

Advantage-Mail.com TERMS AND CONDITIONS

IMPORTANT – READ CAREFULLY. This Terms and Conditions constitutes a legal agreement between you (the “User”) and Candace Crowe, Inc., a Florida corporation, d/b/a Candace Crowe Design, whose current mailing address is 3452 Lake Lynda Drive, Suite 160, Orlando, Florida 32817 (“CCD”). This Service may not be used for the sending of unsolicited e-mail. See our Anti-Spam Policy. By checking the “I have read the AdvantageMail terms and conditions statement, I accept these terms and conditions” box when you sign-up or after logging in for the first time you agree to our terms and conditions.

ACKNOWLEDGEMENT AND ACCEPTANCE OF AGREEMENT. (a) User hereby acknowledges that User has had an opportunity to consult with legal counsel concerning this Agreement and User has fully reviewed this Agreement and understands its terms. User agrees to indemnify and hold CCD harmless from any and all claims or causes of actions arising out of User’s use of the Program. CCD will make every reasonable effort to assure the accuracy of the material produced. However, CCD is not responsible for, correctness of copy, illustrations, photography, trademarks, nor for obtaining clearances or approvals, all of which is the responsibility of User. In addition, User shall be responsible for compliance with the Health Insurance Portability & Accountability Act of 1996 (“HIPAA”) as to any patient information disclosed under the terms of this Agreement. (b) Photography and illustration rights are determined by the photographers involved in the Project, not CCD. CCD retains the right to use the files created for User for marketing and promotional purposes as determined by CCD.

ARTICLE LIBRARY. The article library is an essential part of this Program and is protected by copyright. Use is restricted to User’s e-campaign as outlined on the order form. Use of the articles in any other form or fashion such as blogs, websites, and printed materials is strictly prohibited.

SERVICES AND DELIVERY OF SERVICES. AdvantageMail offers “Services” on an as-is basis. Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to persons under the age of 18. If User does not qualify, do not use the Services. Services provided are subject to this Agreement. CCD may modify the terms and conditions and may discontinue or revise any or all other aspects of the Services at its sole discretion. All such changes shall become effective upon posting of the revised Agreement on the Service.

The Services enable web sites to sign up web site visitors, collect and retrieve visitor sign-up data, and create and deliver e-mail communications with visitors and other prospects.

User’s account will be monitored. AdvantageMail accounts allow User to send an unlimited number of e-mail messages. The total KiloByte data transfer of each message can be no more than 100kb. All email delivery prices are subject to change at any time. All fees paid to CCD are non-refundable. Payment for Services will be made by Pay Pal. User hereby authorizes CCD to charge User’s credit card for such amounts whenever a campaign is sent to more than 5 recipients. Fees are payable in US dollars. All prices are subject to change and User is responsible to remain aware of the Fees charged by CCD.

User must complete the registration form on the [signup page](#) in order to use the Services. User will provide true, accurate, current, and complete information as requested in the registration form. As part of the registration process, User will identify a contact name, phone number, and e-mail address for their AdvantageMail account. User is responsible for maintaining the security of their account, passwords, and files, and for all uses of the account and of the Services in User’s name. CCD reserves the right to refuse registration of, or cancel, accounts it deems inappropriate.

It is understood that CCD makes no guarantee that HTML messages will be rendered properly on all recipients’ e-mail programs, due to the wide variety of HTML generation tools available. CCD makes every attempt to make sure that all e-mail messages sent through our servers follow e-mail standards, but we cannot guarantee that messages will look consistent across all e-mail platforms due to the number of different HTML composition tools available.

RESTRICTIONS AND RESPONSIBILITIES

This is an Agreement for Services, and User is not granted a license to any software by this Agreement. User will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services (“Software”); remove any proprietary notices or labels from the Services or any Software, modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software. The Services shall be used for User internal business (which includes civic or charitable) purposes only and User shall not use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party. If User is using the Services in any country in the European Community, the prohibition against modifying, translating, reverse engineering, decompiling, disassembling or creating derivative works based on the Services or the Software does not affect your rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.

