Web Services LLC
Software License, Website Production, &Web Hosting Service Agreement

READ THESE TERMS CAREFULLY BEFORE INITIATING BUSINESS AND/OR INSTRUCTING DEPLOYMENT OF YOUR WEBSITE WITH US. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT HOST A WEBSITE WITH US AND/OR OTHERWISE USE OUR SERVICES OR SOFTWARE. YOUR WEBSITE HOSTING ON THE WORLD WIDE WEB (WWW) VIA OUR SERVICES AND YOUR CONTINUED USE OF THE SERVICES INDICATES YOUR ACKNOWLEDGMENT THAT YOU HAVE READ AND ACCEPTED THESE TERMS AND CONDITIONS AND AGREE TO BE BOUND AS SET FORTH HEREIN. IF YOU DO NOT UNDERSTAND THESE TERMS, YOU SHOULD CONSULT AN ATTORNEY.

This Agreement ("Agreement") is between you ("Client") and Web Services LLC, a company based in Fort Lauderdale, Florida, USA, ("Web Services") as of the date you order a virtual server or web hosting plan ("Plan") or custom produced web site from Web Services. The date on which you initiate a project with Web Services or the date on which your website code is placed on the servers managed by Web Services (whichever is earlier) is the day on which this agreement takes affect. This may or may not be the date on which your website goes "live" or is marketed as being on the world wide web ("WWW").

Web Services is in the business of offering, among other things, website hosting services pursuant to virtual server plans. Web Services also primarily sells and performs the design, set-up, and/or programmatic development of the website to be hosted. All branded services marketed or sold under these or similar names are also described and included in this agreement.

Web Services may amend this Agreement at any time by posting the amended Agreement on its web site and the effective date of any such amendment will be the date on which the amended Agreement is so posted. Client agrees that it has read and understands this Agreement and acknowledges a duty to periodically check these terms and conditions. Without limiting the generality or effect of the foregoing, Web Services may also add, delete or modify some or all of its Services at any time and in its sole discretion. If any such changes are made, or for any other reason, the Client may end service with us without penalty and additional charge from the time such cancellation is received.

By accepting this Agreement, Client (i) represents and warrants that he or she is at least 18 years of age and is the authorized representative of the organization or entity that he or she purports to represent, and (ii) agrees to provide true, accurate, current and complete information about Client.

1.   SERVICES

1.1   Virtual Server. Pursuant to the terms of this Agreement and the Plan selected by Client, Web Services agrees to provide Client with: (i) space on a server ("Virtual Server") to host a site on the Internet ("Web Site"), (ii) a non-exclusive license to use administrative software by which to partially control the virtual server, and a non-exclusive license to other Web Services proprietary software ("Software"), including but certainly not limited to SmartSearch™, and (iii) various other services as more specifically set forth in Client's Plan (collectively, "Services"). Client hereby agrees that Web Services is responsible only for providing the Services explicitly set forth in Client's Plan and this Agreement, and Web Services is not responsible for providing any other services or tasks.

1.2   Availability of Web Site. The Web Site shall be generally accessible to third parties via the Internet twenty-four hours a day, seven days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Services due to causes beyond the control of Web Services or which are not reasonably foreseeable by Web Services, including but not limited to interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. *PLEASE SEE SECTION 3.2 FOR 99.9% UPTIME GUARANTEE.*

1.3   Updates. Updates to your website are typically not included in the Plan. The Monthly Recurring Charge ("MRC") on most plans is a fee paid to maintain the site on the World Wide Web, and does not include the labor charges that will be incurred to update the site. Some plans with a higher MRC may include limited updates or revisions to the Site. Such service must be explicitly documented in your plan description. If not included, updates to your website will be billed at the current hourly rate. On select Plans, Web Services may provide Client with a system and the necessary Software for Client to transmit to Web Services any revisions, updates, deletions, enhancements or modifications ("Updates") to the Virtual Server. Such software is typically included on Plans which use our SiteBuilder service. Such updates to the Virtual Server shall be reflected on the Client's website assuming that (i) Client is not in default of its payment obligations hereunder, (ii) such Updates are within the scope of this Agreement; and (iii) such Updates are Server Ready (as defined below).

