



**RESPONSE MAKERS, LLC**  
 6650 LUSK BLVD, SUITE 208  
 SAN DIEGO, CA, 92121  
 PHONE 800-884-8312  
 FAX 800-609-3608

This Data Agreement (this “Agreement”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between **RESPONSE MAKERS, LLC** (herein, “Company”) and \_\_\_\_\_ (herein, “Client”). Client and Company (each a “Party,” collectively the “Parties”) hereby agree as follows:

**1. CLIENT INFORMATION & COMPLETION OF EXHIBITS.**

<b>NAME:</b>	<b>CONTACT/TITLE:</b>
<b>ADDRESS:</b>	<b>PHONE/FAX:</b>

Client has completed and signed the Exhibits hereto and warrants that the information provided therein is accurate.

**2. DEFINITIONS.**

In addition to the terms defined elsewhere, the following terms shall be defined as set forth below:

- a. **“Consumer”** shall mean and include an individual in a specified geographic region that appears to have had his or her credit accessed in connection with a mortgage inquiry within approximately the last 24 hours.
- b. A **“Data Record”** shall mean and include, at a minimum, a given Consumer’s name, last known address, and last known telephone number. Such telephone number will have already been scrubbed against federal and state “do not call” lists.
- c. A **“Firm Offer Of Credit”** shall mean and include a “firm offer of credit” as defined in the Fair Credit Reporting Act, 15 USC 1681, et seq., and case law defining the parameters of the same, and as described in the guidelines attached hereto as **Exhibit E**.

**3. INTRODUCTION & ORDERING PROCESS.**

Client seeks to purchase a limited license to use Data Records pertaining to Consumers from Company. Client hereby agrees that such purchase and use of Data Records from Company shall be subject to the terms and conditions set forth in this Agreement. Client shall order Data Records by submitting a completed version of the form at **Exhibit D** (herein, an “Order”) to Company. The terms and conditions set forth in this Agreement are incorporated by reference as if fully stated in, and shall govern and apply to, each Order. Acceptance or use of Data Records, or any other services/products in any form by Client, constitutes acceptance of, and agreement that the terms and conditions of this Agreement shall govern such use. An Order must be signed by Client and Company to constitute an effective, binding Order. Client further agrees that an Order of Data Records may be delivered incrementally on account of limited availability.

**4. CLIENT PERFORMANCE.**

- a. **Payment.** Pricing for Data Records shall be agreed to by the Parties on an Order by Order basis and may be changed from Order to Order. Client agrees to pay for any Orders in advance, and further agrees that Company shall have no obligations to perform hereunder until such advance payment is satisfactorily made.
- b. **Extension of a Firm Offer of Credit.** Client agrees that it shall legally telephone each and every Consumer(s) referenced in a Data Record(s) provided by Company and extend such Consumer(s) a Firm Offer of Credit for a mortgage. Client has read and reviewed the Firm Offer of Credit Guidelines attached hereto as **Exhibit E** (the “Firm Offer Guidelines”), and agrees to follow them when making Firm Offers of Credit to Consumers. Such guidelines may change from time to time, and Company may provide Client with updated guidelines, which Client agrees to follow. *Notwithstanding the foregoing, the Firm Offer Guidelines, as attached or as amended, and/or any other communications from Company or anyone acting on its behalf, do not constitute legal advice, and are not comprehensive or exhaustive. Client agrees that it is exclusively its obligation to be aware of, and comply with, all applicable federal, state, local, and other laws, rules, and regulations both in general, and with regard to Firm Offers of Credit, and will consult with an attorney to ensure such compliance.*



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c. **Restrictions on Use.** Except as set forth herein, or as authorized or consented to by a Consumer, Client agrees that it will not make any other uses of the Data Records aside from those explicitly set forth in this Agreement. Client further agrees that each and every Data Record is licensed hereunder for a one time use only, and will only be used on a one time basis.

## **5. NON PUBLIC PERSONAL INFORMATION & RESTRICTIONS ON USE & DISCLOSURE.**

Client agrees that the Data Records provided hereunder constitute NON PUBLIC PERSONAL INFORMATION, as the term is defined in the Gramm Leach Bliley Act (the “GLBA”) pertaining to individual Consumers (herein, “NPPI”), which is subject to numerous federal, state, local and other statutes, laws, regulations, and rules, including without limitation, the GLBA. Client agrees to only use and disclose any NPPI for the following purposes:

a. **Marketing of Products and Services.** Client may use and disclose the NPPI regarding a particular Consumer to legally telephone such Consumer and extend him/her a Firm Offer of Credit for a mortgage.

b. **Administration Using Disclosed NPPI.** Client may use and disclose the NPPI as consented to by the applicable Consumer, or to effect, administer, or enforce a transaction requested or authorized by such Consumer, or in connection with: (i) servicing or processing a financial product or service requested or authorized by the Consumer; or (ii) maintaining or servicing the Consumer’s account with Client, or other extension of credit extended by Client.

c. **Permitted or Required by Law.** Client may use and disclose the NPPI: to the extent specifically permitted or required by law and in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 et seq.; and/or to law enforcement agencies, including: a federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91-508, 12 U.S.C. § 1951-1959; a State insurance authority; the Federal Trade Commission; self-regulatory organizations; or for a governmental investigation on a matter related to public policy.

