



DNE List Agreement

This Agreement is made on _____, 2006 ("Starting Date") by and between Direct Response Technologies, Inc. ("DRT"), a Delaware Corporation with its principal place of business located at 730 Holiday Drive, Building # 8, Pittsburgh, PA 15220, and _____ ("Subscriber", "you", and "yours" also refers to Subscriber), with its principal of business located at _____.

NOW THEREFORE, in consideration of the mutual covenants contained herein, DRT and Subscriber hereby agree as follows:

1. **Introduction.** The following are the terms and conditions for use of the DNEList service ("Service"), provided to you by DRT through the web site www.dnelist.com or www.directresponse.com ("Site"). By enrolling as a "Subscriber," you agree to be bound by these terms and conditions, including all payment terms, policies, practices, rules, standards and guidelines ("Policies") related to the Site and/or the Services posted on the Site, in effect from time to time (collectively, the "Agreement"). You agree that any of your agents, representatives, employees, or any person or entity acting on your behalf with respect to the use of the Service, shall be bound by, and shall abide by, these Terms and Conditions. You further agree that you are bound by these Terms and Conditions whether you are acting on your own behalf or on behalf of a third party.
2. **NON-EXCLUSIVE LICENSE.** DRT hereby grants you a non-exclusive license to use the Service in accordance with this Agreement. You may not: (1) modify, translate, or create derivative works based on the Service, or permit other individuals to do so; (2) rent, lease, transfer or otherwise transfer rights to the Service; (3) use a single account for multiple business entities; (4) provide third parties with access to your account, except for third parties specifically authorized by DRT; and/or (5) reverse engineer or disassemble the Service.
3. **Term.** The term of this Agreement shall begin on the Starting Date and shall continue monthly if you elect to pay on a month-to-month basis or annually if you elect to pay on an annual basis ("Term Period"), unless terminated in accordance with this Agreement.
4. **SERVICE.** DRT's exclusive obligation is to make the Service available to you through the DRT Site. Subscriber understands and agrees that DRT may change, modify, alter, suspend, remove, disable access to, terminate or discontinue all or any portion of the Site and/or the Services at any time for any reason, with no cost or liability to DRT. DRT will use reasonable efforts to provide advance notice to you of such an event, and shall, as reasonable and practical, provide you with a period of time to retrieve your data from the Site, at your sole cost and expense.
5. **ACCESS.** You are authorized to access the Site and/or the Services solely to manage your email suppression list. Your right to access your account with DRT is personal to you and non-assignable and is subject to any limits established by DRT. You agree that you will not use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access your account with DRT or to monitor or copy the Site or the content contained therein. You agree that you will not use any device, software, reverse engineering, or routine to interfere or attempt to interfere with the proper working of the Services. Without limitation to the foregoing, Subscriber further agrees that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure (as determined by DRT).
6. **SECURITY.** The Subscriber is responsible for all activities that occur under the Subscriber's password or account, and it is the Subscriber's responsibility to keep its password(s) and/or account information confidential. Subscriber shall be solely responsible for any authorized or unauthorized access to Subscriber's account.
7. **PAYMENT.** You agree to pay to DRT all applicable charges to your account, in United States dollars, for the Service you selected at the rates then in-effect as published on the Site.
 - a. **Billing Schedule.** First month fees will be due on the date that you register for the Service, pro-rated from the date of sign-up. Thereafter, subscription fees will be due on the first day of each month. Email usage charges or list usage charges, whichever is greater, will be due 1 day after each month ends for usage incurred in the prior month. Collectively referred to as Account Charges. Billing for usage shall be based on DRT's internal counting and reporting processes only.