1.4   Project Timeline & Pricing Guides. Web Services may offer to produce a project for a fixed-fee or fixed-price. In such scenarios, client may receive a Project Timeline & Pricing Guide, or other similarly titled document, which provides an overview of the proposed project. In conjunction with the requested monetary deposit, this document also serves as a project-initiating binding contract between client & Web Services. Unless otherwise articulated in writing on this aforementioned document, the following terms apply: (i) Timeline is dependent upon both Web Services and client. Timeline is an estimate in consideration of timely client response and feedback sessions (if applicable). Production delays will be communicated freely by Web Services to client however the deployment and/or completion date of the project is not guaranteed; (ii) Monies paid to Web Services are not refundable; (iii) Client may cancel a project at any phase of the project and owe nothing further if such cancellation is prior to the half-way point of the then-current project phase. For example, assuming a 4-week project with 50% at start and balance upon completion, cancellations received in writing before the end of week 2 are eligible for client to owe nothing further. Cancellation requests received beyond the half-way point of the then-current project phase will incur the client the pro-rated project balance in accordance with the timeline exhausted beyond the time paid for by the initial deposit or previous payment; (iv) If a project is cancelled, Web Services will retain all partially and/or completed source files, documents, and/or any other project-related data not delivered to the client prior to cancellation.; (v) pricing & estimated timeline for a particular project is valid for 30 calendar days from the date on which client receives such document; (vi) If client is not hosting produced web site with Web Services, total project fee balance is due in full prior to client receiving web site files on CD. Upload of web site to 3rd party hosting providers is not included in project fees, but is available for additional fee; (vii) project scope changes and/or project description information provided by client to Web Services AFTER delivery of Project Timeline & Pricing Guide and/or fixed-price may, solely at the discretion of Web Services, result in a re-quote of the project. If this occurs, the client will have the option of canceling the project and receive a refund of monies prepaid to Web Services less the pro-rated labors and/or timeline exhausted prior to such re-quote. In this scenario, the client will receive all source files, documents, and/or

other project-related data produced by Web Services. Such delivered files, documents, and project-related data, while delivered to client, will still remain intellectual or other property of Web Services in accordance with Section 6.

2. TERM AND RENEWAL

This Agreement will begin upon the date Client registers the Plan and shall continue for the period of time set forth in the Plan ("Initial Term"), unless earlier terminated according to the provisions of Section 7 below. This Agreement will continue automatically for additional terms equal to the Initial Term (each, a "Renewal Term") unless either party provides notice at least thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable, that it has elected not to renew the Agreement. For security reasons and the general protection of all clients, Web Services requires all notices not to renew the Agreement be delivered by either: (i) submitting a virtual authorization via email to john@johnlewisweb.com or (ii) faxing a cancellation request to (888) 386-7162, containing the account name, password, reason for cancellation and signature of Client.

3. LIMITED WARRANTIES

3.1 Website Hosting 30-Day Money Back Guarantee Web Services cordially extends an unconditional money-back guarantee to Client for website hosting and its associated monthly recurring charge ("MRC") during the first thirty (30) calendar days of the Initial Term ("30-Day Guarantee"). This guarantee applies only to website hosting charges and does not apply to set-up fees and/or labor charges associated with design and/or development of the website. *The 30-Day Guarantee is available on all Plans and shall begin upon completion of the setup of Client's Plan.* In order to avail itself of the 30-Day Guarantee, Client must notify Web Services by faxing a request with an authorized signature to (888) 386-7162. Upon receipt, all Services shall be terminated and any fees paid shall promptly be credited to the Client's credit card or returned by check.

