

Lyris Technologies Outsourcing Service Agreement

To complete the sign-up process for Lyris ListHosting, please follow these three steps:

1. Fill out and sign all required fields on Pages 1 and 8 of this Outsourcing Agreement.
2. Fax the entire Agreement to (510) 844-1598.
3. Mail the entire Agreement to:

Lyris Technologies, Inc.
5858 Horton Street, Suite 270
Emeryville, California 94608

This Lyris Technologies Outsourcing Service Agreement (the "Agreement") is made as of the ____ day of _____, 200__, by and between Lyris Technologies, Inc., a Delaware corporation ("Lyris") and _____ ("Customer").

Customer contact information

Customer name: _____ Billing address: _____			
City: _____ State/Province: _____ ZIP/Postal Code: _____ Country: _____			
Contact information for Customer's List Administrator	Name: _____	Phone: _____	Email: _____
Contact information for Customer's Alternate Contact	Name: _____	Phone: _____	Email: _____

Outsourcing Packages

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> Discussion Basic | <input type="checkbox"/> Newsletter Basic | | |
| <input type="checkbox"/> Discussion Plus | <input type="checkbox"/> Newsletter Plus | <input type="checkbox"/> Marketing Plus | <input type="checkbox"/> Enterprise Marketing Plus |
| <input type="checkbox"/> Discussion Pro | <input type="checkbox"/> Newsletter Pro | <input type="checkbox"/> Marketing Pro | <input type="checkbox"/> Enterprise Marketing Pro |
| <input type="checkbox"/> Discussion Advanced | <input type="checkbox"/> Newsletter Advanced | <input type="checkbox"/> Marketing Advanced | <input type="checkbox"/> Enterprise Marketing Advanced |

Extra-cost Options

- Extra list for Basic packages Add-on list Extra Custom Domain

List and Custom Domain Names – please indicate the names you specified on your online order form

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Comments

AGREED:

Customer name (printed): _____	Title: _____
Customer Signature: _____	Date: _____

