

# Memphis Software Template Service Agreement

This is the Memphis Software Service Agreement (the "Agreement"), which explains the terms, and conditions governing your use of Memphis Software, technology, and any other content made available by Memphis Software. (Online) By checking the box and clicking on the Charge My Credit Card button, you accept these terms and conditions and acknowledge that the Memphis Software service is subject to certain limitations set forth below. . (Printed Agreement) By signing, you accept these terms and conditions and acknowledge that the Memphis Software solution is subject to certain limitations set forth below. If you do not wish to accept this agreement, do not purchase this Service. By registering and purchasing any Memphis Software Solutions, you agree to use the Memphis Software service in a manner consistent with all applicable laws and regulations and in accordance with the terms and conditions outlined below.

## 1. Services

(a) Generally. Purchasing a Memphis Software solution provides you (a "Member") with one of the following packages of content, tools, and services, depending on which one you purchased (individually and collectively "

Memphis Software Solution(s)):

Domain names are purchased in yearly segments. Memphis Software will provide you with a domain name, if you don't already have one. Memphis Software will manage and maintain your domain name for you. We will notify one month prior to your domain renewal. Please signify below your domain selection and who will manage it.

Domain Name prices vary depending on which extension you select:

.COM	\$12.99	.CO	\$12.99	.INFO	\$11.99	.NET	\$9.99
.ORG	\$6.99	.ME	\$7.99	.MOBI	\$6.99	.US	\$3.99
.BIZ	\$5.99	.CA	\$12.99	.CC	\$19.99	.TV	\$29.99
.WS	\$14.99	.ASIA	\$17.99				

Standard Website Templates are \$380.00/\$15.95 Design/Hosting or 12 consecutive monthly payment of \$48.00. Upon completion of 12 consecutive months, payments are reduced to \$15.95. Residence of Tennessee must include 9.25% sales tax. Our Standard Website Template includes 5 custom designed web pages, access to site hosting, 5 pages of disk space, unlimited bandwidth, 15 email mailboxes, quick response backup and restoration, customer support, and performance guarantee (see details in 14(a) below).

Website Template with Flash Intros are \$450.00/\$22.95 Design/Hosting or 12 consecutive monthly payment of \$60.00. Upon completion of 12 consecutive months, payments are reduced to \$22.95. Residence of Tennessee must include 9.25% sales tax. Our Website Template with Flash Intros includes 5 custom designed web pages, access to site hosting, 5 pages of disk space, unlimited bandwidth, 25 email mailboxes, quick response backup and restoration, customer support, and performance guarantee (see details in 14(a) below).

Flash Website Templates are \$520.00/\$29.95 Design/Hosting or 12 consecutive monthly payment of \$73.00. Upon completion of 12 consecutive months, payments are reduced to \$29.95. Residence of Tennessee must include 9.25% sales tax. Our Standard Website Template includes 5 custom designed web pages, access to site hosting, 5 pages of disk space, unlimited bandwidth, 50 email mailboxes, quick response backup and restoration, customer support, and performance guarantee (see details in 14(a) below).

SSL Encryption Certificates can help protect your transactions and customer data. Our SSL Encryption Certificates feature 2048 Bit Encryption, Secure Padlock Icon, and Encryption Shield Logo.. SSL

Encryption Certificates are \$75.00ea. Certificates are purchased in yearly segments. Memphis Software will notify you two months prior to your certificate renewal. Please signify below, if you need SSL.

**Our contract term is for 12 consecutive months from signature date**, after which this contract is self renewing unless canceled by written notification.

(b) Memphis Software Services and Technology: You will be able to use the proprietary and licensed technology incorporated in the Memphis Software Service to enhance visibility of your web site ("Member Site") ("Technology"). Memphis Software may offer other tools and services that are not included in any Memphis Software Solutions, including premium services for which an additional fee will apply

