

The DMA Privacy Shield Program Applicant Information for Swiss-U.S. Privacy Shield Framework



PRIVACY SHIELD PROGRAM

Please provide The DMA Shield Program with the following documents:

- A copy of your Shield privacy policy;
- Company contact information cover sheet;
- DMA Privacy Shield Contract; and
- Privacy Shield Contract fee:
 - \$3,500 fee, for DMA member companies with annual revenue over \$150 million
 - \$2,000 fee, for DMA member companies with annual revenue between \$51 million and \$150 million
 - \$1,000 fee, for DMA member companies with annual revenue between \$21 million and \$50 million
 - \$700 fee, for DMA member companies with annual revenue between \$5 million and \$20 million
 - \$300 fee, for DMA member companies with annual revenue under \$5 million

Please note that DMA membership is a pre-requisite to participate in the DMA Privacy Shield Program.

Please send to: DMA
Attn: Diana Mercado
1333 Broadway, Suite 301
New York, NY 10018
dmercado@thedma.org

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Business Checklist for Privacy Shield Implementation

- Review the U.S. Department of Commerce’s Privacy Shield Framework requirements to determine if this is the best solution for your organization’s needs. Department of Commerce’s website is:**
<https://www.privacyshield.gov>.
- Review the DMA’s Privacy Shield Program:**
<https://thedma.org/resources/compliance-resources/privacy-shield-guide/>
- Designate an executive to be responsible for your organization’s compliance with the Privacy Shield framework.**
- Develop a company privacy policy that meets the requirements of the Privacy Shield framework by assessing your company’s business practices in the following areas:**
 - Data Analysis:**
Analyze data intake flows, data uses, and transfers to third parties.
 - Notice to Customers:**
 - a. Determine to whom, and when, notices must be given;
 - b. Assure notices are drafted accurately and are given at all appropriate times and places; and
 - c. Determine manner in which notice is made publicly available.
 - Opt-out/Opt-in:**
Provide consumers with the opportunity to opt-out or opt-in depending on the nature of the data. Set-up appropriate procedures to respect consumers’ opt-out/opt-in requests particularly with respect to consumers’ requests to not be approached for direct marketing (i.e., in-house suppression system.)
 - Onward Transfer:**
Determine the need for contracts with respect to the transfer of information to third parties. The onward transfer of personal information must be documented by contracts containing appropriate safeguards.
 - Access:**
Set-up procedures to allow customers the ability to access their personal information and the ability to correct, amend or delete it where it is inaccurate or is being processed in a manner that does not comply with the privacy principles in the Privacy Shield.
 - Security:**
Set-up procedures to ensure that the customer’s personal information is protected and secure.
 - Data Integrity and Purpose Limitation:**

Set-up procedures to ensure that the customer's personal information is reliable, accurate, complete, current and processed in accordance with stated purposes.

- Enforcement:**
 - a. Refer consumers to your customer service department or other in-house dispute handling program to address their data privacy complaints; and
 - b. Utilize the DMA Privacy Shield Program as the required independent third-party dispute resolution mechanism to address any unresolved in-house consumer data privacy complaints.
 - c. *Disclose to consumers their ability to seek binding arbitration if steps-- a and b listed above do not resolve complaint to the consumer's satisfaction. **This process will not be available immediately – it will be available when U.S. Department of Commerce and the Swiss Government meet and develop this option at their annual review.*
 - d. If consumer has a national security concern – s/he can be referred to the new Ombudsperson at the Department of State.

- Assessment:**

Establish an annual compliance review process by adhering to either:

 - a. An internal self-assessment compliance review – you need to develop procedures for periodic objective reviews of compliance with your privacy policy and complaint handling; or
 - b. An outside third-party assessment review/audit.
[*The DMA Privacy Shield Program does not provide this auditing function as a part of its service.*]

- Training:**
 - a. Assure all personnel receive general training in your Shield privacy policy. More extensive training should be provided to personnel who have access to or deal with the data; and
 - b. Modify employee/personnel policies to provide for training and discipline for failure to follow your policy.

- Self-Certify to the U.S. Department of Commerce (DOC):**
 - File a self-certification letter with the DOC. This may be done electronically at <https://www.privacyshield.gov/>
 - Re-certify to the DOC on an annual basis through the website.

- Provide DMA Privacy Shield Program with the following documents:**
 - A copy of your Shield privacy policy;
 - Company contact information cover sheet;
 - DMA Privacy Shield Contract; and
 - Annual DMA Privacy Shield Contract fee.

