

# TOTAL WELLNESS ENVELOPE PARTICIPATION AGREEMENT

## ADDITIONAL TERMS AND CONDITIONS

### The Following Terms and Conditions Apply to this Agreement:

Advertiser authorizes Total Wellness to distribute the literature (inserts) specified in the agreement. Total Wellness agrees to provide assistance in planning and preparation of rough copy. It is the sole responsibility of Total Wellness to provide the following: proof, printing, insertion, addressing, envelopes and mailing for the distribution noted on the reverse side of this agreement. The advertiser further agrees to honor each insert that is presented to Advertiser by a recipient of the Total Wellness mailing in accordance with the terms or limitations printed on the insert.

- **Interest:** Advertiser agrees to pay interest on all amounts past due at the rate of one and one-half percent (1 1/2%) per month, or an annual rate of eighteen percent (18%).
- **NSF Checks:** A \$25.00 fee will be assessed on all non-sufficient funds checks.
- **Cancellation by Advertiser:** Due to exclusivity by category, advertisers must provide a 60-day cancellation (from mail date). If an order is cancelled within 60 days of the mail date, the client is responsible for 100% of the mailing job total. Cancellation of an order with proof (art) outside of the 60-day cancellation period will be subject to an additional charge of \$75.00.
- **Cancellation by Total Wellness:** Total Wellness reserves the right to cancel this Agreement at any time should Advertiser fail to pay timely any amounts owing hereunder, or if Total Wellness in its discretion determines that Advertiser has become insolvent or otherwise unable to perform any provision of the agreement, or if Advertiser fails to fulfill any of its obligations under this Agreement.
- **Intermarket Sales:** Intermarket sales are subject to rules and policies of the mailing Total Wellness franchise.
- **Copy and Proofs:** Advertiser agrees to supply Total Wellness with rough copy and desired artwork before deadline to receive a proof. Total Wellness provides one proof, time permitting. Additional proofs cost \$25/proof. The Advertiser assumes responsibility for all errors in the copy proofread by the Advertiser where the advertisement printed corresponds to the approved proof. In the event Total Wellness is supplied rough copy and/or artwork after proof deadline, Advertiser understands and agrees that no proof will be provided. In the event that Advertiser is unavailable to check and/or release proof by proof deadline and has left no authorized person to release proof, Advertiser understands that Total Wellness is authorized to release such proof where the content corresponds with rough copy submitted to Total Wellness, or with changes made to rough copy if such were made known to Total Wellness.
- **No Warranty:** Total Wellness makes no warranties, express or implied, with respect to the service and product supplied hereby.
- **Product Liability:** It is the responsibility of Advertiser to insure against any product liability, negligence, or other claims arising out of the use or misuse of Advertiser's products or services. Advertiser agrees to indemnify, defend, and hold harmless Total Wellness and its employees, agents, and contractors from any and all such claims.
- **Total Wellness Liability:** Total Wellness's liability hereunder shall not exceed an amount equal to the total consideration actually paid hereunder by the advertiser to Total Wellness. This contract contains the entire agreement of both parties, in regards to the Total Wellness Envelope Co-Op mail product, no other promises or conditions in any other agreement whether oral or written apply.
- **Postal Increase:** Rates subject to change in the event of a postal increase or change in state tax laws.
- **Legal Proceedings:** In the event of suit to enforce any rights under this agreement, Advertiser agrees that a venue for such suit will lie exclusively in a court of appropriate jurisdiction in the county and precinct in which Total Wellness's principal place of business is located, as shown on this participation agreement.
- **Representation and Warranties - Indemnification:** Advertiser hereby represents and warrants Total Wellness, Valpak Direct Marketing Systems, Inc. ("VPDMS") and its subsidiaries and affiliates (the "Indemnitees") that neither the distribution of its advertisements via hardcopy or digital format in any manner whatsoever under this Agreement, nor any effects therefrom or incident thereto will, as a result of any of the Advertiser's acts, or any of Total Wellness's on the Advertiser's behalf hereunder, violate any State, Federal or local law, rule or regulation pertaining to, but not limited to, postal requirements, misrepresentation, libel, trade libel, unfair competition, deceptive business practices, fulfillment, copyrights, trademarks, patents, invasion of privacy, misbranding, labeling, safety, or any other cause. In the event VPDMS receives notice which contests Advertiser's right to display a name, trademark, service mark, copyright or other content, VPDMS may discontinue providing advertising services to Advertiser without liability to Advertiser until such time that Advertiser has resolved that dispute with the other party to VPDMS's satisfaction. The Advertiser shall indemnify and hold the Indemnitees harmless against any loss, and against any claims, suits, costs or expenses, including reasonable attorney's fees, of any kind whatsoever, incurred by the Indemnitees as a result of the Advertiser's breach of the representations and warranties contained in this paragraph or otherwise incurred by the Indemnitees in connection with the printing and/or mailing of Advertiser's advertisement. It is the responsibility of the Advertiser to insure his product or service from product liability and Advertiser agrees to hold the Indemnitees harmless from any product liability claims and any other claims arising from the use or misuse of such products.



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