



## **E-MAIL LIST RENTAL PROCESSING ACKNOWLEDGEMENT FORM**

Anchor Computer, Inc. requires that each customer sign an E-Mail List Rental Processing Acknowledgement Form prior to the commencement of any E-MAIL LIST RENTAL DATA PROCESSING. This Processing Acknowledgement Form and the attendant Terms and Conditions shall remain in effect for a period of up to three (3) years with respect to E-MAIL LIST RENTAL DATA PROCESSING. The EMAIL LIST RENTAL SERVICES Processing Acknowledgement Form must be updated on a three (3) year basis as of the date shown below (a new form must be executed annually, if such services continue to be performed).

I, the undersigned, an authorized representative of:

COMPANY Name (please print) \_\_\_\_\_

Address \_\_\_\_\_

City/State/Province/ZIP/Postal Code \_\_\_\_\_

Telephone Number \_\_\_\_\_;

Hereby acknowledge that we have received, reviewed and will abide by all of the E-MAIL LIST RENTAL DATA PROCESSING TERMS AND CONDITIONS that are incorporated herein. I further agree to abide by the CAN SPAM Act (S.877) of 2003, the Utah Child Protection Registry Law and the Michigan Children's Protection Registry Act, and any other applicable Federal, State and Local laws, regulations and conditions all as outlined in Section 7.

Due to Utah & Michigan registry laws you are also required to answer the following questions:

1. Does your company sell any products or services that fall into the following categories?  
\_\_\_\_\_ (If yes, please circle all categories that pertain.)

- 1. Firearms
- 2. Alcohol
- 3. Tobacco
- 4. Gambling
- 5. Lottery
- 6. Pharmaceuticals
- 7. Pornography

2. Does your company have any subsidiaries, sister companies or third parties listed on your company website that sell products or services in any of the aforementioned categories?  
\_\_\_\_\_

3. If yes, can a visitor link from your company website to any of these company, subsidiary or third party products or services? \_\_\_\_\_ If yes, please list the products or services here: \_\_\_\_\_.

4. Are you familiar with the Michigan Children's Protection Registry Act, the Utah Child Protection Registry Law, and all other applicable Federal, State and Local laws, regulations and conditions as outlined in Section 7? \_\_\_\_\_

By signing below, I confirm: (i) that I am at least eighteen (18) years of age with full authority to execute this document on the Company's behalf; and (ii) that the COMPANY understands and accepts the provisions/restrictions stated hereunder.

CLIENT Name (please print) \_\_\_\_\_

Signature \_\_\_\_\_

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

For Anchor Use Only:

Customer # \_\_\_\_\_

# E-Mail List Rental Terms and Conditions

This E-Mail List Rental Agreement is entered into as of the date specified below by and between Anchor Computer Inc ("Anchor") and the E-Mailer named below ("Mailer").

