



## Agreement to Provide List

This is a legally binding agreement. Read it carefully. Use of the lists provided by Five Maples, its List Provider and the lists' Data Owners (collectively "Provider") constitutes your acceptance of this agreement. By your signature below, you hereby certify that you have the authority to bind your organization ("End User"), who is the ultimate list user and that you accept all of the terms and conditions described herein.

This Agreement shall be effective on the date that you first accept the terms of this Agreement ("Effective Date").

Provider grants to you a limited, non-exclusive license to use lists ("Lists") subject to the following:

**Term.** The term of this Agreement ("Term") shall begin on the Effective Date and shall continue for a period of one (1) year, and thereafter shall automatically renew annually until End User no longer receives Lists from Provider under this Agreement. At the end of the Term, this Agreement shall terminate. Upon the termination of this Agreement for any reason, End User shall, at Provider's option, destroy or return to Provider the Lists and any copies thereof and certify in a writing to be delivered to Provider within five (5) business days following such destruction or return that the End User has fully complied with the requirements of this Section. Upon termination, End User shall promptly pay to Provider any outstanding fees owed to Provider.

**Title.** End User acknowledges that the Lists shall at all times remain the intellectual property of Provider or the third party Data Owners who provided the Lists to Provider, and that End User has no proprietary rights whatsoever in the Lists.

**Permitted Uses / Restrictions.** End User may use the List in accordance with the following permitted uses, subject to the restrictions set forth herein:

1. The List may be rented for either one-time use or multiple use as specified in the written request from End User to Provider to rent the list for use by End User.
2. Telephone follow-up within sixty (60) days of mail drop is not considered second use. For telemarketing applications, one-time use is defined as usage within sixty (60) days of delivery.
3. The List is seeded to detect any unauthorized use or duplication thereof, and End User agrees not to remove seeds from its mailing lists.
4. End User agrees to pay for the full multiple use charge for End User's unauthorized use or duplication of the List.
5. The List shall be examined upon the delivery thereof and End User shall notify Provider in writing within thirty (30) days of delivery of any questions or problems. No information shall be accepted after thirty (30) days.
6. End User may not use the List as a factor in establishing an individual's creditworthiness or eligibility for (i) credit or insurance, or (ii) employment.

7. End User shall not use any List to advertise, sell, or exchange any products or services relating to illegal or illicit activities, including, without limitation, sexual products or services, drug products or services, pornographic materials, weapons, or involving credit repair services.
8. If End User receives consumer "lifestyle" data with a List, such lifestyle data shall not be used in connection with any telemarketing activities.
9. All marketing communications used in connection with any List shall (i) be devoid of any reference to any selection criteria or presumed knowledge concerning the intended recipient of such solicitation, or the source of the recipient's name and address; (ii) comply with all applicable federal and state laws, rules and regulations; and (iii) comply with all applicable privacy policies, ethical use and Fair Information Practices published by the Direct Marketing Association ("DMA").
10. End User is responsible for all materials intended for mailing to names/addresses on the List provided by Provider, and further agrees to (i) keep copies of mail materials for a period of no less than six (6) months after any mail date and (ii) provide one (1) copy of such materials to Provider upon request.
11. End User may not use the List, in whole or in part, in the development of (i) any application that is outside the scope of this Agreement or (ii) any data products or services to be provided to third parties including, without limitation, any list enhancement or data appending service or product. Provider reserves the right to review and pre-approve the End User's intended use of the List prior to Provider's acceptance of an order.
12. Provider is obligated to comply with certain restrictions and requirements placed upon the use of the List by the Data Owners. End User shall strictly comply with all restrictions and requirements now or hereafter imposed upon Provider by any Data Owner and made known to End User in writing.
13. If End User receives telephone data ("Telephone Data") with a List, such Telephone Data may be used for either (i) End User's marketing programs, including house file enhancements, mailing list screens, modeling and list analysis; or (ii) End User's reference applications, including an internal reference tool for the purpose of verifying the name and address information contained on End User's internal customer databases and in End User's on-line look-up applications as part of End User's own electronic directory assistance programs. In the event End User is using the Telephone Data for a reference application, such use shall be subject to additional terms contained in a separate schedule attached and incorporated hereto. If End User uses the Telephone Data in marketing programs, such use be subject to all other relevant terms and conditions of this Agreement applicable to marketing applications and in the event that End User misuses the Telephone Data in connection therewith, End User shall defend, indemnify and hold harmless Provider as set forth below.

