



## INTERACTIVE MARKETING SOLUTIONS List Management Services

### CUSTOMER SERVICES AGREEMENT

Interactive Marketing Solutions ("IMS"), a company with a place of business at 777 Summer Street, Suite 502, Stamford, Connecticut, agrees to provide consumer lists and corresponding products and services (hereinafter referred to as "IMS List Management Services") to you, the Customer (hereinafter "Customer"), in consideration of the terms and conditions stated herein. In addition, use of one or more of the IMS List Management Services products offered by IMS, in any form, constitutes the Customer's full acceptance of, and agreement with, the terms and conditions stated herein.

#### List Management Services Terms and Conditions:

**1. General Provisions:** Customer agrees that its use of IMS List Management Services, is strictly for the purposes of:

- (1) suppressing and/or identifying consumers from marketing contact lists to assist the Customer to improve marketing efforts or
- (2) complying with customer contact preferences, as well as state and federal legislation.

IMS authorizes said use for no other purposes, other than specifically stated in this agreement. Customer understands that the IMS List Management Services (The Data) are intended exclusively for its own use and it shall not disseminate, sublet, resell or republish The Data in any manner whatsoever including creating or hosting derivative products. It is further understood that a separate agreement must be executed for each computer/server used to access The Data (excluding backups) and if this agreement is terminated or the Customer does not renew the annual subscription to all or part of The Data, all copies of the affected data will be removed or deleted from the Customers databases and servers. Customer may not use The Data as a factor in establishing an individual's creditworthiness or eligibility for (i) credit or insurance, or (ii) employment. A Customer who identifies itself as a Service Provider may be permitted to use the product(s) to remove individuals from lists owned or licensed by its clients and to enhance client data with the following exceptions:

- **For the Ported Number product**, service organizations may scrub client lists and remove matching ported numbers, **however, if the data is returned to the client, each client must also be a Customer to the Ported Number service.**
- **For Recently Recorded Deceased File (RRDF) product**, service organizations may use this file to scrub client lists and remove matching individuals, **however, each client must also be a Customer to the RRDF.**

**2. Unauthorized Use:** Customer understands that unauthorized use of IMS List Management Services may cause irreparable harm to the direct marketing industry. Any unauthorized use of this service or use for an unauthorized purpose will be considered a breach of this agreement and subject Customer to liability. In the event of any unauthorized use by Customer IMS may cancel this agreement and may seek appropriate recourse for said unauthorized use of the IMS List Management Services, including but not limited to (1) suspension or cancellation of the services provided under this agreement; (2) notification to the Federal Trade Commission or applicable legislative authority; (3) injunctive or equitable remedies; and/ or (4) seeking any and all monetary damages or sanctions available at law.

**3. Compliance with Laws:** Use of IMS List Management Service does not relieve Customer 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 Customers are strongly encouraged to seek their own professional counsel to comply with all applicable legal requirements. Customer agrees that it is Customer's responsibility to ascertain and comply with any and all Federal, State and Local laws and statutes, when using the IMS List Management Services, including but not limited to those that pertain to Do-Not-Call laws and regulations.

**4. Default Termination:** In the event Customer breaches this agreement, IMS may immediately suspend and/or cancel this agreement with or without notice to Customer.

**5. Indemnification:** Customer agrees to hold IMS and its data suppliers harmless and to indemnify IMS and its data suppliers from all liability, damages, losses and/or claims relating to this agreement that may be made against IMS and its data suppliers, and to further indemnify IMS and its data suppliers against all costs (including reasonable attorney's fees) of opposing any such claims or demands.

**6. Confidentiality:** Customer agrees to protect and secure its password that provides its access to the IMS List Management Services. Customer will not disclose the password to any unauthorized individual and will promptly notify IMS if Customer's password is lost, stolen or otherwise compromised. Customer agrees that it will treat as confidential and proprietary any information that IMS identifies as confidential, including but not limited to, the IMS List Management Services. Upon termination of said Customer agreement, the parties agree to return any confidential information to each other.

7. Guarantee: If Customer is not satisfied with IMS List Management Services and provides written notification to IMS within thirty (30) days of entering into this agreement, IMS agrees to refund the Customer's purchase price. Written notice must be provided to IMS at its above-described address. See the below for any exceptions. .

8. Force Majeure: IMS and its data providers shall not be responsible for, or incur any liability as a result of delays or failures in the performance of IMS List Management Services in the event of any act or occurrence beyond IMS's reasonable control.

9. "As Is" Condition: Customer acknowledges that information and/or programs originating from IMS and delivered to Customer may be less than 100% error free. The IMS List Management Services are 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.

10. Limits on Liability; No Consequential Damages: CUSTOMER AGREES THAT IMS AND ITS DATA PROVIDERS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY IMS OR ITS DATA PROVIDER'S ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, PROCESSING, COMMUNICATING OR DELIVERING IMS LIST MANAGEMENT SERVICES, DIRECTLY OR INDIRECTLY. IMS AND ITS DATA PROVIDER'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY UNDER THIS AGREEMENT, SHALL NOT EXCEED THE REFUND OF THE AMOUNTS, IF ANY, THAT CUSTOMER HAS PAID TO IMS. CUSTOMER AGREES THAT IMS AND ITS DATA PROVIDERS SHALL NOT BE LIABLE FOR LOST PROFITS OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Product Changes: Customer understands that IMS may modify or discontinue the use of its IMS List Management Services at any time. If the IMS List Management Services that has been provided to Customer pursuant to this agreement is modified or discontinued, IMS will do its best to provide Customer with a suitable replacement product. Customer shall strictly comply with all restrictions and requirements now or hereafter imposed and made known to the Customer by IMS. Customer shall be solely responsible for accepting and responding to any communication initiated by a consumer arising out of Customer's use of the IMS List Management Services. Customer shall not reference IMS or its data suppliers in any communication to a consumer without prior written approval from IMS.

