purchase Request**” means a Form Purchase Request that is initiated and completed by a Consumer on, and collected by Purchase Request Referrer from, a Purchase Request Referrer Site.

“**Form Purchase Request**” means an electronic form that (i) is initiated by a Consumer; (ii) contains personal contact information

for the Consumer; (iii) requests information regarding the purchase or lease of a Vehicle; and (iv) is completed and collected on a website and electronically submitted to AWEB via an AWEB Designated URL for processing and delivery to a Vehicle Dealer via AWEB’s wholesale or retail Purchase Request delivery channels.

“**Invalid Purchase Request**” means any Purchase Request that does not constitute a Valid Purchase Request.

“**Launch Date**” means the date that is thirty (30) days after the Effective Date.

“**Valid Lead Referral Fee**” means the per Valid Purchase Request fee for particular types and categories of Valid Purchase Requests, as more specifically set forth in the Agreement Schedule or as may be subsequently changed pursuant to the fee change process set forth in Section 3(b).

“**Prohibited Content**” means indecent, obscene, pornographic, hateful, deceptive, misleading, defamatory, unethical or illegal material, subject matter or content; references or links to advertising for alcoholic beverages, firearms, ammunition, gambling, or tobacco; or other content that AWEB may from time to time notify Purchase Request Referrer does not meet AWEB’s Purchase Request program standards.

“**Purchase Request**” means a Form Feed Purchase Request, a Direct Link Purchase Request or a Voice Communication Purchase Request, as applicable.

“**Purchase Request Referrer Representative**” means the representative of Purchase Request Referrer who is the sender of a Referrer Site Change Request or a Referral Fee Change Request under Section 2(f) or Section 3(b) of these Standard Provisions.

“**Purchase Request Referrer Site**” means the Internet website or websites owned or operated by Purchase Request Referrer or that Purchase Request Referrer has the exclusive relationship to acquire Purchase Requests from, as such websites are identified on the Agreement Schedule or as may be added pursuant to the procedure set forth in Section 2(f) of these Standard Provisions.

“**Retail Ping**” means a unique identification number assigned to Purchase Request Referrer used to identify Form Purchase Requests delivered to AWEB via a retail delivery channel, regardless of the final destination of such Form Purchase Request.

“**Valid Form Purchase Request**” means a Form Purchase Request that (i) is not a Duplicate Form Purchase Request; (ii) has all fields designated by AWEB as mandatory completed; (iii) is received by AWEB from Purchase Request Referrer within ten (10) minutes of its submission by the Consumer; (iv) is accepted by AWEB on the first attempted delivery by Purchase Request Referrer; (v) is successfully delivered to and accepted by the Vehicle Dealer or wholesale customer, as applicable, to which AWEB directed the Form Purchase Request; (vi) does not contain any fictitious or invalid name, address, phone number, and/or email address; (vii) originated on a Purchase Request Referrer Site; (viii) is limited to the original Vehicle requested by the Consumer in the Form Purchase Request and does not include additional or “comparable vehicle” requests made by the Consumer; and (ix) in the case of a Dealer Select Purchase Request, is limited to the Dealers selected by the Consumer in the Dealer Select Purchase Request.

“**Valid Purchase Request**” means a Valid Form Purchase Request or a Valid Voice Communication Purchase Request, as applicable.

“**Valid Voice Communication Purchase Request**” means a Voice Communication Purchase Request that is accepted by

AWEB and for which AWEB receives payment from the Vehicle Dealer to which the Voice Transmission Purchase Request is directed.

“**Vehicle**” means a new or used automobile or light-duty truck.

“**Vehicle Dealer**” means a third party dealership offering Vehicles to Consumers for sale or lease.

“**Voice Communication Purchase Request**” means an inquiry regarding a new or used Vehicle initiated by a Consumer via a voice communication (e.g., telephone call) to a Vehicle Dealer using the Vehicle Dealer’s telephone number listed in the Vehicle Dealer’s new or used Vehicle inventory provided by AWEB to Purchase Request Referrer for display on the Purchase Request Referrer Site.

