

### Notes & Key Points

This document contains 3 key sections:

1. Email Services Agreement
2. Anti-Spam Policy
3. Anti-Spam Certification



Require each of your clients to execute a **written** certification.

The agreement must be the same or a substantially similar to this document.



Carefully review each section of this agreement.

Ensure that all team members and clients' team members are educated about spam and opt-in requirements. Third party and purchased lists are not allowed under the terms of this agreement.



**Execute and return** the certification page.

- **Both (A) and (B)** must be filled in with your company's legal name on the certification.

**No lines should be blank.**

Type in box to auto-fill Company Name:

- Ensure that one of either conditions listed under (A) or (B) is met for every email campaign and list for every client.



## Email Policies

### Email Services Agreement, Email Policies & Anti-SPAM Certification

#### Email Services Agreement

This Email Services Agreement ("Agreement") is a binding and enforceable legal agreement between You and JFM Concepts, LLC ("JFM Concepts"). "Services" means the provision of electronic access to email marketing software over a computer network and related technical support services. "You" or "Your" refers to the person, entity or organization which is using software provided by JFM Concepts, and any successor or assignee of same ("Software"). You represent and warrant that you are authorized to enter into this Agreement.

YOU UNDERSTAND THAT BY AGREEING TO THIS AGREEMENT AND/OR BY USING THE SERVICES, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT THAT BINDS YOU IN THE SAME WAY THAT A PAPER CONTRACT BINDS YOU. THIS AGREEMENT LIMITS JFM CONCEPTS' LIABILITY AND OBLIGATIONS TO YOU TO THE TERMS SET FORTH HEREIN AND PERMITS JFM CONCEPTS TO CHANGE, SUSPEND, OR TERMINATE YOUR ACCESS TO AND USE OF THE SERVICES. YOU MUST ACCEPT, WITHOUT MODIFICATION, ALL OF THE TERMS, CONDITIONS, POLICIES AND INSTRUCTIONS REFERENCED IN THIS AGREEMENT IN ORDER TO ACCESS AND USE THE SERVICES. IF YOU DO NOT ACCEPT THIS AGREEMENT IN ITS ENTIRETY, YOU MAY NOT ACCESS OR USE THE SERVICES.

1. USE. You may use the Services only in and for Your own internal purposes and business operations. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of the email marketing software accessed by You hereunder, in whole or in part, is granted except as expressly provided by this Agreement. Neither You nor any of Your affiliates shall reverse engineer, decompile or disassemble the email services software. Nothing in this Agreement will entitle You or any of Your affiliates to access or use the source code of the email marketing software.

2. CONFIDENTIALITY. You acknowledge that the Services and any other information provided to You by JFM Concepts incorporate confidential and proprietary information developed by, acquired by, or licensed to JFM Concepts ("Confidential Information"). You will take (and will cause Your affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither You nor any of Your affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, any part of the Confidential Information to any individual or entity, except to those of Your employees or consultants who require access for Your authorized use of the Confidential Information and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information under this Agreement. You acknowledge that any unauthorized use or disclosure by You or any of Your affiliates of the Confidential Information may cause irreparable damage to JFM Concepts. If JFM Concepts becomes aware of Your breach or threatened breach, JFM Concepts may suspend any and all rights granted to You under this Agreement and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to JFM Concepts.

3. INDEMNIFICATION. You shall indemnify and hold JFM Concepts, and its officers, directors, employees, agents, licensors, and service providers harmless from and against any claims, losses, damages, liabilities, costs or expenses of any nature (including reasonable attorney's fees) suffered or incurred by any of them to the extent that such are caused by or arise in connection with (i) a breach of Your obligations hereunder, (ii) any breach of Your representations and/or warranties contained herein, (iii) JFM Concepts' use, in connection with the performance of the Services hereunder, of any email addresses, Your end user information, or other information that JFM Concepts obtains from You or any of Your affiliates for purposes of providing such services, (iv) any content provided by You or any of Your affiliates, or (v) any emails, newsletters, or other materials sent out by You or any of Your affiliates using the Services.

