

SIGNATURE PAGE

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

Each of the following definitions shall be equally applicable to the singular and plural forms of the terms defined. As used in this Agreement:

“**CASL**” means the Canada Anti-Spam Legislation and any regulations or changes promulgated thereunder.

“**CAN-SPAM Act**” means the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. § 7701-13), and any regulations promulgated thereunder

“**Confidential Information**” means and includes information regarding either party’s business, operations or activities that is not publicly available and that is: (a) first disclosed in written, electronic, photographic or other tangible form and conspicuously marked “Confidential” or “Proprietary” or the like; or (b) first disclosed in non-tangible form and orally identified as confidential or proprietary at the time of disclosure and is summarized in tangible form and conspicuously marked “Confidential” or “Proprietary” or the like within 30 days of the original disclosure.

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679, effective May 25, 2018.

“**Intellectual Property**” means domain names, company names, patents, trademarks, trade names, trade dress, copyrights, trade secrets, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, suggestions, materials, improvements, works of authorship, artwork, software, documentation, or intellectual property of a proprietary nature, and the like.

“**Intellectual Property Rights**” means rights in and to, including the right to assign, lease or transfer, domain names, company names, patents, trademarks, trade names, trade dress, copyrights, trade secrets, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property, rights in other tangible and intangible assets of a proprietary nature, and the like.

“**IP Address**” means a numerical identification and logical address that is assigned to devices participating in a computer network utilizing the Internet Protocol’s set of rules, which govern the format of data sent over the Internet or other network.

“**Message Content**” means information which is provided by a Client to Great American for distribution under this Agreement, including, but not limited to, audio and visual information, text, documents, and offers for products and services.

“**Sender**” means “sender” as defined under the CAN-SPAM Act.

“**Statement of Work**” shall have the meaning set forth in Section 2.

“**Trademarks**” means all rights in and to, including the right to assign, lease or transfer, US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, corporate names, and domain names, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

2. SCOPE OF SERVICES

2.1 Statements of Work. Great American agrees to provide certain professional services as described on separately executed work orders (each a “Statement of Work” or “SOW”), as may from time to time be entered into hereunder. Each Statement of Work shall be substantially in the form attached as Schedule A and shall describe the services to be performed by Great American under this Agreement, applicable pricing and payment terms, and other appropriate terms and conditions.

2.2 Conflict. Each Statement of Work shall be governed by the terms and conditions of this Agreement. If there is a conflict between this Agreement and any Statement of Work, the terms of the Statement of Work shall control.

2.3 Exclusions. Great American does not purport to extend its professional services to any recipient outside the United States of America (“U.S.”), who uses a non-U.S.-based internet service provider or who uses a computer system located outside the U.S. to access electronic messages.

3. USE OF MESSAGE CONTENT

Client grants to Great American a nonexclusive, perpetual, worldwide, nontransferable (except as otherwise permitted under Section 12.5) license to use the Message Content to provide the Services under this Agreement. All Message Content is subject to review and approval by Great American. Great American reserves the right to reject any Message Content.

4. CLIENT RESPONSIBILITIES

4.1 Sender. Client agrees that for purposes of the CAN-SPAM Act it is the Sender of Message Content and is responsible for complying with the duties assigned to Senders under the CAN-SPAM Act.

- 4.2 Prohibited Activities.** Client agrees that Message Content shall not sell, market, advertise either directly or indirectly or link to a message or website that advertises for any firearms, alcoholic beverages or products, tobacco, gambling or gambling services, illegal drugs, pornography or obscene material, prostitution, or any other product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving, including any items prohibited under California Business & Professional Code §22580(i).
- 4.3 Compliance with Law.** Client shall ensure that all Message Content complies with applicable law, including but not limited to the CAN-SPAM Act and all laws governing advertising content including, but not limited to, the Federal Trade Commission Act and the Lanham Act.
- 4.4 From and Subject Line Information.** Client shall specify “From” line and “Subject” line or heading information to be used with the Message Content that is not false, deceptive or misleading to recipients.
- 4.5 Physical Address.** Client shall provide a valid physical postal address within the body of the Message Content.
- 4.6 Use of Opt Out Lists**
- 4.6.1 In line with Client’s responsibilities to comply with CAN-SPAM and its opt-out requirements, Client shall provide to Great American the email addresses of any individuals who have opted out of receiving email communications from Client, so that Great American may strike such addresses from the email distribution list it uses to distribute the Client’s messages pursuant to this Agreement. Great American may not use the Client Opt-Out List for any other purpose. The names of any individuals or entities that voluntarily opt-out of receiving Client emails must be provided to Great American within 5 calendar days of Client receiving the opt-out request.
- 4.6.2 After distributing a Client’s message, Great American will provide to Client the Great American Opt-Out List for the sole purpose of complying with CAN-SPAM, which Client may use for the sole purpose of limiting its future email or other electronic communications to email addresses included on the List. Client may not use the Great American Opt-Out List for any other purpose including Client may not sell or transfer the information in the form of a mailing or other list.
- 4.7 License to Certain Client Intellectual Property.** Subject to and in accordance with this Agreement, Client has rights to any Intellectual Property or Trademarks contained in any and all Message Content and grants Great American a limited, non-exclusive, royalty-free, non-transferrable worldwide license during the term of the Agreement to use, solely in connection with performing any SOW: (a)

