

## ***Direct Marketing Advertising – DMASA***

---

### **1. Definition of direct marketing**

Direct Marketing is a set of business practices designed to plan for and present an organisation's products or services in ways that build effective customer relationships.

### **2. Application**

#### **2.1 *Intent of the Code***

This Code of Ethics and Standards of Practice applies to DMASA member organisations regardless of business sector, sub-discipline or direct marketing medium employed.

Its intention is to identify the ethical principles and best practices that members of the DMASA consider essential to the conduct of direct marketing and direct marketing communications activity in South Africa.

This Code does not purport to replace legal advice or provide legal guidance. Marketers should inform themselves about relevant laws that apply in their jurisdiction including, but not limited to, the South African Constitution and Bill of Rights, and consumer and privacy laws in South Africa. The laws that affect direct marketing in SA as identified as at May 2011 are—

- The Constitution and Bill of Rights Act 108 of 1996
- The Promotion of Access to Information Act 2 of 2000
- The Promotion of Administrative Justice Act 3 of 2000
- Electronic Communications and Transactions Act 25 of 2002
- Electoral Act of 1998
- Identification Act of 1997
- Unfair Discrimination and Promotion of Equality Act of 2000
- Unfair Businesses Act of 1988
- The Lotteries Act 57 of 1997
- National Credit Act 34 of 2005
- Consumer Protection Act
- Protection of Personal Information Bill

**2.2 Consumer Marketing**

This Code applies in its entirety to consumer marketing.

**2.3 Business-to-Business Marketing**

This Code generally applies to business-to-business marketing, with specific exemptions for those practices identified as exclusively relating to consumer marketing.

**2.4 Not-for-Profit Organisations**

This Code applies in its entirety to direct marketing activities conducted by charitable or not-for-profit organisations. The terms “consumers” or “businesses” referenced throughout this Code should be regarded as interchangeable with the more common not-for-profit sector descriptors for “donors” or “supporters”. Please refer to the Consumer Protection Act for definitions [www.thedti.oov.za](http://www.thedti.oov.za)

**2.5 Organisations Marketing Internationally**

Organisations selling abroad are governed by this Code unless doing so contravenes the laws of foreign jurisdictions.

**2.6 Other Codes and Regulations**

The DMASA Code of Ethics and Standards of Practice are intended to stand alongside codes and standards of other South African marketing, advertising and sector-specific organisations.

Marketers are also encouraged to review those guidelines referenced throughout the DMASA Code of Ethics.

**3. Responsibility for direct marketing communications**

Marketers are responsible for the content of their direct marketing communications and the practices of their suppliers and advertising agencies when in the course of executing direct marketing communications on their behalf. This responsibility extends to suppliers which are not DMASA members. For responsibilities of service providers, please refer to Clause 13 of this Code.

**4. “Must” vs “should”**

Throughout this Code, use of the word “must” indicates that a clause is compulsory for marketers. Use of the word “should” indicates that the clause is not compulsory but strongly encouraged as a best practice.

## 5. Demonstration of commitment

### 5.1 *Annual Confirmation*

DMASA members must confirm their compliance with this Code of Ethics and Standards of Practice annually.

Each member organisation has a designated Voting Member, who must sign the compliance clause on their membership application and annual renewal—

“My company/organisation agrees to comply with the DMASA Code of Ethics and Standards of Practice, to participate in DMASA’s Complaint Resolution programme, and, for the purposes of marketing to consumers, to participate in the DMASA Do Not Contact Service”.

### 5.2 *Supporting the Code*

To demonstrate support for this Code and to actively promote widespread awareness of its principles, ethical practices and obligations, member organisations should—

- (a) ensure that employees engaged in the marketing process are familiar with its content;
- (b) prominently display their DMASA Membership plaque in their place of business; and
- (c) include the Association logo in their marketing communications (see also DMASA’s Guide to the Use of the DMASA Logo).

## 6. Overarching ethical principles

### 6.1 *Personal Information Practices*

Marketers must promote responsible and transparent personal information management practices in a manner consistent with the provisions of the Personal Information Protection and Electronic Documents Act and/or applicable provincial legislation and the 8 privacy principles detailed in Clause 10 of this Code.

### 6.2 *Truthfulness*

Marketing communications must be clear and truthful. Marketers must not knowingly make a representation to a consumer or business that is false or misleading.

### 6.3 *Campaign Limitations*

6.3.1 Marketers must not participate in any campaign involving the disparagement or exploitation of any person or group on the grounds of race, colour, ethnicity, religion, national origin, gender, sexual orientation, marital status or age.

Refer to Unfair Discrimination and Promotion of Equality Act of 2000.