**** Please sign Page 8 before submitting this Agreement ****

Lyris Technologies Outsourcing Service Agreement

TERMS OF SERVICE

1. Service Agreement. Lyris agrees to provide Customer with announcement and/or discussion email list services (the "Service") subject to the terms of this Agreement, the Prices stated in Exhibit A, and the Operating Rules stated in Exhibit B (the "Rules"). This Agreement, the Prices and the Rules state the full agreement between Lyris and Customer with respect to the Service to be provided to Customer by Lyris. Any other or prior agreements between Lyris and Customer with respect to the subject matter of this Agreement are hereby superseded. This Agreement will become effective only after Lyris accepts this Agreement by activating Customer's access to the Lyris outsourcing service network (sometimes referred to in this Agreement as the "Lyris Outsourcing System").
2. Right to Modify. This Agreement and the Rules may be supplemented, modified or amended (each a "Revision") by Lyris at any time at its sole discretion, and each such Revision will be effective 2 business days after it has been sent to Customer by Lyris pursuant to Paragraph 11 ("Notices"), provided, however, that prices may be modified only in accordance with the provisions of Paragraph 4 (b) ("Pricing") of this Agreement. If any Revision is not acceptable to Customer, Customer may terminate this Agreement in the manner provided in Paragraph 10 ("Termination") below. Customer's continued use of Lyris's Service under this Agreement after the effective date of such Revision shall be deemed to constitute acceptance of the Agreement as so supplemented, modified or amended. Except as otherwise stated in this Paragraph 2 and Paragraph 4, this Agreement may not be amended, except by a written agreement signed by both parties.
3. Activation and Use of Lyris Outsourcing System
 - (a) Following execution of this Agreement, Lyris shall provide Customer with an account name and a password that will allow access to the Lyris Outsourcing System. Customer will use Lyris as an Independent Content Provider ("ICP"). As an ICP, Customer shall be liable and responsible for any and all activities conducted through its account by Customer or, if applicable, by Customer's users, whether or not such activities have been authorized by Customer.
 - (b) Upon Lyris's request, Customer shall provide Lyris with accurate and complete registration information with respect to Customer's use of the Lyris Outsourcing System (including the identity, email addresses, and passwords of Customer's authorized list administrators) and to promptly update such information as changes occur. Customer's failure to provide or update such information shall constitute a breach of this Agreement and this shall be grounds for Lyris to terminate this Agreement or the right of any person associated with Customer to use the Lyris Outsourcing System (including any person using the Lyris Outsourcing System through Customer's account with or without Customer's authority). In such case, Customer shall also be liable to Lyris for any and all additional remedies that may be available under law.
 - (c) Customer agrees to use a "double opt-in" subscription method for all new list members. For the purpose of this Agreement, a "double opt-in" method shall mean that when Customer adds a new member's email address to the list, that email address shall not be activated unless and until the new member receives a single confirmation e-mail from Customer requesting member's consent to be added to the list and Lyris receives from the new member a confirmation action (such as a confirming e-mail from the new member's email address) approving such action. The confirmation e-mail sent by the Customer to new members may not include advertising or calls-to-action other than an appeal to confirm the member's subscription.
4. Charges
 - (a) Customer will be charged for the use of the Lyris Outsourcing System in accordance with the Prices. The Prices may be modified by Lyris pursuant to section (b) of this Paragraph 4. Payment shall be due within 30 days after the date of Lyris's invoice. Lyris may impose a monthly service charge of up to 10 percent of the unpaid portion of any payments that are not paid within such period. Monthly fees are not refundable except as specifically provided in this Agreement. If payments are not made within 60 days after the date of Lyris's invoice, without limiting any other rights of Lyris under this Agreement, Lyris may (i) discontinue or disable Customer's service or (ii) hold and prevent the copying or export of Customer's list membership data. In the event this Agreement is terminated, Lyris reserves the right to hold and prevent the copying or export of Customer's list membership data until all outstanding invoices and the balance of Customer's minimum term of service as specified in Exhibit A are paid in full. In the event Lyris exercises its right to discontinue or disable Customer's service as provided in this Paragraph 4 and, within 6 months thereafter, Customer has not cured its default under this Agreement by paying to Lyris all amounts which it then owes to Lyris, Lyris shall then have the further right to delete any of Customer's membership data then on the Lyris Outsourcing System.
 - (b) The present rates for the Service are stated in the Prices set forth in Exhibit A. The Prices are not subject to change during Customer's minimum term of service as specified in Exhibit A. After the minimum term of service has been completed, the Prices are subject to change by Lyris at any time and such change shall become effective 30 days after the delivery of a notice to Customer pursuant to Paragraph 11 ("Notices"). If any change in the Prices is not acceptable, Customer may terminate service under this Agreement as provided in Paragraph 10 ("Termination"). However, Customer's continued use of the Lyris Outsourcing System following the effective date of any change in the Prices shall be considered acceptance of such change.
 - (c) Customer is responsible for all charges arising out of its use of the Lyris Outsourcing System whether or not such use is authorized by Customer.
5. Use of Lyris Outsourcing System Content
 - (a) Customer may charge its users under separate agreements for use of the Lyris Outsourcing System and any information, communications, software, photos, video, graphics, music, sounds and other material and services provided by Customer or other users of Customer's account (collectively referred to as "Content").
 - (b) Customer acknowledges, and shall also notify its authorized users, that Lyris is not responsible for and does not give any assurance to any person with respect to the validity, value, usefulness or accuracy of Content. Customer and any person using Customer's account shall bear any risk associated with the Content. Lyris has the right to monitor the use of the Lyris Outsourcing

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System, including the Content that may be transmitted across it from time to time. However, Lyris does not prescreen or attempt to censor or review any Content prior to its appearance on the Lyris Outsourcing System. Lyris has the right (but not the obligation) to require Customer to remove, prohibit or discontinue any Content on the Lyris Outsourcing System which Lyris, in its sole discretion, determines to be harmful, offensive or otherwise in violation of the Rules or this Agreement.

