



DVINCI
MARKETING LEAD PROCUREMENT TERMS AND CONDITION



1. Definitions.

Capitalized have the following meanings unless otherwise defined in the Agreement:

“Applicable Laws” means all federal, state, and local laws, ordinances, regulations, industry standards, and orders applicable to the parties and to performance under these Terms, including rules, regulations, standards, and guidelines adopted or required by the Payment Card Industry Security Standards Council, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Restore Online Shoppers Confidence Act, Telephone Consumer Protection Act, Truth in Caller ID Act, the Federal Trade Commission’s (“FTC”) Telemarketing Sales Rule, and prohibitions against the use of unfair, deceptive, or abusive acts and practices, the California Consumer Privacy Act of 2018 (codified at Cal. Civ. Code § 1798.100, *et seq.*), Nevada Revised Statutes Chapter 603A, and the Vermont Data Broker Law (codified at 9 V.S.A. § 2446, *et seq.*).

“Creative” means an advertisement, website, script, lead generation form, other consumer-facing material, and/or any components or elements thereof created or used by Vendor in furtherance of the services to be provided under these Terms.

“Disqualified Lead” means a Lead (i) obtained by Vendor in a manner that does not comply with these Terms or the applicable Order; (ii) generated by a computer such as by a robot, spider, computer script, program, or other automated, artificial, or fraudulent method designed to appear like an individual; or (iii) that is materially duplicative of another Lead received by Dvinci from Vendor in the prior six (6) months.

“Lead” means a self-reported data record provided by a consumer having the information/data specified in the applicable Order that is provided by Vendor to Dvinci. “Lead” may also refer to the consumer related to such data record.

“Marks” means trademarks, service marks, trade names, and fictitious names, regardless of registration.

2. Personal Information – Information provided by Dvinci to Vendor or obtained by Vendor in connection with providing services under this Agreement that identifies, is identifiable of, or relates to, a natural person.

3. Prior Express Written Consent (“PEWC”) – As defined in 47 C.F.R. § 64.1200(f)(8) and interpreted by regulatory and judicial opinions.

4. Term and Termination.

4.1 Term. This Agreement commences upon the Effective Date and continues until the termination of all Orders associated herewith, unless terminated earlier in accordance with the terms herein (the “Term”).

4.2 Termination. A party may terminate these Terms upon written notice to the other party if: (i) the other party is in material breach of these Terms and fails to cure such breach within thirty (30) days after receipt of written notice; OR (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within sixty (60) days. In addition to the above termination rights, Dvinci may (i) terminate these Terms or any Order hereunder,

with or without cause, upon three (3) business days’ prior written notice to Vendor; or (ii) terminate these Terms or any Order hereunder immediately upon written notice to Vendor in the event Dvinci reasonably believes that Vendor has violated or is violating Applicable Laws.

5. Payment.

5.1 Procedure. Dvinci agrees to pay the amount(s) set forth on each Order (the “Fee”) in accordance with the schedule set forth in each Order. Notwithstanding any other provision of these Terms or an Order to the contrary, Dvinci will not pay compensation to Vendor for Disqualified Leads. Vendor bears the burden to demonstrate that a Lead is not a Disqualified Lead.

5.2 Disputes. If Dvinci disputes a Fee, Dvinci will notify Vendor of the dispute within fourteen (14) days of receiving the invoice containing the disputed Fee. The parties will work in good faith to investigate and resolve the dispute. If the parties are unable to resolve the dispute after fourteen (14) days, they will submit the dispute to a third party mutually agreed by them for resolution. Payment of the applicable invoice will be suspended until fourteen (14) days after resolution of the dispute.

6. Vendor Representations and Warranties.

6.1 Quality of Work. Vendor represents and warrants that it will perform the services in a timely and professional manner consistent with industry-standard practices and will not provide Leads procured through fraud, identity theft, or any other illegal or illicit means. Further, Vendor will not purchase or resell Leads that have been acquired through methods that would violate these Terms if such methods had been used by Vendor itself.

6.2 Consents and Notices. Vendor represents and warrants that it has all necessary rights, licenses and consents, and has provided all necessary notices required by Applicable Laws to perform its obligations hereunder and for Dvinci to use the Leads as anticipated by these Terms and any Order, including obtaining all necessary consent to submit, transmit, provide, obtain, receive, access and/or use Leads, including any Personal Information therein, and any other content it provides, receives, accesses and/or uses through or in connection with these Terms.