- 6.3.2 Marketers must not participate in the dissemination of unsolicited material that is sexually explicit, vulgar or indecent in nature, except where required to do so by law, such as a common carrier.
- 6.3.3 Marketers must not participate in the dissemination of any material that unduly, gratuitously and without merit exploits sex, horror, mutilation, torture, cruelty, violence or hate, except where required to do so by law, such as a common carrier.
- 6.3.4 Marketers must not knowingly exploit the credulity, lack of knowledge or inexperience of any consumer, taking particular care when dealing with vulnerable consumers. The term “vulnerable consumer” includes, but is not limited to children, teenagers, people with disabilities, the elderly and those for whom English or Afrikaans is not their first language and subject to provisions of the Consumer Protection Act.

## **7. Universal marketing practices**

These practices apply regardless of industry sector, sub-discipline or marketing medium employed.

### **7.1 Accuracy of Representation**

- 7.1.1 Marketers must not misrepresent a product, service or marketing programme and must not mislead by statement or manner of demonstration or comparison.
- 7.1.2 Photography, artwork, type size, colour, contrast, style, placement, verbal description and audio-visual portrayal must accurately and fairly describe the product or service offered.
- 7.1.3 Marketers must ensure that the general impression of the communication does not deceive by omission or commission.

### **7.2 Clarity**

Marketing communications must be executed in a manner that is simple and easy to understand.

### **7.3 Disclaimers**

Disclaimers in any medium must be prominent and easily accessible, in close proximity to the representations to which they relate. Disclaimers must not be used to contradict claims but to provide additional information.

**7.4 Support for Claims**

Test or survey data referred to in any marketing communication must be reliable, accurate and current and must support the specific claim being made. Marketers must be able to substantiate the basis for any performance claim or comparison and must not imply a scientific, factual or statistical basis where none exists.

**7.5 Disguise**

7.5.1 Marketers must not engage in marketing communications in the guise of one purpose when the intent is a different purpose.

7.5.2 Marketers must not claim to be carrying out a survey or research when their real purpose is to sell a product or service or to raise funds.

7.5.3 Marketers must not mislead or deceive consumers or businesses into believing that a marketing communication is news, information, public service or entertainment programming when its purpose is to sell products or services or to seek donations to causes or charities.

7.5.4 Marketers should avoid undercover or word-of-mouth marketing initiatives that encourage a consumer or business to believe that the marketers agents are acting independently and without compensation when they are not.

7.5.5 Marketing communications that appear to be genuine bills, invoices or government documents must not be used.

**7.6 Testimonials**

Testimonials and endorsements must be–

- (a) authorised by the person or organisation quoted;
- (b) genuine and related to the experience of the person or organisation quoted, both at the time made and at the time of the marketing communication;
- (c) positioned as opinion, not fact, unless supported by valid research; and
- (d) not taken out of context so as to distort the opinion or experience of the person or organisation quoted.

**7.7 Timeliness**

Descriptions and promises must reflect actual conditions, situations and circumstances existing at the time of the promotion.

7.8 **Availability**

Unless the promotional material advises the consumer or business of limited stock, marketers must ensure that quantities are sufficient to meet reasonably foreseeable demand.

7.9 **Price Claims**

7.9.1 Terms such as “regular price”, “suggested retail value”, “manufacturers list price”, and “fair market value”, must represent prices at which the item has been sold in the relevant marketplace in substantial quantity or for a substantial period of time.

7.9.2 Where price discounts are offered, qualifiers such as “up to”, and “xx off” must be presented in easily readable form, and in proximity to the prices quoted.

7.10 **Use of the word “Free”**

7.10.1 Products or services offered without cost or obligation on the part of the consumer or business may be described as “free”.

7.10.2 “Free” may also be used to describe a premium or incentive to purchase products or services, if–

- (a) any cost or obligation is identified in close proximity to the word “free”; or
- (b) the price of the original product has not been specifically inflated to cover the cost of the premium.

If not, the marketing communication must use another term, such as “bonus”.

7.11 **Currency**

Prices quoted in South Africa must be in South African Rand, unless otherwise clearly identified.

7.12 **Comparative Advertising**

Comparisons included in marketing communications must be factual, verifiable and not misleading. They must compare similar aspects of the products or services being assessed. Marketing communications should not stress insignificant differences designed to lead the consumer or business to draw a false conclusion.

7.13 **Disparagement**

Marketers must not use inaccurate information to attack, degrade, discredit or damage the reputation of competitors’ products, services, advertisements or organisations.

**7.14 Disclosures**

7.14.1 Prior to a consumer buying opportunity, marketing offers must provide all the information necessary for a reasonable consumer or business to make an informed purchase decision. Marketers must take reasonable steps to ensure that a consumer or business agreement to enter a contract is fully informed and intentional. Precise disclosures will vary by product or service being marketed, but must include the—

- (a) exact nature of what is being offered;
- (b) price, including all additional charges such as delivery or handling costs;
- (c) terms of payment;
- (d) consumers or business' commitment and any ongoing obligation in placing an order; and
- (e) delivery arrangements including shipping terms and delivery times.