3.2 99.9% Uptime Guarantee. Subject to the limitations contained herein, Web Services hereby warrants that the following services will have an average monthly uptime of no less than 99.9% as determined exclusively by the "guaranteed" service: http, ftp, Website Control Panel™, Telnet, SSH, SMTP and POP3 ("99.9% Uptime Guarantee"). The month begins on the first day of each month and continues until the last day of that month. In the event of any loss or interruption of Services resulting in less than 99.9% uptime and which is due to (i) causes other than scheduled maintenance and required repairs, (ii) causes beyond the control of Web Services, or (iii) causes which are not reasonably foreseeable by Web Services, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures, Client shall receive, and Web Services's sole and exclusive liability for any loss or interruption of Services shall be, a credit equal to one month's Services of the Client's present Plan fees.

3.3 **Price Freeze Guarantee.** Provided Client is at no time in breach of this Agreement, Web Services hereby agrees to not raise the monthly recurring charge ("MRC") set forth in Client's Plan ("Price Freeze Guarantee"). Such price freeze applies only to the MRC and does not extend to software, services, or labor not typically included in the MRC.

4. FEES AND PAYMENT

4.1 Fees. Client shall pay all fees according to the prices and terms listed in this Agreement and Client's Plan. The prices listed in Client's Plan at the date of this Agreement shall remain in effect during the Initial Term. Except as provided in the Prize Freeze Guarantee, Web Services may change the fees it charges Client for Plans upon sixty (60) days prior notice to any Renewal Term.

4.2 Payments and Late Payment Charge. Payment for all Set-Up Fees (as set forth in the Plan) shall be due immediately upon Client's registration of the Plan. Fees for Services shall be in the amount and frequency set forth in the Plan selected by Client ("Payment Date"). Web Services may offer other payment terms and/or financing which

is unique by client and may be outlined in the invoice or plan description. This Agreement is for the entire Initial Term or applicable Renewal Term and Client is hereby obligated to pay the fees for the entire amount of the Plan voluntarily selected by Client. All such fees shall be received at Web Services by 2:00 p.m. on the Payment Date. Client shall pay a late charge of 2% per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar month or fraction thereof that payments are in arrears to Web Services. All fees that have not been timely paid may be sent by Web Services to a collection agency. Client agrees to be responsible for paying all costs of collection, including, but not limited to, reasonable attorney's fees and, where lawful, collection agency fees. All accounting issues should be addressed via to john@johnlewisweb.com or from the contact page at http://www.JohnLewisWeb.com.

4.3 Checks or Money Order. Client may pay fees by check or money order in U.S. dollars only. Web Services will not accept international checks in foreign currency. In the event a check is returned by our bank, Client will be assessed a $25.00 returned check fee. If Client fails to pay all fees by the Payment Date, Client will be sent a suspension of Services e-mail which will grant Client fourteen (14) days to make payment.

4.4 Credit Cards. Web Services accepts MasterCard, Visa, American Express, and Discover for payment of MRC only. Payment by credit card automatically enrolls clients in e-billing and discontinues future paper statements. Credit card payment may be made via telephone, from Web Services e-invoice email, or by visiting www.johnlewisweb.com/pay. Credit cards are not accepted for payment of design or development fees, fixed-price web site production fees, hourly labor fees, custom printed products, or any other services or invoices unless otherwise explicitly articulated to client in writing.

4.5 Pricing Disputes. Client must notify Web Services in writing of any disputed charges within 30 days of the date of the billing for such charges. If Client does not notify Web Services within that time period, Client has waived any right to dispute such amounts, either directly or indirectly or as a set-off, recoupment or defense in any action or efforts to collect amounts due to Web Services.

4.6 Suspension of Services. Failure of Client to fully pay any fees when due may be deemed a material breach of this Agreement justifying suspension of the performance of Services to Client at Web Services's sole option. Any such suspension of Services does not relieve Client from the obligation to pay all amounts due Web Services under this Agreement for the remainder of the Initial Term or the then applicable Renewal Term. In the event of a suspension of Services and upon a reactivation request by Client, Client shall pay Web Services a $25.00 reactivation fee in addition to full payment of the outstanding balance due. Reactivation of services will only be performed during Web Services's regular business hours (Monday through Friday, 10:00 a.m. – 4:00 p.m. Pacific Standard Time, excluding holidays).