6.3 Ability to Perform Services. Vendor represents and warrants that it is duly qualified and in good standing to do business in every jurisdiction in which such qualification is required for purposes of these Terms and holds all licenses, registrations, and permits required by Applicable Laws to perform the services contemplated by these Terms.

6.4 Ability to Contract. Vendor represents and warrants that the execution and delivery of these Terms, and the performance by Vendor of its obligations hereunder, has been duly and validly authorized by Vendor and these Terms is a legal, valid, and binding obligation of Vendor.

6.5 Compliance with Laws. Vendor complies, and will comply at all times, with Applicable Laws in connection with this Agreement and its performance of the services herein.

6.6 Compliance with Data Security Standards.



(a) Vendor Security. Vendor shall take and maintain reasonable and appropriate physical, technical, policy, and administrative safeguards, precautions, and measures (including on Vendor's computer systems and networks) where Personal information can be accessed, stored, or transmitted, to protect the Personal Information from loss, misuse, unauthorized access, acquisition, or alteration when at rest or in-transit. For example, and without limitation, Vendor maintains and complies with a comprehensive written information security program that provides for all appropriate legal, administrative, physical, policy, and technical measures and security procedures which are necessary (i) to safeguard and ensure the security of the Personal Information, (ii) to protect the Personal Information from destruction, loss and unauthorized access, disclosure, use, or alteration (whether or not encrypted) and (iii) to permit Vendor to comply with Applicable Laws.

(b) Security Incident Notification. In the event Vendor discovers or has reason to suspect that there has been (i) loss or destruction of, (ii) unauthorized access to (or attempt to access), acquisition, disclosure, use, or alteration of Personal Information (a "**Security Event**") owned or maintained by Vendor, Vendor shall immediately notify Dvinci. Vendor shall specify the extent to which Personal Information was or is reasonably believed to have been compromised or disclosed. In addition, Vendor shall promptly investigate the Security Event and fully cooperate with Dvinci's own investigation of the Security Event.

6.7 Exclusion of European Residents. Vendor will implement commercially-reasonable policies and procedures to prevent acquiring and/or supplying to Dvinci the Personal Information of individuals residing or located in the European Economic Area and Switzerland.

6.8 Compliance Monitoring. Vendor authorizes Dvinci to engage in commercially-reasonable compliance monitoring practices such as reviewing consumer interactions, seeding Leads, and/or using secret shoppers.

6.9 Removal of Employees/Contractors. If Dvinci receives a consumer or regulatory complaint alleging conduct that would reasonably violate these Terms, Dvinci may request Vendor remove any related employee or contractor from providing services to Dvinci and Vendor will comply with such request.

6.10 Contractors. Vendor is responsible for the acts and omissions of its contractors, vendors, affiliates, agents, and representatives to the same extent as if such acts and omissions were engaged in by Vendor itself. Vendor will ensure that all of its contractors, vendors, affiliates, agents, and representatives adhere to these Terms to the same extent as required of Vendor. Vendor may not use any contractor, vendor, affiliate, agent, or representative (excepting Vendor's own employees) without disclosure to and written permission from Dvinci.

6.11 Lead Generation Standards. In addition to its other obligations under these Terms, and not as a limitation, Vendor will adhere at all times to the Lead Generation Standards attached to these Terms as Exhibit A and which may hereafter be issued by Dvinci in writing to Vendor from time to time.

7. Dvinci Representations & Warranties. The execution and delivery of these Terms, and the performance by Dvinci of its obligations hereunder, has been duly and validly

authorized by Dvinci and these Terms is a legal, valid, and binding obligation of Dvinci.

8. Confidential Information.

8.1 Definition. "**Confidential Information**" means non-public confidential or proprietary information, including trade secrets, know-how, proprietary information, formulae, processes, techniques and information concerning past, present and future marketing, financial, research, and development activities, that may be disclosed, whether orally, electronically, or in writing, from or on behalf of Dvinci to Vendor, or that may be otherwise received or accessed by a party in connection with these Terms, whether transmitted prior to or after the Effective Date, and including all copies thereof. By way of example and not limitation, Confidential Information includes copyrights, trademarks, service marks, and other intellectual property rights of Dvinci, customer and potential customer data, pricing policies, service information, market analyses, market projections, sales methods, product development plans, internal controls, and security procedures.