**Consumer Inquiries:** End User shall be responsible for accepting and responding to any communication initiated by a consumer ("Consumer Inquiries") arising out of End User's use of the List. End User agrees that it will provide "in house" suppression to consumers, upon request by a consumer, from future marketing initiatives by End User and agrees to honor any such request by suppressing such consumer information from End User's marketing solicitations. No reference to Provider in written or oral communication to a consumer or in scripts used by End User in responding to Consumer Inquiries shall be made without Provider's prior written approval.

**Suppression Files.** Provider's Consumer List product is built using Suppression Files appropriate for that Product, including the Direct Marketing Association's Mail Preference Service and Telephone Preference Service files, e-mail suppression files, Provider opt-out files, FTC DNC file and the state Attorneys General suppression files, to flag an individual consumer as having opted out of receiving marketing solicitations.

1. End User acknowledges that Provider does not guarantee that the names or telephone numbers of all such consumers have been flagged or removed from the List supplied to End User hereunder.
2. End User further represents that if End User is telemarketing in a state that requires registration, End User has registered in the applicable state.
3. End User further acknowledges that it is End User's sole responsibility to ensure that the most current suppression information has been applied to its files before such files are used for marketing.
4. End User agrees to honor consumers' elections to not receive marketing solicitations and in the event that End User does not honor such consumers' choice not to receive marketing solicitations, Provider may cease delivery of any future Lists and/or terminate this Agreement immediately.
5. End User agrees to defend, indemnify and hold harmless Provider, as set forth below, due to End User's failure to properly honor a consumer's choice not to receive marketing solicitations or to comply with its obligations set forth in this Section.

**Warranty Disclaimer.** PROVIDER AND THE DATA OWNERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, HEREUNDER WITH RESPECT TO THE SERVICES, LISTS, OR THE MEDIA ON WHICH THE LISTS ARE PROVIDED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE AND HOWEVER ARISING, INCLUDING BUT NOT LIMITED TO LOST INCOME OR LOST REVENUE, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY.

**Indemnification.** End User shall defend, indemnify, and hold harmless Provider from and against any and all claims, demands, judgments, liability, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from End User's misuse or unauthorized use of the List or End User's request for Provider to investigate and assist End User or End User in responding to regulatory or other third party inquiries into End User's or End User's use of the List or the services Provider performs for End User or End User. Provider shall give End User prompt written notice of any claim of which it has knowledge, and shall provide End User with the assistance, information and authority necessary to perform End User's obligations under this Section. Audit/Non-Compliance.

Provider reserves the right to audit any and each of your computer systems and applicable business records to ensure your compliance with the terms and conditions of this Agreement. Similarly, Provider may monitor your use of the Lists. Provider reserves the right, in its sole discretion, to immediately suspend your use of the Lists in the event of any suspected or actual violation of the terms of this Agreement. In the event an audit reveals that you are not in compliance with the terms and conditions of this Agreement, you shall be responsible for the costs of the audit, as well as any and all damages resulting from such non-compliance including, without limitation, any special, incidental, indirect, or consequential damages whatsoever (including punitive damages and damages for loss of goodwill).

**Force Majeure.** Neither party shall be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any act of God, act of governmental authority, act of public enemy, war, riot, flood, civil commotion, insurrection, severe weather conditions, or any other cause beyond the reasonable control of the party delayed. Electronic Communication. The parties may communicate with the other by electronic means.

**General Provisions.** If any part of this Agreement is found void and unenforceable, the balance of the Agreement shall remain valid and enforceable according to its terms. This Agreement shall automatically terminate upon failure by you to comply with its terms. This Agreement may only be modified in writing, signed by an authorized representative of Provider. This Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

Signed:

For Five Maples\_\_\_\_\_

Printed Name\_\_\_\_\_

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

Signed:

For End User\_\_\_\_\_

Printed Name\_\_\_\_\_

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

Organization:\_\_\_\_\_

Address:\_\_\_\_\_