“**Wholesale Ping**” means a unique identification number assigned to Purchase Request Referrer and used to identify Form Purchase Requests delivered to AWEB via a wholesale delivery channel, regardless of the final destination of such Form Purchase Request.

## 2. Program Operation.

(a) Submission of Purchase Requests. Purchase Request Referrer may submit Purchase Requests as Form Feed Dealer Select Purchase Requests, Direct Link Dealer Select Purchase Requests, Form Feed Purchase Requests, Direct Link Purchase Requests or Voice Communication Purchase Requests, indicated by the Valid Lead Referral Fees set forth in the Agreement Schedule. Purchase Request Referrer shall implement the processes and requirements for submitting applicable Purchase Requests on or before the Launch Date.

### (i) Form Purchase Requests.

#### (1) General Provisions

Applicable to All Form Purchase Requests. Purchase Request Referrer will submit Form Purchase Requests to AWEB in accordance with AWEB’s requirements for the applicable type or category of Form Purchase Requests as provided by AWEB to Purchase Request Referrer from time to time.

#### (2) Direct Link Purchase

Requests. The direct links for Direct Link Purchase Requests shall be placed on Purchase Request Referrer Sites only on pages containing information regarding Vehicles. The direct links will redirect Consumers to the AWEB Sites designated by AWEB from time to time. Such direct links shall be in the form of graphical, textual or other linking approved by AWEB and shall comply with AWEB’s requirements for direct linking as provided by AWEB to Purchase Request Referrer from time to time.

#### (3) Dealer Select Purchase

Requests. In the case of Dealer Select Purchase Requests, after the Consumer has indicated an interest in submitting a Form Purchase Request (either in a Form Feed Dealer Select Purchase Request or a Direct Link Dealer Select Purchase Request), a message is transmitted to AWEB’s lead generation system to determine if AWEB has placement coverage for the Consumer’s Form Purchase Request. AWEB will provide either (i) Vehicle Dealer data for all nearby Vehicle Dealers (up to four (4) Vehicle Dealers) that are located in or near the Consumer’s zip code area and that meet the Consumer’s request (each a “**Match**,” or collectively, the “**Matches**”), or (ii) a message that the Consumer’s request could not be matched by AWEB with a Vehicle Dealer. If there are Matches, the Consumer will be provided with the opportunity to complete the Dealer Select Purchase Request form and provide the Consumer’s information to one or more of the Vehicle Dealers presented to the Consumer. If the Consumer elects to complete and submit the Dealer Select Purchase Request form and provide the Consumer’s

information to a Vehicle Dealer, in the case of Form Feed Dealer Select Purchase Requests, the Purchase Request Referrer shall promptly submit the Form Feed Dealer Select Purchase Request to AWEB.

### (ii) Voice Communication Purchase

Requests. The phone number display for Voice Communications Purchase Requests for Vehicle Dealers participating in this AWEB program shall be placed on Purchase Request Referrer Sites only on pages in conjunction with the new or used Vehicle inventories of the applicable Vehicle Dealer and, in the case of specific Vehicles that are presented with a phone number, in conjunction with such Vehicles. The phone number provided will direct Consumers to the participating Vehicle Dealers for such vehicle. Such phone number display shall be in the form of textual or other graphical designed approved by AWEB and shall comply with AWEB’s requirements for displaying a phone number as provided by AWEB to Purchase Request Referrer from time to time.

(b) Quality of Purchase Requests. Purchase Request Referrer acknowledges that the quality of the Purchase Requests submitted to AWEB is a constant priority for AWEB and its customers, and Purchase Request Referrer shall use its commercially reasonable efforts to identify and implement measures designed to provide AWEB with high quality Purchase Requests. Purchase Request Referrer shall use commercially reasonable efforts to promptly notify AWEB of any material changes in its promotional activities that could affect the volume and quality of the Purchase Requests delivered by Purchase Request Referrer pursuant to this Agreement.