8.2 Exclusions. Confidential Information will not include information: (i) previously known to the receiving party without an obligation of confidentiality; (ii) independently developed by or for the receiving party or the receiving party's employees, consultants, or agents without reference to or use of Confidential Information; (iii) lawfully acquired by the receiving party from a third party who is not under an obligation of confidentiality with respect to such information; or (iv) which is or becomes publicly available through no fault of the receiving party or not as a result of a breach of these Terms. Notwithstanding the foregoing exceptions to Confidential Information, Personal Information of Dvinci's customers and potential customers, including Leads, will always be deemed to be Confidential Information.

8.3 Responsibility. The receiving party will hold the Confidential Information in strict confidence and will take reasonable care, but in no instance less than the degree of care it uses to protect and maintain its own information that it considers to be confidential, to assure that Confidential Information will not be disclosed to others, in whole or in part, except as otherwise provided herein. Except with regard to Leads purchased from Vendor by Dvinci which are deemed owned by Dvinci, the disclosing party retains all ownership rights in and to its Confidential Information (regardless of the form in which it is disclosed) and all intellectual property rights associated with such Confidential Information. The receiving party will not use, disclose, duplicate, or distribute any Confidential Information except as necessary to perform its obligations under these Terms. Further, with respect to any such necessary disclosure or distribution, the receiving party will limit such disclosure or distribution to those of its employees, officers, agents, and contractors who have a need to know the Confidential Information for purposes of the receiving party's performance of its obligations, and the receiving party will limit such disclosure or distribution so as to only disclose or distribute those applicable portions of the Confidential Information that such employee, officer, agent, or contractor needs to know. To the extent that the receiving party determines that it needs to disclose or distribute any Confidential Information to a third party (i.e., someone other than an employee, officer, agent, or contractor) to perform its obligations under these Terms, the receiving party will obtain from said third party their prior written



agreement to comply with the terms of this section, and will not disclose any Confidential Information prior to doing so.

8.4 **Lead Ownership.** All Leads and Personal Information are the property of Dvinci. Vendor covenants that it will not (i) sell Leads or Personal Information to any party other than Dvinci; (ii) retain, use, or disclose Leads or Personal Information for any purpose other than for the specific purpose of performing the services specified in these Terms, including retaining, using, or disclosing Leads or Personal Information for a commercial purpose other than providing the services specified in these Terms; or (iii) retain, use, or disclose Leads or Personal Information outside of the direct business relationship between Vendor and Dvinci. Vendor will not provide Leads or Personal Information to Dvinci for which the applicable person has revoked their consent to the sale of their Personal Information by Vendor.

8.5 **Agreement Termination.** Upon termination of these Terms, the receiving party will, unless otherwise provided herein, (i) return all Confidential Information to the disclosing party or, if requested by the disclosing party, (ii) destroy all Confidential Information and certify to such destruction. Except for Leads purchased from Vendor by Dvinci, the receiving party may retain only such Confidential Information that it is required by law to retain; however, the receiving party's obligations under these Terms related to Confidential Information will continue for so long as the receiving party retains such Confidential Information.

8.6 **Compelled Disclosure.** If the receiving party is compelled by law to disclose Confidential Information, it will provide the disclosing party with at least five (5) business days' prior written notice of such disclosure (to the extent legally permitted) and any assistance the disclosing party requests to contest or limit the disclosure.

8.7 **Remedies.** If the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information in contravention of these Terms, the disclosing party will have the right, in addition to any other remedies available to it under these Terms, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that other available legal remedies are inadequate.

9. **Intellectual Property.** A party may utilize the other party's Marks in connection with the performance of the services contemplated by these Terms only to the extent authorized by the other party in writing. Each party agrees and acknowledges that the other party is the owner of their own Marks and each party's use of the relevant Marks will be for the sole benefit of the other party. Neither party will attempt to register any of the Marks of the other party or make any claim regarding the Marks of the other party. Vendor acknowledges and agrees that all original works of authorship or invention, whenever and however created, containing, making use of, or deriving from Dvinci Marks or produced at the request of Dvinci or in service of Dvinci (collectively, "**Intellectual Property**") are, and will remain, the sole and exclusive property of Dvinci. Vendor will cooperate with Dvinci, including by executing any additional documents required, to effect this provision and protect Dvinci's rights and interests in the Intellectual Property. Subject to the terms of these Terms, each party grants the other party, for the Term, a non-exclusive, non-transferable, royalty-free, limited, personal license to use such party's Intellectual Property, as approved by

such party in writing, solely in connection with providing the services contemplated by these Terms.