<p>Also, please make sure that your company is a DMA member. DMA membership is a pre-requisite to participate in the DMA Privacy Shield</p>
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**Please send to: DMA
 Attn: Diana Mercado
 1333 Broadway, Suite 301 | New York, NY 10018
 dmercado@thedma.org**

COMPANY CONTACT COVER SHEET

Please submit the following information to the DMA as a condition of membership in The DMA Privacy Shield Program. The DMA Accountability staff looks forward to working with you throughout the process. If you have any questions, please feel free to contact our staff by:

Phone: 202.955.5030 ext. 2436
Fax: 202.955.0085
Email: privacyshield@thedma.org or Lshosteck@thedma.org

Company Name: _____
Contact Name: _____
Title: _____
Address: _____
City: _____
State: _____
Zip: _____
Telephone: _____
Fax: _____
Email: _____
Website: _____

Company Industry Sector(s):

(please choose all that apply)

- financial services
- health care services
- computer services
- manufacturing
- retailing
- direct marketing services
- non-profit services
- telecommunication services
- transportation/aviation services
- tourism
- other (please specify) _____
- other (please specify) _____
- n/a

Your published Shield Privacy Policy is located at:

URL address: _____

Your company receives personal data from Switzerland.

Please submit this form along with the following documents:

- A copy of your Privacy Shield privacy policy;
- DMA Privacy Shield Contract; and
- Annual Privacy Shield Contract fee:
 - \$3,500 fee, for DMA member companies with annual revenue over \$150 million
 - \$2,000 fee, for DMA member companies with annual revenue between \$51 million and \$150 million
 - \$1,000 fee, for DMA member companies with annual revenue between \$21 million and \$50 million
 - \$700 fee, for DMA member companies with annual revenue between \$5 million and \$20 million
 - \$300 fee, for DMA member companies with annual revenue under \$5 million

Please send to:

Data & Marketing Association
Attn: Diana Mercado
1333 Broadway, Suite 301
New York, NY 10018
dmercado@thedma.org

THE DMA PRIVACY SHIELD PROGRAM: MARK AND DISPUTE RESOLUTION AGREEMENT

THIS AGREEMENT (this “*Agreement*”), is made as of _____ (the “*Effective Date*”) by and between DMA, a not-for-profit association located at 1333 Broadway, Suite 301, New York, NY 10018, and _____, a _____ located at _____ (the “*Participant*”), that may operate a site on the World Wide Web at and under the domain name(s) set forth in the signature block below (the “*Participant Site*”), with respect to the Participant’s use of The DMA Privacy Shield Mark, as set forth in Attachment [A] (“*The DMA Privacy Shield Mark*”), and The DMA Privacy Shield Program, as set forth in *The DMA Privacy Shield Program: A Guide for Businesses* (the “*The DMA Shield Program*”). The DMA Shield Program applies to claims brought by data subjects of Switzerland (“*Swiss data subjects*”) against participating U.S. companies in connection with personal data in the possession or control of Participant that is subject to the Swiss-U.S. Privacy Shield Privacy Principles, FAQs and other relevant Swiss documents (collectively, the “*Privacy Shield*”), as set forth in Attachment [B].

NOW, THEREFORE, in consideration of the mutual promises herein, DMA and Participant, intending to be legally bound, agree as follows:

1. ELIGIBILITY REQUIREMENTS.

- A. For the Privacy Shield— Participant warrants and represents that it has or, within twenty (20) days of signing this Agreement, will become self-certified (“*Self-Certification*”), as set forth and made available by the U.S. Department of Commerce (“*USDOC*”) and on the World Wide Web at the USDOC Export Portal at <https://www.privacyshield.gov> and subsidiary and linked pages (the “*USDOC Privacy Shield Site*”). Participant additionally agrees to immediately notify DMA of any changes in Participant’s Self-Certification status or eligibility.
 - B. To Resolve Disputes Based on the Privacy Shield Privacy Principles— When available, Swiss data subjects should seek redress through Participant’s internal compliance mechanism prior to bringing a claim to The DMA Privacy Shield Program. Participant agrees that any claim of an individual arising from the personal data in the possession or control of Participant, which is subject to the Privacy Shield (“*Personal Data*”), shall be resolved according to The DMA Privacy Shield Program. Participant further agrees that any decision made by The DMA Privacy Shield Program Committee shall be based upon the Privacy Shield and that Participant will abide by all rules and decisions of The DMA Privacy Shield Program.
 - C. Notice to Individuals— Consistent with the Privacy Shield, Participant will provide individuals with contact information to enable them to submit questions and complaints about Personal Data. Participant is required to provide individuals with conspicuous notice of The DMA Privacy Shield Program, including all The DMA Privacy Shield Program contact information, as set forth in Attachment [C], if such individuals are not satisfied with the decisions rendered by Participant’s internal complaint mechanism.
2. **SCOPE.** The DMA Shield Program applies to claims brought by Swiss data subjects against Participant in connection with online and offline Personal Data of those data subjects.