6. Intellectual Property Rights.

(a) Content Subject to Rights - Customer acknowledges that Content on the Lyris Outsourcing System, whether provided by Customer or others may include material which is the subject of and protected by copyrights, trademarks, service marks and other proprietary rights ("Rights"). Customer acknowledges that such Rights are valid and valuable and are protected and apply to all media which now exists or may in the future exist. Unless specifically provided elsewhere in this Agreement, Customer's ability to use any Content which is protected by such Rights shall be governed by applicable law including relevant patent and trademark law.

(b) Customer Warranty - Customer agrees, and will require each and every one of its users to agree, (i) that it will transmit on the Lyris Outsourcing System only Content that is not subject to any Rights in favor of any other party or Content in which the holder of any Rights has given express consent to such transmission and (ii) that by transmitting or allowing the transmission of any Content on the Lyris Outsourcing System, Customer or Customer's users automatically warrant that Lyris has the royalty-free, irrevocable, nonexclusive worldwide right to transmit and display such Content in whole or in part on the Lyris Outsourcing System for the duration of the performance of the Service. Customer may obtain the consent of its users to the covenants provided in this Paragraph by requiring such persons to perform sign-on procedures which will confirm their agreement to and acceptance of these conditions.

(c) Lawful Use - Customer agrees to use the Lyris Outsourcing System only for lawful purposes. Customer recognizes and agrees that Lyris at its sole discretion may monitor any and all areas of the Lyris Outsourcing System to oversee compliance with this Agreement and the Rules and Customer will so inform its users that their use of the Lyris Outsourcing System will constitute consent to such monitoring. If Customer or any of its users restricts or inhibits any other customer or user of the Lyris Outsourcing System, Lyris may, at its discretion, terminate or limit the right of Customer or Customer's user to use the Lyris Outsourcing System.

7. International Usage. Customer acknowledges that its use of the Lyris Outsourcing System allows access to Content originating from other customers, ICPs and third parties located in countries other than the United States. Customer agrees that its access to and use of such Content may be governed (in addition to this Agreement and the Rules) by separate terms and operating policies which conform to appropriate and applicable national laws and customs. Lyris is registered with the U.S. Department of Commerce's Safe Harbor List, and certifies that its organization adheres to the safe harbor framework.

8. No Warranty. CUSTOMER EXPRESSLY AGREES THAT USE OF THE LYRIS OUTSOURCING SYSTEM, SERVICES AND SOFTWARE ARE AT THE CUSTOMER'S SOLE RISK. LYRIS'S SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LYRIS'S LIABILITY TO CUSTOMER FOR BREACH OF THIS AGREEMENT IS LIMITED SOLELY TO THE AMOUNT PAID BY CUSTOMER TO ACCESS AND USE THE LYRIS OUTSOURCING SYSTEM AND LYRIS'S SOFTWARE AND SERVICES FOR THE PERIOD OF TIME DURING WHICH THE LYRIS OUTSOURCING SYSTEM FAILED TO OPERATE AS A RESULT OF LYRIS'S ACT OR OMISSION. THE REFUND OF FEES PAID TO LYRIS FOR THE PERIOD DURING WHICH THE LYRIS OUTSOURCING SYSTEM MAY HAVE FAILED TO OPERATE AS A RESULT OF LYRIS'S ACT OR OMISSION SHALL BE CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE LYRIS OUTSOURCING SYSTEM AND LYRIS'S SOFTWARE AND SERVICES. IN NO EVENT SHALL LYRIS BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE). IN THE EVENT ANY JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF ANY WARRANTY OR LIABILITY UNDER THIS AGREEMENT, LYRIS'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW.

9. Indemnification.

(a) Indemnification of Customer. Lyris will defend and indemnify Customer and hold Customer harmless from all liabilities, claims and expenses, including attorney's fees (collectively, "Damages"), arising from a third party claim for Damages resulting from: (i) Lyris' breach of this Agreement, or (ii) the gross negligence or willful misconduct of Lyris or its agents in connection with Lyris' provision of products or performance of services pursuant to this Agreement.

