

Photography Internet Marketing Agreement

Version 3.4

This **Photography Internet Marketing Agreement** (the "Agreement") is made by and between **Express Digital Graphics, Inc.** ("Express Digital"), a Colorado corporation, and **You**, the "Photographer".

1. Photographic Image Upload and Publishing

Photographer may upload photographic images to the Express Digital website known as Photorelect.

Express Digital will publish the Photographer's images in a low-resolution thumbnail format on Photorelect. In this context, "publish" means displaying these images on a web page accessible via the internet.

2. Online Ordering and Pricing

Express Digital will provide Photographer's clients ("Clients") internet-based, on-line ordering services via Photorelect for the purchase of:

- Photographic prints ("Prints") that may include one or more items such as traditional photographic prints, gallery wraps, stand-outs, greeting/holiday/special event cards and similar other items.
- Hard good products ("Products") displaying a photograph that may include one or more items such as mugs, shirts, key chains and similar other items.
- Digital, electronic image files.
- Other goods and services that Express Digital may elect to make available from time to time.

Express Digital may discontinue offering any of the above items at any time.

The prices at which Photographer sells items to a Client are set by the Photographer and communicated to Express Digital. The prices at which Express Digital sells items to Photographer are at the amounts displayed in the Photorelect software.

Clients will pay Express Digital in advance, by credit card, for all orders at the prices set by Photographer. Express Digital will communicate the receipt of an order to Photographer and/or begin the Express Digital Fulfilled Orders process only after receipt of payment from the Client.

When Express Digital processes an order and receives payment from a Client, Express Digital will notify Photographer of that event within 24 hours of its occurrence. This notification will be by email.

3. Self-Fulfilled Orders

Some older versions of Photorelect support Self Fulfilled Orders. Some newer versions of Photorelect do not support Self Fulfilled Orders in which case the provisions of this section do not apply. Express Digital is not obligated to provide the Photographer a version of Photorelect that supports Self Fulfilled Orders.

Self Fulfilled Orders are orders for Prints or Products for which the Photographer has assumed the primary responsibility for fulfilling the order by producing the product themselves in-house or by having the product produced under an arrangement between the Photographer and a third-party (such as a photofinishing lab) to which Express Digital is not a party.

Photographer (and not Express Digital) is responsible for timely processing and shipping of Self-Fulfilled Orders to Clients. In any case, Photographer will complete Self-Fulfilled Orders within twenty-one (21) days of Express Digital's initial receipt of the order. Using the Express Digital website, Photographer will notify Express Digital of the shipment of an order to a Client within 24 hours of the shipment.

Photographer will notify Express Digital in a timely manner of any returns, refunds or disputes by a Client. Express Digital will then conduct the appropriate business transaction with Client based on those facts and circumstances.

Photographer will notify Express Digital of order shipments, changes in prices, and any other information using the Express Digital software or using the other notification procedures in this Agreement.

4. Express Digital Fulfilled Orders

Express Digital Fulfilled Orders are orders for Prints or Products for which Express Digital has assumed primary responsibility for fulfilling the order and shipping the Prints or Products to the location designated by the Photographer or the Client. These orders are generally fulfilled under an arrangement between Express Digital and a third party (such as a product fulfillment center) to which the Photographer is not a party.

Express Digital is responsible for timely processing and shipping of Express Digital Fulfilled Orders. Express Digital will complete such orders within twenty-one (21) days of Express Digital's initial receipt of the order.

5. Service and Support to Photographer

Express Digital will provide service and support to Photographer related to Photographer's use of the Photoreflex software. The manner in which Photographer can contact Express Digital for service and support will be as published and presented in the Photoreflex software. Service and support to Photographer is available from 8:30 AM to 5:30 PM, Central Time, Monday thru Friday, excluding major holidays.