Client and Company agree that: the NPPI will be used for no other purpose aside from the above stated purposes and/or as permitted by law; that except as explicitly provided for herein, they will not disclose, and will maintain the confidentiality of, any NPPI; and that they shall at all times comply with any and all federal, state, local and other statutes, laws, rules and regulations applicable to the NPPI, including without limitation, the GLBA.

Company and Client shall each maintain physical, electronic and procedural controls and safeguards in compliance with any applicable federal, state, local and other statutes, laws, rules and regulations to protect the NPPI from unwarranted disclosure. These controls shall include, but not be limited to, the maintenance of appropriate safeguards to restrict access to the NPPI to those employees, agents or service providers of each Party who need such information to carry out the purpose(s) for which the NPPI was disclosed. For electronically disclosed NPPI,

Company and Client each agree that such safeguards must include electronic barriers (e.g., “firewalls”) and password protected access to the NPPI. For information disclosed in written form, Company and Client each agree that such safeguards must include secured storage of disclosed NPPI. Company and Client each represent that they have assigned an “NPPI Security Employee” the task of ensuring that the foregoing protocols are followed. Company and Client each agree to notify each other of any security breaches involving the NPPI.

Upon cancellation of this Agreement, Client shall, within 10 days of such cancellation, return any and all NPPI (and all accounts, copies, or summaries thereof) to Company or dispose and destroy the same in a manner compliant with any applicable federal, state, local and other laws, rules and regulations. All information furnished to Client by Company under this Agreement is licensed only for a one time use and only for the purposes stated above and for no other uses or purposes. Client agrees that it will not re-sell, distribute or disseminate the Data Records, or contravene the obligations contained in this Section or this Agreement.



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## **6. TERM.**

This Agreement will run for an initial term of one year (the “Term”) and shall automatically and continuously renew for additional year long Terms until cancelled. Either Party may cancel this Agreement with cancellation effective immediately upon the other Party’s receipt of written notice. Once this Agreement has been cancelled, Client must execute a new version of the same in order to submit Orders for Data Records.

## **7. CONFIDENTIALITY.**

"Confidential Information" means all valuable or potentially valuable information, whether communicated in oral, written, electronic or other form prior to or after execution of this Agreement, furnished by Company or its agents to Client, including but not limited to, any and all: data, formats, attributes, scores, specifications, and files; financial, commercial, marketing, sales, technical, or scientific information; intellectual property (including without limitation: all patented, copyrighted, or trademarked material or items; all service marks, trade names and trade dress; any applications relating to the same; and trade secrets, software, codes, inventions, know-how and similar information); and any and all other business information. Client shall not acquire any right, title, license or interest in the Confidential Information as a result of its execution of this Agreement. Client may only use the Confidential Information to fulfill its responsibilities pursuant to this Agreement and for no other purpose. Client may not appropriate or use the Confidential Information for its own benefit, nor disclose the Confidential Information to any third party. Client may not copy or allow to be copied, in whole or in part, the Confidential Information, nor merge the Confidential Information with, or allow it to become a part of, data of any other kind. In addition to the other restrictions set forth herein, the Confidential Information may not be made a part of any product or service developed or offered by Client, or otherwise used, re-used, sold, licensed or transferred in any way. Client further agrees that it will hold the terms of this Agreement, including without limitation, the pricing schedule set forth in **Exhibit C**, both currently or as may be modified, in the strictest of confidence and will not disclose the same to any third parties.

## **8. SALES AGENT END USER AGREEMENT.**

Client has read the Sales Agent End-User Agreement found at **Exhibit F** (the “Equifax Agreement”) in its entirety, and has executed the same. Client agrees that in addition to complying with the obligations of this instant Agreement, it will comply with those of the Equifax Agreement.

## **9. REPRESENTATIONS & WARRANTIES.**

In addition to the other representations, warranties, and agreements, contained herein, Client represents and warrants that: **(a)** it is a legal entity in good standing; **(b)** it is duly funded, licensed and authorized, and fully able to extend each and every Consumer referenced in a Data Record a Firm Offer of Credit for a mortgage, and to honor the same; **(c)** it has and will comply with all applicable federal, state, local and other laws, rules and regulations, including without limitation, the federal Truth-in-Lending Act; the Equal Credit Opportunity Act; the Fair and Accurate Credit Transactions Act; the FCRA; the Gramm-Leach-Bliley Act; 47 USC § 227; the Telemarketing Sales Rule; Federal/state “Do Not Call” statutes/rules; and/or any statutes or regulations applicable to telemarketing or phone calls; **(d)** that it will only use the Data Records once, and in compliance with the terms and conditions of this Agreement, and that it will not use them for any illegal, fraudulent or deceptive purpose; and **(e)** it will not, nor cause Company, to violate any privacy, contractual, statutory or other rights of any entities or persons. The Signatories below represent that they are authorized to bind the Parties hereto.