10. **Insurance.**

10.1 **Commercial General Liability Insurance.** Vendor will obtain and maintain commercial general liability insurance covering all operations by or on behalf of Vendor against bodily injury (including death), property damage (including loss of use), including premises/operations, personal, and advertising injury, products/completed operations, contractual liability, and data breach/cyber liability. This commercial general liability insurance will be in limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. Vendor will include Dvinci as an additional insured and loss payee under Vendor's commercial general liability insurance policy.

10.2 **Errors and Omissions or Professional Liability Insurance.** Vendor will obtain and maintain errors and omissions or professional liability insurance coverage with a limit of not less than \$1,000,000. Vendor will include Dvinci as an additional insured and loss payee under Vendor's errors and omissions or professional liability insurance policy.

10.3 **Commercial Crime Insurance.** Vendor will obtain and maintain coverage for the dishonest acts of Vendor's employees with a coverage limit of not less than \$1,000,000. Such coverage must extend to cover any assets of Dvinci in the care, custody, and or control of Vendor or its employees, agents, or contractors. Vendor will include Dvinci as an additional insured and loss payee under Vendor's commercial crime insurance policy.

10.4 **Insurer Qualifications.** All policies required under these Terms must be written by insurance companies licensed to issue policies in Vendor's state of domicile or principal place of business and having an A.M. Best rating of "A-" or higher.

10.5 **Proof of Coverage.** Within five (5) business days of Dvinci's request, Vendor will provide Dvinci with certificates of insurance and all endorsements evidencing all of the insurance coverage required by these Terms.

11. **Complaint Processing.** Vendor will notify Dvinci, in a form and manner designated by Dvinci, of any consumer or regulatory complaints relating to the services provided by Vendor to Dvinci under these Terms received, directly or indirectly (e.g., via the Better Business Bureau, an Attorney General, or party to litigation), by Vendor within twenty-four (24) hours of receipt thereof. Vendor will fully cooperate with Dvinci in the resolution of complaints, regardless of source, including, but not limited to, promptly providing records, call recordings, and interviews with contractors and personnel as may be requested by Dvinci. Vendor's failure to accurately, courteously, and professionally represent Dvinci will constitute a material breach of these Terms.

12. **Indemnity.** Vendor will defend, indemnify, and hold Dvinci and its affiliates, subsidiaries, successors, assignees, owners, directors, officers, employees, contractors, representatives, and agents harmless from and against any and all claims, governmental investigations, demands, actions, and proceedings, real or threatened, and all losses, judgments, awards, settlements, damages, fines, injuries, penalties, and costs (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "**Losses**") arising out of or related



to (i) any breach or alleged breach of these Terms, including the warranties or representations contained herein, by Vendor; (ii) a Security Event; or (iii) Vendor's gross negligence or willful misconduct.

13. Limitation of Liability. DVINCI WILL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES RELATED TO THIS AGREEMENT OR THE SERVICES PERFORMED HEREUNDER. DVINCI WILL NOT BE LIABLE UNDER THESE TERMS FOR AMOUNT EXCEEDING AMOUNT PAID BY IT TO VENDOR DURING THE SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE ALLEGED LIABILITY.

14. Miscellaneous.

14.1 Governing Law and Venue. these Terms and the rights and obligations of the parties hereto will be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflicts of law provisions. The venue for all disputes arising in connection with these Terms will be exclusively in the state and federal courts of New Castle County, Delaware, and the parties consent to the jurisdiction thereof.

14.2 Notice. Any written notice to be provided in accordance with these Terms must be provided by nationally recognized overnight courier (e.g., Federal Express, United Parcel Service, DHL) or United States certified/registered mail, postage prepaid, to the address identified at the beginning of these Terms ("**Notice Address**"). Notices will be deemed effective upon delivery. A party may update its Notice Address by providing written notice to the other party at least seven (7) days prior to the new Notice Address becoming effective.

14.3 Audits. Dvinci and/or a third-party designated by Dvinci may audit Vendor during Business Days to determine Vendor's compliance with the terms of this Agreement. Vendor agrees to cooperate fully with the audit including, but not limited to, promptly providing requested documents and making personnel available for requested interviews. Vendor will reimburse Dvinci and/or the third-party auditor designated by Dvinci for their reasonable audit expenses if the applicable audit reveals a material breach of this Agreement by Vendor.