4.7 Taxes. Fees are exclusive of any and all sales, use, value added, excise, transfer, privilege, duty and any other taxes or duties, whether international, national, state or local, however designated or assessed with respect to the Services provided under this Agreement; excluding, income taxes on profits which may be levied against Web Services.

5. CLIENT OBLIGATIONS

5.1 Client Content. Client shall provide all materials comprising the Web Site, including, but not limited to, any and all images, photographs, illustrations, graphics, audio clips, video clips or text (the "Client Content"), which shall be in a correct format (as specified by Web Services), including, but not limited to, HTML.2 format ("Server Ready"). Client is solely responsible for the content of any postings, data or transmissions using the Services, or any other use of the Services by Client or by any person or entity Client permits to access the Services. Web Services reserves the right, in its sole discretion, to exclude or remove from the Web Site any Client Content for any of the following reasons: (i) Client Content is not Server Ready, (ii)

CGI scripts or programs consume an unreasonable amount of Central Processing Unit ("CPU") usage, Random Access Memory ("RAM"), or other system resources, (iii) Web Services has received a significant number of complaints regarding Client's failure to be reasonably accessible to its customers or timely fill orders, (iv) Client has become the subject of a government complaint or investigation, (v) Client runs or executes JAVA Servlets on the Virtual Server, or (vi) any other reason which may violate or infringe any law or third party rights or which otherwise may potentially expose Web Services to civil or criminal liability or public ridicule, provided that such right shall not place an obligation on Web Services to monitor or exert editorial control over the Web Site. *PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.*

5.2 Representations and Warranties. Client represents and warrants that: (i) Client has the power and authority to perform its obligations hereunder and the Agreement constitutes a valid and binding obligation enforceable against Client in accordance with its terms, (ii) Client has the requisite level of knowledge in the use of Internet languages, protocols and software to utilize the Services provided by Web Services, (iii) Client has secured all required authorization(s) necessary for hypertext links to third party web sites, (iv) Client holds all necessary licenses from the required jurisdictions to engage in the advertising and sale of any goods and services which may be offered on the Web Site, (v) Client Content does not and will not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right, and (vi) Client owns the Client Content or otherwise has the right to place the Client Content on the Web Site. *PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.*

5.3 Acceptable Use of Virtual Server. Client agrees not to utilize the Services for any activities that: (i) constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws, (ii) defame, impersonate or invade the privacy of any third party or entity, (iii) infringe the rights of any third party, including but not limited to the intellectual property, business, contractual or fiduciary rights of others, (iv) involve the display, sale, distribution or creation of any pornographic, obscene or otherwise offensive goods, services, material or ideas or promote violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, (v) modify any Web Services copyright notices or scripts without obtaining Web Services's prior written consent, (vi) provide mirroring service for other web sites, (vii) the primary purpose is non-http compatible file distribution, including but not limited to the distribution of the following file types: .arj, .mp3, .exe, .tar, .rar, or .zip, (viii) are in any way connected with trolling, mailbombing, IRC Bots, Game-emulators, ROMs or the transmission of "junk mail," "spam," the unsolicited mass distribution of e-mail or with any unethical marketing practices, (ix) maintain or provide an image archive or collection for display, (x) use an email box exclusively as a storage space for data, which includes a mailbox exceeding 30 MB, and (xi) the primary website theme is related to professional wrestling, fads, "Top" sites, or otherwise "trendy" websites. In the event any provisions contained in this Agreement conflicts with any terms, conditions or clauses contained in the AUP, the provisions of this Agreement shall govern. *PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.*

5.4 Mailing Lists. Web Services permits Client to send mailings to subscribers of Client's own mailing list. Such mailings must have explicit instructions to the recipient on how to remove his/her name from the list, and all requests to do so must be honored immediately. Client agrees not to send mailings to lists provided by an outside agency or individual. Client further agrees not to provide mailing list services to others. Web Services reserves the right to terminate