- b. **Method of Payment.** You agree and represent that all information you provide for the purpose of enrolling as a Subscriber will be accurate, complete, and current. Subscriber expressly authorizes DRT to charge your credit card, charge card, or debit card for any and all applicable Account Charges associated with your account hereunder. If payment cannot be charged to your credit/charge/debit card, for whatever reason, or if there is a charge-back for any reason, DRT reserves the right to either suspend or terminate your account with DRT. If you provide us with a credit card, charge card, or debit card that expires during the term of this Agreement, we reserve the right to charge any renewal card issued to you as a replacement.
 - c. **Failure to Make Payment.** In the event of any failure by you to make payment, or if you charge-back, you will be responsible for all reasonable expenses (including attorneys' fees) incurred by DRT in collecting such amounts plus interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is greater.
 - d. **No Refunds.** 100% of all Account Charges are NON-REFUNDABLE.
 - e. **Rate Changes.** DRT reserves the right to change the rates for the Service in its sole discretion.
8. **NO ASSIGNMENT OR RESALE.** Except as otherwise indicated herein, you may not resell, assign, or transfer any of your rights under this Agreement, and if you attempt to resell, assign, or transfer your rights, we may immediately terminate this Agreement with out liability to us.
9. **LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES.**
- a. **Limitation of Liability.** DRT does not represent or warrant that the Service will be uninterrupted or error-free, that defects will be corrected, or that the Service or the server that makes it available, are free of viruses or other harmful components. You specifically agree that DRT shall not be responsible for unauthorized access to or alteration of your data. You agree that you, and not DRT, are fully responsible for the use of your suppression list by your employees, agents, contractors, officers, affiliates, publishers, and any other entity to whom you have granted access to your list.
 - b. **DISCLAIMER OF WARRANTIES .** YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE AND/OR SERVICES IS AT YOUR OWN RISK. THE SITE AND/OR SERVICES ARE AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY, OR IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR COURSE OF CONDUCT. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.
 - c. **EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES.** DRT will not be liable to Subscriber or any third-party claimant for any direct, indirect, special, punitive, consequential, or incidental damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of this Agreement and/or the use of or inability to use the Service and/or Site, regardless of the form of action whether in contract, tort, warranty, negligence, strict liability, breach of any statutory duty, indemnity or contribution, or otherwise, even if DRT has been advised of the possibility of such damages. The exclusion contained in this paragraph shall apply regardless of the failure of the exclusive remedy provided in the foregoing paragraph.
 - d. The foregoing exclusions and disclaimers are an essential part of this agreement and formed the basis for determining the price charged for the products.
10. **REPRESENTATIONS.**
- a. **Your Representations.** You represent and warrant (i) that you have sufficient authority to enter into this Agreement.; (ii) that you are and shall at all times be in compliance with all applicable laws; (iii) that you shall not be in violation of any obligation, contract or agreement by entering into this Agreement, by performing your obligations under these terms or by authorizing and permitting DRT to perform the Services hereunder; (iv) that you shall comply with all of the terms and conditions of this Agreement, as amended from time to time; (v) that all information provided by you is truthful,

accurate, and complete, and is not misleading in any way; (vi) that you shall be solely liable and responsible for, and DRT shall have no liability for, the suppression list stored by DRT on your behalf; and (vii) you will at all times be in compliance with Spam laws, rules and regulations domestically and internationally, and will be in compliance at all times with commercially reasonable standards with regard to Spam as set forth by leading industry watch organizations such as Spamhaus

- b. **DRT's Representations.** DRT represents and warrants (i) that DRT has sufficient authority to enter into this Agreement; and (ii) that DRT is and shall at all times be in compliance with all applicable laws;

11. INDEMNIFICATION.

- a. **Your Indemnification.** You agree to indemnify and hold us (and our directors, officers, employees and agents) harmless against any and all expenses and losses of any kind (including reasonable attorneys' fees and costs) incurred by us (and our directors, officers, employees and agents) in connection with any claims of any kind made by a third party arising out of your use of the Site and/or Services, breach of this Agreement by you, any SPAM related issues that arise as a result of your use of the Site and/or Services, and/or the actions or omissions of any entity to whom you have granted access to your suppression list.
- b. **DRT Indemnification.** DRT agrees to indemnify and hold you (and your directors, officers, employees and agents) harmless against any and all expenses and losses of any kind (including reasonable attorneys' fees and costs) incurred by you (and your directors, officers, employees and agents) in connection with any claims of any kind made by a third party arising out of a breach of the representations made in this Agreement by DRT.

12. **NOTICES.** We will provide all notices to you to the contact person and at the address, email address, or fax number identified on your account. You must send all notices to us at: office@directresponse.com, or such other address as provided on the Site from time to time.

13. **NO AGENCY.** The parties to this Agreement are independent contractors and this Agreement does not create and shall not be construed to create an agency, partnership, joint venture or other association relationship between the parties.

14. TERMINATION; CANCELLATION.

- a. **Your Right To Terminate.** You may terminate this Agreement and your account at anytime, by providing written notice to us or by following the online instructions, if any. Termination will become effective within 1 business day of our receipt of your termination notification.
- b. **Our Right To Terminate.** Notwithstanding anything contained in this Agreement to the contrary, DRT may, in its sole discretion, terminate your account, and discontinue your participation in the Service. Reasons for DRT's determination to so terminate or discontinue your account or participation as provided for above include, but are not limited to, failure to make payment in accordance with DRT's terms, and/or if DRT believes that you violated this Agreement, your representations contained herein, or other policies or guidelines of DRT, or if DRT believes your conduct may be harmful to consumers, advertisers, or subscribers who participate in the Service. All decisions made by DRT in this matter will be final and neither DRT nor its licensees (or distributors) shall have any liability with respect to such decisions.
- c. **Effect of Termination.** Upon termination, you will no longer be able to access your account. Regardless of which party terminates this Agreement, You will be responsible for all charges incurred up to and through the date of termination including payment obligations during the remainder of any unexpired initial Term or renewal term and such charges will be due and payable immediately.
- d. **Survival.** Sections 11, 15, 16, 18 and 22 shall survive any termination of this Agreement.