## **2. Payment Terms**

(a) For access to and use of any Memphis Software solutions, you agree to pay all fees and charges specified in the Memphis Software Service fee schedule. All fees are due immediately and are nonrefundable. If you switch your Memphis Software service, your service fees shall be prorated. You understand that in the event you have already purchased a Memphis Software Solution, your first payment for any purchase of a subsequent Memphis Software Solution may be prorated, and the actual amount charged may be slightly different than the list price. You agree to pay Memphis Software all amounts due upon demand; our standard due date is the 1<sup>st</sup> of each calendar month with payment considered late by the 5<sup>th</sup> and a late charge due of 3.50% of total outstanding balance or \$5.00 whichever is greater. ALL MONTHLY CARD PAYMENTS REQUIRE A \$1.50 CONVENIENCE FEE. Memphis Software will suspend your service by the 8<sup>th</sup> of each month with a reconnection fee of \$15.00 required to reinstate your service. Memphis Software may take commercially reasonable actions to validate your credit card and collect all payments due. You agree to pay all attorney and collection fees arising from any efforts to collect any past due amounts from you to the extent allowed by law. You understand that if Memphis Software does not receive timely payment of

all amounts due for any Solution you purchase, your use of any Memphis Software Service or Solution may be severely restricted or terminated at Memphis Software's sole discretion. This includes any Information you provide to Memphis Software while using any Memphis Software Service or Solution. THE FEE FOR ANY MEMPHIS SOFTWARE SERVICE IS NONREFUNDABLE. MEMPHIS SOFTWARE WILL NOT REFUND ANY FEES PAID BY YOU IF YOU TERMINATE YOUR AGREEMENT WITH US.

(b) Memphis Software reserves the right at its sole discretion and as it deems appropriate to add or remove certain services it offers and change its fees for any services in accordance with Section 4.

(c) You agree to notify Memphis Software immediately if you suspect unauthorized use of the Memphis Software Service, your credit card, or your password. Under the Fair Credit Billing Act, your credit card provider cannot hold you liable for more than \$50.00 of fraudulent charges. Subject to the following, if your credit card provider holds you liable for any of this \$50.00, Memphis Software will cover your entire liability up to the full \$50.00. Memphis Software will cover this liability only if the unauthorized use of your credit card is solely a result of a negligent act or omission by Memphis Software, and only for purchases made at Memphis Software while using the secure server. In the event of an unauthorized use of your credit card, you must notify your credit card provider in accordance with its reporting rules and procedures.

(d) You agree to pay any taxes, including personal property taxes or sales taxes, resulting from your use of the Memphis Software Services. You agree to pay all attorney and collection fees arising from our efforts to collect any past due amounts from you to the extent allowed by law.

## **3. Restrictions and Description of Prohibited Acts**

(a) You may not use any Memphis Software Service or Solution, for your Member Site, the Technology, or the Member Site to, including, but not limited to: (i) display material containing pornographic material of any kind; (ii) provide material that is grossly offensive to the Memphis Software online community, including blatant expressions of bigotry, prejudice, racism, hatred, or excessive profanity, or post any obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable content; (iii) sell or promote any products or services that are unlawful in the location at which the content is posted or received; (iv) access illegally or without authorization any computers, accounts, or networks of Memphis Software or any Memphis Software Member, or attempt to penetrate Memphis Software's security

measures ("hacking"), or conduct a port scan, stealth scan, or other information-gathering activity the intent of which is to gather information to be used to attempt a system penetration; or upload to Memphis Software, send through Memphis Software, or have Memphis Software host or distribute any Internet viruses, worms, Trojan horses, other harmful code, pinging, flooding, mail bombing, or denial-of-service attacks; or disrupt the use of or interfere with the ability of others to effectively use a Memphis Software Service or any connected network, system, service,

or equipment; (v) display material that exploits, or otherwise exploit, children under 18 years of age; (vi) post any content or otherwise infringe in any way or violate any copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property right of any third party; (vii) promote, solicit, or participate in pyramid schemes; (viii) post any content that holds Memphis Software Company up to public scorn or ridicule; (ix) engage in any libelous, defamatory, scandalous, threatening, or harassing activity; (x) post or disclose any personally identifying information or private information about children or any third parties without their consent (or their parents' consent, in case of a minor); and/or (xi) post any content that advocates, promotes, or otherwise encourages violence against any governments, organizations, groups, or individuals or that provides instruction, information, or assistance in causing or carrying out such violence.