(c) Prohibited Content and Solicitations. Neither the Purchase Request Referrer Sites or any Purchase Request submitted to AWEB by Purchase Request Referrer shall contain any Prohibited Content. Referrer shall not solicit, obtain, advertise or acquire in any manner, directly or indirectly, the origination of any Purchase Request (i) from any website or other media other than a Purchase Request Referrer Site; (ii) through the use, making or initiation of any electronic or voice media (including, without limitation, email; facsimile; land, wireless or cellular telephones; or other wireless devices) other than a Purchase Request Referrer Site; (iii) through the use of any unsolicited calling, emailing, facsimile transmission, text messaging or other communication; or (iv) through the offer of any incentives or inducements of any kind (e.g., contests, sweepstakes, or giveaways).; or (v) in violation of applicable laws, rules, regulations or orders. Purchase Request Referrer shall not authorize or engage any third party to do any of the foregoing on behalf of Purchase Request Referrer. Without limiting the generality of the foregoing, Purchase Request Referrer is prohibited from advertising AWEB or any AWEB Site by using or cooperating with others to use an automatic telephone dialing system to send SMS text messages to cellular phones unless each text-message recipient has given explicit prior written consent to receive such text messages.

### (d) Right of First Refusal for Purchase Requests.

During the Term of the Agreement, AWEB shall be Purchase Request Referrer’s non-exclusive referral destination for Purchase Requests originated through the Purchase Request Referrer Site; provided, however, that AWEB shall have the first right of refusal for all Purchase Requests offered for distribution by Purchase Request Referrer. Purchase Request Referrer shall not have previously sold, disclosed, disseminated or distributed any Purchase Request delivered to AWEB or any information or data contained therein to any third party. Except for AWEB’s ownership of Valid Purchase Requests and related data and information, the rights granted to each party in the Agreement are non-exclusive, and

nothing herein shall be deemed or construed to prohibit either party from participating with third parties in similar business arrangements as those contemplated by this Agreement.

(e) **No Delivery of Non-Complying Purchase Request.** Purchase Request Referrer shall not deliver to AWEB any Purchase Request that does not comply with this Agreement.

(f) **Purchase Request Referrer Sites.** At all times during the term of this Agreement, Purchase Request Referrer shall maintain the Purchase Request Referrer Sites in accordance with this Agreement. From time to time, Purchase Request Referrer may submit a request (öReferrer Site Change Requestö) by email notification directed to the AWEB Representative requesting the addition or deletion of websites to be added to the list of Purchase Request Referrer Sites. The AWEB Representative will then reply to the Purchase Request Referrer Representative by an email notification confirming or denying acceptance of the requested additions or deletions to the list of Purchase Request Referrer Sites.

(g) **Purchase Request Volume.** AWEB has sole and absolute discretion to control and determine the volume of Valid Purchase Requests accepted by AWEB under this Agreement.

(h) **AWEB Customer Requirements.** From time to time customers of AWEB may impose various additional specific terms, conditions and requirements that will need to apply to Purchase Request Referrer in order for Purchase Request Referrer's Purchase Requests to be considered for delivery to such customers. Such additional terms, conditions and requirements may include the nature of Purchase Requests that they are prepared to accept; the terms, conditions and circumstances under which the Purchase Requests were originated, including, without limitation, the nature or content of the sites from which Purchase Requests may be originated; compliance with applicable laws, rules and regulations, including privacy laws, rules, and regulations; privacy policies; non-infringement of third party intellectual property rights; indemnification requirements; marketing and communications with Consumers; and the manner in which Vehicle inventories, Vehicle Dealers, or telephone numbers for Voice Communications Purchase Requests are displayed to Consumers. In the event any such terms, conditions or requirements are not already covered by this Agreement, AWEB may notify Purchase Request Referrer of such terms, conditions and requirements and such terms, conditions and requirements shall become terms, conditions and requirements of this Agreement thirty (30) days after the effective date of such notification unless Purchase Request Referral notifies AWEB that Purchase Request Referral will not or cannot comply with such terms and conditions within such thirty-day period. In the event Purchase Request Referrer so notifies AWEB that Purchase Request Referrer will not or cannot comply with such terms and conditions, (i) either Party may elect to terminate this Agreement under Section 4(a)(iv); or (ii) AWEB may elect to cease delivery of any Purchase Requests submitted by Purchase Request Referrer to such customer.