4. YOUR REPRESENTATIONS AND WARRANTIES. You represent and warrant to JFM Concepts that:

a. No information delivered by You to JFM Concepts in support of this Agreement will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

b. You will not use the Services in a manner that violates any law or regulation. Neither You nor any of Your affiliates will use the Services for purposes of, or transmit via the Services, (i) any unlawful, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or foreign law, including without limitation the U.S. export control laws and regulations; (ii) any chain letters, pyramid schemes or other deceptive, misleading, and/or fraudulent content; (iii) any unsolicited commercial or non-commercial



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communication; (iv) any emails with deceptive, misleading or false subject lines or header information that makes it difficult to identify the initiator of the email; or (v) any information containing a virus, Trojan horse, worm, or other harmful component.

c. Each person as to whom email addresses are provided to JFM Concepts by You or any of Your affiliates (i) can or will be categorized as an "opt-in" recipient by their agreement with You to receive such information via email, and (ii) has not or will not have notified You or any of Your affiliates of their desire not to receive email (i.e., no such person has "opted out" of the receipt of email with respect to You or Your products or services or any of Your affiliates or their products or services).

5. **OUTAGE POLICY.** YOU ACKNOWLEDGE AND UNDERSTAND THAT JFM CONCEPTS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE AND THAT JFM CONCEPTS MAY OCCASIONALLY EXPERIENCE "HARD OUTAGES" DUE TO INTERNET DISRUPTIONS THAT ARE NOT WITHIN THEIR CONTROL. ANY SUCH HARD OUTAGE SHALL NOT BE CONSIDERED A BREACH OF THIS AGREEMENT.

6. **OWNERSHIP.** All trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to the Services, are and will remain the sole and exclusive property of JFM Concepts or its applicable service provider(s), whether or not specifically recognized or perfected under applicable law. JFM Concepts or its applicable service provider(s) shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the Services or any new programs, upgrades, modifications or enhancements thereto, even when such refinements and improvements result from Your request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in JFM Concepts or its applicable service provider(s) by virtue of this Agreement or otherwise, You hereby transfer and assign (and, if applicable, shall cause Your affiliates to transfer and assign) to JFM Concepts or its applicable service provider(s) all rights, title, and interest which You or any of Your affiliates may have in to such refinements and improvements.

7. **DISCLAIMER OF WARRANTIES.** EXCEPT AS MAY BE OTHERWISE SPECIFICALLY PROVIDED HEREIN, THE APPLICATION SOFTWARE AND APPLICATION SERVICES ARE PROVIDED HEREUNDER "AS IS" WITHOUT WARRANTY OF ANY KIND. EXCEPT AS MAY BE OTHERWISE SPECIFICALLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, JFM CONCEPTS AND ITS APPLICABLE SERVICE PROVIDER(S) EACH EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE APPLICATION SOFTWARE AND APPLICATION SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE APPLICATION SOFTWARE OR APPLICATION SERVICES, WHETHER MADE BY EMPLOYEES OF JFM CONCEPTS OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY JFM CONCEPTS FOR ANY PURPOSE, OR GIVE RISE TO ANY LIABILITY OF JFM CONCEPTS WHATSOEVER.

8. **CUSTOMER MARKS.** JFM Concepts and its applicable service provider(s) may use Your trademarks and trade names ("Marks") in connection with the authorized provision of the Services.

9. **THIRD PARTY BENEFICIARY.** ExactTarget, Inc. ("ExactTarget") shall be deemed a third party beneficiary under this Agreement and You shall be liable to ExactTarget for any damages arising due to Your breach hereof to the same extent as if ExactTarget had been a signatory to this Agreement.



## Email Policies

### Email Services Agreement, Email Policies & Anti-SPAM Certification

#### Anti-Spam Policy

This policy is based of the online Anti-Spam Policy which is subject to updates and changes. For the most current version visit [www.vdpweb.com](http://www.vdpweb.com).

#### Anti-SPAM at JFM Concepts

Our clients certify that they will use our software only to send emails to customers and prospects that have directly consented (opted-in) to receive email. They are forbidden to transmit unsolicited commercial email (spam) via our system. JFM Concepts does not buy or sell email lists, nor do we allow our clients to use purchased or harvested email lists (see below).

Additionally, JFM Concepts offers confirmed opt-in as an optional tool for our clients to use to help minimize allegations of spam and abuse. When a list is designated as "confirmed opt-in," JFM Concepts' system automatically sends a follow-up email to each subscriber on such lists asking the recipient to verify that they wish to receive communications via email. Only those subscribers responding affirmatively will be opted-in to future mailings sent via the JFM Concepts system.