14.4 Injunctive Relief. Notwithstanding anything to the contrary herein, the parties agree that any breach by any party of the provisions of these Terms may cause substantial and irreparable harm to the non-breaching party for which an award of monetary damages would be an inadequate remedy. Accordingly, in the event of any such breach or threatened breach, the injured party may seek injunctive relief in addition to all other rights and remedies available to such party at law and in equity.

14.5 Independent Contractors. In making and performing under these Terms, the parties are acting and will act as independent contractors and not that of master and servant or partnership. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer, or partner of any other party for any purpose. No party will have any authority to act for or to bind another party in any respect, nor will any party hold itself out as having such authority.

14.6 Non-Disparagement. During the Term and for a period of one (1) year thereafter, Vendor will not make, cause to be

made, or encourage others to make or cause to be made any statements, observations, opinions, announcements, releases, or other communications that disparage or are likely in any way to harm Dvinci or Dvinci's reputation, business opportunities, or public perception.

14.7 Non-Solicitation. During the Terms and for a period of one (1) year thereafter, Vendor will not solicit, cause to be solicited, or encourage others to solicit any client of Dvinci.

14.8 Record Retention. Vendor will retain all records related to the provision of services under this Agreement for at least the greater of five (5) years from each record's creation or any retention period prescribed by Applicable Laws.

14.9 Assignment; Binding Effect. No party will assign or transfer these Terms nor delegate any of its rights or obligations hereunder without the prior written consent of the other party, which consent will not be unreasonably withheld. However, a party may assign these Terms to the surviving entity in a merger or consolidation in which it participates or to a purchaser of all or substantially all of its assets. these Terms will be binding upon and will inure to the benefit of and be enforceable by the parties to these Terms and their respective successors and permitted assigns.

14.10 Waiver. No term or provision of these Terms will be deemed waived and no breach excused, unless such waiver or consent is in writing and signed on behalf of the party against whom it is asserted. Any consent by any party to, or waiver of, a breach of another, whether express or implied, will not constitute consent to, waiver of, or excuse for any different or subsequent breach of these Terms by such party.

14.11 Severability. If any of the provisions of these Terms are declared to be invalid or unenforceable by a court of competent jurisdiction, such provisions will be ineffective to the extent of such invalidity or unenforceability while the other provisions hereof will remain in full force and effect.

14.12 Survivability. Provisions which by their nature would survive termination of these Terms or any applicable Order will be deemed to survive.

14.13 Remedies Cumulative. No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy unless otherwise specified herein, and each and every right and remedy will be cumulative and in addition to any other right or remedy under these Terms, or under applicable law, unless otherwise specified herein, whether now or hereafter existing.

14.14 Entire Agreement; Amendment. these Terms, along with all Orders, set(s) forth the entire understanding between the parties with respect to the subject matter hereof. these Terms supersedes all prior or contemporaneous representations, discussion, negotiations, letters, proposals, agreements, and understandings between the parties with respect to the subject matter hereof, whether written or oral. these Terms may be amended, modified, or supplemented only in a writing duly executed by an authorized representative of all parties.

14.15 Controlling Document. Notwithstanding any inconsistent or additional terms and conditions which may be contained in a purchase order, invoice, voucher, or other similar document issued by either party, such document will be for



issuing party's internal purposes only and the terms and conditions of these Terms will prevail. Therefore, even if such document is acknowledged or accepted by the receiving party and regardless of any statement to the contrary which may be contained therein, the inconsistent or additional terms and conditions of such purchase order, invoice, voucher or other similar document will have no force or effect on these Terms.

14.16 Counterparts. these Terms may be executed in counterparts, each of which will be deemed to be an original, and both of which, taken together, will constitute one agreement binding on all parties. A facsimile signature or other similar electronic reproduction of a signature will have the force and effect of an original signature, and in the absence of an original signature, will constitute the original signature.



