The terms and conditions herein form a part of the letter of commitment ("LOC") between Client and News Marketing Canada Corp. ("NMC") for the (i) SmartSource Online Savings Network Program ("SmartSource Program") or (ii) the Coupon Technology Program ("CTP") or in the case of a joint engagement of both the LOC, Client shall have been deemed to have accepted these terms and conditions. Subject to the terms and conditions of the LOC, NMC shall provide the services (the "Services") for the Coupon Technology program, the Targeted Email Program, the SmartSource Online Savings Network Program, or the SmartSource Display Program as specified in the LOC and herein (each a "Program"). Unless otherwise stated, all references to "NMC" shall be deemed to apply to all Programs.


(a) For each SmartSource Online Savings Network Program only, (i) NMC will make available Client's offer/coupon to users ("Consumers") to be printed; selected to be mailed to the Consumer; or otherwise distributed, as the case may be, by NMC, NMC shall be deemed to have accepted these terms and conditions. Subject to the terms and conditions of the LOC, NMC shall provide the services (the "Services") for the Coupon Technology program, the Targeted Email Program, the SmartSource Online Savings Network Program, or the SmartSource Display Program as specified in the LOC and herein (each a "Program").


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Collecting Technology") with respect to any Program hereunder to track impressions and related data with respect thereto (collectively, the "Approved Purpose"), Client shall obtain the prior written approval of NMC and provide all information requested by NMC regarding such Data Collecting Technology. Client represents and warrants that the use of all such Data Collection Technology as part of the Program and Services shall comply with all applicable laws, including without limitation the provisions of CASL. Further to this, Client represents and warrants that the use of such Data Collecting Technology shall not be used in such a manner as to create or cause any unlawful or improper content, except as otherwise expressly authorized by NMC. Client shall ensure that all such data will be deleted from its servers upon termination or expiration of the relationship between NMC and Client.

8. Ad Verification Services. Client must obtain NMC’s prior written approval to use ad verification services (e.g., DoubleVerify, AdSafe) ("the Ad Verification Services") in connection with any Program and of the types of tracking/crawling technologies being used in connection with such Ad Verification Services. NMC may approve or reject in its sole discretion the use of Ad Verification Services with respect to a Program generally or the use of a specific vendor. If NMC approves the use of an Ad Verification Service, Client will provide reports from the Ad Verification Service twice per week to enable the parties to discuss any issues raised by such reports on an immediate basis. Such reports should identify specific delivery problems, associated sites and number of impressions. NMC is under no obligation to adjust its billing or provide make-goods or credits as a result of reports. However, NMC will consider in good faith any issues raised by such reports, including optimizing issues and other errors.

9. Indemnification for Third Party Claims
(a) NMC shall indemnify, defend and hold Client and its affiliates and their respective directors, shareholders, officers, employees and other representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including without limitation reasonable legal fees), which Client or such indemnities shall incur by reason of any claim, suit, proceeding, investigation or action by any governmental authority or other third party against Client or such indemnities based upon, or arising out of, any breach or alleged breach by NMC of any of its obligations under the LOC, except to the extent arising from the negligence or intentional misconduct of Client or breach by NMC of the LOC. In the case of the assertion of any third party claim which may give rise to indemnification by NMC hereunder, NMC shall give prompt notice thereof to NMC. NMC shall have the right to defend, at NMC’s expense, any such claims, suits or actions and to manage and control all such claims, suits or actions with legal counsel of its own selection, except that NMC shall not settle any such claim, suit or action without the prior written consent of Client, such consent not to be unreasonably withheld.
(b) Client shall indemnify, defend and hold NMC and its affiliates and their respective directors, shareholders, officers, employees and other representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including without limitation, reasonable legal fees) which NMC or such indemnities shall incur by reason of any claim, suit, proceeding, investigation or action by any governmental authority or other third party against or involving NMC or such indemnities based upon, or arising out of, any breach or alleged breach of the LOC by Client, any Client Materials, the manufacture, marketing, use, distribution or purchase of Client’s products, the redemption of coupons, the Client Suppression List or the failure by Client to provide or update the Client Suppression List in accordance with the terms contained herein, or the negligence or intentional misconduct of Client. In case of the assertion of any third party claim which may give rise to indemnification by Client hereunder, NMC shall give prompt notice thereof to Client. Client shall have the right to defend, at Client’s expense, any such claims, suits or actions and to manage and control all such claims, suits or actions with legal counsel of its own selection, except that Client shall not settle any such claim, suit or action without the prior written consent of NMC, such consent not to be unreasonably withheld.
(c) Client shall bear exclusive responsibility for the entire cost of all coupons redeemed, including, without limitation, the coupon value and all applicable handling fees, and for compliance with all applicable laws and regulations relating to couponing and advertising activities with respect to Client Materials, products and promotions.