(i) **Privacy Policy.** Purchase Request Referrer shall at all times during the Term maintain and comply with a privacy policy that complies with all applicable laws, rules, regulations and orders and allows for sale and delivery of Purchase Requests to AWEB in accordance with this Agreement, redistribution and resale of Purchase Requests to AWEB customers, and marketing and communications to Consumers submitting Purchase Requests by third parties other than Purchase Request Referrer without conditions or restrictions. Such obligation shall continue after termination of this Agreement with respect to Purchase Requests submitted to AWEB prior to the termination. Purchase Request Referrer will not pre-check any Consumer permissions and authorizations.

(j) **Compliance with Laws.** Purchase Request Referrer shall comply with all applicable laws, rules, regulations and orders relating to the performance of its obligations under this Agreement and to Purchase Request Referrer's practices in originating and processing Purchase Requests, including all applicable laws, rules, regulations and orders relating to (i) the privacy and safeguarding of personally identifiable information, and (ii) email, facsimile, telephone (land, wireless or cellular), or text message communications or marketing.

### 3. **Valid Purchase Request Referral Fees and Reporting.**

(a) **Valid Purchase Request Referral Fees.** During the Term of the Agreement, AWEB shall pay to Purchase Request Referrer the Valid Purchase Request Referral Fees set forth in Cover Page Provisions for the type and category of Purchase Requests set forth in the Agreement Schedule. In the event a type or category of Purchase Request is not listed in the Agreement Schedule, such type or category of Purchase Request shall not be applicable to this Agreement. AWEB, in its sole discretion, may change the amount, structure, computation, method and/or basis of the Valid Purchase Request Referral Fees at any time during the Term upon thirty (30) days prior notice to Purchase Request Referrer. No Valid Purchase Request Referral Fee or compensation of any kind shall be due Purchase Request Referrer for any Invalid Purchase Requests.

(b) **Referral Fee Change Requests.** From time to time, Purchase Request Referrer may submit an email request (öReferral Fee Change Requestö) directed to the AWEB Representative requesting a change in the Valid Purchase Request Referral Fee for the types and categories of Valid Purchase Requests identified in the Referral Fee Change Request. The AWEB Representative will then send the Purchase Request Referrer Representative an email confirming or denying acceptance of the Fee Change Request. Similarly, the AWEB Representative may submit a request by email notification directed to the Purchase Request Referrer Representative requesting a change in Valid Purchase Request Referral Fees. The Purchase Request Referrer Representative will then send the AWEB Representative an email notification confirming or denying acceptance of the requested change in Valid Purchase Request Referral Fee. All accepted requests for changes in Purchase Request Referral Fees will be effective on the first day of the month following the month in which the request is accepted, provided the request is submitted at least seven (7) working days prior to the end of the month in which the change request is submitted. Accepted changes in Purchase Request Referral Fees will remain in effect until the parties agree to a new Purchase Request Referral Fee or the Agreement is terminated by either party. Changes in Purchase Request Referral Fees will not be effective unless and until the change request is accepted by both parties.

(c) **Reporting.** Within thirty (30) days following the end of each calendar month during the Term, AWEB shall provide Purchase Request Referrer with a report showing the total Valid Purchase Requests accepted by AWEB for the previous month and the total Purchase Request Referral Fees owed to Purchase Request Referrer with respect thereto. AWEB will pay the amount shown as due in each such report on a monthly basis.

(d) **Audits.** During the Term, Purchase Request Referrer agrees to maintain complete records and books of account and all proper entries therein relating directly to Purchase Requests that are the subject of this Agreement. AWEB may cause an audit to be made of Purchase Request Referrer's applicable records in order to verify statements rendered hereunder. Any such audit shall

be following prior reasonable notice to Purchase Request Referrer and conducted during regular business hours in such a manner as not to interfere with Purchase Request Referrer's normal business activities. At AWEB's election, any such audit will be conducted by an independent certified public accountant.