Client's Intellectual Property and/or Trademarks; (b) Client's domain names, website addresses, websites, and URL's; (c) Intellectual Property and/or Trademarks contained in any Message Content and provided to Great American for distribution or use; and (d) any Intellectual Property or Trademarks created by Great American on Client's behalf as part of performing any SOW. Client grants no other right or license to any Client Intellectual Property or Trademarks by implication, estoppel or otherwise.

- 4.8 Personal Identifying Information.** The Client will not provide or otherwise transfer to Great American any "Personal Identifying Information," "Personal Protected Information" or "Personal Information" of any individuals as that phrase is defined under the GDPR or federal or state law, including, Michigan's Identity Theft Protect Act, Act 452 Section 445.63(q)-(r). To the extent the Client does provide Great American such information, it will defend, and hold Great American harmless from and against any and all losses, claims, liability, etc., arising out of its providing or transferring such information.
- 4.9 CASL.** The Client will not provide Great American with information, including email, personal, or contact information, for any individual or entity residing in Canada or having an IP Address in Canada.
- 4.10 GDPR.** The Client will not provide Great American with information, including email, personal, or contact information, for any individual outside the U.S., including, but not limited to, individuals in the European Economic Area or having an IP Address outside the U.S.
- 4.11** To the extent "Personal Identifying Information," "Personal Protected Information" or "Personal Information" of any individuals as that phrase is defined under the GDPR, federal or state law, including, Michigan's Identity Theft Protect Act, Act 452 Section 445.63(q)-(r), is provided by Great American to Client in click reports, which are reports generated for some Client identifying the individuals who clicked on or otherwise interacted with an email provided to an individual by Client or by Great American on a Client's behalf, Client will not use, process, collect, distribute or copy that information for any purpose other than Client may review to determine if it wishes to provide additional marketing information or materials to a particular person. After review, the Client must immediately destroy or render unreadable such information.
- 4.12** To the extent Great American provides Client with any information that personally identifies an individual as having purchased, leased, rented, or borrowed written books or other written materials, including magazines ("Subscriber Information"), Client will not provide, disclose or otherwise transfer any such Subscriber Information to any individual or entity. To the extent Client does provide, disclose or otherwise transfer such Subscriber Information, it will defend, and hold Great American harmless from and against any and all losses,

claims, liability, etc., arising out of its providing, disclosing or transferring such Subscriber Information.

5. GREAT AMERICAN RESPONSIBILITIES

- 5.1 Functional E-mail Address:** Unless the Client specifies a return email address to be used, Great American will ensure that any message it transmits pursuant to this Agreement will contain a functioning return email address. However, if Client specifies a return email address to be used, then Client will be responsible for ensuring that such email address is functional.
- 5.2 Opt-Out.** Great American will ensure that any marketing message that it sends pursuant to this Agreement includes a functional mechanism that allows a recipient to opt out of receiving future marketing e-mail messages from Client and that any opt-out request is honored within 10 business days of the opt-out request. For up to 30 calendar days after sending Client's message, Great American will collect opt-out requests related to such message ("Great American Opt-Out List") and will apply any such requests to the mailing list that Great American uses to provide Services to Client under this Agreement. In connection with this 30-day collection period, Great American will forward to Client on a weekly basis (Wi-Fi necessary) an updated Great American Opt-Out List for the Client's CAN-SPAM Act compliance purposes.
- 5.3 Performance.** Great American is not responsible for the performance of the email campaign and does not provide any warranties or promises regarding the results of any email campaign. The success rate of the email campaign depends on many factors outside of Great American's control.
- 5.4 Client's Intellectual Property.** Great American acknowledges that Client owns all right, title, and interest in, to and under the Client's Intellectual Property and that Great American shall not acquire any proprietary rights therein. Any use by Great American or any representative of Great American of any of Client's Intellectual Property and all goodwill associated therewith shall inure to the benefit of Client.