Client's mailing program, whether provided by Web Services or not, immediately and without notification to Client if said list causes a problem, in Web Services's sole discretion, with the e-mail services of other clients. Web Services also reserves the right to forbid Client from utilizing any mail-sending program that jeopardizes the mail services of other clients. Due to the consumption of system resources and overloading of the e-mail server, Web Services forbids the use of Gossamer Links program by any of its clients. *PLEASE SEE SECTION 7.2 OF THIS AGREEMENT FOR SPECIFIC TERMINATION FEES AND PROCEDURES FOR CLIENT'S VIOLATION OF THIS SECTION.*

6. **LICENSE AND PROPRIETARY RIGHTS**

6.1 Software License. During the Initial Term and any applicable Renewal Term, Web Services grants Client a nontransferable, nonexclusive limited license to use the Software, in object code form only, solely for purposes of using the Services on the Virtual Server. To the extent such Software belongs to a third party, Web Services only grants such rights as it is able to under an agreement with the applicable third party. *CLIENT MAY NOT USE WEB PAGES OR PARTS OF WEB PAGES GENERATED BY MEANS OF THE SOFTWARE ON ANY SERVER OTHER THAN THE VIRTUAL SERVER.*

6.2 Software License Restrictions. Client agrees that it will not, directly or indirectly (and it will not allow others to):

    5.2.1 Copy the Software, except as is necessary to install on Hardware and for internal, archival purposes. In the event Client makes any copies of the Software, Client shall reproduce all proprietary notices on such copies;

    5.2.2 Reverse engineer, decompile, dissemble, modify or otherwise attempt to derive source code from the Software;

    5.2.3 Sell, lease, license, transfer, give possession of, or sublicense the Software or the documentation to others;

    5.2.4 Write or develop any derivative or other software programs, based, in whole or in part, upon the Software.

6.3 Proprietary Rights. Client shall not have any right, title, or interest in the Virtual Server, Software, Hardware, documentation, or any copyrights, patents, trademarks, trade secrets and any other proprietary rights embodied or used in connection therewith, except for the limited license provided in Section 6.1.

6.4 Proprietary Rights of Client. As between Client and Web Services, Client Content shall remain the sole and exclusive property of Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. Client hereby grants to Web Services a non-exclusive, worldwide, royalty-free license for the Initial Term and any Renewal Term to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Client Content as necessary to render the Services to Client under this Agreement.

6.5 Definition of particular software. Without being comprehensive in listing, the Client may have incorporated specific utilizations of proprietary software(s) in select areas of the website. Whether such code and/or particular software is explicitly branded by Web Services or not, the code that powers the website is inclusively and forevermore the property of Web Services. In particular, this includes preprogrammed or customized versions of SmartSearch™ technology software, a proprietary software of Web Services, ProMail, eMerchant, or any 3rd party software, freeware, or shareware which is/are obtained by Web Services and customized for the client.

6.6 Non-exclusive, temporary license of our software while a customer in good standing. The cost of using our proprietary software, including but not limited to SmartSearch™ technology software, shall be waived while this agreement is in affect and/or whilst a paying website hosting customer of Web Services at the frozen or agreed-to price. Should the client nullify this agreement and/or

become a non-paying website hosting customer of Web Services, the use of the aforementioned software MAY NOT BE TRANSFERRED, LENT, BORROWED, OR HOSTED by another website hosting company without the client purchasing a license for use of the proprietary software(s) of Web Services at the then-current retail price. The license for EACH UNIQUE or CUSTOM INSTANCE (mentioned in Section 6.5) of such proprietary software at the time of such occurrence shall be purchased no less than 14 days before the end of this agreement and/or immediately upon non-payment for Web Hosting Services. The current retail price of EACH UNIQUE or CUSTOM INSTANCE of EACH proprietary software, such as SmartSearch™ or ProMail, shall be exactly 100 times the cost of the client's MRC. For example, if the client pays US$49 monthly to Web Services for hosting and site management, the license cost to purchase our proprietary or customized software is $4900. The retail price, for the Client only mentioned herein, for such proprietary software shall not increase more than 10% every calendar year. The retail price for a software is only incurred if (i) the client discontinues web hosting with Web Services, (ii) the client's account with Web Services is not in good standing, or (iii) if the client wishes to host his website elsewhere yet still use our proprietary or customized software.

