



## Terms of Sales and Service

### 1. Copy Approval

Advertiser must deliver to Extravagant Media ("Extravagant Media") the content of the advertisement. Advertiser is contracting Extravagant Media to broadcast (the "Copy") no less than three (3) days prior to the desired email broadcast date. All Copy shall be subject to Extravagant Media's approval. Extravagant Media reserves the right to reject any Copy that does not conform to Extravagant Media's requirements, including, but not limited to Copy that advertises or promotes any product or service involving illegal activity, illegal products, illegal product paraphernalia, sexual paraphernalia, adult items or other media, gambling, weapons, illicit activities, chain letters, pyramid fund raising, or similar types of material. By reserving this right, Extravagant Media shall not be legally obligated for any failure to advise Advertiser of the nature of any such Copy.

### 2. Details of Broadcast

The email messages broadcast by Extravagant Media shall accurately identify the source from which the message was delivered, and shall contain multiple opt-out features that allows the recipient to electronically communicate their desire to be removed from the Extravagant Media (or affiliate) database.

### 3. Hardware, Software and Database

Extravagant Media shall obtain and maintain the computer hardware, software and databases necessary to perform its obligations under these Terms and Conditions. The hardware and software is dedicated hardware and software, which belongs exclusively to Extravagant Media. Nothing in these Terms and Conditions shall grant any right, title or interest in or to the Extravagant Media (or affiliate) database, hardware or software.

### 4. Payment

Advertiser shall pay in full the fees charged by Extravagant Media in advance of receiving service. If Advertiser fails to pay the full amount of the charges detailed in any Extravagant Media invoice within five (5) days of such invoice, the unpaid amounts of such invoice shall accrue interest at a rate of 28% per annum. Additionally, Advertiser agrees to pay all of Extravagant Media's cost of collection of such charges, including and without limitation Extravagant Media's reasonable attorneys' fees. Extravagant Media maintains a NO REFUND policy on all sales. Any attempt to cancel payment made to Extravagant Media, or any of its agent's, after 72 hours of initiating payment, or within three (3) days of scheduled service, or anytime after service has been rendered, will be considered a breach of this Agreement and further treated as "Chattel of Service" (Theft of Service), and may be prosecuted criminally as such. If any such attempt at cancellation of payment is made without written notification to Extravagant Media outlining such action, the action will further constitute "Fraud" (Fraudulently obtaining Service), and will be criminally prosecuted as such.

### 5. Recurring Billing

Any service agreement between Advertiser and Extravagant Media, for which Extravagant Media agrees to provide service on a daily, weekly, bi-weekly, or monthly basis, such as "Weekly Mailing Program" or "Monthly Mailing Program", is considered a "Recurring Billing Account". Recurring Billing Accounts are subject to the same "Terms of Sales and Service" as all other transactions, in addition to the following; 1. Recurring Billing Accounts are automatically renewed at the end of each billing cycle. Unless otherwise specified in writing, each billing cycle shall be a period of 90 days. After the initial 90 days of service, the service agreement will automatically renew for an additional 90 days, unless a duly authorized cancellation request has been submitted no less than 30 days in advance of the next billing cycle. 2. The Recurring Billing Cycle begins on the date in which the order is received. 3. Cancellation Request must be sent by fax, no less than 30 days in advance, to 801-684-5272. Any cancellation request which is not signed and submitted by the same party who authorized payment on the original Invoice is not duly authorized, and therefore will not be processed. Subsequent to delivery of your duly authorized cancellation notice, and upon acceptance, you will receive confirmation of your cancellation from [billing@extravagantmedia.com](mailto:billing@extravagantmedia.com)

### 6. Late Fees

In addition to the terms described in Section 4, if Advertiser fails to pay the full amount of the charges detailed in any Extravagant Media invoice within five (5) days of such invoice, Advertiser shall pay Extravagant Media a Late Fee in the amount of 35% of the charges detailed in such Extravagant Media invoice. In the event of Chattel of Service or Fraud described in Section 4, the Advertiser shall pay Extravagant Media an additional Penalty Fee in the amount of 35% of the total outstanding balance after calculating the original Invoice and Late Fee.