#### **4. Term and Termination.**

(a) **Term.** This Agreement shall commence as of the Effective Date and shall continue until terminated in accordance with the following provisions (**Term**):

(i) The Agreement may be terminated immediately by either party in the event the other party suffers any insolvency proceeding, either voluntary or involuntary, or is adjudicated bankrupt or makes any assignment for the benefit of creditors.

(ii) Either party may terminate this Agreement immediately upon notice in the event of a material breach by the other party.

(iii) AWEB may terminate this Agreement immediately upon notice in the event of Purchase Request Referrer's failure to implement a Form Feed Purchase Request process (if applicable) and a Voice Communication Purchase Request process (if applicable) on or before the Launch Date.

(iv) Either party may terminate this Agreement with or without cause or reason upon thirty (30) days prior notice to the other party.

(v) This Agreement will be subject to change or termination by mutual agreement of the parties to the extent necessary to comply with federal, state, or local laws and regulations. To the extent that either party is advised by legal counsel, or either party is advised in writing by a regulatory body with jurisdiction over its activities, that certain aspects of its performance under the Agreement do not comply with federal, state, or local law or regulations, that party will be entitled, in its sole discretion, to suspend those certain aspects of its performance, including any payment obligations to the other party relating thereto, immediately upon notice to the other party and will not be liable for failure to perform or delay in its performance of those certain aspects. Either party may immediately terminate this Agreement upon written notice to the other party if such party reasonably believes that (i) performance of this Agreement violates or is being conducted in a manner that does not comply with any applicable law, regulation, licensing requirement, ordinance or order, and (ii) that such violation or non-compliance cannot be remedied or that the cost of remediation or compliance is prohibitive.

(b) **Effect of Termination.** No termination shall relieve the non-terminating party from liability for the performance of its obligations arising prior to the effective date of such termination. Exercise of a right to terminate shall be in addition to all other rights and remedies the terminating party may have available to it under this Agreement, at law or in equity.

#### **5. Ownership of Information, Confidentiality and AWEB Marks.**

(a) **Ownership of Purchase Requests.** All information and data compiled concerning or relating to a Consumer in a Purchase Request shall be the sole and exclusive property of AWEB upon AWEB's acceptance of the Purchase Request as a Valid Purchase Request. Purchase Request Referrer is specifically prohibited from reselling any Valid Purchase Request or any information or data contained in any Valid Purchase Request. Nothing herein shall be deemed to create a joint ownership in and to such information, or any form of sharing agreement with respect to such information. Purchase

Request Referrer shall not make any use of, copy, make derivative works from, sell, transfer, lease, assign, redistribute, disclose, disseminate, or otherwise make available in any manner, such information or data, or any portion thereof, to any third party.

(b) **Confidential Information.** Purchase Request Referrer understands that disclosure of Confidential Information could adversely affect AWEB's business. Accordingly, subject to the terms hereof, during the Term, and for three (3) years thereafter (or such longer period as may be required by applicable laws, rules, regulations or orders in the case of Consumer personally identifiable information), Purchase Request Referrer shall use Confidential Information only for purposes of the Agreement and only to the extent necessary for such purpose and shall restrict disclosure of Confidential Information to its officers, directors, employees, agents, consultants, attorneys or independent contractors (**Representatives**) with a need to know and shall not disclose such Confidential Information to any third party without prior written approval of AWEB. Purchase Request Referrer will give notice of such covenant of confidentiality to its Representatives and require such Representatives to comply with such covenant. The foregoing obligations shall not apply to the extent Confidential Information must be disclosed by Purchase Request Referrer to comply with any requirement of law or order of a court or administrative body (provided that Purchase Request Referrer notifies AWEB of the issuance of such order and cooperates in any AWEB efforts to convince the court or administrative body to restrict disclosure).

(c) **Publicity.** Except as may be required, as determined in good faith by the disclosing party, by applicable law, rules or regulations or the rules of any securities exchange or market, neither party will make any public statement or release concerning this Agreement or any of the transactions contemplated by this Agreement, except for such written information as has been approved in advance in writing as to form and content by the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, neither party shall have the right to review or approve any filings or other disclosures that the other party determines in good faith are reasonably required to be made in any filings with the Securities and Exchange Commission, with any other governmental agency, or any securities exchange or market.