3. **APPLICANTS.** DMA will review each applicant for membership. If DMA determines, at its sole discretion, for any reason that it does not wish to enter into this Agreement with an applicant, it shall so notify applicant.

4. **USE AND OWNERSHIP OF THE DMA PRIVACY SHIELD MARK.**

- A. Permitted Use — DMA hereby grants to Participant a non-exclusive limited right during the term and subject to this Agreement to use, display and distribute The DMA Privacy Shield Mark solely for the purposes set forth in this Agreement and in the form provided to Participant by DMA and subject to any use guidelines DMA may publish from time to time. Participant acknowledges that any unauthorized or misuse of The DMA Privacy Shield Mark will cause irreparable harm to DMA and agrees that DMA is entitled to the immediate entry of a permanent injunction therefor.
- B. Ownership Acknowledgement and Use of The DMA Privacy Shield Mark— Participant acknowledges that DMA is the sole and exclusive owner of all rights, title and interest in and to The DMA Privacy Shield Mark. Participant agrees that: (i) Participant shall do nothing inconsistent with such ownership either during the Agreement or at any time afterwards; (ii) Participant shall take no action that will interfere with or diminish DMA’s right in The DMA Privacy Shield Mark; (iii) Participant shall use The DMA Privacy Shield Mark so as to create a separate and distinct impression from any other mark or trademark that might be used by Participant; and (iv) Participant will not display The DMA Privacy Shield Mark in any manner that is misleading, unlawful, or violative of the rights of third parties, or inconsistent with the terms and conditions imposed on its use by DMA.
- C. Non-Alteration— Participant shall not alter The DMA Privacy Shield Mark in any form. If used on Participant’s Site, The DMA Privacy Shield Mark, shall reside on the Participant’s server. Participant shall not alter The DMA Privacy Shield Mark by changing the data contained within the image, changing the file name of the image, or changing the proportion or shape of the image. Notwithstanding anything to the contrary in this Section of this Agreement, Participant may permit its providers to host The DMA Privacy Shield Mark solely for the furtherance of the purposes of this Agreement, and provided that if The DMA Privacy Shield Mark resides on a server other than the Participant’s own server, Participant shall ensure that such third-party conforms to the requirements of this Agreement with regard to The DMA Privacy Shield Mark.

5. **DURATION OF AGREEMENT AND TERMINATION.**

- A. Initial and Renewal Terms— The term of this Agreement is one (1) year and may be renewed annually, beginning on the Effective Date of this Agreement, which shall be the date it is executed by DMA. This Agreement may be extended by DMA on an annual basis, but DMA is under no obligation to do so, nor is it under any obligation to continue The DMA Privacy Shield Program.
- B. Termination—
 - i. *For Breach*— DMA may terminate this Agreement immediately if Participant breaches any of the terms of this Agreement for any reason.
 - ii. *Termination by Either Party for Convenience*— Either party may terminate this Agreement at any time with not less than thirty (30) days prior written notice to the other party for any reason or no reason.
 - iii. *Effect of Termination on Participant’s Rights*— Upon expiration or termination, all rights or benefits granted to Participant shall cease immediately. Notwithstanding anything to the contrary herein, this Agreement shall survive expiration or termination only to the extent necessary to permit Participant to comply with obligations that arise under this Agreement prior to such expiration or termination, including without limitation participation in The DMA Shield Program.