15. **TRADEMARKS:** Without the prior written consent of DRT, Subscriber shall not display or use in any manner any DRT Marks.

16. **PROPRIETARY RIGHTS.** Title, ownership rights, and intellectual property rights in and to the Site and/or the Service shall remain with DRT. The Service and/or the Site, and the intellectual property operating it are

protected by international copyright treaties. Title, ownership rights, and intellectual property rights in and to the content, and code accessed through the Service and/or the Site is the property of DRT and may be protected by applicable copyright or other law. This License gives you no rights to such content or code.

17. **MARKETING.** Subscriber grants to DRT a non-exclusive license as long as this Agreement is in effect to use, reproduce, publicly and digitally display and perform, transmit and broadcast Subscriber's name, logos, trademarks, trade names, service marks, URLs and slogans to advertise, market, promote and publicize the Service, including the inclusion of Subscriber in DRT's marketing materials and on DRT's "partners' and testimonial page". All such uses pursuant to this Section 17 shall be subject to your prior written approval.
18. **CONFIDENTIALITY:** "Confidential Information" means any information disclosed by one party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, other than information that the receiver can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure; (ii) becomes publicly known and made generally available after disclosure other than through the receiver's action or inaction; or (iii) is in the receiver's possession, without confidentiality restrictions, at the time of disclosure by the other party as shown by the receiver's files and records immediately prior to the time of disclosure. The receiver shall not at any time (a) disclose, sell, license, transfer or otherwise make available to any person or entity any Confidential Information, (b) use any Confidential Information, or (c) reproduce or otherwise copy any Confidential Information, except as necessary in connection with the purpose for which such Confidential Information is disclosed or as required by applicable law. The receiver agrees to take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. All Confidential Information shall at all times remain the personal property of the disclosing party and all documents, electronic media and other tangible items containing or relating to any Confidential Information shall be delivered to the disclosing party immediately upon the disclosing party's request.
19. **CONSTRUCTION.** No conditions other than those set forth in this Agreement shall be binding on us unless we expressly agree in writing signed by an authorized representative of DRT. DRT may change this Agreement, its Policies, and/or rates at any time upon 30 days prior written notification to you. Any use of the Service and/or Site after such notice shall be deemed to be continued acceptance of this Agreement including its amendments and modifications. DRT reserves the right to discontinue offering the Service and/or Site at any time.
20. **FORCE MAJEUR.** If the performance of any part of these Terms by DRT is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, judicial or governmental action, labor dispute, war, insurrection, technical failure, act of God or any other causes beyond the control of DRT DRT shall be excused from such performance to the extent that it is prevented, hindered or delayed by such causes.
21. **Data Ownership.** Personally identifiable information of email recipients collected by DRT on behalf of Subscriber shall be deemed to be Client's confidential information. DRT may use the information solely for the limited purpose of carrying out the duties set forth in this Agreement, and for no other purpose.
22. **MISCELLANEOUS.** This Agreement (i) shall be governed by and construed in accordance with the internal substantive laws of the Commonwealth of Pennsylvania, without giving effect to its principles of conflicts of law; and (ii) constitute the complete and entire expression of the agreement between the parties, and shall supersede any and all other agreements, whether written or oral, between the parties concerning the subject matter hereof. You submit to jurisdiction and venue in the state and federal courts located in the Commonwealth of Pennsylvania, Allegheny County and further agree that any cause of action you may bring arising under this Agreement will be brought by you exclusively in a state or federal court located in the Commonwealth of Pennsylvania, Allegheny County. Subscriber agrees to pay all legal expenses of DRT, including reasonable attorney's fees, should Subscriber be found in breach of this Agreement. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.



ACCEPTED AND AGREED TO BY:

Subscriber: _____

By: _____

Title: _____

Name: _____

Date: _____

Address: _____

Email: _____

Direct Response Technologies, Inc.

By: _____

Title: CEO

Name: Jason Wolfe

Date: _____

Address: 730 Holiday Drive, Building 8, Pittsburgh, PA
15220

Email: office@directresponse.com