6. TERM AND TERMINATION

- 6.1 Term.** This Agreement shall remain in effect until terminated by either party as provided in this Agreement. Each Statement of Work shall remain in effect until it has expired on its own terms or the services described therein have been completed.
- 6.2 Termination by Either Party.** This Agreement or any Statement of Work may be terminated by either party if the other party:

- 6.2.1 Fails to perform any of its material obligations under this Agreement or any Statement of Work and fails to correct such failure within 20 days after receipt of written notice.
 - 6.2.2 Ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors.
 - 6.2.3 Becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization and such proceeding is not dismissed within 90 days after it is commenced.
- 6.3 Termination for Convenience.** Either party may terminate this Agreement upon 30 days' written notice to the other party at any time that no Statement of Work is then in effect.
- 6.4 Effect of Termination.** Upon termination or expiration of this Agreement or any Statement of Work, Client shall pay Great American for all Services completed by Great American prior to the termination date and each party shall return to the other party any and all Confidential Information of that party.
- 6.5 Survival of Terms.** Upon termination of this Agreement, the provisions of this Agreement providing for the payment of fees and expenses (that accrued prior to termination), warranties, limitation of liability, protection of Confidential Information, indemnification and the miscellaneous provisions shall continue and survive in full force and effect.
- 6.6 Force Majeure.** No Party shall be liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling the any term of this Agreement (except for Client's obligation to pay Great American under this Agreement, when and to the extend the failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) national or regional emergency; (e) compliance with any government order, rule, regulation, or any action taken by a governmental authority; (f) cybercriminal espionage, hacking or interference; (g) shortage of adequate power or telecommunications capabilities; or (h) any other event that is beyond the reasonable control of such party (each of the foregoing is a "Force Majeure Event"). A Party whose performance is affected by a Force Majeure Event shall give notice to the other party stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure to delay and minimize the effects of the Force Majeure Event. During the Force Majeure Event, the non-affected Party may similarly suspend its performance obligations until such time as the affected Party resumes performance.

7. PRICE AND PAYMENT

- 7.1 Services.** The Services provided by Great American shall be at the pricing stated in the applicable Statement of Work.
- 7.2 Invoices.** Unless otherwise provided in the Statement of Work, Great American shall have no obligation to perform any of the duties or provide any of the Services under this Agreement until it has received payment in full of the amount provided in the Statement of Work.
- 7.3 Invoice Disputes.** Client shall notify Great American in writing of any dispute with an invoice along with substantiating documentation/a reasonably detailed description of the dispute within 20 business days from the Client's receipt of such invoice. Client will be deemed to have accepted all invoices for which Great American does not receive timely notification of dispute, and shall pay all undisputed amounts due under such invoices within the period set forth in the applicable Statement of Work. The Client and Great American shall seek to resolve all such disputes expeditiously and in good faith. Except for invoiced payments that Client has successfully disputed, Client shall pay interest on all late payments, calculated daily and compounded monthly at the lesser of the rate of 7% per month or the highest rate permissible under applicable law. Client shall also reimburse Great American for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
- 7.4 Taxes.** Great American's rates and charges do not include any amounts for taxes, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any taxing authority on such amounts. Client agrees to pay all applicable taxes levied by any tax authority based upon this Agreement, any Statement of Work and/or any Services performed by Great American, excluding any taxes based upon Great American's income.

8. WARRANTY

- 8.1 Services.** Great American warrants that the Services provided under this Agreement will be performed in a workmanlike manner. Client shall notify Great American in writing of any breach of this warranty within 30 days after completion of the Services. Great American's sole obligation to Client, and Client's exclusive remedy for breach of this warranty, is re-performance of the service.
- 8.2 Disclaimer.** THE WARRANTY SET FORTH IN SECTION 8.1 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. GREAT AMERICAN EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY

- 9.1 MAXIMUM LIABILITY.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY CLIENT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATION SHALL NOT APPLY TO CLIENT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.
- 9.2 EXCLUSIONS.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION SHALL NOT APPLY TO CLIENT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.

10 CONFIDENTIALITY

- 10.1 Nondisclosure.** Except as otherwise provided in this Agreement, each party agrees that it shall not use or disclose to any third party any Confidential Information of the other party for any reason, except to its employees who require such knowledge in the ordinary course of their employment. Each party shall take all necessary action to ensure that its employees comply with the confidentiality provisions of this Section 10.
- 10.2 Exceptions.** The obligations set forth in this Section 10 shall not apply to any information that (a) is publicly available; (b) is obtained by the receiving party from a third party as a matter of right; (c) is already known or independently developed by the receiving party; or (d) is required to be disclosed by law.
- 10.3 Injunctive Relief.** Great American and Client agree that in the event of any breach of Section 10, monetary damages are not a sufficient remedy or protection for the aggrieved party, and that the aggrieved party shall be entitled to injunction or other relief as may be deemed proper or necessary by a court of competent jurisdiction.