6. Service and Support to Photographer's Clients

Photographer has the primary business relationship with Clients for transactions conducted through the Photoreflex software. If a Client has a question, concern or needs information about a transaction with Photographer conducted through the Photoreflex software, Photographer has the primary responsibility for providing customer service and support to that Client. Express Digital is not responsible for and does not provide service and support directly to Clients in the form of a call center, help desk, online chat or similar type activities. If a Photographer's Client contacts Express Digital directly, Express Digital's responsibility extends only to referring Client to Photographer for assistance after which time it becomes Client's responsibility to contact Photographer or vice-versa. Express Digital is not obligated to notify Photographer of communications Express Digital has with Clients.

7. Refunds to Clients

Photographer is responsible for and may issue refunds to Clients using tools provided in the Photoreflex software or by other means deemed appropriate by Photographer. Express Digital does not provide refund services.

The operating policies and procedures of Visa, MasterCard, Discover and American Express ("Credit Card Issuers") provide that refunds can be issued using their services for at least 90 days after a transaction originated through them occurred. As a result of those policies, a refund to a Client's credit card account cannot be transacted through the Photoreflex software after that 90 day period has expired. Refunds to Clients for transactions beyond that 90 day period are the Photographer's responsibility to transact through other means outside the Photoreflex software.

Photoreflex will support refund transactions for an order as a whole. It does not support refunds for individual components of an order. If the Photographer wants to refund selected components of an order but not the order as a whole, the Photographer must conduct that transaction through other means outside the Photoreflex software.

At the time of a refund, Photographer must have an account balance owed to them not yet paid by Express Digital that is equal to or greater than the amount of the refund being issued to a Client. If such is not the case, Photographer must provide Express Digital a credit card number that Express

Digital will charge in an amount necessary to create an account balance for Photographer with Express Digital that is adequate to support completing a refund transaction.

8. Credit Card Disputes and Chargebacks

Visa, MasterCard, Discover and American Express provide Clients a process for disputing charges to a Client's credit card. At the time of such disputes, the Credit Card Issuers typically grant a conditional credit to the Client's credit card account and withdraw funds from Express Digital, commonly referred to as a chargeback. When a chargeback occurs, Express Digital will respond to the Credit Card Issuers with information reasonably available to Express Digital in an effort to substantiate the disputed charge and to have the chargeback reversed. If Express Digital requires additional information from Photographer to perform this work, Photographer will use their best efforts to provide Express Digital that information in a timely manner upon Express Digital's request.

If Express Digital does not have adequate information to sustain a reversal of the chargeback, or if Express Digital determines that Photographer did not properly fulfill their obligation to a Client that in turn caused the chargeback, Photographer will be liable to Express Digital for the chargeback amount. Express Digital may recover such amount from Photographer through reasonable means including, but not limited to, a reduction of amounts to be paid Photographer in the future or by charging a Photographer's credit card number that Photographer has supplied to Express Digital.

9. Software Usage Fee

In consideration for providing the Photoreflex software for the Photographer's use, Photographer will pay Express Digital a monthly Software Usage Fee of in an amount as presented in the Photoreflex software or at Photoreflex.com. Express Digital will first collect this fee on the 30th calendar day following the first day on which Photographer has access to use the Photoreflex software and thereafter on the same day of each following month ("Due Date"). Once the fee is paid, it is non-refundable to Photographer.

This Software Usage Fee can be paid only by using a Visa, MasterCard, Discover or American Express credit card. Express Digital does not accept debit cards, checks or cash. Photographer is solely responsible for maintaining a valid credit card on file with Express Digital with which to pay this fee.

Payment of the Software Usage Fee entitles Photographer to use the Photoreflex software until the next Due Date. Photographer may elect to discontinue paying for and using the Photoreflex software at any time by notifying Express Digital of such in the manner provided by Express Digital in the Photoreflex software. Upon such notification, or upon Photographer not having a valid credit card on file with Express Digital with which to pay the Software Usage Fee, Photographer will have access to and the ability to use the Photoreflex software until the later of (1) the end of 14 additional calendar days or (2) the next Due Date. At the expiration of such time, Photographer will have no access to the Photoreflex software and specifically, will not be able to sell any Prints, Products, digital files or other products or services using the Photoreflex software.