6.7   Option to reject. Should the Client choose to abandon this agreement and/or nullify it and/or become a non-paying customer of Web Services, the Client has the option to reject the purchase offer of proprietary software of John Lewis Web Services. This will be assumed should the Client not pay for a license of the proprietary software as stated in Section(s) 6.5 and 6.6. The site areas which utilize such proprietary software, as stated in Section 6.5, will be DISABLED and DELETED only on the screens and/or pages which utilize the technology of the software. If this is the care, the Client also agrees to DISABLE and DELETE all local versions or copies of the aforementioned proprietary software. This is applicable regardless of new hosting company, in-house hosting, internal use, or non-use of the website.

7.   TERMINATION OF AGREEMENT

7.1   Termination upon Breach or Insolvency. Subject to Section 7.3 below, this Agreement may be terminated by either party upon written notice, (i) if the other party breaches any obligation hereunder and the breaching party fails to cure such breach within thirty (30) days after such notice, or (ii) if the other party is the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, makes an assignment for the benefit of creditors or admits in writing its inability to pay debts when due. Notwithstanding the foregoing, this Agreement may be terminated by Web Services at any time upon written notice to Client if Client fails to make any payment within five (5) days after such payment was due.

7.2   Termination for Client's Breach of Sections 5.1, 5.2, 5.3, 5.4. Notwithstanding Section 7.1 above, Web Services may immediately terminate this Agreement and remove Client's Web Site from the Virtual Server if it is determined, in Web Services's sole discretion, that Client has breached Sections 5.1, 5.2, 5.3, or 5.4 of the Agreement. Any termination under this Section 7.2 shall take effect immediately and Client expressly agrees that it: (i) shall not have any opportunity to cure, (ii) shall not be entitled to a refund of any fees paid to Web Services, and (iii) shall promptly pay a $250.00 clean-up / disconnection fee.

7.3   Rights and Remedies upon Termination. In the event either party terminates the Agreement pursuant to Sections 7.1 or 7.2, Web Services shall be entitled to immediately receive payment for all Services incurred through the date of termination. In addition, it is agreed to that, if Client is the breaching party, then Web Services will suffer damages that would be difficult to ascertain. Therefore, Client agrees to pay Web Services all amounts due hereunder for the remainder of the Initial Term or then applicable Renewal Term as liquidated damages and not as a penalty. Such liquidated damages shall be in addition to all other rights and remedies available to Web Services in law and in equity which may be granted by a court of competent jurisdiction.

8.   WARRANTY DISCLAIMER; LIMITATION ON LIABILITY & INDEMNITY

8.1   Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3 OF THIS AGREEMENT, ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. WEB SERVICES DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WEB SERVICES DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

8.2   Limitation on Liability. IN NO EVENT SHALL WEB SERVICES BE LIABLE TO CLIENT, CLIENT'S USERS OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR NONCONTRACTUAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SERVICES, EVEN IF WEB SERVICES HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. WEB SERVICES'S LIABILITY, IF ANY, TO CLIENT OR TO ANY THIRD PARTY HEREUNDER SHALL IN NO EVENT EXCEED THE TOTAL AFTER TAX PROFITS EARNED BY WEB SERVICES UNDER THIS AGREEMENT IN THE LAST TWELVE MONTHS. THE PARTIES ACKNOWLEDGE THAT WEB SERVICES HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

IN NO EVENT SHALL WEB SERVICES BE LIABLE FOR FAILURE OR DELAY IN PERFORMING ITS OBLIGATIONS HEREUNDER IF SUCH FAILURE OR DELAY IS DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF ANY GOVERNMENTAL BODY, WAR, INSURRECTION, SABOTAGE, EMBARGO, FIRE, FLOOD, STRIKE OR OTHER LABOR DISTURBANCE, INTERRUPTION OF OR DELAY IN TRANSPORTATION, UNAVAILABILITY OF OR DELAY IN TELECOMMUNICATIONS OR THIRD PARTY SERVICES, FAILURE OF THIRD PARTY SOFTWARE OR INABILITY TO OBTAIN RAW MATERIALS, SUPPLIES, OR POWER USED IN OR EQUIPMENT NEEDED FOR PROVISION OF THE SERVICES.