The following additional disclosures must be made either with the offer, or, provided the customer or business can return goods or refuse services, with the shipment—

- (f) other order-related charges (such as handling charges, services charges, surcharges, etc.);
- (g) late payment penalties;
- (h) return and cancellation policies and procedures;
- (i) substitution policies;
- (j) guarantees and warranties; and
- (k) marketer contact information.

7.14.2 For business-to-business transactions, all information necessary for a reasonable business to make an informed purchase decision, including the disclosures described in 9.14.1 must be presented at the time of the original offer and agreement. In the case of an on-going relationship, the information must be presented again only when there is a material change.

7.14.3 A material change to an agreement requires new consent.

7.14.4 Disclosures of offers must be clear, comprehensive and prominent. They must present all items material to a purchase decision and be available in a form which permits a consumer or business to access a hard copy of the information.

7.14.5 Full and fair disclosure of the terms of the offer includes not just wording, but the manner of presentation of the price, terms and conditions and customer commitments and obligations. Information that, by the use of photography, artwork, type size, colour, contrast, placement, verbal description, audio-visual portrayal or other means, materially distorts the clarity of the offer or exceptions to it must not be used.

7.15 ***Fulfilment Practices***

Specific requirements concerning shipment timing, delays, back-orders, substitutions, cancellation provisions, complaint handling, refund practices and written confirmations are dependent on the nature of the agreement as defined in relevant consumer protection and other laws. In addition to legal compliance, marketers should adopt practices of maximum transparency in notifying consumers and businesses about their order status and delivery timing.

7.15.1 *Shipment*: Goods offered must be shipped within 30 days of the receipt of a properly completed order or within any shorter period that may be prescribed by applicable law or within the time limit stated in the original agreement.

7.15.2 *Delay*: If delivery will be delayed, the consumer or business must be advised within 30 days of the receipt of the order or within any shorter period that may be prescribed by an applicable law or within the time limit stated in the original agreement.

7.15.3 *Order Cancellation*: Marketers must give consumers or businesses the right to cancel an order for goods which cannot be delivered within 30 days or any shorter period that may be prescribed by an applicable law or within the time stated in the original agreement, without cost or obligation to the consumer or business.

7.15.4 *Substitution*: Any substitution of goods to those originally offered and ordered must be disclosed to the consumer or business and must be of the same or better quality, or be approved by the consumer or business before shipment. The consumer or business must be informed that they have the right to accept or reject goods substituted, without additional obligation or cost, including return shipping cost.

7.15.5 *Guarantees and Warranties*: Any guarantee provided with the provision of goods or services must clearly identify the name and address of the guarantor and duration of such guarantee. Any valid request under the terms of a guarantee for repair, replacement, refund or other remedy must be honoured promptly.

7.16 ***Automatically Billed Products or Services***

Automatically billed products or services plans – in which the consumer or business agrees to receive and be billed for products or services on a continuing basis – are permitted. The marketer must clearly inform the consumer or business of all material terms and obligations in the original marketing communication, including whether there is a right to cancel.

Any material change in the products or services offered to a consumer or business that has previously consented to be automatically billed for those products or services must require the marketer to obtain new consent. Such new consent may be inferred from the consumer or business’s acceptance or use of the products or services, provided that the consumer or business has a meaningful opportunity to decline the services without incurring cost or further obligation.

7.17 ***Unordered Products and Services***

Marketers must not send unsolicited products or services to a consumer or business for which they invoice, bill or otherwise demand payment. Consumers or businesses have no obligation in respect of the use or disposal of unordered products or services.

7.18 ***Complaints***

Marketers must establish and communicate fair, effective and timely procedures to handle complaints from consumers or businesses.

## **8. Protection of personal privacy**

8.1 The Nine Privacy Principles as defined in the Protection of Personal Information Draft Bill 2006–

1. *Accountability*: An organisation is responsible for personal information under its control and accountable for the compliance of the principles.

2. *Processing limitation*: The collection of personal information shall be limited to that which is necessary, adequate, relevant and not excessive for the purposes identified by the organisation.

Information shall be collected by fair and lawful means. The information must be collected directly from the data subject and the knowledge and consent of the individual are required for the collection, use or disclosure of personal information, except where inappropriate. The data subject has the right to object to usage of information.

3. *Purpose specification*: The specific, explicitly defined and legitimate purposes for which personal information is collected shall be made clear to the data subject at the time the information is collected. The personal information shall be retained only as long as necessary for the fulfillment of those purposes

4. *Further processing limitation*: Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law.