(d) **Ownership of AWEB Marks.** The AWEB Marks are and shall remain the sole and exclusive property of AWEB or the applicable AWEB Affiliate. Purchase Request Referrer is not granted or licensed any rights to use, publish or display AWEB Marks under this Agreement.

#### **6. Representations and Warranties; Limitations of Liability; Indemnification.**

(a) **Purchase Request Referrer Representations and Warranties.** Purchase Request Referrer represents and warrants to AWEB that (i) it has the power and authority to enter into this Agreement and perform its obligations hereunder; (ii) neither the execution and delivery of this Agreement nor the performance by Purchase Request Referrer of its obligations hereunder will (A) conflict with any other agreement to which Purchase Request Referrer is currently a party, including any agreements pertaining or related to the Purchase Request Referrer Sites, (B) invade the right of privacy or publicity of any third person, (C) misappropriate or infringe any patent, copyright, trademark, trade secret or other intellectual or proprietary right of any third party in any jurisdiction, or (D) violate or contravene any law, rule, regulation or order of any court or governmental agency; (iii) Purchase Request Referrer is duly authorized and licensed by all applicable governmental regulatory

authorities to operate its business as it is now conducted; (iv) Purchase Request Referrer is lawfully carrying on its business, is financially solvent, is not the subject of bankruptcy, insolvency or any liquidation or receivership proceeding; and (v) to its knowledge, no claim is pending against Purchase Request Referrer that, if true or resolved adversely to it, would cause any representation, warranty, performance covenant or other covenant set forth in the Agreement to be untrue or breached.

(b) **AWEB Representations and Warranties.** AWEB represents and warrants to Purchase Request Referrer that (i) it has the power and authority to enter into this Agreement and perform its obligations hereunder; (ii) neither the execution and delivery of this Agreement nor the performance by AWEB of its obligations hereunder will (A) conflict with any other agreement to which AWEB is currently a party, including any agreements pertaining or related to the AWEB Sites, (B) invade the right of privacy or publicity of any third person, (C) misappropriate or infringe any patent, copyright, trademark, trade secret or other intellectual or proprietary right of any third party in any jurisdiction, or (D) violate or contravene any law, rule, regulation or order of any court or governmental agency; (iii) AWEB is duly authorized and licensed by all applicable governmental regulatory authorities to operate its business as it is now conducted; (iv) AWEB is lawfully carrying on its business, is financially solvent, is not the subject of bankruptcy, insolvency or any liquidation or receivership proceeding; and (v) to its knowledge, no claim is pending against AWEB that, if true or resolved adversely to it, would cause any representation, warranty, performance covenant or other covenant set forth in the Agreement to be untrue or breached.

(c) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, EACH PARTY DISCLAIMS ALL OTHER EXPRESS WARRANTIES AND ALL WARRANTIES, DUTIES AND OBLIGATIONS IMPLIED IN LAW, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY WARRANTS AND EACH SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT ITS SITES WILL BE UNINTERRUPTED OR ERROR-FREE.

(d) **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR DAMAGE TO OR LOSS OF PERSONAL PROPERTY OR DATA), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN THE EVENT THAT EITHER PARTY BREACHES ITS OBLIGATIONS UNDER THIS AGREEMENT, THE NON-BREACHING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT (I) THE LIABILITY OF THE BREACHING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED; AND (II) EACH PARTY WILL REMAIN LIABLE FOR THE AGGREGATE AMOUNT OF ANY PAYMENT OBLIGATIONS OWED TO THE OTHER PARTY PURSUANT TO THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 6(d), THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SHALL NOT APPLY TO (I) ANY BREACHES OF REPRESENTATIONS,

**WARRANTIES, OR OBLIGATIONS OF A PARTY UNDER SECTION 5(b) OR THIS SECTION 6, (II) THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 5(e) OR (III) DAMAGES RESULTING FROM INTENTIONAL MISCONDUCT.**

