



## **DMA List Management Services E-Mail Preference Service (EMPS)**

**DIRECT MARKETING ASSOCIATION & INTERACTIVE MARKETING SOLUTIONS**

### **SUBSCRIPTION/PURCHASE AGREEMENT**

The Direct Marketing Association ("DMA") and Interactive Marketing Solutions ("IMS") (hereinafter collectively known as the "Company") agree to provide products and services subject to the terms and conditions stated herein unless otherwise agreed to in writing by the Company. Acceptance or use of one or more products or services (hereinafter named "DMA's List Management Services") offered by the Company in any form by the Subscriber constitutes the Subscriber's full acceptance of, and agreement with, the terms and conditions stated herein.

### **List Management Service Terms and Conditions**

Subscriber agrees that its use of DMA's List Management Services, with the exception noted in Other below, is strictly for the purpose of removing individuals from lists and the Company authorizes its use for no other purposes. Subscriber understands that the DMA's List Management Services are intended exclusively for its use and it shall not copy, disseminate, sublet, resell, or republish them in any manner whatsoever. Subscriber agrees by its acceptance below that its use of the DMA's List Management Services will be solely for the authorized purposes specified in this agreement. Organizations subsequently identifying themselves as Service Providers are also permitted to use the product(s) to remove individuals from lists owned or licensed by its clients and to enhance client data except as follows:

- For the Wireless Block Identifier product, service organizations may use this file to scrub client lists and remove matching numbers. However, if the matching telephone numbers are identified as wireless and returned to the client, the client must also be a subscriber to the Wireless Block Identifier service.
- For the Ported Number product, service organizations may scrub client lists and remove matching ported numbers. However, if the scrubbed file is returned to the client in a manner that would permit the client to determine that the removed telephone numbers matched the Ported Number file, the client must also be a subscriber to the Ported Number service.

Subscriber agrees that unauthorized use of the DMA's List Management Services might cause irreparable harm to the direct marketing industry. Any unauthorized use of this service or use for an unauthorized purpose may subject Subscriber to appropriate recourse to be determined by the Company, including but not limited to (1) referral to the DMA Committee on Ethical Business Practice, (2) referral to the DMA Board of Directors, (3) notifying the Federal Trade Commission or applicable legislative authority, (4) the Company's seeking injunctive or equitable remedies, or (5) the Company's seeking monetary damages or sanctions.

Subscriber recognizes the value to the industry and to the DMA of maintaining the integrity of the DMA's List Management Services. Accordingly, Subscriber understands that the Company intends to pursue any breach of this agreement to the fullest extent possible under law.

Use of the DMA's List Management Service does not relieve Subscriber from complying with any applicable federal, state or foreign law governing unsolicited commercial communications. Many states have enacted some type of legislation governing solicited and unsolicited commercial communications. The requirements of these laws vary and participating merchants are strongly encouraged to comply with all applicable legal requirements.

Subscriber agrees that: (a) It is Subscriber's RESPONSIBILITY to ascertain and comply with any and all Federal, State and Local laws and statutes, including those that pertain to Do-Not-Call laws and regulations; (b) By signing this agreement it agrees to hold the Company harmless from all liabilities, damages, losses, claims, costs, and expenses (including attorneys' fees) arising from Subscriber's failure to abide by all applicable Federal, State and local laws and statutes.

The Company shall not be responsible for, or incur any liability as a result of, delays or failures in the performance of the DMA's List Management Services in the event of any act or occurrence beyond the Company's reasonable control.

Subscriber agrees to protect its password and will not disclose the password to an unauthorized individual. Subscriber will promptly notify the Company if Subscriber's password is lost, stolen or otherwise compromised.

If Subscriber is not satisfied with the DMA's List Management Services, the Company will refund the purchase price within thirty (30) days of the signing of this agreement. See the Note below for any exceptions.