User acknowledges and agrees that the Services and the AdvantageMail company names and logos and all related product and service names, design marks and slogans, are the property of CCD or its affiliates or suppliers (collectively, the “Marks”). User is not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of CCD. Use of the Services confers no title or ownership in the Service, the Software or the Marks and is not a sale of any rights in the Service, the Software or the Marks. All ownership rights remain in CCD or its third party suppliers, as the case may be.

User represents, covenants, and warrants that they will use the Services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). User agrees they will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited e-mail to any third party. User hereby agrees to indemnify and hold harmless CCD against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to use of the Services. Although CCD has no obligation to monitor the content provided by User or use of the Services, CCD may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates federal, state or other laws that may apply in User local area is prohibited. This may include material that is obscene, threatening, harassing, libelous, or in any way a violation of intellectual property laws or a third party’s intellectual property rights.

In using the varied features of the Services, User may provide information (such as name, contact information, or other registration information) to CCD. CCD may use this information and any technical information about use of the Services to tailor its presentations to User, facilitate User’s movement through the Service, or communicate separately with User.

CCD will not use any of User’s subscriber lists or any other customer information for any other purposes than those intended with the service. User’s customer information will not be shared with any other parties. In addition, CCD will not use User’s customer information for the purpose of sending unsolicited commercial e-mail.

User will adopt and maintain the [Privacy Policy](#), which may be modified by CCD from time to time. You may not use AdvantageMail to distribute illegal contests, pyramid schemes, chain letters, or multi-level marketing campaigns.

User may not use AdvantageMail to send email campaigns that link to or display nudity, obscene content, gambling related content, pharmaceutical related content, illegal software, viruses, or to distribute any other content that we deem inappropriate.

TERMINATION

User may terminate this Agreement at any time by sending an e-mail message to candace@candacecrowe.com or by sending written notice to CCD, 3452 Lake Lynda Dr., Suite 160, Orlando, FL 32817. Correspondence must include User's first name, last name, and AdvantageMail username. No refunds will be issued if User terminates this agreement.

CCD may terminate this Agreement or the Services at any time with or without cause, and with or without notice. CCD shall have no liability to User or any third party because of such termination. If CCD terminates this agreement because User violated the [Anti-Spam policy](#), no refund will be issued. CCD may delete any of the User's archived data within 30 days after the date of termination. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.

If User does not log into their account for more than 120 days, the account will become inactive. When an account is classified (at CCD's sole discretion) as inactive, CCD will flag that account as inactive. INACTIVE ACCOUNTS HAVE 30 DAYS TO BECOME ACTIVE OR THE ACCOUNT AND ITS DATA, INCLUDING SUBSCRIBER SIGNUPS, MAY BE PERMANENTLY REMOVED FROM THE AdvantageMail DATABASE.

WARRANTY DISCLAIMER; REMEDIES

USE OF THE SERVICES AND ANY RELIANCE BY USER UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY USER BECAUSE OF SUCH USE OR RELIANCE, IS AT USER'S SOLE RISK. CCD DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND CCD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

User's sole and exclusive remedy for any failure or nonperformance of the Services shall be for CCD to use commercially reasonable efforts to adjust or repair the Services.

LIMITED WARRANTY. In no event will CCD be liable to User for damages, whether based on contract, tort, warranty, or other legal or equitable grounds, including any loss of profits, lost savings, or other incidental or consequential damages arising out of User's use or inability to use the Program. The entire risk as to the quality and performance of the Program is with User, who shall be obligated to test the Program to ensure that it operates in accordance with User's specifications. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to User. This warranty gives User specific legal rights, and User may also have other rights that vary from state to state.

LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL CCD OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "CCD") BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF CCD SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, CCD IS FOUND LIABLE TO USER FOR DAMAGES

FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF CCD TO USER WILL BE LIMITED TO THE AMOUNT USER PAID FOR THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO USER.