We additionally require that clients reconfirm (permission pass) or stop mailing an existing list when it is determined to be in violation of our anti-spam policies. Repeated violations or failures to comply with our policies will result in termination of that client's access to the JFM Concepts system.

#### Members Agreement

Our clients agree not to send unsolicited email via our system. For any opt-in list of email addresses used in JFM Concepts' system, clients agree to provide us with the source of the email addresses, the method used for recipient signup, and details surrounding the process used, and whatever other information relates to the transaction or sign-up process used. This includes, but isn't limited to, date and time of sign up, IP address of sign up, website signed up from, and whatever other information the client asked of the recipient at point of sign up.

Our clients certify that they will not use rented or purchased lists, email append lists, or any other list that contains email addresses captured in any other method than opt-in. The use of opt-out lists is prohibited in our system. JFM Concepts retains the right to review client lists and emails to verify that clients are abiding by the privacy and permission policies set forth herein. Our clients are required to comply with our policies and all applicable law.

#### How do we protect your privacy?

We use strict security measures to protect against the loss, misuse and alteration of data used by our system. We promise to keep your email address secure and private and will not use it for other purposes. Please review our Privacy Policy for more details.

#### Why did you receive an email from our system?

You should only receive email from our system from some client of ours that you recognize signing up to receive email from. Our clients certify that all email addresses used in our system are opt-in names that have given permission to the client to send them email. As we indicate above, JFM Concepts does not allow nor desire that any client use our email services to send unwanted mail or spam. If you don't recognize who sent you the message, see the next section.

#### Reporting Unwanted Mail as Spam

If you don't recognize who used the JFM Concepts or VDP Web service to send you a given message, you can report it to us as spam by sending it to [abuse@vdpweb.com](mailto:abuse@vdpweb.com). We receive, investigate, catalog, and take action based on these complaints. We work with anti-spam blacklist groups and strive to address all issues to their satisfaction.

#### How do I get off an email list?

Each email sent through the JFM Concepts system contains a link that allows subscribers to unsubscribe from receiving emails from the sender. Each email contains an easy and automated way for you to unsubscribe. You may also change your expressed interests at any time. If you wish to unsubscribe or change your interests, simply follow the instructions at the bottom of any email. If you have



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received an unwanted email sent by the JFM Concepts system, please see above for options on how to handle and report an issue.

#### **Will your information ever be shared, sold or rented?**

We will never share, sell, or rent individual email addresses without your advance permission, unless ordered by a court of law. Information submitted to us is available only to employees responsible for managing this data.

If you have any questions about JFM Concepts' Anti-Spam Policy, please contact us at 317-254-4510 or email us at [abuse@vdpweb.com](mailto:abuse@vdpweb.com).

Updated: 2009-09



# Email Policies

## Email Services Agreement, Email Policies & Anti-SPAM Certification

### Anti-Spam Certification

In order to comply with federal law, email best practices, and the policies set forth by ISPs and other email filtering organizations, JFM Concepts requires all clients to certify their compliance with JFM Concepts' Anti-Spam email policy as well as the opt-in status of any lists they distribute using the JFM Concepts application.

If you cannot provide the certifications requested below, please contact your representative to discuss the means by which your email distribution list(s) may be brought into compliance with our opt-in list requirements.

#### First Certification: JFM Concepts Anti-Spam Policy

I, or another member of my organization, have read and understand JFM Concepts' Email Services Agreement and Anti-Spam Policy (attached hereto), and agree to be bound by the JFM Concepts' and VDP Web's policies and terms of service posted online at [www.vdpweb.com](http://www.vdpweb.com).

\_\_\_\_\_ initials

#### Second Certification: List Source

I certify that: (A) \_\_\_\_\_ is the owner of all email distribution lists distributed using the JFM Concepts application, and that \_\_\_\_\_ is solely responsible for the composition and membership of each list; or (B) \_\_\_\_\_'s clients have executed the Email Services Agreement.

\_\_\_\_\_ initials

#### Third Certification: List Opt-In Status

I certify that: (A) all subscribers to be used in connection with the JFM Concepts application have provided permission to \_\_\_\_\_ to send them email; or (B) \_\_\_\_\_'s clients have executed an Email Services Agreement.

\_\_\_\_\_ initials

Certified by: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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