10. Warranties and Waiver. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NMC HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED REPRESENTATION, WARRANTY OR CONDITION OF MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. Client acknowledges and agrees that NMC shall have no responsibility or liability as a result of a Consumer’s (i) inability to print Client’s coupon/offer, including without limitation as a result of firewalls, inability to successfully download the print at home software, printer failure or error, failure of internet connection, etc.; and (ii) failure to receive Client’s coupon/offer via mail. A waiver by either party hereto of any default or breach by the other of any provision hereof shall not be considered a waiver of any subsequent default or breach of the same or of any other provisions hereof. The failure of either party to object to or to take affirmative action with respect to any conduct of the other which is in violation of the LOC shall not be construed as a waiver thereof, or a subsequent waiver of the same.

11. Confidentiality. Each party shall keep the terms of the LOC confidential and shall not disclose any of such terms other than to such party’s respective officers, directors, employees, affiliates, contractors or advisors with a need to know such terms in order for such party to perform its obligations hereunder and who represent personally that they agree to keep such terms confidential, except as required to be disclosed by law, regulation, proceeding, order or investigation of any court or governmental authority or agency (provided that, to the extent permissible, reasonable prior notice is provided to the other party prior to disclosure). If a third party (e.g., advertising agency or other promotional services company) is authorized by Client to place Client’s programs, then NMC and Client are authorized to provide to such agency or company only such information (rates, schedules, terms and conditions) as reasonably necessary to ensure successful placement of that program and compliance with the LOC, provided such third party agrees to keep such information confidential.

12. General
(a) Each Letter of Commitment shall be governed by and construed and enforced in accordance with, the laws of the Province of Ontario and federal laws of Canada applicable therein, without regard to principles in respect of conflict of law. The parties consent to the exclusive jurisdiction of the Province of Ontario, and judicial district of Toronto to the exclusion of all other courts with respect to any claim arising out of or related to the LOC or otherwise.
(b) Neither the LOC nor any LOC may be assigned or transferred by Client without the prior written consent of NMC, which consent shall not be unreasonably withheld. The LOC and each LOC shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. No provision of the LOC, including any LOC, shall be or shall be construed as creating a partnership, joint venture, master agent, principal-agent, employment, trust arrangement or other relationship for any purpose whatsoever, authorized by the other party, or other form of business organization of Client. In the event of any merger, consolidation or sale of all or substantially all of the assets of Client (each a "Transaction"), Client agrees that it will not conclude any Transaction unless it enters into an agreement with the other party to such Transaction (the "Transaction Party") that fully assigns each LOC to the Transaction Party. Client agrees that it will provide NMC with at least thirty (30) days prior written notice of any such Transaction.
(c) The LOCs constitute the entire agreement of the parties with respect to the subject matter thereof and shall (i) supersede all prior agreements, arrangements or understandings with respect thereto and (ii) may not be modified by the terms, conditions or provisions of any purchase order or other documents or instructions submitted by Client. The LOC, including any LOCs, may be changed or modified or any provisions therein waived except in a writing signed by both parties.
(d) If any term or provision of the LOC shall, to any extent, be held to be invalid or unenforceable, the remaining terms and provisions of such LOC shall not be affected thereby and each term and provision thereof shall be valid and enforced to the fullest extent permitted by law. The LOC shall be construed without regard to any presumption or other rule requiring construction against the party causing such documents to be drafted.
(e) No action of any kind arising out of or related to the performance of the LOC or otherwise may be brought by either party more than twelve (12) months after the same has accrued except an action for non-payment or indemnification which may be commenced within the period provided by statute.
(f) Any provision of the LOC that constitutes performance or observance or supervision or expiration of the term or termination of such LOC (including without limitation confidentiality, warranty and indemnification provisions) shall survive the expiration of the term or any termination of such LOC and shall remain subject to these terms and conditions.
(g) Client acknowledges and agrees that monetary damages would not be an adequate remedy for the damage suffered by NMC as a result of a breach of any of the provisions of the LOC by Client and agrees that in addition to, and not in lieu of, any other remedy which is available to NMC, NMC shall be entitled, without bond and without the necessity of showing actual monetary damages, to equitable relief, including without limitation, relief by way of temporary or permanent injunction and to such other relief that any court of competent jurisdiction may deem just and proper to enforce the terms and provisions of the LOC.
(h) Except as specifically provided herein, the rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which the parties may otherwise have at law or in equity. NMC shall have no duty to mitigate any damages.
(i) Headings of sections or paragraphs are for convenience only.
(j) The parties’ relationship is that of independent contractors. Neither the LOC nor the transactions contemplated thereby are to be construed as creating a partnership, joint venture, master servant, principal-agent, employment, trust arrangement or other relationship for any purpose whatsoever. Neither party may be held for the acts either of omission or commission of the other party, and neither party is authorized to or has the power to obligate or bind the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever.
(k) Except as specifically provided herein, all notices required or permitted to be given pursuant hereto shall be given to the parties by hand delivery, reputable overnight courier or certified mail, return postage prepaid and to the addresses set forth on the LOC.
(l) The parties have requested that this LOC and all correspondence and all documentation relating to this LOC be written in the English language. Les parties présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.

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