12. Entire Agreement: Customer has not been induced to enter into this agreement by any representation not set forth within this agreement, and/or the online product choices, term and pricing pertaining to this agreement. The agreement and/or the online product choices, term and pricing represent the entire agreement of the parties. The agreement shall not be modified, other than stated herein, except by subsequent written agreement executed by the Customer and IMS.

13. Waiver: The failure of either party to enforce any right it may have under this agreement, shall not be construed as a waiver of that right or remedy.

14. Severability: If any of the provisions of this agreement shall be declared invalid or unenforceable, said declaration shall not render the entire agreement invalid or unenforceable. Rather, the entire agreement shall be construed as if not containing the invalid or unenforceable provision.

15. Product Choices, Pricing & Term: Schedule A, attached to this agreement, constitutes the particular IMS List Management Services chosen by Customer and agreed to be provided by IMS along with the pricing and term associated with the same.

The terms and conditions contained herein will be governed by, and construed, in accordance with the laws of the State of Connecticut, which are intended to supersede any choice of laws or rules which might otherwise be applicable.

#### **Notes and Exceptions:**

A. For Ported Number file Customers only:

- The Ported Number Wireless-to-Landline files may add numbers to a calling list when used appropriately
- Ported Number files may be used to identify cellular telephone number
- **All sales are final; no refunds are permitted for Ported Number Customers.**
- Payments to iconectiv are included in the IMS subscription price; and IMS will remit all payments to iconectiv on behalf of the Customer.

B. For Wireless Block file Customers only:

- Wireless Block files may be used to identify cellular telephone numbers

C. For Recently Recorded Deceased File (RRDF) Customers only:

- **EACH MONTHLY FILE MAY BE USED FOR NO MORE THAN 45 DAYS AND IN NO EVENT MAY A CUSTOMER USE THE DATA FOR MORE THAN ONE (1) YEAR FROM THE ORIGINAL OR RENEWAL SUBSCRIPTION DATE.** Active customers will receive a replacement file near the end of each month.
- The distributed data file will be adjusted monthly to contain the deceased data recorded during the previous 24 months.

- **All sales are final; no refunds are permitted for RRDF Customers**
- The distributed data is not intended to be representative of, or include, all Deaths occurring during any period

D. For State and Federal Prison File (SFPF) Customers only:

- The distributed data **may not** contain data from **all** State and Federal Prisons

E. For VigilantDB Customers only:

- Data will only be used to identify address level households.

I, the Customer, have read, understand, and accept the above-described terms and conditions of this agreement.

CUSTOMER:

\_\_\_\_\_

INTERACTIVE MARKETING SOLUTIONS

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Schedule A DMAChoice Services

### Terms and Conditions – Products and Prices

	-----Annual Prices-----	
	End User	Service Org
	\$	\$
<u>Do Not Mail Files-End User</u>		
DMAChoice – Member (MPS)	2,750	*
DMAChoice – Non Member (MPS)	5,500	*
<u>Do Not Call Files</u>		
Telephone Preference Service – Monthly Downloads (PA/WY DNC Lists)	1,170	1,170
Telephone Preference Service – Quarterly Downloads (PA/WY DNC Lists)	800	800
Pennsylvania Do Not Call List (PADNC)	495	495
Wyoming Do Not Call List (WYDNC)	465	465
<u>Do Not Email List</u>		
Email Preference Service – Weekly downloads (EMPSW)	5,200	5,200
Email Preference Service – Monthly downloads (EMPSM)	1,800	1,800
Email File Scrubbing (unlimited)	2,400	2,400

\*Do Not Mail Service Organization Pricing – Based on Customer records Cleaned using DMAChoice.

Records Processed against the <u>DMAChoice</u> files (Yearly Estimate)	DMA Members	Non-DMA Members
0 to 50 Million	\$ 2,750	\$ 5,500
50 Million to 100 Million	\$ 5,500	\$11,000
100 Million to 500 Million	\$11,000	\$22,000
500 Million to 1 Billion	\$16,500	\$33,000
1 Billion to 5 Billion	\$22,000	\$44,000
Over 5 Billion	\$27,500	\$55,000



## Payment Options

**Choose One:**

**Service Provider**

**(You are a Service Provider if you pass the DMAChoice files against files owned by others)**

**End User**

**(You are an end user if you pass the DMAChoice file against files owned by you)**

Please state the products or services you are ordering: \_\_\_\_\_

American Express    Master Card    VISA    Check enclosed

\_\_\_\_\_  
Cardholder or Authorized signature

\_\_\_\_\_  
Printed Name of Authorized Cardholder

\_\_\_\_\_  
Credit Card number

\_\_\_\_\_  
Expiration date

**Make Checks Payable To:**  
**Direct Marketing Association, Inc.**  
**PO Box 505275**  
**St. Louis, MO 63150-5275**  
**Fax Credit Card Payment To:**  
**Fax: 203-653-2767**