(b) Indemnification of Lyris. Customer will defend and indemnify Lyris and hold Lyris harmless from all Damages arising from a third party claim for Damages resulting from: (i) breach of this Agreement or the Rules by Customer or any of Customer's users, (ii) the transmission by Customer or its users of any Content of the Lyris Outsourcing System, whether or not such use was authorized by Customer; or (iii) the gross negligence or willful misconduct of Customer or its agents.

(c) Cooperation and Control of Defense. In any case in which a party is required to provide indemnification pursuant to Paragraph 9(a) or 9(b) above, the indemnified party, at the indemnifying party's expense, will cooperate with the indemnifying party in the defense of any matters which are the subject of the indemnification; however, the indemnified party reserves the right to approve any settlement agreement in connection with any such matter that is not fully covered by applicable insurance. The indemnified party also reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the indemnifying party; but in that event, the indemnifying party shall have no further indemnity obligation with respect to that matter. The obligation to indemnify, defend and hold an indemnified party harmless in accordance with this Paragraph 9 shall not apply to the extent that any losses or costs suffered by the indemnified party are due to gross negligence or willful misconduct on the part of the indemnified party or any of its agents, or third parties under its control.

10. Termination. (a) Either Customer or Lyris may terminate this Agreement at any time and for any reason, with or without cause, by delivering written notice of the termination to the other party as provided in Paragraph 11, such termination to be effective upon receipt of the notice. Subject to the provisions of Paragraph 8, if Customer is dissatisfied with any term of this Agreement or any Rule,

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policy or practice of Lyris in operating the Lyris Outsourcing System, or in the Content appearing on the Lyris Outsourcing System or the amount or type of fees or billing methods, or any change therein, Customer may terminate this agreement by delivering written notice to Lyris in the manner provided in Paragraph 11 and in such instance this will be Customer's sole remedy.

(b) Termination for Breach. If either Lyris or Customer terminates this Agreement for the other party's breach of a material obligation hereunder, the terminating party will deliver written notice to the breaching party of the breach and its option to terminate this Agreement as provided in paragraph 11 below. Customer shall be responsible for and shall pay to Lyris all amounts due and owing under this Agreement as of the date of termination.

(c) Termination by Customer Other Than for Lyris' Breach. If Customer terminates this Agreement other than for Lyris' material breach of its obligations hereunder, Customer shall be responsible for and shall pay to Lyris in addition to all amounts due and owing under this Agreement to the date of termination, the remainder of the term of the initial contract as set forth in Exhibit A.

(d) Termination by Lyris Other Than for Customer Breach. In the event that a Customer's Agreement is terminated or canceled by Lyris, Customer shall be responsible for and shall pay to Lyris all amounts due and owing under this Agreement as of the date of termination.

11. Notices. Notices to the parties shall be sent by personal delivery or by certified mail, return receipt requested or by recognized overnight courier with a printed confirmation of receipt or by email at the addresses indicated on Page 1 of the Agreement (or to such other address as a party may specify by written notice sent in accordance with this paragraph):
12. Delays. Lyris shall not be liable for failure to perform hereunder due to the inability of Customer, Lyris or any other person to connect to the Internet, or any other failure or unavailability of the Internet for any cause whatsoever, acts of God, or of the public enemy, or of any government or agency thereof, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, severe weather, differences with workmen, restrictions imposed by governmental agencies, war, hostilities, riot, rebellion, delay in or lack of transportation facilities, inability to secure materials, power failure or fluctuation or any other cause beyond the control of Lyris, or Lyris's exercise of its rights under this Agreement. In the event of delay by Lyris due to any such cause, the date of performance of any act by Lyris will be postponed by such length of time as may be reasonably necessary to compensate for such delay.
13. Privacy.
 - (a) Lyris shall exercise reasonable commercial efforts to make the Lyris Outsourcing System secure. Lyris shall not make Customer's passwords available to anyone who is not (i) an authorized agent or employee of Lyris or (ii) a list administrator who has been so designated to Lyris by Customer in writing.
 - (b) Lyris acknowledges that membership lists provided to Lyris by Customer in connection with this Agreement are the property of Customer. Unless Lyris receives specific instructions from Customer to the contrary, Lyris will not sell, license, share, transfer or otherwise disclose Customer's membership lists or Customer's list administrator's login information to any third party except as otherwise specifically provided in this Agreement or the Rules or as required by law or a court order.
 - (c) Lyris may access Customer's membership lists in order to unsubscribe a member who has sent to Lyris a request that it do so or a complaint to the effect that such member is unable or unwilling to unsubscribe themselves, or if such member violates the Rules or the terms of this Agreement.
14. Applicable Law. To the extent of any conflict between this Agreement and the Rules, this Agreement shall take precedence. If any portion of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties and the remaining portions shall remain in full force and effect. This Agreement shall be governed by the laws of the State of California, excluding its conflicts of law rules, and Customer and Lyris each submit to the exclusive jurisdiction of the courts of the State of California for the enforcement of this Agreement or any action arising out of or relating to this Agreement. This Agreement shall bind and be for the benefit of the parties hereto and their respective successors and assigns.