Subscriber acknowledges that information and/or programs originating from or through the Company and delivered to Subscriber may be less than 100% error free and is furnished "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF CORRECTNESS, COMPLETENESS, CURRENTNESS, PERFORMANCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. SUBSCRIBER AGREES THAT THE COMPANY SHALL NOT BE LIABLE TO SUBSCRIBER FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY THE COMPANY'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, PROCESSING, COMMUNICATING OR DELIVERING THE DMA'S LIST MANAGEMENT SERVICE, DIRECTLY OR INDIRECTLY. THE COMPANY'S SOLE LIABILITY AND SUBSCRIBER'S SOLE REMEDY REGARDLESS OF THE FORM OF LEGAL ACTION SUBSCRIBER MAY TAKE, WHETHER IN TORT OR CONTRACT, SHALL NOT EXCEED THE REFUND OF THE AMOUNTS, IF ANY, SUBSCRIBER HAS PAID.

SUBSCRIBER AGREES THAT THE COMPANY SHALL NOT BE LIABLE FOR LOST PROFITS OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PARAGRAPH STATES THE COMPANY'S ENTIRE LIABILITY AND SUBSCRIBER'S SOLE REMEDY FOR ANY BREACH HEREUNDER.

Subscriber shall indemnify, defend and hold the Company harmless from and against any and all liabilities, damages, losses, claims, costs, and expenses (including attorneys' fees) arising from Subscriber's use of the DMA's List Management Services provided by the Company. Subscriber understands that the Company reserves the right to modify or discontinue its DMA's List Management Services at any time. The Terms and Conditions hereunder may be amended from time to time by agreement of the parties, and the company may add further restrictions at its sole discretion. During the terms of this agreement, Subscriber will receive e-mail concerning the status of the subscription. The terms and conditions contained herein will be governed by, and construed, in accordance with the laws of the State of New York, which are intended to supersede any choice of laws or rules which might otherwise be applicable.

**NOTE:** For Ported Number Subscribers only

- The Ported Number Wireless-to-Landline file, used appropriately, may add numbers to a calling list.
- All sales are final; no refunds are permitted.
- A separate agreement must be executed for each computer/server used to host the files.
- Payments to NEUSTAR are included in the IMS subscription price.
- IMS will remit all payments to NEUSTAR on behalf of the subscriber.

Please allow up to 5 business days for the processing of your subscription.

I understand and agree to the above Terms and Conditions.

Authorized Signature: \_\_\_\_\_ Name (Printed): \_\_\_\_\_  
 Title: \_\_\_\_\_ Email: **(REQUIRED)** \_\_\_\_\_  
 Company Name: \_\_\_\_\_ Telephone No: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ Fax No: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

**This Company is a:**

Service Bureau  End User

If user, please indicate your product(s) or service(s): \_\_\_\_\_

**Purchase Options:**

**Media:**  CD-ROM Tab delimited format  Internet downloads

12 Month Subscription (choose one and check box)

Cleaning Service \$600  Monthly E-MPS\* \$1,800  Weekly E-MPS\* \$5,200

\*ONLY DMA MEMBERS MAY SUBSCRIBE TO THE WEEKLY OR MONTHLY OPTIONS.

Options (in addition to annual subscription)

Surcharge for Shipping CD out of the U.S. \$600

**Payment Options:**  American Express  Master Card  VISA  Check enclosed

\_\_\_\_\_  
 Cardholder or Authorized signature  
 \_\_\_\_\_  
 Printed Name of Authorized Cardholder  
 \_\_\_\_\_  
 Credit Card number  
 \_\_\_\_\_  
 Expiration date

<p align="center"><b>Make Checks Payable To:</b>  <b>Direct Marketing Association</b>  <b>1120 Avenue of the Americas, 14<sup>th</sup> Fl.</b>  <b>New York, NY 10036</b>  <b>Fax Credit Card Payment To:</b>  <b>Fax: 203-653-2767</b></p>
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