



## Subscription Agreement

This Subscription Agreement is by and between The Association of National Advertisers (“ANA”), a not-for-profit trade association located in New York City, NY, and Company Subscriber (“Subscriber”) and is dated as of the date below (“Agreement”). The ANA agrees to provide certain list services (hereinafter “DMAchoice Services”) subject to the terms and conditions contained herein. Acceptance or use of one or more DMAchoice Services offered by the ANA in any form to Subscriber constitutes Subscriber's full acceptance of, and agreement with, the terms and conditions contained herein.

- 1. Exclusive Purpose.** Subscriber agrees that it will use DMAchoice Services, all information provided or accessible through the DMAchoice Services and any other materials or data provided by or on behalf of ANA to Subscriber under this Agreement, including without limitation, any Personal Data (defined below) or suppression lists, (collectively, “ANA Materials”) only for the purpose of and to the extent necessary, reasonable and proportionate for suppressing consumers’ names from marketing lists and for no other purpose, unless and to the extent required by applicable laws. Subscriber understands that DMAchoice Services are intended exclusively for Subscriber’s own internal use and Subscriber shall not disseminate, sublet, sell, resell, license, reproduce, transfer, exploit, republish, repurpose or create derivatives of the DMAchoice Services or any other ANA Materials in any medium in any manner whatsoever (including but not limited to aggregated or de-identified data with respect to ANA Materials). Subscribers identifying themselves as service bureaus or service providers (hereinafter “Service Organizations”) are permitted to use DMAchoice Services to remove individuals from lists owned or licensed by their clients pursuant to this Agreement. “Personal Data” means any information provided by or on behalf of ANA under this Agreement that identifies, relates to, describes, is capable of being associated with or identifying, or could reasonably be linked, directly or indirectly, with a particular individual, household, or device, including any inferences thereof.
- 2. Confidentiality.** During and after the term of this Agreement, Subscriber will (i) hold all Confidential Information in strict trust and confidence, (ii) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted under Section 1, (iii) except for the limited purposes expressly stated under Section 1 above, refrain from disclosing or permitting others to disclose any Confidential Information to any third party, and (iv) limit access to Confidential Information to personnel who have a need to know such information in order to fulfil the permitted purpose expressly set forth under Section 1. Subscriber will ensure the security of Confidential Information and will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as ANA protects its own confidential or proprietary information of a similar nature and with no less than the greater of reasonable care and industry-standard care. “Confidential Information” means any and all information ANA reasonably considers to be confidential or proprietary, including, but not limited to Personal Data, suppression lists and any other ANA Materials and any other information Subscriber ought reasonably to have known was confidential. As between ANA and Subscriber, all Confidential Information is and will be deemed to be and will remain the exclusive property of ANA.
- 3. Compliance.** Subscriber will not collect, retain, use or otherwise process ANA Materials except in accordance with applicable laws. Subscriber may not combine or otherwise merge Personal Data with any other personally identifiable information. Should ANA receive a request from an individual regarding Personal Data or the DMAchoice Services (e.g., consumer wants to be removed from the suppression list), Subscriber will reasonably cooperate and promptly assist ANA as reasonably requested in order for ANA to respond to such request. Subscriber warrants that all Personal Data in its possession or control will be securely deleted or destroyed once such information is no longer necessary for the permitted purpose expressly stated under Section 1 above.
- 4. Irreparable Harm.** Subscriber agrees that unauthorized use of DMAchoice Services or Confidential Information will cause irreparable harm to the direct marketing industry and to ANA. Therefore, Subscriber agrees that any unauthorized use of DMAchoice Services or Confidential Information, or use for an unauthorized purpose will,

at ANA's discretion, subject Subscriber to (1) referral to the ANA Ethics Review Committee, (2) suspension of DMAchoice Services provided under this agreement without refund, (3) notification thereof to the Federal Trade Commission or other law enforcement authority, (4) entry of an injunction prohibiting such conduct and (5) monetary damages and an accounting of Subscriber's profits and any other remedies at law or in equity to which ANA is entitled.