1. Anchor grants to Mailer the limited, non-exclusive, non-transferable rights described in this Agreement to use the e-mail addresses (the "List") derived from lists and databases of Anchor and/or its licensors ("Owners") following: (i) execution and delivery of this Agreement by Mailer to Anchor and (ii) receipt and acceptance by Anchor of a signed Anchor "Email List Rental Insertion Order Form" ("List Rental Form").
2. Mailer understands and agrees that Anchor reserves the right, anytime prior to transmission, to accept or reject any order (including previously accepted orders) in its sole discretion. Mailer agrees that the List is a very valuable proprietary asset of Owners and remains at all times the exclusive property of the Owners and protected under copyright, trade secret and other intellectual property and proprietary rights laws, and by this Agreement.
3. The Mailer agrees that this Agreement grants a one-time or multiple use use, non-exclusive, non-transferable right to use the List for e-mail transmission(s) of a message (hereinafter "Dispatch") by Mailer as defined and agreed to in an "Email List Rental Insertion Order Form" ("List Rental Form"). The text/html of which shall be provided by Mailer in advance for Anchor's express and specific pre-approval which may be given or withheld in Anchor's sole discretion.
4. Mailer represents, warrants and covenants that the Dispatch Content will not contain:
  - (i) Any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane, unethical or otherwise objectionable information, including without limitation any transmission constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law;
  - (ii) Any misleading or deceptive information or any misrepresentation with respect to products or services offered by Mailer or its advertisers;
  - (iii) Any chain letters, illegal pyramid, or "Ponzi" type schemes;
  - (iv) Any information, audio, video, graphics, software, or other works in violation of any person's copyright, trademark or any other intellectual property rights;
  - (v) Any deceptive information which would imply affiliation or sponsorship of any entity or person other than Mailer without the written consent of such entity or person; or
  - (vi) Any virus, worm, "trojan horse", time bomb or similar contaminating or destructive feature.
5. Mailer acknowledges and agrees that it is MAILERS'S RESPONSIBILITY to ascertain and comply with any and all Federal, State and Local laws, statutes and regulations, including but not limited to those pertaining to the CAN SPAM Act (S.877) of 2003, the Utah Child Protection Registry Law and the Michigan Children's Protection Registry Act. By signing this Agreement, Mailer agrees to hold Anchor harmless from all liabilities, damages, losses, claims, costs and expenses (including attorney's fees) from MAILER's failure to abide by any applicable Federal, State and local laws and statutes.
6. Each party shall indemnify, defend and hold harmless the other party from and against any costs, losses, liabilities and expenses, including all court costs, reasonable expenses and reasonable attorneys' fees that the party seeking indemnification may suffer, incur or be subjected to in connection with any legal action, proceeding, arbitration or other claim by a third party (including any governmental or regulatory authority), whether commenced or threatened, arising out of or as a result of the

indemnifying party's failure to comply fully with its obligations under the foregoing paragraphs (1) through (5).