Exhibit A

Lead Generation Standards

1. General Lead Generation Standards.

- 1.1 *Inducements.* Unless specifically permitted by Dvinci in writing, Vendor may not induce Leads to complete any form or provide Personal Information through the use of prizes, gifts, premiums, sweepstakes, or other incentives, including, but not limited to, gift cards, free products/services, or contest entries. Vendor must comply with all Applicable Laws when offering inducements.
- 1.2 *Coercive Tactics.* Vendor may not use coercive tactics to induce Leads to complete any form or provide Personal Information, including, but not limited to, bullying, harassment, abusive language, profanity, threats, or requiring consent for marketing communications as a condition of obtaining products/services.
- 1.3 *Lead Path Consistency.* Vendor may only solicit Leads for Dvinci via a lead path that is consistent with the product/service type that the potential Lead seeks. For example, if Vendor is soliciting Leads for Dvinci related to solar energy, Vendor may only solicit such Leads via a lead path for consumers seeking solar panels, solar energy, and associated services.
- 1.4 *Prior Express Written Consent.*
 - 1.4.1 General Requirements. If Vendor is required to obtain PEWC for future communications by Dvinci to the Lead, Vendor will ensure that such PEWC complies with Applicable Laws, including, the requirement that Vendor clearly & conspicuously disclose to the Lead, prior to obtaining consent, (i) Dvinci's identity; (ii) that Dvinci will contact the Lead with marketing offers; (iii) the phone number for which the Lead is providing consent; (iv) that Dvinci may use an autodialer, prerecorded message, or text message; (v) that consent is not required for purchase; (vi) that standard message and data rates may apply; (vii) that by giving consent the Lead is also providing their electronic signature; and (viii) that the Lead's consent will override any prior request by that Lead to be placed on Dvinci's or any federal or state do not call list.
 - 1.4.2 Multi-Seller PEWC Disclosures. Vendor may obtain PEWC for Dvinci via a PEWC disclosure that obtains PEWC for multiple sellers so long as the PEWC disclosure (i) complies with the requires in sub-section 1.4.1; (ii) identifies the seller type (e.g., "solar energy providers"); (iii) the number of sellers to whom the consent will be provided (e.g., "three solar energy providers"); (iv) the seller type is a hyperlink that links the consumer to a webpage that clearly and conspicuously discloses all possible sellers to whom the consent may be provided; and (v) Vendor supplies, at least seventy-two (72) hours prior to use, the Creative containing such multi-seller PEWC disclosure to Dvinci and Dvinci has not objected to its use.

2. Special Standards Related to Lead Generation Using Telecommunications.

- 2.1 *Communication Restrictions.* Unless expressly permitted in an Order, Vendor will not communicate with consumers using (i) outbound telephone calls; (ii) an "automatic telephone dialing system" as defined in the Telephone Consumer Protection Act and its implementing regulations and administrative and judicial opinions; (iii) marketing faxes; (iv) text messages; (v) prerecorded messages; (vi) artificial/synthesized voices; or (vii) ringless voicemail. Notwithstanding the foregoing, Vendor is not prohibited from using an automatic telephone dialing system if (i) it is authorized by Dvinci in writing to make outbound telephone calls to consumers; (ii) it and Dvinci have PEWC for the call to the called party; and (iii) Vendor can prove such PEWC by competent and reliable written or electronic evidence including, at minimum, the date and time of the consumer's grant of PEWC, the PEWC disclosure provided to the consumer prior to their grant of PEWC, and evidence of the consumer's affirmative consent such as submission of an online form (including at least IP address, date and time of consent, and content of PEWC disclosure) validated by an independent third-party lead validation service (e.g., Jornaya, TrustedForm). Further, Vendor is not prohibited from using an automatic telephone dialing system to call, on behalf of Dvinci, Leads certified in writing by Dvinci as having provided PEWC for calls from Dvinci.
- 2.2 *Text Message Compliance.* If permitted by an Order to communicate with consumers via text messages (SMS or MMS), Vendor will abide by industry best practices regarding text message campaigns, including, but not limited to, the MMA U.S. Consumer Best Practices for Messaging, CTIA SMS Interoperability Guidelines, and CTIA Short Code Monitoring Handbook.