11. INDEMNIFICATION

- 11.1 Warranty.** Client represents and warrants to Great American that Client owns the Message Content, including all associated Intellectual Property Rights, Trademarks or otherwise has the right to grant Great American the right and license provided in this Agreement, and that to the best of its knowledge the Message Content does not infringe any valid Intellectual Property Rights or Trademarks.

11.2 Indemnification. Client shall defend, indemnify, and hold harmless Great American, its affiliates and their officers, directors, agents, employees, and authorized users from and against any liability, claim, action, loss, damage, or expense (including court costs, attorney's fees, and any regulatory penalties) arising out of, or relating to, Great American's use of the Message Content in connection with the Services provided in conformance with the terms of this Agreement or Client's failure to comply with CAN-SPAM requirements, including its opt-out requirements or CASL and its GDPR requirements. Great American agrees to promptly notify Client as soon as it becomes aware of any claim and agrees to cooperate with Client with respect to the defense and disposition of such claim.

12. MISCELLANEOUS

12.1 Independent Contractor. Great American is an independent contractor and nothing in this Agreement shall be deemed to make Great American an agent, employee or joint venturer of Client.

12.2 Excusable Delays. Neither party shall incur liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement, excluding payment obligations, where such failure is caused in whole or in part by events, occurrences, or causes beyond the reasonable control of the party, provided that such party has taken reasonable steps to mitigate the effects of such delay.

12.3 Notices. All notices given under this Agreement shall be in writing and mailed by regular first-class mail or expedited mail service, postage prepaid, and addressed to the parties at the addresses set forth above or at such other addresses as the parties may designate in writing.

12.4 Amendment. No provision of this Agreement may be modified except by a written document signed by a duly authorized representative of each party.

12.5 Assignment. Client shall not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of Great American.

12.6 Waiver. No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach of the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

12.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Great American and Client and their respective legal representatives, successors and authorized assigns. Nothing in this Agreement, express or implied, confers on

any other person any legal or equitable right, benefit or remedy or any nature whatsoever under or by reason of this Agreement.

- 12.8 Severability.** If any provision of this Agreement shall be prohibited or unenforceable by any applicable law, the provision shall be ineffective only to the extent and for the duration of the prohibition or unenforceability, without invalidating any of the remaining provisions.
- 12.9 Governing Law and Venue.** This Agreement shall be governed by and interpreted according to the laws of the State of Michigan, without regard to conflicts of law principles. It shall not be governed by the United Nations Convention on the International Sale of Goods. Any action or legal proceeding concerning this Agreement shall be brought in the state or federal courts located in Kent County, Michigan.
- 12.10 Statute of Limitations.** No party may commence an action under this Agreement more than 2 years after the expiration of its term, or, in the event of a breach, more than 2 years after the occurrence of the breach, or, in the event the breach is not discovered by the injured party when it has occurred, more than 2 years after the breach could, in the exercise of due diligence, have been discovered by such party.
- 12.11 Waiver of Jury Trial.** Client and Great American each separately and individually acknowledge and agree that any controversy that may arise under this Agreement, including any Statements of Work, exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any Statements of Work, exhibits, schedules, attachments, or appendices attached to this Agreement, or the transactions contemplated hereby.
- 12.12 Legal Expenses.** If any action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged or actual dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- 12.13 Counterparts.** This Agreement may be executed simultaneously, in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
- 12.14 Executable by Facsimile.** Any signature of this Agreement or any Schedule through facsimile shall constitute execution of the Agreement or Schedule by such party.

12.14 Entire Agreement. This Agreement, including all Statements of Work, constitutes the entire agreement between Great American and Client with respect to the subject matter of this Agreement and supersedes all earlier agreements and understandings, oral and written, between the parties. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. The terms and conditions of any purchase order or other instrument issued by Client that are in addition to or inconsistent with this Agreement shall be of no effect and shall not be binding on Great American.

**Great American Publishing, Inc. d/b/a
Great American Media Services**

By: _____
(Signature)

(Type or Print Individual's Name)

Its: _____
(Type or Print Individual's Position)

Date: _____

(Type or Print Client's Name)

By: _____
(Signature)

(Type or Print Individual's Name)

Its: _____
(Type or Print Individual's Position)

Date: _____