5. *Information quality*: Personal information shall be as accurate, complete and up-to-date as is necessary for the purposes for which it is being used.

6. *Openness*: The organisations must notify the Commissioner of its gathering of personal information activities, and they will be entered into a register. The organisation shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

7. *Safety safeguards*: Personal information shall be protected by security safeguards appropriate to the sensitivity of the information and integrity of personal information. Breach of security must be reported.

8. *Individual participations*: Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

9. *Transborder transfers*: personal information must not be transferred to any foreign country, unless the country ensures an adequate level of protection in relation to the processing of personal information.

For guidance in the implementation of these principles and the key tenets of PPI marketers are encouraged to consult DMASA's Privacy Legislation Guide and DMASA Opt-Out Consent Guidelines.

**8.2 Privacy and Business-to-Business**

Business-to-business marketing also need to apply the PPI 8 Privacy Principles above when the collection, use or disclosure of contact information is limited to name, and/or title/position, and/or business address(es), and/or business phone number(s). If any other personal information is collected, used or disclosed then the provisions of this section apply.

**8.3 Use of DMASA’s Do Not Contact Service**

Marketers must use DMASA’s Do Not Contact Service when conducting a consumer mail campaign. In the absence of a government-mandated, national Do Not Call List, marketers must also use the DMASA’s Do Not Contact Service when conducting marketing by way of a consumer telephone call, cell phone call or SMS, e-mail or fax. The service must be used regardless of whether the campaign is being conducted in-house or through the use of an agency and/or communications provider.

This does not apply to current customers who subscribed to communications prior to 01 April 2011, and who have separately requested that they be included on an organisation’s internal Do Not Contact list.

**8.4 Opt-Out Opportunity**

Recognising that a consumer can opt-out of receiving marketing communications at any time, marketers must present consumers, including current customers, an easy-to-see, easy-to-understand and easy-to-execute opportunity to decline further marketing, the use of their name or other information, at least once every three years. Marketers must always inform the consumers of the charge of opting out. The consumer cannot be charged more than the cost of transmission of the opting out after network charges.

See also Clauses 12.4.9 and 12.6.5 of this Code, “Fax Marketing Opt-Out” and “E-mail Marketing Opt-Out”.

**8.5 Source of Personal Information**

Marketers must provide consumers with the source of their personal information, upon request. Please refer to the Electronic Communications and Transactions Act No. 25 of 2002.

**8.6 List Rental Practices**

Marketers must only rent or transfer their lists where they have a contractual guarantee that list users will abide by the relevant privacy laws in South Africa. Further, marketers should adopt a

list rental and data transfer policy that limits rental of information only to organisations that agree to comply with Clause 10.3 of this Code, “Use of DMASA Do Not Contact Service”.

## **9. Marketing to children and minors**

By definition, Clause 11 of this Code applies to consumer marketers only. In addition to the rest of this Code, and to specific legal requirements of the relevant jurisdiction(s), when marketing to children and minors, marketers must adhere to the following requirements.

### **9.1 *Age and Application***

For purposes of this Code, the term “child” refers to someone who has not reached his or her 18<sup>th</sup> birthday, and the term “minor” refers to someone who has not reached his or her 21<sup>st</sup> birthday and/or is otherwise classified as a minor under South African law.

### **9.2 *Responsibility***

Marketing to children and minors imposes a special responsibility on marketers. Marketers must recognise that children and minors are not adults and that not all marketing techniques are appropriate for them.

Marketers will use discretion and sensitivity in marketing to children and minors, to address the age, knowledge, sophistication and maturity levels of their intended audience. Marketers should exercise caution that they do not take advantage of or exploit children and minors, particularly—

- (a) Marketers must not portray sexual behaviour or violence that is inconsistent with community or industry standards.
- (b) Marketers must respect the parent/guardian-child relationship and must not encourage the child or minor to exclude parents or guardians from a purchase decision.
- (c) Marketers must not solicit, collect or knowingly use personal information from children and minors as a means of acquiring further household information.

### **9.3 *Consent***

Marketing interactions with children and minors are governed by the following guidelines concerning consent—

- 9.3.1 Except as provided for below in Clause 11.4 of this Code, “Contests Directed to Children”, all marketing interactions directed to children that include the collection, transfer and requests for personal information require the express consent of the child’s parent or guardian.

- 9.3.2 Where the child, parent or guardian withdraws or declines permission to collect, use or disclose a child's information, marketers must immediately delete all such information from their database.
- 9.3.3 Marketers must obtain the express consent from a minor for the collection and use of their personal and/or contact information. See Glossary of Terms of this Code for a definition of "contact information".
- 9.3.4 Marketers must obtain the express consent of the parent or guardian prior to the disclosure of a child's or minors contact information to a third party.
- 9.3.5 Where the minor, parent or guardian withdraws or declines permission to collect, use or disclose a minors information, marketers must immediately delete all such information from their database.