The Software Usage Fee grants Photographer a license to access and use the Photoreflex software for the period of time for which the Software Usage Fee has been paid. The Software Usage Fee does not grant Photographer ownership of the Photoreflex software or any right to copy to Photographer's computer or otherwise possess a copy of the Photoreflex application software or underlying source code. Photographer has no right to resell access to the Photoreflex software.

10. Enhanced Features Fees

Express Digital may, from time-to-time, offer enhanced, optional features and functions in the Photoreflex software that Photographer may elect to use. Express Digital may charge Photographer an Enhanced Features Fee to use those optional features and function. An Enhanced Features Fee is subject to the same payment terms and conditions as the Software Usage Fee.

11. E-Commerce Fee

In consideration for facilitating Photographer's sales using the internet, Express Digital will earn and Photographer will pay an E-Commerce Fee on each order. This fee is computed based upon the

aggregate selling price of the Prints and Products. Taxes and shipping and handling are not subject to the E-Commerce Fee. The E-Commerce Fee rates are as follows:

	Rolling Twelve Months Aggregate Selling Price for All Orders (K = Thousands)	E-Commerce Fee
Level 1	Up to \$20K USD/\$20K CDN/€12.5K EUR/£10K GBP	15%
Level 2	Over Level 1 and up to \$60K USD/\$60K CDN/€37.5K EUR/£30K GBP	13%
Level 3	Over Level 2 and Up to \$100K USD/\$100K CDN/ €62.5K EUR/£50K GBP	11%
Level 4	Over \$100K USD/\$100K CDN/ €62.5K EUR/£50K GBP	10%

If aggregate orders over a rolling twelve month period move from one level to the next, subsequent orders are subject to the lower e-commerce fee of the next level. If aggregate orders over a rolling twelve month period drop to a lower level, subsequent orders are subject to the higher E-Commerce fee of that lower level. There is no retroactive adjustment of past orders to a subsequent fee level.

12. Credit Card Fee

In consideration for providing Photographer's Clients the ability to pay by credit card, Express Digital will earn and Photographer will pay a Credit Card Processing Fee of 3% on each order. This fee is computed based on the total amount charged by a Client to a credit card.

13. Fulfillment Cost

Fulfillment cost is the amount Express Digital must pay to third parties for Prints and Products necessary to fulfill a Client's order to the extent such cost is not otherwise paid Photographer. Express Digital will retain this amount and forward it to the third party fulfiller.

14. Sales Tax

Express Digital will collect sales tax on orders in accordance with applicable law. If Photographer is obligated under the law to remit sales tax collected to the taxing authorities, Express Digital will pay the collected taxes to Photographer. If Express Digital is obligated under the law to remit sales tax to the taxing authorities, Express Digital will retain and remit the sales tax collected. In no event does Express Digital assume an obligation or responsibility for remitting sales tax collected to taxing authorities in those situations where the primary such obligation resides with Photographer.

15. Fee Refunds

Express Digital earns all fees on the original order transaction as compensation for its time and expense in processing that transaction. If an order is refunded to a Client, no fees are refunded to Photographer.

16. Payment to Photographer

Express Digital will pay Photographer for each order shipped to a Client. For Self-Fulfilled Orders, Photographer must use the Express Digital website to designate an order as shipped.

For shipped orders, Express Digital will pay Photographer the amount of the order charged to the Client's credit card less the E-Commerce Fee, the Credit Card Fee, the Convenience Fee, the Fulfillment Cost (if applicable), the Paper Check Fee (if applicable) and the sales tax retained by Express Digital for remittance to taxing authorities (if applicable.)

Express Digital will pay Photographer every two weeks for orders shipped to Clients.

The amount due Photographer by Express Digital must be \$25 USD/\$25 CDN/€25 EUR/£25 GBP or more for Photographer to receive a payment from Express Digital. If the amount due is less than these amounts, the accumulated amount will be retained until additional orders cause the amount due to exceed these amounts, after which time that accumulated amount will be paid to Photographer on the next regularly scheduled payment date.