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**10. INDEMNIFICATION.**

Client shall indemnify, defend & hold harmless Company and its parent, subsidiary and affiliated entities, and their or Company's owners, members, directors, managers, officers, employees, and agents; as well as Company's contractors and any third party data providers (and their affiliates); from and against all threatened or actual losses, damages, expenses, liabilities, suits, demands, and/or claims (including without limitation, for reasonable attorneys' fees & costs/expenses) resulting from: (a) Client's breach of any warranties, agreements or obligations or the inaccuracy of any of its representations (in general, herein, or in the Equifax Agreement); (b) any violations, established or alleged, on Client's part of any regulation, rule, law, civil, private, contractual or other right, or any other basis as to which Client is alleged to be at fault; and/or (c) any 3rd party claims related to this Agreement.

**11. WARRANTY DISCLAIMERS.**

**CLIENT AGREES THAT THE SERVICES/PRODUCTS PROVIDED AND/OR LICENSED HEREUNDER, INCLUDING ANY DATA RECORDS, ARE USED AT CLIENT'S OWN SOLE RISK, ON AN "AS IS" & "AS AVAILABLE" BASIS. ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ACCURACY, ARE DISCLAIMED. IN PARTICULAR, BUT WITHOUT LIMITATION, COMPANY DOES NOT WARRANT, REPRESENT, OR OTHERWISE GUARANTEE THE ACTUAL CREDIT WORTHINESS OF ANY CONSUMERS, ANY FORM OF RESULTS, ANY MATTER RELATED TO THE TIMING OF WHEN A CONSUMER MAY HAVE APPLIED FOR A LOAN, ANY AMOUNT OF REVENUE OR LOAN TRANSACTIONS, THE ACCURACY OF ANY INFORMATION REGARDING ANY CONSUMERS, INCLUDING WITHOUT LIMITATION, THE ACCURACY OF ANY PHONE NUMBERS, OR THAT THE SERVICES/PRODUCTS PROVIDED HEREUNDER WILL BE ERROR FREE OR WITHOUT INTERRUPTION OR DELAY. NO STATEMENTS, WHETHER ORAL OR WRITTEN, SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.**

**12. LIMITATIONS ON LIABILITY.**

**IN NO EVENT SHALL COMPANY BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER DAMAGES (SUCH AS, FOR EXAMPLE, LOST PROFITS OR THE COST OF SUBSTITUTE GOODS OR SERVICES) WHETHER FORESEEABLE OR NOT, AND HOWEVER CAUSED, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT OCCUR.**

**CLIENT AGREES THAT COMPANY'S SOLE LIABILITY FOR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE FOR RE-PROVISION OF THE AFFECTED SERVICES/PRODUCTS. WITHOUT LIMITING AND SUBJECT TO THE FOREGOING, AND IN ANY EVENT, COMPANY'S LIABILITY SHALL NEVER EXCEED THE TOTAL FEES PAID FOR ANY AFFECTED ORDER(S).**



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**13. MISCELLANEOUS.**

Texas state law shall govern this Agreement, without regard to its choice of law, or conflict of laws, rules. All actions related to this Agreement shall be litigated only in courts within Houston, Texas, and each Party irrevocably consents to the venue & jurisdiction of any court therein. If Client breaches this Agreement or is otherwise at fault, Company shall be entitled to recover all damages, including without limitation, its reasonable attorneys & experts fees and court costs. The terms of this Agreement are meant to be severable, and any unenforceable term of this Agreement shall only be ineffective to the minimum extent and without impairing the remaining terms. Company shall not be liable for any failure of performance due, in whole or in part, to causes beyond its control, including but not limited to: natural disasters; power outages; fires; governmental actions; the acts or omissions of third parties including without limitation any credit reporting agencies; national emergencies; riots; terrorism; wars or strikes. No failure/delay by a Party to exercise any right, power or privilege shall operate as a waiver thereof. This Agreement, along with any exhibits, is the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This Agreement shall not be superseded by a subsequent agreement unless such agreement identifies this Agreement by name and date of execution, and expressly supersedes its terms. This Agreement and the terms & conditions contained herein, shall be binding upon Client's parents, subsidiaries, and affiliates, and shall inure to the benefit of Company's affiliates, parents, and subsidiaries; as well as Company's contractors and any third party data providers (and their affiliates). The Parties shall at all times be independent contractors of each other. Client agrees that Company or its affiliates may fax Client marketing or advertising materials, and that such permission shall survive cancellation of this Agreement until separately revoked in writing. This Agreement may be modified only with the signed, written consent of both Parties. No oral waiver, amendment or modification will ever be effective. Paragraphs 2 through 13, the terms of EXHIBITS A through F, and any other terms necessary for Company to enforce its rights, shall survive cancellation of this Agreement.