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EXHIBIT A: PRICES

Enterprise Marketing Packages

Package	Set-up	Monthly	Lists	20kb Messages	Data Storage	Custom Domain	Extras
Enterprise Marketing Plus	\$1,500	\$1,500	Unlimited	100,000	500 MB	1 Included	1
Enterprise Marketing Pro	\$1,500	\$3,500	Unlimited	500,000	1 GB	1 Included	1
Ent. Marketing Advanced	\$1,500	\$8,000	Unlimited	2 million	2 GB	3 Included	1

Marketing Packages

Package	Set-up	Monthly	Lists	20kb Messages	Data Storage	Custom Domain	Extras
Marketing Plus	\$1,000	\$1,000	20 + test list	100,000	500 MB	1 Included	1,2
Marketing Pro	\$1,000	\$2,500	Unlimited	500,000	1 GB	1 Included	1
Marketing Advanced	\$1,000	\$6,000	Unlimited	2 million	2 GB	3 included	1

Newsletter Packages

Package	Set-up	Monthly	Lists	10kb Messages	Custom Domain	Extras
Newsletter Basic	\$100	\$200	3	50,000	N/A	3,4
Newsletter Plus	\$250	\$500	20	200,000	1 Included	1,2
Newsletter Pro	\$500	\$1,000	Unlimited	500,000	1 Included	1,2
Newsletter Advanced	\$1,000	\$10,000	Unlimited	20 million	3 included	1

Discussion Packages

Package	Set-up	Monthly	Lists	10kb Messages	Max Members per List	Custom Domain	Extras
Discussion Basic	\$100	\$200	3	40,000	2,000	N/A	3
Discussion Plus	\$250	\$500	50	250,000	2,000	1 Included	1
Discussion Pro	\$1,000	\$2,000	100	2 million	2,000	1 Included	1
Discussion Advanced	\$1,000	\$4,000	Unlimited	5 million	2,000	3 included	1

Term: Six (6) month minimum term unless terminated earlier in accordance with Section 10 of the Outsourcing Service Agreement (the "Agreement"). Customer is responsible for payment of all minimum monthly fees during this term, after which Customer may terminate the Agreement at any time per Section 10 of the Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for successive period of six (6) months unless terminated by either party's transmission of written notice (email and fax inclusive) of its intent not to renew the Agreement at least thirty (30) days prior to the intended termination date.

Extras

1. Extra custom domains: Setup \$50* + Monthly fee \$100
2. Add-on lists: Setup \$50* + Monthly fee \$100
3. Custom domain for Basic packages: Setup \$50* + Monthly fee \$100
4. Extra list: Setup \$100* + Monthly fee \$200 (includes 40,000 messages)

Very Important Notes

- Set-up fees are one-time and non-refundable. * Set-up fees for Options are waived if purchased with this initial Agreement.
- All Outsourcing Packages require a six-month minimum contract.
- You are responsible for your minimum monthly fees each month. By means of this contract, you agree to pay the minimum fee even you have no mailing activity during a particular month.