(e) **Indemnification.**

(i) Each party (öIndemnifying Partyö) to the Agreement shall defend, indemnify and hold harmless the other party (öIndemnified Partyö) and each of the Indemnified Party's parent companies, affiliate companies, customers acquiring Purchase Requests from such party, and their respective officers, directors, employees and agents against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (öThird Party Claimsö) arising out of, resulting from or based upon any claim, action or proceeding by any third party alleging facts or circumstances that constitute or that may constitute: (i) a breach or alleged breach of the representations, warranties or obligations of the Indemnifying Party under this Agreement or in its performance hereunder; (ii) a violation or alleged violation of applicable law, rule, regulation or order by the Indemnifying Party; (iii) operation of the Indemnifying Party's websites; (iv) any infringement or misappropriation of any third party patent, copyright, trademark, trade secret or other intellectual or proprietary right by the Indemnifying Party; or (v) a violation of the right of privacy or publicity of any third party by the Indemnify Party.

(ii) If either party becomes aware of any Third-Party Claim it believes should be indemnified by the other party hereunder, that party, as the Indemnified Party, shall give the other party, as the Indemnifying Party, prompt written notice of such Third-Party Claim. Such notice shall (i) provide the basis on which indemnification is being asserted and (ii) be accompanied by copies of all relevant pleadings, demands, and other papers related to the Third-Party Claim and in the possession of the Indemnified Party. The Indemnifying Party shall have a period of ten (10) business days after delivery of such notice to respond. If the Indemnifying Party refuses to undertake the defense of or otherwise indemnify the Indemnified Party or does not respond within the requisite ten (10) day period, the Indemnified Party shall be entitled to undertake its own defense and resolution of the Third-Party Claim, for the account and at the expense of the Indemnifying Party, and with legal counsel of the Indemnified Party's choice. If the Indemnifying Party timely agrees to undertake the defense and otherwise indemnify the Indemnified Party in response to the Indemnified Party's notice, said obligation of indemnity shall be conditioned on the following: (i) the Indemnifying Party shall have the exclusive right to control the investigation, defense and resolution of any such Third-Party Claim with legal counsel of its choice, provided that such counsel reasonably believes that no conflict exists or is likely to arise in jointly representing the interests of the Indemnified Party and the Indemnified Party; (ii) the Indemnified Party shall fully cooperate with the Indemnifying Party, as reasonably requested by, and at the sole expense of, the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not settle any Third-Party Claim without the Indemnified Party's prior written consent, if the settlement involves any admission or other obligation on the part of the Indemnified Party other than the payment of money to be fully paid by the Indemnifying Party. When required under the foregoing provisions, the Indemnified Party's consent shall not be unreasonably withheld or delayed. An Indemnified Party shall at all times have

the option to participate in any matter or litigation through counsel of its own selection and at its own expense, provided that in the case of a conflict or likelihood of a conflict in the joint representation of the Indemnified Party and the Indemnifying Party, the expense of separate counsel for the Indemnified Party shall be at the expense of the Indemnifying Party.

## 7. Miscellaneous.

(a) Independent Parties. The relationship between AWEB and Purchase Request Referrer is, and at all times shall remain, solely that of independent parties, and shall not be, or construed to be a joint venture, partnership, fiduciary, or other relationship of any nature. No provision of this Agreement is intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

(b) Notices. Any notice required or permitted under this Agreement will be considered to be effective in the case of (i) certified mail, when sent postage prepaid and addressed to the party for whom it is intended at its address of record, three (3) days after deposit in the mail; (ii) by courier or messenger service, upon receipt by recipient as indicated on the courier's receipt; or (iii) upon receipt of an Electronic Transmission by the party that is the intended recipient of the Electronic Transmission. For purposes of this Section 7(b), "**Electronic Transmission**" means a communication (A) delivered by facsimile, telecommunication or electronic mail when directed to the facsimile number of record or electronic mail address of record, respectively, which the intended recipient has provided to the other party for sending notices pursuant to this Agreement and (B) that creates a record of delivery and receipt that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. The record addresses, facsimile numbers of record, and electronic mail addresses of record for the parties are set forth on the Agreement Schedule and may be changed from time to time by notice from the changing party to the other party pursuant to the provisions of this Section 7(b).