**READ IN ITS ENTIRETY AND AGREED TO BY:**

**RESPONSE MAKERS, LLC**

**CLIENT:** \_\_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature of Duly Authorized Representative*

\_\_\_\_\_  
*Name/Title*

\_\_\_\_\_  
*Name/Title of Authorized Representative*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



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**GENERAL INFORMATION**

**EXHIBIT A**

Client Name: \_\_\_\_\_ Time in Business: \_\_\_\_\_  
 Type of Ownership/Entity:  Partnership  Sole owner  Non-Profit  Corporation  LLC  
 Other names, affiliates, or DBA's: \_\_\_\_\_  
 Employer ID Number: \_\_\_\_\_ Website Address: \_\_\_\_\_  
 Do you have an active subscriber code with Experian, Equifax or Transunion? Please list below:  
 Experian: \_\_\_\_\_  Equifax: \_\_\_\_\_  Transunion: \_\_\_\_\_

Current Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Duration of location: \_\_\_\_\_ Is this a residence:  Yes  No Leased or owned: \_\_\_\_\_  
 Fax: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
 Previous Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**PRINCIPAL OF CLIENT**

Principal Name: \_\_\_\_\_ Title/Position: \_\_\_\_\_  
 Current Residential Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
 Zip: \_\_\_\_\_ Phone: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**BANK REFERENCE**

(For business checking account)

Bank Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Checking Acct. Number: \_\_\_\_\_  
 Current Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**BONA FIDE BUSINESS VERIFICATION**

Please attach one of the following materials:

- State Bus. License  Articles of Inc.  Mortgage Broker Certificate  Mortgage Banker License

Please attach one of the following materials:

- Current Business Phone Bill  Business check  Business Lease

The information provided on this page is accurate and complete and does not contain any material omissions. The signatory below represents and warrants that he or she is duly authorized to execute this document on behalf of the party he/she is signing for. Client authorizes the above stated Bank reference to release verification information to RESPONSE MAKERS, LLC.

SIGNED ON BEHALF OF: \_\_\_\_\_

NAME/TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



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**EXHIBIT B**

**Subscription Account Number (SAN) Certificate**

\_\_\_\_\_ (herein, "Client") warrants and represents that it is a current subscriber to the National Do Not Call Registry and that such subscription includes coverage of the area codes/states corresponding to the Data Records that Client is requesting from RESPONSE MAKERS, LLC. Client further warrants and represents that it is currently, and shall remain, properly registered as a telemarketer, or as otherwise required by any applicable statutes, rules, and regulations, to make use of the telephone information provided by RM. Client agrees that it is its sole responsibility to ensure that the use of the telephone number information provided by RM is compliant in all respects with all applicable federal, state, local and other laws, rules and regulations, and as such, agrees to indemnify and hold RM harmless from any and all claims that may arise from the use of telephone number information provided by RM.

\_\_\_\_\_  
End User Subscription Account Number

\_\_\_\_\_  
Organization ID

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Expiration Date

Please select the appropriate box.

- Nationwide Area Code
- Select State Area Code

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date



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## EXHIBIT C

Client and Company agree to the following pricing, terms & conditions, and price schedule:

<b>Number of Data Records</b>	<b>Price Per Data Record</b>
500 (Minimum Order) – 999	TBD on an Order by Order basis
1000 – 2,499	TBD on an Order by Order basis
2,500 – 4,999	TBD on an Order by Order basis
5,000 – 9,999	TBD on an Order by Order basis
10,000 and up.	TBD on an Order by Order basis

*\*Such pricing is subject to change without notice.*

*\*Client agrees to pay for any Orders in advance, and further agrees that Company shall have no obligation to perform hereunder or provide/license any services or products to Client until such advance payment is satisfactorily made.*

AGREED TO ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008 BY:

**COMPANY:**

**RESPONSE MAKERS, LLC**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name/Title*

**CLIENT:** \_\_\_\_\_

\_\_\_\_\_  
*Signature of Duly Authorized Representative*

\_\_\_\_\_  
*Name/Title of Authorized Representative*



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**EXHIBIT D – ORDER FORM**

**CLIENT NAME:** \_\_\_\_\_ (HEREIN, “CLIENT”)  
**CURRENT BUSINESS ADDRESS:** \_\_\_\_\_  
**BUSINESS PHONE NUMBER:** \_\_\_\_\_ **FAX NUMBER:** \_\_\_\_\_  
**PRINCIPAL OWNER NAME:** \_\_\_\_\_ **YOUR TITLE:** \_\_\_\_\_