Photographer may elect to be paid by electronic funds transfer or paper check. There is no charge for payment by electronic funds transfer. For payments made by paper check on January 1, 2010, or later, Express Digital charges a Paper Check Fee of \$5 USD/\$5 CDN/€5 EUR/£5 GBP for each paper check issued to offset the additional expense of processing and mailing a paper check. Express Digital will collect this fee by reduction of the amount paid Photographer.

17. License and Ownership of Images

Express Digital will not gain any ownership interest in the Photographer's images ("Images"). Photographer grants a license to Express Digital to process the sale and delivery of images on Photographer's behalf. Photographer represents and warrants that (a) Photographer has the right and unrestricted ability to grant the license to the Images to Express Digital, and (b) the Images will not infringe upon any copyright, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law. Photographer agrees to indemnify Express Digital from any and all damages, costs, claims, expenses or other liability (including attorneys' fees) arising from or relating to the breach or alleged breach by Photographer of these representations and warranties. Should Express Digital believe, in its sole discretion, that any Image violates a copyright, right of publicity or privacy, or any other proprietary right of any person, Express Digital may, without prior permission or consent from Photographer, remove such Image from Photorelect.

Photographer has the primary business relationship with Clients for transactions conducted through the Photorelect software. Any sale or delivery of Images using Photorelect is done under business practices and policies established by the Photographer. Express Digital does not establish business practices or policies for Photographers and does not monitor whether or not the Photographer's business is conducted in accordance with Photographer's business practices and policies.

18. Limitation of Liability

EXPRESS DIGITAL WILL NOT BE LIABLE TO PHOTOGRAPHER FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGE OR INJURY TO BUSINESS EARNINGS, PROFITS OR GOODWILL SUFFERED BY PHOTOGRAPHER OR ANY PERSON ARISING FROM THIS AGREEMENT, OR THE TERMINATION OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. IN NO CASE WILL EXPRESS DIGITAL BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS IT EARNS UNDER THIS AGREEMENT.

19. Independent Contractor Relationship

Photographer's relationship with Express Digital is that of an independent contractor. Nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Photographer is deemed the seller of all prints and any other products or services sold through the Express Digital and/or Photorelect websites. Photographer will not be entitled to any of the benefits which Express Digital may make available to its employees, including, but not limited to, group health or life insurance, profit-sharing or retirement benefits. Photographer is not authorized to make any representation, contract or commitment on behalf of Express Digital unless specifically requested or authorized in writing to do so by an Express Digital officer. Photographer is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement. Photographer is solely liable for any failure to pay applicable taxes. Photographer is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Agreement. No part of Photographer's compensation will be subject to withholding by Express Digital for the payment of any social security, federal, state or any other employee payroll taxes.

20. Confidential Information

Photographer agrees to hold Express Digital's Confidential Information in strict confidence and not to disclose such Confidential Information to any third parties. Confidential Information as used in this Agreement will mean all information disclosed by Express Digital to Photographer that is not generally known in Express Digital's trade or industry and will include, without limitation:

- Concepts and ideas relating to the development and distribution of content in any medium or to the current, future and proposed products or services of Express Digital or its subsidiaries or affiliates;
- Trade secrets, drawings, inventions, know-how, software programs, and software source documents;
- Information regarding plans for research, development, new service offerings or products, marketing and selling, business plans, business forecasts, budgets and unpublished financial statements, licenses and distribution arrangements, prices and costs, suppliers and customers;
- Existence of any business discussions, negotiations or agreements between the parties; and
- Any information regarding the skills and compensation of employees, contractors or other agents of Express Digital or its subsidiaries or affiliates.

Confidential Information also includes proprietary or confidential information of any third party who may disclose such information to Express Digital or Photographer in the course of Express Digital's business.