#### 9.4 ***Contests Directed to Children***

Subject to applicable laws, marketers may collect personal information from children for the purposes of contests without obtaining the parent or guardian's express consent, only if the marketer—

- (a) collects a minimal amount of personal information, sufficient only to determine the winner(s);
- (b) deals only with the winner(s)' parent or guardian and does not contact the winner(s);
- (c) does not retain the personal information following the conclusion of the contest or sweepstakes;
- (d) makes no use of the personal information other than to determine the contest or sweepstakes winner(s); and
- (e) does not transfer or make available the personal information to any other individual or organisation.

#### 9.5 ***Credulity***

- (a) Marketing to children and minors must not exploit their credulity, lack of experience or sense of loyalty.
- (b) Marketing communications to children and minors should not understate the degree of skill or age level generally required to use or enjoy the product or service.

- (c) Special care should be taken to ensure that direct marketing communications do not mislead children and minors as to the true size, value, nature, durability and performance of the product or service—
- If extra items are needed to use it (e.g. batteries) or to produce the result shown or described (e.g. paint), this should be made clear.
  - A product or service that is part of a series should be clearly indicated, as should the method of acquiring the series.
  - Where results of the product or service usage are shown or described, it should represent what is reasonably attainable by the average child or minor in the age range for which the product or service is intended.
- (d) Marketing to children and minors must not unduly exploit their impressionability, or susceptibility to peer or social pressures. Marketers must not imply that possession or use of a product or service will make its owner superior to others or that without it the individual will be open to ridicule or contempt.
- (e) Price indication should not be such as to lead children and minors to an unreal perception of the true value of the product, for instance by using the word “only”. Nothing should imply that the product or service is immediately within reach of every family budget.

9.6 ***Age-appropriate Language***

When marketing to children, marketing communications must be age appropriate and presented in simple language, easily understood by children.

Marketers must not knowingly accept an order from a child or minor without a parent or guardian’s express consent. Marketers must not pressure a child or minor to urge their parents or guardians to purchase a product or service.

Marketers must be aware that transactions with minors may not be legally enforceable against the minor, or his or her parent or guardian.

**10. Sub-disciplines and specific marketing practices**

In addition to the rest of this Code, marketers must adhere to the following requirements when employing specific marketing strategies and techniques.

## 10.1 *Direct Mail/Catalogue Marketing*

As the collection, use and disclosure of personal information are closely linked to direct marketing, marketers must be aware of the principles detailed in Clause 10 of this Code, “Protection of Personal Privacy”.

10.1.1 *Renting Lists*: Marketers and list owners or their representatives must define the parameters of the intended use of the list prior to the deployment of a marketing communication. Unless otherwise agreed to and specified in the list or data transfer contract–

- (a) A list or data transaction permits one-time use only.
- (b) Marketers may not transfer personal information from rented lists to their own marketing or customer files.
- (c) Consistent with the definition of current customer, marketers may continue to contact those consumers or businesses that respond to direct marketing or to catalogue solicitations.

10.1.2 *Accessibility of the Marketer*: All direct marketing and catalogue marketing communications must identify the marketer’s name and a complete mailing address or telephone number.

10.1.3 *Pre-notification Membership Plans or Clubs*: A pre-notification subscription membership plan or club is a contractual plan offered by marketers to consumers. Under these plans, the seller pre-notifies the member of a selection that will be sent to the member and billed for unless the member instructs the seller, in a method provided by the seller, not to provide the selection.

Advertising and promotional material for a pre-notification membership plan must clearly and conspicuously disclose material terms before soliciting a contract from a consumer. Material terms include: number of selections in a 12-month period; number of days to instruct the seller not to ship; and any minimum purchase or membership term. A consumer must provide explicit consent to join.

10.1.4 *Continuity Programmes/Advance Consent Marketing Plans*: Programmes where the consumer or business gives consent to receive and pay for products or services on a continuing or periodic basis until the recipient cancels the plan are subject to the requirements laid out in Clause 9.16 of this Code, “Automatically Billed Products and Services”.

- 10.1.5 *E-commerce*: Marketers selling products and services online must–
- (a) provide a clear order confirmation process that allows the consumer to confirm his or her interest in buying, see all the relevant details of his or her order, confirm the accuracy of the details and print the details of the order as submitted;
  - (b) send a separate confirmation e-mail as soon as possible after the online portion of a transaction has been completed; and
  - (c) provide an online “click-through” mechanism for consumers to contact the marketer.
- 10.1.6 *Protection of Personal Information*: Considering the fundamental importance of customer and prospect databases in direct marketing and cataloguing, marketers should give particular attention to the requirements in Clause 10 of this Code, “Protection of Personal Privacy”. Marketers are also encouraged to consult DMASA’s Privacy Legislation Guide and DMASA Opt-Out Consent Guidelines. Book training with the DMASA.
- 10.1.7 *Security*: All electronic transfer of data should be password protected and encrypted.