- 2.3 *Soundboard.* For purposes of this Agreement and Vendor's compliance herewith, technologies commonly referred to as "soundboard" or "avatar" which permit live representatives to communicate with consumers by selecting and playing prerecorded or synthesized audio files will be considered the use of a prerecorded message in accordance with the FTC's Staff Opinion Letter to Michael Bills dated November 10, 2016.
- 2.4 *Ringless Voicemail.* For purposes of this Agreement and Vendor's compliance herewith, technologies commonly referred to as "ringless voicemail" or "voicemail drop" which permit depositing a voicemail message in consumer's voicemailbox without ringing the consumer's handset will be considered a call subject to the Telephone Consumer Protection Act in accordance with *Saunders v. Dyck O'Neal, Inc.*, 319 F. Supp. 3d 907 (W.D. Mich. July 16, 2018).
- 2.5 *Representation of Caller.* Unless expressly permitted in an Order, Vendor will not represent itself to consumers as Dvinci, nor will Vendor state that it is calling "on behalf of Dvinci" or make any other statement of similar meaning.
- 2.6 *Call Recording.* Vendor will record all calls with consumers. Vendor will provide a call recording disclosure promptly at the beginning of each call and each time a new party joins the call. Vendor will provide call recordings within twenty-four (24) hours of Dvinci's request therefor.
- 2.7 *Do Not Call.* Vendor will receive and immediately honor do not call/text requests from consumers. If Vendor receives a request specific to Dvinci or that could reasonably be interpreted to apply to Dvinci, Vendor will submit a file to Dvinci, in a format to be agreed between the parties, containing, for the applicable reporting period, at least the name and phone number of each consumer who submitted a do not call/text request and the day and time of their request.
- 2.8 *Scripts & Program Materials.* Vendor will be responsible for script development, training, calling strategy, and program execution. Dvinci reserves the right to review and disapprove any script, talking points, training materials, strategy, Creative, or other program component.
- 2.9 *Quality Assurance.* Vendor will establish a commercially-reasonable quality assurance program to ensure compliance with scripts and program materials. Vendor will comply with all requests of Dvinci for records and personnel interviews to facilitate Dvinci's quality assurance program.

3. Special Standards Related to Lead Generation Using Online Techniques.

- 3.1 *Placement Limitations.* Vendor may not place any Creative on websites, in connection with social media posts, or in emails that contain, promote, reference, or have links to (i) profanity, sexually-explicit material, hate material, material that promotes violence, discrimination, or illegal activities, or any other material deemed unsuitable by Dvinci; (ii) webpages with no content; (iii) piracy, hacking, cracking, emulators, or other violations of the intellectual property or privacy rights of others; (iv) misleading or deceptive advertising; (v) personal webpages (except for paid influencers or endorsers approved in writing by Dvinci); or (vi) activities generally understood as abusive such as sending spam and using spyware or malware. Vendor may not generate Leads via downloadable applications.
- 3.2 *Bidding Limitations.* Vendor may not bid on search terms that compete with Dvinci's paid and organic search strategy, as such terms may be designated from time to time in writing by Dvinci.
- 3.3 *Portrayal of Identity.* Unless expressly permitted in an Order, Vendor may not, expressly or by implication, portray its website, social media, or other consumer-facing communication as being owned, operated, on behalf of, or in partnership/affiliation with Dvinci.
- 3.4 *Clear & Conspicuous Disclosures.* Vendor Creatives must clearly and conspicuously disclose an email address, toll-free number, or other reliable, free, easy-to-use mechanism to opt out of sharing of Personal Information. Vendor Creatives that contain legal disclosures, such as PEWC disclosures, must present such disclosures in a clear and conspicuous manner so that they are easily readable, in equal to or larger type than the surrounding text, in contrasting type, font, or color to the surrounding text, and above any call to action button such as an "I consent" or "I accept" button. Vendor Creatives must not distract consumer attention from legal disclosures and must be configured to appear appropriately on the various devices from which a consumer may access them (e.g., desktop, laptop, mobile phone, tablet).
- 3.5 *Affirmative Action.* If the Vendor Creative will obtain PEWC, the Vendor Creative must require the consumer take an affirmative action to indicate their consent, such as checking a box or clicking a button that clearly indicates an intent to agree to the disclosure and be contacted such as "I consent," "I accept," or "Call me."



- 3.6 *Privacy Policy & Terms of Use.* Vendor Creatives must clearly and conspicuously disclose links to the Vendor's online Privacy Policy and Terms of Use. Vendor's Privacy Policy and Terms of Use must comply with Applicable Laws and clearly and conspicuously disclose Vendor's legal name and contact information.
4. **Conflict with Law or Terms.** To the extent that any term in this Exhibit A conflicts with Applicable Law, Applicable Law controls. Nothing in this Exhibit A relieves Vendor of its obligation to comply with Applicable Law or obtain necessary consents or provide notices required by Applicable Law or the Terms.