Message Volume: Size and Quantity

In Lyris terms, "message volume" is a factor of both the actual number of messages you send and your average message size (in kb) over a one-month period. We use the Lyris Billing Module to calculate your actual usage. The package prices above include a specified number of messages and assume a monthly average message size of 20kb for Marketing Packages, and 10kb for all others. Please note: if your total message volume exceeds this

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amount during a particular month—either due to message quantity or size, or both—your total bill for that month will be higher than the package amount. If your monthly message volume exceeds the amount included in your package, you will be charged for the extra mail at the effective "cost per thousand" (CPM) of your package. The CPM rates for the Newsletter and Discussion packages (with 10kb message sizes) are as follows: Newsletter Basic \$4.00; Newsletter Plus \$2.50; Newsletter Pro \$2.00; Newsletter Advanced \$0.50; Discussion Basic \$5.00; Discussion Plus \$2.00; Discussion Pro \$1.00; Discussion Advanced \$0.80. Rates for messages averaging more than 10kb follow a sliding scale based on the effective CPM rates in calculated increments. For example, messages with an average monthly size of 20kb sent with a Discussion Pro package are charged at \$2.00 per thousand; if the monthly size were 25kb, the charge would be \$2.50 per thousand. The rates for Marketing packages (with 20kb message sizes) are as follows: Marketing Plus \$6.67; Marketing Pro \$4.00; Marketing Advanced \$2.50; Enterprise Marketing Plus \$11.67; Enterprise Marketing Pro \$7.00; Enterprise Marketing Advanced \$3.50. Rates for messages averaging more than 20kb follow a sliding scale based on the effective CPM rates in calculated increments. For example, messages with an average monthly size of 40kb sent with a Marketing Pro package are charged at \$8.00 per thousand.

Payment

All Lyris Outsourcing Service Agreements require a minimum term of six (6) months from the date of account activation. For packages with monthly fees of \$500 or less, we require credit card payment. For packages above \$500 per month, we accept purchase orders (North American companies only) and credit cards. If you pay for an account with a monthly fee of \$500 or more by credit card, we'll reduce your setup fee by 50%. For all payment types, we email you an invoice each month that details your usage and costs for that period, including any monthly minimum fees that apply. Please note that we do not send invoices by postal mail. If your account is by credit card, we charge your card automatically each month. Payment for purchase order accounts is due within 30 days of the invoice date. Remember: minimum monthly fees always apply, even if there is no mailing activity during the month. Please also note that set-up fees are non-refundable.

Changing or Modifying Packages

If your requirements change over time, you may switch to a higher or lower package. Please note that such changes will take effect during your *next* billing cycle, not the current month in which you request the new plan, and your new package will renew the Agreement for a six-month minimum service period. To switch to a new package, or to modify your existing one, please complete and submit the Service Agreement Addendum, available at <http://www.lyris.com>.

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EXHIBIT B: THE RULES

Note: Compliance with the Rules is a condition for use of the Lyris Outsourcing System.

Spamming Prohibited:

You (i.e., the Customer) may not use the Lyris Outsourcing System (also known as Lyris.Net) to send unsolicited email ("spam"), whether it be commercial or non-commercial. Your email will be considered unsolicited if your membership addresses are not 100% opt-in by your members. If your email addresses came from harvesting, a purchased email list, another mailing list (even with the approval of the other list owner), or were compiled by any method other than by direct subscription from your members, for the purposes of this Agreement and these Rules they will be considered unsolicited (non-opt-in) email (that is, "spam").

If Lyris receives complaints that you are sending unsolicited commercial or non-commercial e-mail ("spamming"), in addition to any other rights that Lyris may have under this Agreement or under applicable law, Lyris may at its sole option suspend your service pending a reconfirmation of your entire membership list. This reconfirmation may be required by Lyris in any reasonable manner it determines in its sole judgment including, without limit, sending a single e-mail to all of your list members requesting confirmation of their wish to maintain their subscription to such list. Members who do not reconfirm within a reasonable time established by Lyris may be deleted from the list in question. Lyris agrees to use reasonable commercial efforts to contact your designated list administrator by e-mail or phone before suspending service. Your consent will be requested before Lyris contacts your list members for the purposes of reconfirmation, however, if you do not consent to Lyris contacting your list members for the purposes of reconfirmation, Lyris may terminate this Agreement.