**ORDER & DATA FILER INFORMATION**

**# OF DATA RECORDS:** \_\_\_\_\_ **PRICE:** \_\_\_\_\_ /DATA RECORD **TOTAL PRICE:** \_\_\_\_\_  
**STATE:** \_\_\_\_\_ **COUNTIES:** \_\_\_\_\_  
**FICO SCORE RANGE:** \_\_\_\_\_ **MIN. MORTGAGE BALANCE:** \_\_\_\_\_  
**ADDITIONAL FILTERS:** \_\_\_\_\_  
 \_\_\_\_\_  
**ELIMINATED BANKRUPTCIES:** \_\_\_\_\_ **ELIMINATED FORECLOSURES:** \_\_\_\_\_ **HISPANICS ONLY:** \_\_\_\_\_

Client hereby agrees that the terms and conditions of the following agreements are incorporated by reference as if fully stated herein, and shall govern Client’s use of the Data Records and all matters related thereto: (a) the Data Agreement (and all exhibits or attachments thereto) previously entered into between Client and RESPONSE MAKERS, LLC (“Company”), including without limitation, the terms & conditions listed below; and any and all obligations, representations, warranties, DISCLAIMERS and/or LIMITATIONS OF LIABILITY set forth therein; and (b) Equifax’s Sales Agent End User Agreement signed by Client. This Order must be signed by both parties to constitute a binding Order, and advance payment is required. Client further agrees that an Order of Data Records may be delivered incrementally on account of limited availability.

**DNC Filtering.** The phone numbers contained in any Data Records will have already been “scrubbed” against the Federal and State “Do Not Call” Database(s). Please note that the phone numbers provided are those captured from a credit reporting agency. **There is no accuracy guarantees on any phone numbers provided by Company.** Dead numbers, fax lines, and/or wrong numbers are to be expected.

**NO WARRANTIES OR LIABILITY.** CLIENT AGREES THAT THE SERVICES/PRODUCTS PROVIDED AND/OR LICENSED HEREUNDER, INCLUDING ANY DATA RECORDS, ARE USED AT CLIENT’S OWN SOLE RISK, ON AN “AS IS” & “AS AVAILABLE” BASIS. ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ACCURACY, ARE DISCLAIMED. IN NO EVENT SHALL COMPANY BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER DAMAGES (SUCH AS, FOR EXAMPLE, LOST PROFITS OR THE COST OF SUBSTITUTE GOODS OR SERVICES) EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT OCCUR OR THEY ARE FORSEEABLE.

**Firm Offer of Credit Requirement.** Client agrees that it will legally telephone each and every Consumer corresponding to a Data Record and extend them a Firm Offer of Credit for a mortgage as more fully set forth in the Data Agreement.

**Restrictions On Use.** Client agrees that it will comply with any applicable federal, state, local and other laws, statutes, rules, and regulations applicable to the Data Records or other NPPI provided by Company, including without limitation the Gramm Leach Bliley Act. Client further agrees: (a) that the Data Records are only being provided/licensed for a one time use; (b) that it will not sell or distribute the Data Records or any portion thereof; and (c) that it will not disclose the Data Records to any persons or entities aside from its employees or agents whose duties reasonably relate to the lawful business purpose for which the Data Records were obtained as provided in the Data Agreement, or except as permitted or required by any applicable statutes or regulations.

**AGREED TO ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008:**

**RESPONSE MAKERS, LLC**

**CLIENT:** \_\_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name/Title*

\_\_\_\_\_  
*Name/Title*



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## **EXHIBIT E**

### **INTRODUCTION**

Mail and telemarketing offers using lists that are prescreened against credit bureau information are subject to certain rules and regulations that do not apply to other types of marketing lists. Credit screened lists are subject to the Fair Credit Reporting Act (the "FCRA"), which requires that a firm offer of credit be extended to every name on the list. Below are suggested guidelines about how to comply with the FCRA'S requirements when making Firm Offers of Credit for a mortgage. *These guidelines do not constitute legal advice from RESPONSE MAKERS, LLC (herein, "Company" )and are not meant to be comprehensive or exhaustive. It is exclusively your obligation to be aware of, and comply with, all applicable federal, state, local and other laws, rules, regulations and guidelines, and you must consult with an attorney to ensure such compliance.*

### **A FIRM OFFER OF CREDIT**

Recent court decisions have drastically changed the FCRA landscape. That which was presumed to be compliant as recently as two years ago has now been held by certain courts to be non-compliant. Therefore, certain precise elements must be included in all direct mail campaigns and/or telephonic firm offers to ensure compliance based on both new laws and new interpretations of existing laws. The following guidelines will focus on firm offers of credit.

A firm offer of credit is essential in order to establish permissible purpose, a requirement of the FCRA which is triggered by the access of credit data in order to compile a mailing or calling list for solicitation purposes. A firm offer of credit is defined, in its most basic form, as an offer which has value to the consumer and can be accepted. Based on precedents established in court decisions in 2004 and as recently as 2007, the offer must be practical and one which a reasonable consumer would find to have value. For example, offering a minimum loan amount of \$300 for an auto loan was found in *Cole v. US Capital* not to be reasonable and in fact, a "sham." A firm offer of credit (or insurance) must be legitimate and distinguished from an advertising scheme to sell cars, real estate, or to invite insurance or loan applications.