10.2 **Sales Promotion**

- 10.2.1 *Lotteries and Contests*: The use of contests or prizes in the promotion of goods or services must conform to the laws of South Africa. These marketing practices are highly regulated by law and marketers should obtain guidance from legal experts and/or professional contest administrators. Marketers must present all terms and conditions of a contest in a manner that is clear, visible, easy to find, easy to read and easy to understand. See also Clause 11.4 of this Code, “Contests Directed to Children”.
- 10.2.2 *Field Marketing*: Field marketing is the face-to-face promotion or sale of products or services to consumers. It includes merchandising, sampling, demonstrations and events. Marketers must ensure that information provided directly to consumers by field personnel is not misleading and does not employ unreasonably aggressive sales tactics. See also Clause 9.5.4 of this Code regarding undercover or word-of-mouth marketing initiatives. Field demonstrations must be carried out safely by trained personnel.

10.2.3 *Sampling*: In certain industry sectors (e.g. pharmaceuticals, food, alcohol), this marketing practice is highly regulated and marketers should obtain guidance from legal experts and/or sampling specialists.

Marketers must take reasonable steps to ensure that samples are not distributed inappropriately to children or minors.

### 10.3 **Direct Response Broadcasting**

Marketers and their agencies should for detailed guidance about the development and clearance of commercials, infomercials and public service announcements.

10.3.1 *Misrepresentation*: Marketers must not employ presentations likely to mislead reasonable consumers or businesses that the presentation is news, information, public service or entertainment programming. (Product placement within entertainment programming is acceptable.)

10.3.2 *Endorsement*: Except where the endorser is identified as an expert or is a generally recognised celebrity (whose sole connection with the marketer is the payment of a fee for the endorsement), any material connection between the endorser and the marketer must be disclosed.

Results, experiences or findings of the endorser must be generally representative of the results to be expected by the average consumer or business. Alternatively, the marketer must clearly and conspicuously explain that the experiences or findings are not typical of the experiences of the average consumer or business.

10.3.3 *Direct Response Television*: Commercials that solicit orders must clearly disclose the price, purchase terms, shipping costs and currency if other than South African.

10.3.4 *Infomercials and Transparency*: Infomercials (direct response commercials over 12 continuous minutes in length) must be preceded and followed by a clear or prominent video and oral announcement that the presentation is a paid commercial message. This announcement must identify the product or service being offered and the marketers identity. The video announcement must also be presented prior to each ordering opportunity. For those infomercials intended for adults only, the opening disclaimer must notify viewers that it contains content intended for adults. This notification must be provided in both audio and video.

10.3.5 *Direct Response Radio*: As a local medium that reflects community standards, marketers should take the local environment into consideration, including the programming environment, the station's format and the composition of the station's audience.

10.4 **Telephone/fax Marketing**

These standards of practice apply to all forms of commercial solicitation relating to the purchase of products or services, or requests for charitable donation conveyed by telephone and/or cell phone (also known as telemarketing), including the presentation of offers by means of telephone facsimile (also known as fax).

10.4.1 *Calling and Faxing Hours*: Marketers must limit the hours of outbound telemarketing or faxing to the hours of 08:00 a.m. to 8:00 p.m. weekdays and 09:00 a.m. to 1:00 p.m. Saturdays. Restrictions refer to the time zone of the called party. Calling or faxing must not be undertaken on statutory holidays.

10.4.2 *Use of DMASA Do Not Contact Service*: In the absence of a government mandated, national Do Not Call List, marketers must use DMASA's Do Not Contact Service when conducting a consumer telemarketing or fax campaign.

10.4.3 *Internal Do Not Contact List*: At the request of either a current customer or a consumer or business, marketers must promptly add telephone or fax numbers to an internal Do Not Contact list and cease marketing to the current customer, consumer or business at that telephone or fax number. Telephone and fax numbers must be retained on the internal Do Not Contact list for three years.

10.4.4 *Unlisted Numbers*: Marketers must not knowingly call any consumer or business who has an unlisted or unpublished telephone number, except where the telephone number was furnished by the consumer or business to that marketer, or by a third party with the consumers consent.

10.4.5 *Sequential Dialling*: Marketers must not engage in sequential dialling.

10.4.6 *Random Dialling*: Marketers must not engage in random dialling other than to a list or public directory where it is possible to remove telephone and/or fax numbers that are on the DMASA Do Not Contact list (in the absence of a government mandated, national Do Not Call List) and/or on a marketers internal Do Not Contact list.