### 7. Indemnification

You agree to indemnify, defend, and hold harmless Extravagant Media, its parents, subsidiaries, affiliates, officers, directors, employees, agents, and suppliers, and their respective affiliates, officers, directors, employees, and agents, from any claim, action, demand, or damage, including reasonable attorney's fees, made by any third party or governmental agency arising out of or related to your use of any service offered by Extravagant Media or your violation of this Agreement, including without limitation, claims or suits for libel, violation of rights of privacy or publicity, interference with property rights, trespass, copyright infringement, trademark infringement, patent infringement or plagiarism. Extravagant Media may, at its sole discretion, assume the exclusive defense and control of any matter subject to indemnification by you. The assumption of such defense or control by Extravagant Media, however, shall not excuse any of your indemnity obligations.

### 8. Warranties

EXTRAVAGANT MEDIA'S SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU EXPRESSLY AGREE THAT USE OF ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, EXTRAVAGANT MEDIA DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

EXTRAVAGANT MEDIA DOES NOT MAKE ANY WARRANTY THAT ITS SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED; NOR DOES EXTRAVAGANT MEDIA MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA.

YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA IS AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND OR DATA.

EXTRAVAGANT MEDIA DOES NOT MAKE ANY WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH OR FROM ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA, OR ANY TRANSACTIONS ENTERED INTO BY USE OF OR THROUGH ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EXTRAVAGANT MEDIA OR THROUGH ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.



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### 9. Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, SHALL EXTRAVAGANT MEDIA OR ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR THE INABILITY TO USE ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO BY MEANS OF OR THROUGH ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA, OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, OR OTHER INFORMATION THAT IS SENT OR RECEIVED OR NOT SENT OR RECEIVED, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLES, EVEN IF EXTRAVAGANT MEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU AGREE THAT EXTRAVAGANT MEDIA IS NOT LIABLE FOR ANY FAILURE TO DELIVER, HOLD, OR STORE EMAIL TRANSMITTED THROUGH THE SERVICE. YOU AGREE THAT EXTRAVAGANT MEDIA DOES NOT ENDORSE THE SUBJECT MATTER OF ANY OF ITS LISTS OR ANY OF THE CONTENTS OF COMMUNICATIONS TRANSMITTED THROUGH ITS SERVICE. YOU ALSO AGREE THAT EXTRAVAGANT MEDIA SHALL NOT BE RESPONSIBLE OR LIABLE TO YOU, OR TO ANYONE, FOR THE STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR ARISING FROM USE OF ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA.

IF YOU ARE DISSATISFIED WITH ANY SERVICE OFFERED BY EXTRAVAGANT MEDIA, YOUR EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE WITHOUT REFUND OF ANY KIND WHATSOEVER. YOU AGREE, AND ACKNOWLEDGE AWARENESS THAT EXTRAVAGANT MEDIA MAINTAINS A NO REFUND POLICY ON ALL PRODUCTS AND SERVICES OFFERED AT ALL TIMES.

### 10. Force Majeure

Neither party shall be liable for delays or nonperformance of these Terms and Conditions caused by strike, fire or accidents, nor shall either party be liable for delay or nonperformance caused by lack of availability of materials, fuel or utilities or for any other cause beyond its control.

### 11. Assignment

Neither party may assign its rights or obligations under these Terms and Conditions without the prior written consent of the other party.

### 12. Relationship of the Parties

The parties are independent contracting entities, and there is no partnership or agency relationship between them.

### 13. Entire Agreement

Except as modified or supplemented by a writing executed by both parties, the Terms and Conditions described herein and in the attached invoice, incorporated by reference herein, are the only representations, warranties, and understandings between the parties with respect to the products and/or services described herein.

### 14. Disputes

In the event of a dispute, Advertiser agrees to communicate their intent to Extravagant Media by contacting [billing@extravagantmedia.com](mailto:billing@extravagantmedia.com) prior to taking any other action, and attempt to resolve the dispute. Failure to contact Extravagant Media, and attempt a dispute resolution prior to taking any other action, will result in a breach of this agreement by Advertiser. The Advertiser hereby waives any right to a trial by jury in the event of any controversy or claim relating to these Terms and Conditions. The law of the Province of Ontario Canada shall apply to any resulting claim or action, and the exclusive jurisdiction and venue for any proceeding brought pursuant to these Terms and Conditions shall be Toronto, Ontario, Canada. Extravagant Media maintains relationships with PreCharge.com and MaxMind.com, and will file a negative report against any advertiser/client attempting a chargeback or payment reversal, which may include notices to major credit bureaus.

### 15. Severability

Should any provisions of these Terms and Conditions be found invalid or unenforceable, all such provisions are to be enforced to the maximum extent permitted by law, and beyond such extent shall be deemed severed from these Terms and Conditions without affecting the validity or enforceability of any other provision.