8.3   Indemnity. Client will indemnify, defend and hold Web Services, and its officers, directors, employees, agents and affiliates (each, an "Indemnified Party") harmless from and against any and all costs, liabilities, losses and expenses, including, but not limited to, reasonable attorneys' fees (collectively, "Losses") resulting from or arising out of any claim, suit, action, arbitration or proceeding (each, an "Action") brought by a third party against Indemnified Party relating to: (i) a breach or alleged breach by Client of any of its representations, warranties, covenants or obligations hereunder, (ii) infringement or misappropriation of any intellectual property rights, including but not limited to rights of privacy, patent, copyright, trade secret, trademark rights and/or licenses, (iii) injury caused by any negligence or willful misconduct of Client, or (iv) use of the Services, including use of the Services without the consent of Client

9.   GENERAL PROVISIONS

9.1   Privacy Policy. In an effort to address Client's privacy concerns, Web Services has instituted a privacy policy ("Privacy Policy") which is available on request and is incorporated herein by this reference. Web Services reserves the right to change the Privacy Policy at any time. Client acknowledges that it has read and understands the Privacy Policy and that Client has an obligation to periodically review the Privacy Policy from time to time. In the event any provisions contained in this Agreement conflicts with any terms,

conditions or clauses contained in the Privacy Policy, the provisions of this Agreement shall govern.

9.2 <u>Independent Contractor</u>. Web Services and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Web Services and Client. Neither Web Services nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9.3 <u>Binding Nature of Agreement; Assignment</u>. Except as otherwise provided herein, all the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that Client may not assign or transfer its rights or obligations under or interest in this Agreement without first obtaining the prior written consent of Web Services. Web Services may, in its sole discretion, assign its obligations under this Agreement in connection with any merger, sale of all or substantially all of the assets of Web Services, or sale of a majority of the outstanding shares of stock of Web Services.

9.4 <u>No Lease</u>. This Agreement is a service agreement and is not intended to and will not constitute a lease for any real or personal property. Client acknowledges and agrees that (i) it has been granted only a license to use the Services and equipment provided by Web Services in accordance with this Agreement, (ii) Client has not been granted any real property interest in any equipment, and (iii) Client has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.

9.5 <u>No Third-Party Beneficiaries</u>. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

9.6 <u>Attorneys' Fees</u>. In the event of any litigation or arbitration between the parties hereto arising from or related to a party's nonperformance or breach of this Agreement, the prevailing party in any such action shall be entitled to reimbursement of all costs and expenses incurred in connection with such litigation or arbitration, including without limitation, reasonable attorney's fees.

9.7 <u>Alteration</u>. No alteration, modification, or change of this Agreement shall be valid unless made in writing and executed by the parties hereto.

9.8 <u>Governing Law; Venue</u>. This Agreement shall be governed by and shall be construed, interpreted and enforced in accordance with the laws of the State of Florida, without reference to principles of conflicts of law. The parties agree that the sole and exclusive venue for any and all disputes arising hereunder shall be in any trial court located in Broward County, Florida. The parties hereby irrevocably consent to the jurisdiction of the appropriate court in Broward County, Florida.

9.9 <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The parties agree that this Agreement, the Service Order and Service Order Change Forms may be delivered by any party by electronic or facsimile signature.

9.10 <u>Severability</u>. Each provision of this Agreement shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein.

9.11 <u>Entire Agreement</u>. This Agreement, along with the AUP, Privacy Policy and Client's Plan, shall be the entire agreement among the parties with respect to the transactions contemplated among them and, except as otherwise provided, supersede all previous negotiations, commitments, and writings.

[END]

We appreciate your business & thank you for choosing to manage your website with us.

Most of our business is initiated by referrals. We will thankfully extend you a complimentary month of web hosting for every paid referral you send to us. Welcome to Web Services!

Rev. 04-11-06