6. **CHANGES TO THE DMA SHIELD PROGRAM.** DMA may alter, and/or update the DMA Privacy Shield Program (“*Amended Terms*”) at any time and from time-to-time by any reasonable means, and notify Participant by any reasonable means, including in electronic or print form, of such Amended Terms to DMA’s Site on the World Wide Web at the “thedma.org”. Participant shall be responsible for periodically checking the website for any changes to The DMA Privacy Shield Program. Participant’s continued use of The DMA Privacy Shield Mark shall be deemed conclusive acceptance of all such Amended Terms.
7. **PUBLICITY.** DMA may refer to or list Participant as a member of the DMA Privacy Shield Program in proposals and marketing materials and regulatory filings. The DMA Privacy Shield Program Committee, at its discretion, may publicly disclose the name of a Participant, the facts of a dispute, and/or the legal reasoning leading to a decision as well as any adverse decisions.
8. **CONFIDENTIAL INFORMATION.** Other than the information stated in Section 7, Participant may request for information to be treated as confidential. In seeking such treatment, Participant shall: (a) identify which materials are confidential and which are not; and (b) affirm in writing that the information for which confidentiality is claimed is not publicly available. Any such requests may be granted at the sole discretion of DMA.
9. **INVESTIGATION.**
 - A. After diligent inquiry and in good faith, Participant covenants and attests that at the time of entering into this Agreement, Participant is not involved in a formal or informal investigation by any known governmental entity or other self-regulation program in any country, including without limitation the Attorney General of any State, the United States Federal Trade Commission, any law enforcement agency, any other state or federal governmental agency with jurisdiction over this matter, or any foreign privacy authority or other foreign government authority, of which it has been notified of the misuse of Personal Data.
 - B. If Participant becomes the subject of any such allegation of misuse of Personal Data or a defendant in any action by any of the aforementioned authorities, it shall, except to the extent prohibited by law, provide immediate notice of the allegation to The DMA and, if applicable, the name of the agency, the purpose of the investigation, and the status of the investigation.
 - C. If such investigation, involving Participant, is referred to a law enforcement agency or any other governmental agency for further investigation, DMA may publish a notice of such investigation, including descriptive references, as DMA deems appropriate in its sole discretion.
 - D. Participant’s failure to comply with any and all remedies resulting from The DMA Privacy Shield Program may, pursuant to the Privacy Shield, result in DMA’s notifying any known governmental entity or other self-regulation program in any country, including without limitation the Attorney General of any State, the United States Federal Trade Commission, any law enforcement agency, any other state or federal governmental agency with jurisdiction over this matter, or any foreign privacy authority or other foreign government authority, of Participant’s non-compliance.
 - E. Participant agrees to hold DMA and each and every member of the DMA Privacy Shield Program Committee harmless from all claims arising out of or related to The DMA Privacy Shield Program, including, but not limited to, in the event that The DMA notifies any known governmental entity or other self-regulation program in any country, including without limitation the Attorney General of any State, the United States Federal Trade Commission, any law enforcement agency, any other state or federal governmental agency with jurisdiction over this matter, or any foreign privacy authority or other foreign government authority.

10. REPRESENTATIONS AND WARRANTIES.

- A. Participant Representations and Warranties—

- (i) *General*— Participant represents and warrants the following: (i) Participant is and will remain in compliance with the Eligibility Requirements in Section [1] of this Agreement; (ii) all of the information provided to DMA is accurate and truthful; and (iii) the individual signing on behalf of Participant has the authority to bind Participant to the terms and conditions of this Agreement.
 - (ii) *Cooperation to Resolve a Complaint*— If Participant is the subject of a complaint submitted by any party to The DMA of an alleged violation of the Privacy Shield by Participant, Participant shall comply with The DMA Privacy Shield Program in an effort to resolve the complaint. Participant agrees that any decision made by The DMA Privacy Shield Program Committee will be based upon the then current Privacy Shield. Participant further agrees to abide by the result and any decision of The DMA Privacy Shield Program.
 - (iii) *No Modification of the Agreement*— Participant warrants that at the time of submitting this Agreement to DMA that Participant has not modified either the form or content of this Agreement from the form and content of the original Agreement as posted on DMA’s website or as otherwise obtained from DMA.
- B. DMA— DMA represents and warrants that it has the right, power and authority to enter into and perform this Agreement.
- C. Disclaimer— EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, THE DMA DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD-PARTY, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION. EACH PARTY FURTHER ACKNOWLEDGES THAT ALL SERVICES ARE PROVIDED “AS IS” TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- D. Limitation of Liability— IN NO EVENT SHALL THE DMA BE LIABLE TO THE PARTICIPANT FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATING TO LOST PROFITS OR LOSS OF BUSINESS OPPORTUNITY) EVEN IF THE DMA IS GIVEN NOTICE OF THE POSSIBILITY OF DAMAGES OR EVEN IF PARTICIPANT, CLAIMING SUCH DAMAGES, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PARTICIPANT ACKNOWLEDGES THAT THE LIMITATION OF LIABILITIES AND DISCLAIMERS OF WARRANTY CONTAINED HEREIN CONSTITUTE AN AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES AND ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES.