Since the basic concept of a firm offer of credit is that an offer is being made based on information already obtained from the consumer's credit profile, the use of the word "apply" or "application" is not appropriate and should never be used. Likewise, the phrase "on approved credit," "OAC," or "WAC" must never be used. Federal regulations allow for a "post-screen" wherein the lender is permitted to confirm that the recipient meets the qualifications set forth ahead of time and used to make the offer. If the recipient proves not to meet these qualifications then it is within the lender's rights to rescind the offer. However, this process is not an application for credit and should never be referred to as such.

In order to meet the FCRA standards as established in *Kudlicki v. Farragut Financial Corp.*(filed January, 2006 in the Northern District of IL), a firm offer of credit should include what the judge referred to in the decision as the "four corners" of a firm offer of credit. They are: (1) an interest rate (APR) or reasonable range of interest rates, (2) an amount to finance, or in lieu of an actual amount to finance, a reasonable minimum amount to finance (as well as a maximum), (3) a payment term (or a reasonable range of terms), and (4) the method of calculating interest. Since certain of these will be determined by the consumer's preferences, among other factors, a reasonable range will generally suffice. You can also provide examples such as:

**If you continue to meet the criteria used to select you for this offer and our creditworthiness criteria, you are pre-qualified for a loan of no less than \$25,000 at a 14.75% maximum APR, which is calculated according to the simple interest method, for a term of between 180 and 300 months. For example, a loan amount of \$25,000 with zero down payment at 14.75% APR repaid over a term of 15 years can result in 180 monthly payments of \$13.82 per \$1,000 borrowed. The actual amount of your loan, at or above \$25,000, will be determined based on information obtained in processing your acceptance of this offer including, but not limited to, the credit bureau information, appraisal, verification of income, and equity in your home.**



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**Terms & Conditions of Offer:** You must be at least 18 years of age to be eligible for this offer. You must continue to meet the criteria used to select you for this offer. You must respond to this offer before the expiration date indicated on the front of this letter. If we receive your response after the expiration date, we may require you to follow our normal application procedures and will evaluate your application based on our current underwriting criteria. This offer is non-transferable and supersedes all prior offers. Our credit worthiness criteria include that your loan be secured by your residence as collateral; that the equity in your home meet our equity requirements; that you pay all applicable loan fees; and that your combined monthly debts and other credit obligations not exceed 50% of your gross verifiable monthly income. If you continue to meet the criteria used to select you for this offer and our creditworthiness criteria, you are pre-qualified for a loan of no less than \$25,000 at a 14.75% maximum APR, which is calculated according to the simple interest method, for a term of between 180 and 300 months. For example, a loan amount of \$25,000 with zero down payment at 14.75% APR repaid over a term of 15 years can result in 180 monthly payments of \$13.82 per \$1,000 borrowed. The actual amount of your loan, at or above \$25,000, will be determined based on information obtained in processing your acceptance of this offer including, but not limited to, the credit bureau information, appraisal, verification of income, and equity in your home. You will be required to pay for an appraisal. Home equity loans are available in most areas. Some limitations apply. This offer is not valid if you move outside of our marketing area. This offer is void where prohibited by law. The amount you save on your monthly payments may vary.

### **Notice of Terms and Conditions**

Certain states, including without limitation, Georgia, require the Terms and Conditions to appear on the face page of the offer. It is your responsibility to verify where the Terms and Conditions must appear. If the Terms and Conditions are not on the face page of the offer, then there should be language on the face page directing the reader to the Terms & Conditions. The statement should be prominent and preferably in bold so there is no mistake that the reader is intended to see it. An example: **“See Important Terms and Conditions on Reverse Side.”**

The disclosures of amount, rate, term, and interest payment calculation can be included in the Terms And Conditions but should also be mentioned on the face page. We recommend that it not be in a type size smaller than the main text of the page. The designation APR should always follow any interest rate.

### **THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT**

The Fair And Accurate Credit Transactions Act (FACTA) became effective August 1st, 2005. With respect to disclaimers/disclosures, FACTA amends the current rules slightly but significantly. Although the FCRA information required in the disclaimer has not changed essentially, there are very specific rules regarding their display. To begin with, a disclaimer at the bottom of the page will no longer be sufficient. Both a **Short Notice** and a **Long Notice** will now be required.

The **Short Notice** is designed to get the attention of the consumer and notify him that he may opt out of receiving future solicitations based on credit pre-screening, and also directs the consumer to more detailed information on the subject in what is referred to as the **“Long Notice.”** The **Short Notice** must be on the first (or main) page of the offer and must be conspicuous. In fact, its purpose is to be conspicuous and to direct the reader to the additional information contained in the long notice whether the long notice is on the reverse side, below, or on a separate insert. The short notice must be in type that is *larger* than the size of the principal text on the same page but in no event smaller than 12pt. It must be in a different type style than the principal text on the same page (i.e, bold, italics, different color, etc.) and must be in a format that distinguishes it from other text on the page (i.e. inside a border).