(c) Amendments. Except for provisions of these Standards Provisions that specifically provide for changes to be implemented by email notification, this Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties, and no supplement, amendment, or modification of the Agreement will be binding unless it is in writing and signed by both parties.

(d) No Waiver. No waiver of any breach, failure, right, or remedy, will be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless a writing so specifies.

(e) Governing Law. This Agreement, and any dispute arising from the relationship between the parties, shall be governed and determined by the laws of the State of California without regard to conflicts of law principles.

(f) Dispute Resolution.

(i) The parties consent to and agree that any dispute or claim arising hereunder shall be submitted to binding arbitration in Orange County, California, and conducted in accordance with the Judicial Arbitration and Mediation Service (JAMS) rules of practice then in effect or such other procedures as the parties may agree in writing, and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere. The parties further agree that (A) any request for arbitration shall be made in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen; provided however, that in no event shall the demand for arbitration be made after the date that institution of

legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statute(s) of limitations; (B) the appointed arbitrator must be a former or retired judge or attorney at law with at least ten (10) years experience in commercial matters; (C) costs and fees of the arbitrator shall be borne by both parties equally, unless the arbitrator or arbitrators determine otherwise; (D) depositions may be taken and other discovery may be obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings; and (E) the award or decision of the arbitrator, which may include equitable relief, shall be final and judgment may be entered on such award in accordance with applicable law in any court having jurisdiction over the matter.

(ii) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(iii) The parties acknowledge and agree that money damages may not be a sufficient remedy for a breach of certain provisions of the Agreement, including but not limited to Section 5(c) of these Standard Provisions, and accordingly, a non-breaching party may be entitled to specific performance and injunctive relief as remedies for such violation. Accordingly, notwithstanding the other provisions of this Section 7(f), the parties agree that a non-breaching party may seek relief in a court of competent jurisdiction for the purposes of seeking equitable relief hereunder, and that such remedies shall not be deemed to be exclusive remedies for a violation of the terms of the Agreement but shall be in addition to all other remedies available to the non-breaching party at law or in equity.

(iv) In any action, arbitration, or other proceeding by which one party either seeks to enforce its rights under the Agreement, or seeks a declaration of any rights or obligations under the Agreement, the prevailing party will be entitled to reasonable attorneys fees, and subject to Section 7(f) of these Standard Provisions, reasonable costs and expenses incurred to resolve such dispute and to enforce any final judgment.

(v) No remedy conferred on either party by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of one or more remedies by a party will not constitute a waiver of the right to pursue other available remedies.

(g) Severability. Any provision of the Agreement that in any way contravenes the law of any state or country in which the Agreement is effective will, in that state or country, to the extent the law is contravened, be considered separable and inapplicable and will not affect any other provision or provisions of the Agreement.

(h) Assignment. Purchase Request Referrer shall not sell, mortgage, assign or otherwise transfer any of its rights or obligations under this Agreement to any other person or entity, without the express written consent of AWEB. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

(i) Integration. This Agreement constitutes the final, complete, and exclusive statement of the terms of this Agreement between the parties pertaining to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into the

Agreement by, nor is any party relying on, any representation or warranty independent of those expressly set forth in the Agreement.

(j) **Interpretation.** No provision of this Agreement shall be construed in favor of or against any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof. The parties agree that California Civil Code Section 1654 shall not apply to the terms of the Agreement. The captions and headings contained in this Agreement are for convenience only and shall not control the meaning, effect, or construction of the Agreement.

(k) **Independent Counsel.** The parties have read this Agreement and have had the opportunity to consult with independent counsel prior to executing the Agreement to the extent desired by a party.

(l) **Counterparts; Facsimile or PDF Signatures.** This Agreement and any amendments or modifications thereto may be executed in counterparts, each of which will be deemed an original hereof and all of which together will constitute one and the same instrument. This Agreement and any amendments or modifications thereto may be executed by facsimile or PDF signature by either party and such signature shall be deemed binding for all purposes hereof, without delivery of an original signature being thereafter required.