### 16. Headings

The headings of these Terms and Conditions are for convenience only and shall not be used to construe the meaning of this Agreement.

### 17. Spam Traps and/or Spam Complaints

Extravagant Media warrants that all emails delivered through the Extravagant Media network contain complete subscriber information including but not limited to subscribers IP address, Time & Date or Source stamps. In the unlikely event that a complaint or complaints are sent to the ISP of an advertiser, upon request Extravagant Media will provide complete details to the ISP verifying that the complaint was from a legitimate opt in subscriber. While Extravagant Media employs the use various filters and techniques to ensure that spam traps and malicious user records are filtered out, we are not responsible for Damages incurred by the inclusion of spam traps, or any malicious user records, in any database sold, delivered to, or leased under this agreement.

### 18a. Database Purchases and CAN-SPAM legal compliance

Can Spam Act of 2003: Purchaser agrees that any use of this data will be in compliance with all applicable state and federal laws, including the CAN-SPAM Act of 2003, and with Purchaser's own privacy policies. If using this data to send e-mail messages, such compliance includes, but is not limited to: (1) not using forged, false or misleading header information; (2) not using false or misleading subject lines; (3) including the sender's physical address (not a P.O. box); (4) clearly identifying the e-mail message as an advertisement; (5) providing an opt-out notice with a functioning opt-out mechanism via e-mail or the Internet which is operational for at least 30 days after sending the message; (6) honoring opt-out notices within 10 business days of receipt of each opt-out request; and (7) for e-mail messages with sexually explicit material, including a warning in the subject line and requiring an additional step to view the material after opening the message. If reselling, sharing, renting or transferring this data, such compliance includes, but is not limited to, not reselling, sharing, renting or transferring the e-mail addresses of recipients who have opt-ed out of receiving e-mail messages. PURCHASER AGREES NOT TO SELL, SHARE, RENT OR TRANSFER THIS DATA TO OR WITH ANY PERSON OR ENTITY WHICH DOES NOT AGREE, IN WRITING, TO USE THIS DATA IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL LAWS, INCLUDING THE CAN-SPAM ACT OF 2003, AND WITH ITS OWN PRIVACY POLICIES. Purchaser agrees to indemnify Extravagant Media, its clients, owners, officers, partners, members, managers, employees, agents, subsidiaries, and their respective successors and assigns, against any and all claims, damages, liabilities, costs and expenses (including reasonable attorney's fees) arising from or related to Purchaser's breach or alleged breach, or the breach or alleged breach of any person or entity to whom Purchaser may have sold the data, of the promises and obligations herein.



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### **18b. Database Purchases and CAN-SPAM legal compliance**

Extravagant Media represents that it shall enter into a signed agreement(s) with Web Property Owner ("Publisher") (and any other broker from which the data is being acquired, if applicable) similar to this Certification whereby the Publisher (and broker, if applicable) represents and warrants that the data referenced in above was collected in such a manner as to be in full compliance with "Campaign Specifics" and with all applicable state and federal laws, including the CAN-SPAM Act of 2003, and with all applicable privacy policies. Such compliance includes, but is not limited to: (1) not having collected this data by e-mail address harvesting or dictionary attacks; and (2) not including the e-mail addresses of recipients who have opted-out of receiving e-mail messages in this data. Publisher will also represent and warrant that it can and will comply with, at a minimum, the requirements set forth herein, and agrees to indemnify and hold Extravagant Media and Purchaser harmless from any violation of the CAN-SPAM Act of 2003.

### **19. Non-circumvention**

Purchaser agrees that it will not engage in any co-registration activity with the Internet Property Owner providing the co-registration space for this campaign for a period of ninety (90) days following the termination of this Insertion Order, unless a previously existing business relationship between Purchaser and Internet Property Owner can be demonstrated to the reasonable satisfaction of Extravagant Media. In this connection, both Parties agree and acknowledge that if Purchaser violates their obligations hereunder, Extravagant Media will be entitled to damages in the amount of twenty-five percent (25%) of the gross amounts paid to Internet Property Owner resulting from co-registrations placed by Purchaser on Internet Property Owner's site(s).

### **20. Usage**

Except as otherwise stated herein, Extravagant Media hereby grants the Purchaser unrestricted royalty-free worldwide right to transfer, share, rent, sell, or otherwise use this data at their sole discretion, unless stated otherwise on the Purchaser's invoice.

### **21. Applicability**

By placing an order with Extravagant Media and/or using any of our websites and web-services, you are subject to and bound by the terms of this agreement.