5. **Force Majeure.** ANA shall not be responsible for, or incur any liability as a result of, delays or failures in the performance or non-performance of DMAchoice Services as a result of any act or occurrence beyond ANA's reasonable control.
6. **Password.** Subscriber agrees to protect its password and will not disclose its password to any unauthorized person. Subscriber will promptly notify ANA if Subscriber's password is lost, stolen, or otherwise compromised.
7. **Payment; Refund.** Subscriber will pay ANA the fees as set forth under the attached SOW prior to the receipt of the applicable suppression list.
8. **No Warranties.** Subscriber acknowledges and agrees that the DMAchoice Services and all ANA Materials are provided "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN NO EVENT WILL ANA BE LIABLE FOR THE COMPLETENESS, ACCURACY, ERRORS, OR ANY OTHER DEFECTS ASSOCIATED WITH THE DMACHOICE SERVICES AND/OR THE ANA MATERIALS.
9. **Limitation on Liability.** Subscriber agrees that ANA shall not be liable to Subscriber or any third party for any loss, injury, damage or any other liability arising out of or caused, in whole or in part, by the provision of DMAchoice Services or the ANA Materials. ANA's sole liability and Subscriber's sole and exclusive remedy, for claims not subject to the immediately foregoing limitation of liability, regardless of the form of legal action, whether in tort or in contract, shall not exceed the fees, if any, Subscriber has paid to ANA for the DMAchoice Services hereunder in the twelve (12) months immediately preceding the action giving rise to the claim. Subscriber agrees that in no event will ANA be liable for lost profits or any indirect, incidental, special or consequential damages, even if advised of the possibility of such damages. This paragraph contains ANA's entire liability and Subscriber's sole remedy under the Agreement.
10. **Indemnification.** Subscriber shall indemnify, defend and hold ANA and its affiliates harmless from and against any and all claims, demands, judgments, liability, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of Subscriber's use of DMAchoice Services and/or the ANA Materials. Subscriber shall maintain liability insurance sufficient to fulfill its obligations under the terms of this Agreement. ANA shall give Subscriber written notice of any claim of which it has knowledge, and shall provide Subscriber with the assistance, information and authority necessary to perform Subscriber's obligations under this section.
11. **Change in Fees and Instructions.** Subscriber understands that ANA reserves the right to modify or discontinue its DMAchoice Services at any time and to increase its rates thereto upon notice. ANA may issue instructions regarding the use of the DMAchoice Services and/or ANA Materials from time-to-time. Subscriber shall strictly comply with all restrictions and requirements now or hereafter imposed and made known to Subscriber by ANA.
12. **Use of Recent Names.** Subscriber acknowledges that it is Subscriber's responsibility to ensure that its files have been processed using the most recent suppression information before such files are used for marketing. Subscriber acknowledges that ANA may not have identified and included the names or telephone numbers of all consumers who have signed up for DMAchoice in the data supplied to Subscriber hereunder. Subscriber agrees to use the most recent file every thirty (30) days, and shall not use the most recent file past forty-five (45) days.
13. **No Publicity.** Subscriber shall be responsible for accepting and responding to any communication it directly receives that was initiated by a consumer ("Consumer Inquiries") arising out of Subscriber's use of DMAchoice Services. Subscriber agrees that it will provide in-house suppression of consumer names, upon request by a consumer or upon receipt of the suppression list provided through the DMAchoice Services, for future marketing

initiatives by Subscriber. No reference to ANA in written or oral communication to consumers or in scripts used by Subscriber in responding to Consumer Inquiries shall be made without ANA's prior written approval.

14. **Term; Termination.** This Agreement shall commence on the date first mentioned above and continue for twelve (12) months, and will automatically renew for consecutive twelve (12) month periods, unless terminated by a party pursuant to this Agreement or a party notifies the other party of its intent not to renew at least sixty (60) days prior to the expiration of the then current term. Either party may terminate this Agreement in the event of a material breach of this Agreement that remains uncured for at least thirty (30) days after receipt by the breaching party of written notice thereof.
15. **Choice of Law.** The terms and conditions contained herein will be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. Any legal action shall be commenced exclusively in a federal or state court of competent jurisdiction located in the State, County and City of New York, and Subscriber hereby waives any claim of lack of personal jurisdiction or of inconvenient forum.
16. **Miscellaneous.** The provisions that by its wording or nature contemplate performance or observance after termination of this Agreement shall so survive. This Agreement embodies the entire agreement between the parties with regard to the subject matter hereof and supersedes all prior written or oral agreements or contemporaneous discussions, negotiations, correspondence or other understandings with respect to the subject matter hereof. No changes or additions to this Agreement may be enforced without written approval of both parties hereto. Subscriber may not assign, transfer or delegate its rights or obligations under this Agreement, without ANA's prior written consent. This Agreement shall inure to and bind the permitted successors, assigns and representatives of the parties.

**I understand, agree and accept the above terms and conditions.**

Authorized Signature: \_\_\_\_\_ Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Email: **(REQUIRED)**: \_\_\_\_\_

Billing Contact Information:

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_ Telephone No: \_\_\_\_\_

Street Address: \_\_\_\_\_ Fax No: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Notify Email (when files are ready): \_\_\_\_\_

**SOW – Products and Prices**

	-----Annual Prices-----	
	End User	Service Org
	\$	\$
<u>Do Not Mail Files</u>		
DMAchoice – Member (MPS)	2,850	*
DMAchoice – Nonmember (MPS)	5,700	*
 <u>Do Not Call Files</u>		
Telephone Preference Service – Monthly Downloads (PA/WY DNC Lists)	1,370	1,370
Telephone Preference Service – Quarterly Downloads (PA/WY DNC Lists)	1,000	1,000
Pennsylvania Do Not Call List (PADNC)	595	595
Wyoming Do Not Call List (WYDNC)	565	565
 <u>Do Not Email List</u>		
Email Preference Service – Weekly downloads (EMPSW)	5,400	5,400
Email Preference Service – Monthly downloads (EMPSM)	2,000	2,000
Email File Scrubbing (unlimited)	15,000	15,000

\*DMAchoice Service Organization Pricing – Based on Customer records Cleaned using DMAchoice Services.

Records Processed against the <u>DMAchoice</u> files (Yearly Estimate)	ANA Members	Nonmembers
0 to 50 Million	\$ 2,850	\$ 5,700
50 Million to 100 Million	\$ 5,700	\$12,000
100 Million to 500 Million	\$11,500	\$23,000
500 Million to 1 Billion	\$17,000	\$34,000
1 Billion to 5 Billion	\$23,000	\$46,000
Over 5 Billion	\$28,500	\$57,000

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**Make Checks Payable To:**  
 Association of National Advertisers  
 155 East 44<sup>th</sup> Street | New York, NY 10017

**Wire/ACH Instructions:**  
 153 East 53<sup>rd</sup> Street | New York, NY 10022  
 ABA Number: 021000089  
 Account#: 9932134261