Photographer's obligations set forth in this Section will not apply with respect to any portion of the Confidential Information that Photographer can document by competent proof that such portion:

- Was in the public domain at the time it was communicated to Photographer by Express Digital;
- Entered the public domain through no fault of Photographer, subsequent to the time it was communicated to Photographer by Express Digital;
- Was in Photographer's possession free of any obligation of confidence at the time it was communicated to Photographer by Express Digital;
- Was rightfully communicated to Photographer free of any obligation of confidence subsequent to the time it was communicated to Photographer by the Express Digital;
- Was developed by employees or agents of Photographer independently of and without reference to any information communicated to Photographer by Express Digital; or
- Was communicated by Express Digital to an unaffiliated third party free of any obligation of confidence.

Photographer may disclose Express Digital's Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law.

All Confidential Information furnished to Photographer by Express Digital is the sole and exclusive property of Express Digital, its suppliers or affiliates. Upon request by Express Digital, Photographer agrees to promptly deliver to Express Digital the original and any copies of such Confidential Information. This Section will survive for 3 years beyond any termination or expiration of this Agreement.

21. Term and Termination

Express Digital or Photographer may terminate this agreement, with or without cause, at any time without prior notice.

22. Privacy and Decency

Photographer will not upload, post, or transmit to the Express Digital or its website Images or other material that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, racially or ethnically offensive, or sexually explicit. Express Digital is the sole judge of decency and may refuse to accept, display or publish any Image or photograph at its sole discretion. Photographer agrees to indemnify Express Digital from any and all damages, costs, claims, expenses or other liability (including attorneys' fees) arising from or relating to the breach or alleged breach by Photographer of the provisions of this Section. Photographer will also abide by the provisions posted on the Express Digital website in the User Agreement and Privacy Statement, as amended from time to time.

23. Suspicious Activity

Express Digital may suspend or discontinue a Photographer's access to and/or use of PhotoReflect if Express Digital suspects Photographer is conducting activity that appears fraudulent, unlawful, materially misleading to Clients or otherwise inconsistent with the purpose for which PhotoReflect exists. In such case, Express Digital may, but is not obligated to, notify Photographer of such suspension or discontinued access. Express Digital may reduce balances otherwise owed Photographer or charge a credit card provided by Photographer to Express Digital for any amounts Express Digital must return to a Client as a result of such suspicious activity.

24. Photographer Information

To effectively process transactions for and conduct business with Photographer, Express Digital will obtain and use various information pertaining to Photographer, including, but not limited to, Photographer's name, e-mail address, mailing address and banking information. Express Digital will store this information on its servers.

Express Digital will communicate with Photographer using email and other electronic means. Such communications may include information about Photographer including, but not limited to, the information of the type described in the preceding paragraph.

The Photoreflex software uses "cookies" to operate efficiently and effectively. "Cookies" are small pieces of information stored on a computer's hard drive by a web browser. To facilitate its effective operation, Photoreflex will cause cookies to be stored on Photographer's computer that may contain information about Photographer or Clients that is communicated back to Express Digital. Photographer grants Express Digital permission to store and use such cookies on Photographer's computer. If Photographer elects to configure their web browser to block the storing of cookies, the functionality of the Photoreflex software may be reduced or otherwise compromised.

25. Successors and Assigns

Photographer may not subcontract or otherwise delegate its obligations under this Agreement without Express Digital's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of Express Digital's successors and assigns and will be binding on Photographer's assigns.

26. Notices

Any notice required or permitted by this Agreement must be in writing and delivered either (i) in person; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; (iv) by certified or registered mail, return receipt requested, upon verification of receipt; or (v) by email.

27. Governing Law

This Agreement is governed in all respects by the laws of the United States of America and by the laws of the State of Colorado, without regard to its conflict of laws rules.

28. Severability

Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

29. Waiver

The waiver by Express Digital of a breach of any provision of this Agreement by Photographer will not operate or be construed as a waiver of any other or subsequent breach by Photographer.

30. Entire Agreement

This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.