11. GOVERNING LAW/JURISDICTION/VENUE/ATTORNEYS’ FEES. This Agreement shall be construed in accordance with, and governed by the laws of the State of New York, exclusive of its conflicts of law principles, as if this agreement were made and to be performed in the State, County and City of New York. The parties hereby consent to exclusive venue and jurisdiction for actions governing this Agreement in the federal or state court having jurisdiction where The DMA’s principal office is located at the time the suit is filed. In any action to interpret or enforce this Agreement, the prevailing party shall be awarded all court costs and attorneys’ fees incurred.

12. INDEMNITY. Participant agrees to indemnify, defend, and hold DMA and each and every member of the DMA Privacy Shield Program Committee harmless from all claims, actions, losses, costs and liabilities, including without limitation litigation costs and attorneys’ fees, and relating to Participant’s failure to comply with the terms and conditions of this Agreement.

13. SANCTIONS. The DMA Privacy Shield Program Committee shall have the authority to issue certain sanctions as a result of their decision. The sanctions available to the DMA Shield Program Committee shall include, but are not limited to:

- A. Correction of actions found not to be in compliance with the Swiss-U.S. Privacy Shield Framework;
- B. Correction or deletion of inaccurate personal information;
- C. Reimbursement by Participant to a Swiss resident of actual, direct monetary damages incurred by that individual as the result of the Participant's violation of the Privacy Shield;
- D. Removal from The DMA Privacy Shield Program and revocation, if any, of Participant's ability to display the DMA Privacy Shield Mark;
- E. Public notification of the decision and action taken by the DMA Privacy Shield Program Committee;
- F. Notification to the U.S. DOC or any relevant U.S. or Swiss authority, as mentioned in Section 9, of the DMA Shield Program Committee's decision and a request for removal from the Privacy Shield Certification List due to a failure to comply with the Privacy Shield;
- G. Referral of the matter to the U.S. Federal Trade Commission, U.S. DOC, or other appropriate governmental agency for enforcement action.

14. GENERAL PROVISIONS.

- A. Entire Agreement— This Agreement embodies the entire agreement between DMA and Participant and supercedes any prior agreements, understandings, and obligations between said parties.
- B. Assignment— Participant may not assign or transfer, directly or indirectly (including without limitation by merger or operation of law), any of its rights or delegate any of its duties under this Agreement without the prior written consent of DMA. Any attempt by Participant to assign this Agreement without DMA's consent shall be void and of no force and effect.
- C. Captions— The headings of the Sections herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
- D. Severability— The provisions of this Agreement are severable. In the event that any provision of this Agreement is determined by a Court of competent jurisdiction or a governmental regulatory entity to be invalid or unenforceable, in whole or in part, that provision shall be construed or limited in such a way as to make it enforceable and consistent with the manifest intentions of the parties. If such construction or limitation is impossible, the unenforceable provision shall be stricken, and the remaining provisions of this Agreement shall remain valid and enforceable.
- E. Survival— Sections 4(B), 5(B)(iii), and 9(C) and (E), survive the expiration or termination of this Agreement.
- F. Acceptance— Upon ratification, this Agreement becomes a legally binding and enforceable document. Any changes must be made by written amendment and agreed on by the other party/s to this Agreement.

Company (the Participant)		
Street Address		
City	State	Zip Code
Email Address	Participant's URL	
Name of Company Officer	Title	
Signature	Date	

For DMA's use only:

Signature for DMA	Date
Email Address privacyshield@thedma.org	ID #

Attachment A— The DMA Privacy Shield Mark



Attachment B – Privacy Shield Privacy Principles, FAQs, and Other Relevant Information

1. Privacy Shield Privacy Principles are set forth and made available by the U.S. Department of Commerce at: www.privacyshield.gov
2. FAQs and other relevant Privacy Shield documents are set forth and made available by the U.S. Department of Commerce at: www.privacyshield.gov
3. Swiss-U.S. Privacy Shield FAQs: <https://www.privacyshield.gov/Swiss-US-Privacy-Shield-FAQs>

**Attachment C – The DMA Privacy Shield Program
DMA Contact Information to post in your Privacy
Shield Notice**

- DMA
Privacy Shield
1333 Broadway, Suite #301
New York, NY 10018
<https://thedma.org/resources/consumer-resources/privacysield-consumers/>
- online complaint form: <https://thedma.org/resources/consumer-resources/privacysield-consumers/dma-swiss-privacysield-complaint-form/>
- fax: 202.955.0085

The DMA Privacy Shield Program Mark



Once your application has been reviewed and approved by DMA staff, you will be contacted regarding the process for downloading and using the mark in your promotional materials.