- 10.4.7 *Unsolicited Fax Marketing:* Marketers must not knowingly send unsolicited marketing communications by fax to consumers or businesses, except where the consumer or business is a current customer or has consented to receive such communications.
- 10.4.8 *Fax Marketing Identification and Contact Information:* Marketers must identify the marketer on behalf of whom the fax is being sent, including the telephone number, fax number and name and address of a responsible person to whom the faxed party can write. Marketers must display the originating faxing number or an alternate number where the sender can be reached, except where number display is unavailable for technical reasons.
- 10.4.9 *Fax Marketing Opt-Out:* Marketers must provide an easy-to-see, easy-to-understand and easy-to-execute opt-out opportunity within each fax advertisement.
- 10.4.10 *Telephone Identification and Contact Information:* Marketers must identify themselves, the business or organisation represented and the purposes of the call promptly at the beginning of each outbound telemarketing call. Upon request, the marketer must provide the marketers telephone number and the name and address of a responsible party to whom the called party can write. Marketers must not block Caller ID information, unless there is a significant technological impediment to providing this information to the consumer. Should there be a technological block, the tele-marketer must provide all the details when requested as per above.
- 10.4.11 *Voice Recording:* Marketers must obey the laws concerning voice recording and they must advise consumers when recording a goods or services transaction.
- 10.4.12 *Frequency:* Marketers must not knowingly contact a consumer who is not already a current customer more frequently than once per month for the same product or service unless they have received consent to do so. Business-to-business marketing is exempt from this requirement, as prospect development often requires more frequent contact, calling a business office is less intrusive than calling a consumer at home, and B2B marketing often involves contacting multiple individuals within the same company.

- 10.4.13 *Use of Predictive Dialling Technology:* Marketers using predictive dialling technology should ensure that abandoned or “hang up” calls be kept as close to 0% as possible, and must in no case exceed 5% of dialled calls for any given outbound telemarketing campaign.
- 10.5 ***Cell Phone Text/SMS/MMS Marketing***
- 10.5.1 *Unsolicited Text Messages:* Marketers must not knowingly send unsolicited voice and/or text and/or multimedia messages to wireless devices of either consumers or businesses before consulting the national Do Not Contact database.
- 10.5.2 *Internal Do Not Contact List:* At the request of a current customer or a consumer or business, marketers must promptly add cell phone numbers to an internal Do Not Contact list and cease marketing to the current customer, consumer or business at that number. Cell phone numbers must be retained on the internal Do Not Contact list for three years.
- 10.6 ***Internet/E-mail Marketing***
- 10.6.1 *Collection of E-mail Addresses:* Marketers must identify the purpose for which an e-mail address is being requested prior to or at the time the e-mail address is collected. The e-mail address that has been collected can be used only for those purposes identified, subject to 12.6.3.
- 10.6.2 *Published Business E-mail Addresses:* Published business e-mail addresses should only be used for marketing communications relevant to the business of the e-mail recipient.
- 10.6.3 *E-mail Consent:* Marketers must not send e-mail marketing communications without the consent of the recipient, except where there is an existing business relationship. In cases where a consumer has provided his or her e-mail address to a marketer, the marketer has implied consent to e-mail that consumer.
- 10.6.4 *Internal Do Not Contact List:* At the request of a consumer or business, including a current customer, marketers must promptly add e-mail addresses to an internal Do Not Contact list and cease marketing to that e-mail address. E-mail addresses must be retained on the internal Do Not Contact list for three years.
- 10.6.5 *E-mail Marketing Opt-Out:* Every e-mail message must clearly identify the marketer and source of the e-mail, and

provide the recipient with a simple and easy-to-use click-through means to opt-out from receiving further e-mail marketing communications from the marketer.

- 10.6.6 *E-mail Disclosure*: Marketers must not misrepresent the source of any message or use false or misleading “subject” lines in e-mail marketing communications. The subject line and body text in e-mail marketing communications must accurately reflect the content, origin and purpose of the communications.
- 10.6.7 *Privacy Policy*: Marketers must clearly display a privacy policy on their website that articulates the Organisation’s policy with respect to the collection, use and disclosure of personal information that might be gathered from consumers. The privacy policy must advise consumers what personal information is being collected, used and disclosed. Access to the privacy policy must be provided in every location, site or page from which the marketer is collecting such data.
- 10.6.8 *Security*: All electronic transfer of data should be password protected and encrypted.

## **11. Responsibilities of service providers**

In their role as suppliers to marketers and as key contributors to the marketing industry, service providers are responsible for upholding the highest standards of professionalism and business conduct as set out in this Code and in particular this section.

### **11.1 Confidentiality**

Service providers must protect the confidentiality of their clients’ proprietary information by not disclosing it without express consent from the client, unless required by law.