If Lyris determines in good faith that you have been spamming, in addition to any other rights under this Agreement and applicable state or federal law, (i) Lyris will issue a one-time warning to your primary contact's email address to cease such activity, after which if your spamming continues (ii) Lyris may bring an action in any court of competent jurisdiction to enjoin such activity, it being understood that such activity may cause irreparable harm to Lyris which may not be fully compensable by monetary damages and (iii) Lyris may recover from Customer monetary losses caused to Lyris by such activity in an amount equal to (a) \$500 for each such item of unsolicited e-mail which Customer has sent to each separate and identifiable e-mail address in violation of this Rule, which amount the parties agree is a fair and reasonable estimate of Lyris's losses which would be occasioned by such violation; or (b) if Lyris can establish a greater amount of monetary loss, the amount of such actual monetary loss suffered by Lyris as a result of such violation including, but not limited to, any damage or loss (including attorney's fees) resulting from any claim made against Lyris as a result of Customer's conduct in violation of this Rule. In addition to the foregoing, Customer shall be responsible for reasonable costs incurred by Lyris in bringing such actions, including reasonable attorney's fees.

Other Unacceptable Uses:

Additionally, you may not use the Lyris Outsourcing System to:

1. Send email with an invalid "From:" or "Reply-to:" address. All messages posted to your list must contain valid email addresses and you must be responsive to all replies from members of your list, including unsubscribe requests. You may not refuse or ignore unsubscribe requests from members of your list.
2. Harass, threaten, embarrass or cause distress, unwanted attention or discomfort to a person or entity.
3. Post or transmit sexually explicit images or other content that is deemed by Lyris to be offensive.
4. Transmit any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, or hateful content or content which is racially, ethnically or otherwise objectionable, or which infringes upon the rights of any third party, as determined by Lyris.
5. Impersonate any person, including but not limited to, an official of Lyris or an information provider, or communicate under a false name or a name that you are not entitled or authorized to use.
6. Intentionally or unintentionally violate any applicable local, state, national or international law, including but not limited to any regulations having the force of law.

Membership Confirmation:

You will use a "double opt-in" (signup plus confirmation) subscription method for all new list members, as provided in Paragraph 3(c) of the Agreement. The confirmation email you send to new members may not include advertising or calls-to-action other than an appeal to confirm the member's subscription. If you import unconfirmed (single opt-in) members directly into your list, or include advertising or other unsolicited calls-to-

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action in the confirmation message, be advised that you do so at your own risk, and that, in case of complaints of spamming, Lyris reserves the rights described in the section entitled "Spamming Prohibited".

Unsubscribing:

All list messages must include the Lyris unsubscribe instructions in the body or footer of the message, so that members can unsubscribe themselves from the list.

List owners should respond to member requests for manual removal from the list with courtesy and timeliness. Please do not discard personal email messages you receive asking to be removed from your list. Even if the user request for removal is aggressive, unfriendly or otherwise rude, you should nonetheless make every attempt to help the user get off your list and to resolve the situation.

Membership List:

You may not use the Lyris Outsourcing System for one-time mailings to a list of members after which you delete substantially all of the membership and create a new list. Your membership must be a static, permanent list to which you add or delete new members and/or members subscribe or unsubscribe themselves in the ordinary course.

Violation:

In the event you violate these Rules, Lyris may, in its sole discretion, remove your list from its server and terminate your right to use the Lyris Outsourcing System. List owners should be aware that they are responsible for the behavior of their list members.

Privacy:

Lyris is committed to maintaining your privacy and that of your list members.

1. Lyris treats private communications on or through the Lyris Outsourcing System as strictly confidential.
2. For your protection, we strongly recommend you do not give your membership list to anyone, ever.

See Paragraph 13 of the Service Agreement for more information on Lyris's Privacy Policy.

AGREED:

Customer name (printed): _____ Title: _____

Customer Signature: _____ Date: _____

**** Please fax and mail this Agreement to Lyris per the instructions on Page 1 ****