MISCELLANEOUS

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

CCD and User agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

No agency, partnership, joint venture, or employment is created as a result of the Agreement, and User does not have any authority of any kind to bind CCD in any respect whatsoever. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

SYSTEM REQUIREMENT

It is understood that in order to use AdvantageMail, a Windows PC with Internet Explorer 4.0 or higher must be used. Additionally, a stable connection to the Internet is required. CCD may work in a limited manner on Macintosh, Unix, and other platforms, but there is no guarantee of functionality on non-Windows platforms. Additionally, AdvantageMail may work in a limited manner on a non-Internet Explorer web browser (such as Netscape Navigator), but there is no guarantee of full functionality on web browsers other than Microsoft's Internet Explorer.

COMPLIANCE RULES FOR SENDING E-MAIL

All AdvantageMail customers must follow the rules of the federal CAN-SPAM act and AdvantageMail's [Anti-Spam policy](#) when sending e-mail through the service. Accordingly, CCD requires the following of e-mail messages sent through the AdvantageMail system:

1. All e-mails must contain a one-click unsubscribe link as provided by the AdvantageMail service. AdvantageMail scans every campaign for the existence of an unsubscribe link. If an unsubscribe link is not detected, the User is informed and is required to include an unsubscribe link before continuing.
2. All e-mails must contain non-Internet contact information of the sender, such as User's company address, or company phone number.
3. All e-mails must state the reason the recipient is receiving the message. For example, "You are receiving this message from ABC Company because you signed up for our e-mail list at www.abc.com."

These 3 guidelines will help ensure that AdvantageMail maintains its reputation and white-listing status with a number of major ISPs and whitelisting programs. If at any time User's campaign is flagged as SPAM by an AOL recipient, CCD reserves the right to cancel User's account without notice.

EMAIL AND PERMISSIONS PRACTICES

Every email message sent in connection with the Services must contain an "unsubscribe" link or other mechanism that allows subscribers to remove themselves from User's mailing list. Each such link must remain operational for a period of thirty (30) days after the date on which User sends the message, and

must be in form and substance satisfactory to CCD. User acknowledges and agrees that User will not remove, disable or attempt to remove or disable either link.

User agrees to import, access or otherwise use only permission-based lists. Purchased lists may not be used. User cannot mail to distribution lists, newsgroups, or spam email addresses.

User is responsible for monitoring, correcting, processing unsubscribe requests within 10 days, and updating the email addresses to which messages are sent through User's AdvantageMail account. Emails sent through the Service may generate abuse complaints from recipients. User is responsible for ensuring that their email campaigns do not generate a number of abuse complaints in excess of industry norms. CCD, in its sole discretion, shall determine whether User's level of abuse complaints is within industry norms, and CCD's determination shall be final, binding and conclusive for all purposes under this Agreement.

CCD, at its own discretion, may immediately disable User's access without refund to the Services if CCD believes in its sole discretion that User has violated any of the email and permission practices listed above, or the CCD Anti-Spam Policy.

ENFORCEMENT OF AGREEMENT. In the event that enforcement of this Agreement becomes necessary, the prevailing party shall be entitled to recover from the other party, in addition to all other remedies available at law, an amount equal to all costs and expenses incurred in connection with such enforcement, including reasonable attorney fees at the trial level and in connection with all appellate proceedings. This Agreement and all instruments or documents related thereto shall be construed in accordance with the laws of the State of Florida without regard to the conflict of laws principles. In the event of any legal or equitable action arising under this Agreement, the parties agree that jurisdiction and venue of such action shall lie exclusively within the courts of Florida located in Orange County, Florida, and the parties specifically waive any other jurisdiction and venue.

GENERAL PROVISIONS. The following provisions apply in the construction and interpretation of this Agreement: (i) this Agreement constitutes the entire agreement and understanding between the parties as to the subject matter hereof, and shall not be amended or modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest; (ii) any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument; (iii) whenever possible, each part of this Agreement shall be interpreted in such a manner as to be valid under applicable law, and the invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; (iv) the waiver by CCD of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or of any future breach of the provision so waived; and (v) the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.