### **11.2 List Transfer**

Whenever lists are being transferred to a service provider, service providers must provide a contractual guarantee that they will abide by privacy laws in South Africa as these apply to the transfer, handling or storage of the data.

### **11.3 Screening For Approval**

List owners or their representatives should require marketers who are using their list to provide accurate samples of the marketing communications to help ensure that marketing communications comply with this Code.

11.4 ***Use of DMASA Do Not Contact Service***

Service providers should encourage clients that are not DMASA members to use DMASA’s Do Not Contact Service when conducting a consumer mail and/or telephone and/or fax marketing campaign.

11.5 ***Conflict of Interest***

Service providers must not–

- (a) enter into a business relationship with a third-party that conflicts with their client’s interests, without the client’s knowledge; or
- (b) accept compensation or rewards from third parties that create obligations detrimental to their client’s interests, without the client’s knowledge.

11.6 ***Disparagement***

Service providers must not use inaccurate information to attack, degrade, discredit or damage the reputation of competitors.

11.7 ***Misrepresentation***

Service providers must not misrepresent their competence, credentials, experience or professional capabilities.

11.8 ***Authorship***

Providers of creative services must not copy the work of others or claim authorship of others’ work without the consent of the originator or owner of the work.

11.9 ***Responsibility***

While service providers are not normally responsible for the content of marketing materials they only disseminate or distribute (the “Publisher’s Defense”), they should insist on their clients’ compliance with this Code when they are aware of a breach or where they have a role in developing the content of the communications.

**12. Glossary of terms**

***Business-to-Business (B2B) marketing:*** Marketing products or services to other companies, government bodies, institutions and other organisations.

***Consent:*** A voluntary agreement for what is being done or proposed. The following forms of consent may be used to obtain an individual’s agreement to collect, use or disclose their personal information–

- (a) ***Implied consent*** is consent which can be reasonably inferred from the circumstances of a given relationship, transaction or situation.

Implied consent is often used in dealings with one's current customers. For example, it is reasonable to infer that a current customer has given implicit consent to receive a magazine subscription renewal notice or solicitation for a further donation.

- (b) **Opt-out consent** is consent obtained through the presentation of an explicit opportunity to a consumer or business to refuse to grant permission. The following is an example of an opt-out: "We occasionally make our client list available to carefully screened companies whose products or services we feel would be of interest to our customers. If you would prefer not to receive such offers, please check here:"
- (c) **Express consent** (sometimes called positive or opt-in consent) is consent which is definite and unmistakable and results from an action or message from a consumer or business which is given orally or in writing. The following is an example of express consent: "If you would like your child (under age 16) to receive copies of our monthly kids-club newsletters, please check here."

**Consumer marketing:** Marketing products or services to individuals when they are purchasing for personal or household use.

**Contact information:** A subset of personal information, contact information refers solely to an individual's name, home address, e-mail address and/or telephone numbers. This subset of personal information is considered non-sensitive.

**Current customer/Existing business relationship:** An existing business/consumer relationship or current customer relationship exists where a consumer has made a purchase or donation, has rented, leased or contracted for, or has otherwise participated in an organisation's provision of products or services within the past 18 months, or a period consistent with that organisation's normal buying cycle; and an existing business/consumer relationship is also defined as continuing for six months from the date of an inquiry or application from a consumer.

**Direct Marketing:** A set of business practices designed to plan for and present an organisation's products or services in ways that build effective customer relationships.

**DMASA Do Not Contact (DNC) Service/List:** The DMASA Do Not Contact Service enables consumers to reduce the number of marketing offers they receive by mail and/or telephone and/or fax. Unless there is an existing business relationship, marketers must use the DMASA DNC list to cross-reference and purge all consumer telephone, fax and mail marketing lists, removing the contact information of those who are on the DMASA DNC list.

**Internal Do Not Contact list:** A list of current customer, consumer or business contact information of those persons or businesses who have requested that they not be contacted by the marketers organisation. It is used to cross-reference and purge that information from any list to be used for any marketing campaign by that organisation. Often referred to as an “internal deletion list”, this Code requires that internal Do Not Contact lists must be maintained by every organisation that markets for every channel by which they market, and that the information must be retained on the list for three years.

**Personal Information:** Information about an identifiable individual. This does not include the name, title, or business address or telephone number of an employee of an organisation.

**Third party:** An organisation or individual corporately distinct from that with which the customer originally did business (for example a list rental company), including an organisation corporately related to the original marketer or part of the same group, where the relationship would not be apparent to the customer. Third parties do not include data processors operating on behalf of the organisation with which the customer has an established business relationship.

**Word-of-mouth marketing:** Also sometimes referred to as “buzz” marketing, word-of-mouth marketing is capturing the attention of consumers and the media to generate favourable word of mouth about a brand, product, service or organisation.