Example:

**You can choose to stop receiving “pre-screened” offers of credit from this and other companies by calling toll-free 888-567-8688. See the PRESCREEN & OPT OUT NOTICE below for more information about prescreened offers.**



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The **Long Notice** must be in a type size no smaller than the type size of the principal text on the page but in no event, smaller than 8 point (we recommend at least 10 pt., and 12 pt. if you locate the long notice on the reverse side). It must begin with the following heading in capital letters *and* underlined: “**PRESCREEN & OPT OUT NOTICE**”. The type style must be distinct from the type style of the principal text of the page (i.e. bold, italics, different color) and must be set apart from other text on the page, such as indenting margins and including a blank line above and below it. Example:

**PRESCREEN & OPT-OUT NOTICE:** This “prescreened” offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria, including providing acceptable collateral. If you do not want to receive prescreened offers of credit from this or any other companies, call the consumer reporting agencies toll-free, 1-888-567-8688 or visit the website at [www.optoutprescreen.com](http://www.optoutprescreen.com); or write TransUnion Opt-Out Request PO Box 505, Woodlyn, PA 19094-0505, Equifax Options, P.O. Box 740123 Atlanta, GA 30374, and Experian Information Systems, Inc., P.O. Box 919, Allen, TX 75013.

The **Long Notice** should not contain any information other than what you see above because it could obfuscate the FCRA message. Any additional specific lending criteria should be separate from this notice.

#### **ADDITIONAL ISSUES**

##### **Relational Consistency**

Since it is required that an offer of credit have value for the consumer, it is important that certain issues be considered when setting the terms of the offer. For example, the terms of the offer should be consistent with the qualifications of the offer’s recipients. It is important to ensure that all or most of the recipients of the offer will generally qualify for it as stated. While you have the right to post screen to determine the final terms of the offer, a FICO range of 480 to 550 for example, would not be consistent with an APR range of between 5.5% and 6.5%. Since, in this extreme example, none or most of the recipients who passed the post screen would qualify for that range of rates, that could be construed as a bait and switch tactic (see UDTP section below).

##### **Unfair and Deceptive Trade Practices (“UDTP’s”)**

Laws regarding unfair and deceptive trade practices exist to protect the consumer. There are federal, state, and local laws regarding UDTP’s. UDTP’s are indirectly related to FCRA issues but in any event are enforced by the same government agency, the Federal Trade Commission (“FTC”) on the federal level, and state Attorneys General (“AG”) on the state level. UDTP’s, for our purposes, basically prohibit false or misleading advertising, bait and switch tactics, and other generally acknowledged practices which take unfair advantage of consumers. It is our policy that all mail pieces or firm offers connected to our data be in compliance with all federal, state, local and other laws, rules and regulations regarding UDTP’s. Besides constituting criminal activity and being therefore illegal, UDTP’s are bad for business in the long run, attracting unwanted attention from Attorneys General, the FTC, and various consumer protection agencies and inevitably resulting in substantial governmental fines and penalties (or worse) not to mention lawsuits.

##### **Prizes, Games, and Sweepstakes**

Many of our clients desire to add incentives for the consumer. Games, prizes, gift giveaways, vacations, sweepstakes, etc. designed to increase the response rate are regulated in most states. Although in most cases these items are not illegal, there are stringent restrictions and guidelines regulating their use. Furthermore, some attorneys have interpreted additional incentives to obfuscate or otherwise adversely impinge on a firm offer of credit. Therefore, while we don’t strictly prohibit them, we don’t recommend them in connection with a Firm Offer of Credit. However, if you do use any of these additional incentives, it is strictly your responsibility to ensure that any incentive offers strictly adhere to the rules and regulations regarding the same. If a mail piece or telephonic firm offer using our data includes a non-compliant offer, the client will be held responsible and will be required to indemnify Company against all fines and/or legal actions.



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### **Checks, Vouchers, Certificates, Etc.**

It is illegal under federal and most states' laws to mail a "false check" or anything which may appear to the consumer to be a financial instrument when it is not. It is therefore incumbent on the designer to ensure that no mailer which is to be mailed to consumers based on credit information, includes a "check" which is not an actual financial instrument tied to a legitimate bank account of a financial institution licensed to make loans in that state. If you wish to include a "voucher" or "certificate" or other such similar item which does not purport to be a check, the following will apply:

1. The item must be clearly and conspicuously titled (i.e., voucher, certificate, coupon, etc.)
2. The word "check" must not appear on the piece (i.e. Check # 284473) except in a disclaimer.
3. Wording such as "Pay to the order of" and other such language found on checks, drafts, and other financial instruments is prohibited.
4. If the general layout of the item resembles a check, then the following words must be prominently and conspicuously displayed on the item:

