



## **NEGATIVE OPTION CHECKLIST**

This Checklist is an Addendum to the Merchant Agreement ("Agreement") dated \_\_\_\_\_, between \_\_\_\_\_, (the "Merchant") and NATIONAL MERCHANTS ASSOCIATION ("NMA").

**Merchant represents and warrants each of the following by checking it and signing below:**

\_\_\_\_ Merchant is engaged in the business of offering certain goods and/or services for sale through various media by one or more "negative option marketing" plans including, without limitation, pre-notification negative option plans, continuity plans, automatic renewals, and fee-to-pay or nominal-free-to-pay conversion offers, and has obtained, and throughout the term of the Agreement will maintain, all local, state, and federal licenses, registrations, and approvals required to conduct such business.

\_\_\_\_ Merchant understands, currently fully complies with, and during the term of the Agreement, will fully comply with all relevant provisions of all of the following as amended from time to time:

- Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45;
- the Rule Concerning the Use of Pre-notification Negative Option Plans, 16 C.F.R. Part 425;
- the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §6101, et seq. ("TCFAPA") and all regulations implementing the TCFAPA including without limitation the Telemarketing Sales Rule, 16 C.F.R. § 310.1, et seq.;
- the Electronic Funds Transfer Act, 15 U.S.C. § 1693, et seq. ("EFTA") and all regulations implementing the EFTA including without limitation Regulation E, 12 C.F.R. §1005.1, et seq.;
- the Telephone Consumer Protection Act, 47 U.S.C. §227, et seq. ("TCPA") and all regulations implementing the TCPA including without limitation 47 C.F.R. §64.1200, et seq.;
- the Restore Online Shopper's Confidence Act, 15 USCS § 8401, et seq.;
- the Unordered Merchandise Statute, 39 U.S.C. § 3009;
- the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001, et seq.; and
- all other applicable federal, state, and local laws, rules and regulations including, without limitation, those referring, relating or pertaining to the foregoing, consumer privacy and protection, credit, lending, financing, and banking, and with the Rules (as defined in Section 1 of the Agreement).

\_\_\_\_ Merchant will immediately notify NMA and Bank in writing of any inquiry, investigation, complaint, charge, subpoena, claim, request for information, judgment, injunction, restraining order, cease and desist order, any similar judicial, quasi-judicial, administrative, or executive order, or any license or permit revocation or cancellation, by any local, state or federal law enforcement or regulatory agency, entity, or official in connection with or relating to Merchant's business including without limitation any complaints, charges or claims against Merchant by any customers of Merchant or by any local, state or federal official.

\_\_\_\_ In addition to the indemnity obligations set forth in the Agreement, Merchant will also indemnify and hold NMA and Bank harmless from and against any and all losses, costs, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from or incurred in connection with any breach of the Agreement including and as modified by this Addendum, and/or resulting from or incurred in connection with any inquiry, investigation, complaint, charge, subpoena, claim, or request for information of or against Merchant, or against or involving NMA or Bank in connection with Merchant, by any local, state or federal law enforcement or regulatory agency in connection with or relating to Merchant's business including without limitation any complaints, charges or claims by any customers of Merchant or by any local, state or federal official.

\_\_\_\_ Merchant understands that NMA or Bank may terminate the Agreement effective immediately in the event of any breach of this addendum or as otherwise set forth in the Agreement.

**NATIONAL MERCHANTS ASSOCIATION:**

**MERCHANT:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**Print:** \_\_\_\_\_

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

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

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_