7. In consideration of Anchor's undertakings, and the limited license granted to Mailer, herewith, Mailer shall pay Anchor the license fee(s) specified and agreed to in a signed "List Rental Form". Mailer is fully responsible for payment regardless of the involvement of Mailers authorized agency or list broker. Anchor reserves all rights for collection from Mailer. In the event of cancellation of Agreement by Mailer, cancellation fees will apply. Mailer is responsible for any and all costs and expenses, including attorneys' fees, incurred by Anchor in enforcing this Agreement.
6. Indemnification by Mailer. In addition to those provisions relating to compliance with commercial e-mail laws, Mailer shall indemnify, defend and hold harmless Anchor and its List Owners and service providers (collectively, "Anchor Indemnitees") from and against any costs, losses, liabilities and expenses, including all court costs, reasonable expenses and reasonable attorney's fees (collectively, "Losses") that a Anchor Indemnitee may suffer, incur or be subjected to as a result of or arising out of a breach of any warranty, representation or agreement made by Mailer contained in this Agreement or by reason of any legal action, proceeding, arbitration or other claim by a third party, whether commenced or threatened, arising out of or as a result of any Prohibited Content contained in a Dispatch provided or approved by Mailer in accordance with the terms of this Agreement. The indemnities included in this section shall apply to any information contained on any Internet web site to which recipients of a Dispatch are directed as a result of any links included in such Dispatch.
7. **ALTHOUGH ANCHOR USES REASONABLE EFFORTS TO MAINTAIN ACCURATE LISTS, NEITHER ANCHOR NOR ITS AFFILIATES, LICENSORS, SUPPLIERS, SERVICE PROVIDERS OR AGENTS REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE LIST IS COMPLETE OR FREE FROM ERROR, AND HEREBY EXPRESSLY DISCLAIM ANY LIABILITY TO ANY PERSON FOR ANY LOSS OR DAMAGE CAUSED BY ERRORS OR OMISSIONS IN THE LIST, WHETHER SUCH ERRORS OR OMISSION RESULT FROM NEGLIGENCE, ACCIDENT, OR ANY OTHER CAUSE. IN ADDITION, NEITHER ANCHOR NOR ITS AFFILIATES, LICENSORS, SUPPLIERS, SERVICE PROVIDERS OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PERFORMANCE OF THE FULFILLMENT SYSTEM USED IN CONJUNCTION WITH THE LIST. MAILER UNDERSTANDS THAT, EXCEPT AS STATED HEREIN, ANCHOR, ITS AFFILIATES, LICENSORS, SUPPLIERS AND AGENTS, MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LIST RECORDS OR THE SERVICES PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUBJECT TO ITS EXPRESS INDEMNIFICATION OBLIGATIONS STATED HEREIN, ANCHOR, ITS AFFILIATES, LICENSORS, SUPPLIERS, SERVICE PROVIDERS AND AGENTS' SOLE LIABILITY FOR ANY DEFECT IN THE LIST RECORDS OR SERVICES PROVIDED HEREUNDER WILL BE LIMITED TO THE LICENSE FEE PAID FOR THE PART OF THE DATA THAT IS DEFECTIVE, OR TO REPERFORM THE SERVICES SO AS TO REMEDY THE DEFECT. IN NO EVENT WILL ANCHOR, ITS AFFILIATES, LICENSORS, SUPPLIERS, SERVICE PROVIDERS OR AGENTS, BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL OR EXEMPLARY DAMAGES OR PENALTIES, INCLUDING BUT NOT LIMITED TO ANY LOST REVENUES, ANTICIPATED PROFITS OR SAVINGS ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM THE SERVICES HEREUNDER OR LICENSEE'S USE OR INABILITY TO USE THE LIST RECORDS REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR WHETHER SUCH DAMAGES ARE DEEMED TO RESULT FROM THE FAILURE OR INADEQUACY OF ANY EXCLUSIVE OR OTHER REMEDY.**
8. **General Provisions.** This Agreement and its enforcement shall be governed by, and construed in accordance with the laws of the State of New York, without regard to conflicts-of-law principles. Each party irrevocably consents to the exclusive jurisdiction of the courts of the State of New York and the federal courts situated in the County and State of New York in connection with any action arising under this Agreement. If any provision of this Agreement is adjudicated to be unenforceable or contrary to any applicable law or regulation, such provision shall be enforced to the maximum extent permitted by law and to effect the parties' fundamental intentions hereunder, and the remainder of this Contract shall continue in full force and effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and permitted assigns. This Agreement is not assignable by either party. The Parties are independent contractors, and nothing contained herein shall be deemed to

create a partnership, agency or employment relationship. This Agreement, including any Exhibits and the signed List Rental Order, sets forth the entire agreement between the parties on the subject hereof and supersedes any prior negotiations, understandings and agreements concerning such subject matter. No amendment or modification of this Agreement may be made except by a writing signed by both parties. The failure of either party to insist on the performance of any terms or conditions of this Agreement shall not be construed as a waiver of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing party with respect thereto shall continue in full force and effect. No failure or omission by either party in performing under this Agreement shall be deemed a breach nor create any liability if the same shall arise from any cause or causes beyond the reasonable control of such party, including but not limited to the following: acts of God, acts or omissions of any government or any officer, department, agency or instrument thereof; fire, storm, flood, earthquake, accident, acts of the public enemy, war, terrorism, rebellion, failure of telecommunications services, public utilities or an Internet brown out, insurrection, riot, invasion, strikes, or lockouts.

9. Mailer has read, understands and agrees to be bound to the provisions in this E-Mail List Rental Agreement and the "List Rental Order Form", which address processing fees and terms of remuneration. Any modifications made hereto by Mailer (other than by Anchor) shall be considered a counteroffer by or on behalf of Mailer and shall not be effective or binding upon Anchor unless acknowledged and accepted in writing by an authorized representative of Anchor, and in no event shall any other action or failure to act by Anchor be construed as acceptance of or agreement to any such modifications.

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END OF TERMS AND CONDITIONS

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