**"This Is Not A Check Or A Negotiable Instrument And Has No Cash Value"**

### **TELEMARKETING OFFERS**

1. Telemarketing firm offers have the same requirements as listed above, except for the opt-out notices, which do not need to be recited to the consumer.
2. The telemarketing script must state an offer for which the consumer has been pre-qualified and the conditions based on which it may be withdrawn.
3. The script must state: (a) a reasonable minimum dollar amount for which the consumer is pre-qualified (or a reasonable range); (b) the applicable interest rate (or a reasonable range); (c) the method of interest calculation; (d) the length of the term of repayment (or a reasonable range) and (e) whether or not collateral is required and what other conditions apply.
4. The offeror must intend to make the offer in the script and must intend to make all the disclosures, but it is not necessary to call back if the consumer refuses to listen.
5. The script cannot be a mere invitation to apply for a loan, or indicate that the offeror has detailed knowledge of the consumer's credit details.
6. The script need not contain the FTC prescribed opt out notices since they are only required for written offers.

***The foregoing does not constitute legal advice from RM and is not meant to be comprehensive or exhaustive. It is exclusively your obligation to be aware of, and comply with, all applicable federal, state, local and other laws, rules, regulations and guidelines, and you must consult with an attorney to ensure such compliance.***



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## **FCRA/FACTA COMPLIANCE CHECKLIST:**

### **FIRM OFFER OF CREDIT**

- Do you offer a financed amount, or at the least, a reasonable range of possible financed amounts including a minimum AND maximum?**
- Is the minimum amount a reasonable loan amount with which to fulfill its purpose? i.e. for a mortgage?**
- Do you have set approval criteria that the consumer could reasonably be expected to meet?**
- Do you state an interest rate or a reasonable range of interest rates?**
- Are the specified, or minimum and maximum, amounts & rates reasonable for the targeted consumer to be approved for?**
- Are all interest rates clearly designated as “APR’s”?**
- Do you describe a method of payment calculation? (i.e., simple interest)**
- Do you include a term or range of terms?**
- Are you mailing in a state where the Terms and Conditions must be on the face page of the mailer? If not, is there a notice on the face page directing the consumer to the Terms and Conditions paragraph?**
- If there are any incentives on the mailer or in connection with the offer (i.e., an offer of premiums, gifts, gift cards, vacations, sweepstakes, or prizes), have you done due diligence in ensuring both the legality of the incentive as well as the manner in which it is offered, both on the applicable state and federal levels?**
- If there is a voucher, certificate, coupon, etc., it does not look like a check; or if it resembles a check in any way, it carries the following disclaimer clearly and conspicuously: “This is not a check or negotiable instrument and has no cash value”**

### **OPT OUT -SHORT NOTICE (N/A TO TELEMARKETING OFFERS)**

- Is it on the front page of the offer / mailer?**
- Does it direct the reader to the Long Notice?**
- Is the type size larger than the size of the principal text on the same page?**
- Is the type size at least 12 pt.?**
- Is the type in a different style than the principal text on the same page (i.e, bold, italics, different color, etc.)?**
- Is it in a format that distinguishes it from other text on the page (i.e. inside a border)?**



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Example:

You can choose to stop receiving “pre-screened” offers of credit from this and other companies by calling toll-free 888-567-8688. See the [PRESCREEN & OPT OUT NOTICE](#) below for more information about prescreened offers.

**OPT OUT - LONG NOTICE (N/A TO TELEMARKETING OFFERS)**

- Is the type size no smaller than the type size of the principal text on the page?
- Is the type at least 8 pt. (preferably 10pt. and recommended 12 pt. if on the reverse side)?
- Does it begin with the following heading in capital letters *and* underlined: **“PRESCREEN & OPT OUT NOTICE”**?
- Is the type style distinct from the type style of the principal text of the page (i.e. bold, italics, or different color)?
- Is it set apart from other text on the page, such as indenting margins and a blank line above and below it?
- Does it contain ONLY language regarding the Opt Out message and nothing else that could confuse the consumer?
- Is it in clear, concise, and simple terms that the average consumer will easily understand?

Example:

**PRESCREEN & OPT-OUT NOTICE:** This “prescreened” offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria, including providing acceptable collateral. If you do not want to receive prescreened offers of credit from this or any other companies, call the consumer reporting agencies toll-free, 1-888-567-8688 or visit the website at [www.optoutprescreen.com](http://www.optoutprescreen.com); or write TransUnion Opt-Out Request PO Box 505, Woodlyn, PA 19094-0505, Equifax Options, P.O. Box 740123 Atlanta, GA 30374, and Experian Information Systems, Inc., P.O. Box 919, Allen, TX 75013.

The **Long Notice** cannot contain any information other than what you see here that might obfuscate the FCRA message. Any additional specific lending criteria or any other terms and conditions such as debt to income ratios, etc., will have to be separate from this notice.

***The foregoing does not constitute legal advice from RM and is not meant to be comprehensive or exhaustive. It is exclusively your obligation to be aware of, and comply with, all applicable federal, state, local and other laws, rules, regulations and guidelines, and you must consult with an attorney to ensure such compliance.***