(b) You agree that without the express consent of Memphis Software (and showing proof of the appropriate licenses where necessary or appropriate), you will never provide, sell, or offer to sell the following products or content (or services related to the same) on the Member Site you create: pharmaceutical or any other controlled substances; illegal drugs; illegal drug contraband; alcohol; firearms; weapons; pirated computer programs; pornography or illicitly pornographic sexual products; programs to "nuke" or create attacks against another individual or an Internet service provider; illegal goods; escort services; instructions on how to assemble or otherwise make bombs, grenades, or other weapons; information used to circumvent manufacturer-installed copy-protect devices; or computer software viruses or software designed to create a virus.

(c) You also agree that you will never promote or provide instructional information about: illegal activities, activities that can lead to physical harm to any group or individual, or any activities that lead to cruelty to animals. You may not use the Memphis Software Service, Technology, or Member Site in any high-risk activities where damage or injury to persons, property, environment, or business may result if an error occurs. YOU EXPRESSLY ASSUME ALL RISK FOR SUCH USE.

(d) Unless Memphis Software offers a service to conduct any of the following, you agree that you will never conduct the following types of activities on the Member Site: gambling; sweepstakes; raffles; lotteries; contests, pyramid, or ponzi schemes; and/or unsolicited commercial email (spam). (e) You agree that you will not (and you will not allow any third party to) partake in the following actions: reverse engineering, reverse compiling or otherwise deriving the underlying source code or structure or sequence of any Memphis Software Service, Memphis Software Solution, or any Technology; individual pass wording of Member Sites (or pages contained therein); deleting or altering author attributes or copyright notices, unless expressly permitted in writing by the author or owner; and/or fail to obtain all required permissions when using a Memphis Software Service, Memphis Software Solution, or Technology to receive, upload, download, display, distribute, or execute programs or perform other works protected by intellectual-property laws, including copyright and patent laws.

#### **4. Changes to the Terms and Conditions**

Memphis Software may at any time, with notice of not less than thirty (30) days, change its fees and change the terms of this Agreement. Except for the addition of new tools and services, Memphis Software will also give reasonable notice before any modification of the then-current Memphis Software Service that could change your Member Site. Memphis Software will announce changes to our fees and charges by posting them in the Home section of our service or via email. Memphis Software may, at its discretion, supplement such notice by sending you an email or by putting a popup notice on your screen when you access the Memphis Software Service, or by sending you a letter. If you find any change to be unacceptable, you are free to terminate this agreement by following the steps described in Section 8. Your use of the Memphis Software Service after the effective date of a change constitutes your continued acceptance of the terms of this agreement, the Memphis Software Service, and its fee schedule.

#### **5. Information About You and Your Business**

(a) Memphis Software is committed to protecting your privacy. Memphis Software will never sell personally identifiable information about you or your business to any third party without first receiving your permission, and all uses of any personally identifiable information about you or your business will be subject to our Privacy Policy.

(b) In order to protect you, Memphis Software uses state-of the-art technology to protect your data from unauthorized third parties. Currently Memphis Software uses encryption to protect your data and secure your transactions by encrypting your personal information, including your credit card number, name, and address, as it is transmitted over the Internet.

## **6. Memphis Software Rights**

(a) Member Site Content Changes. Memphis Software reserves the right to make changes to Member Site upon written request by you to Customer Support to do so, such as through email, or upon breach of any of the provisions of this Agreement by providing you notice of such breach and reasonable time, determined by Memphis Software at its sole discretion, to rectify the infringing content. If after such time has expired the Member Site does not conform to Memphis Software 's satisfaction, Memphis Software may make changes to the content of Member Site to bring it to compliance with this Agreement. Member agrees not to hold Memphis Software liable for any foreseeable, unforeseeable, direct, or indirect consequences that may result from changes made by Customer Support to Member Site in response to Member request to do so or in response to a Member Site that breaches this Agreement. Memphis Software 's decisions are final and binding. Notwithstanding the above, Memphis Software also reserves the right to discontinue the provision of any or all aspects of the Memphis Software Service or any Memphis Software Solution to any Member for any breach of this Agreement.

(b) Communications. Memphis Software reserves the right to communicate with all Members regardless of their email subscriptions in the event that important messages need to be communicated to Members, including, but not limited to, service outages, material changes or modifications to the service, and notice of changes to this Agreement.

## **7. Term/Termination**

(a) Term.

This agreement shall be effective upon when you (Online) click on the Charge MyCredit Card button or (Printed Agreement) By signing, until terminated in accordance with the provisions below.

(b) Termination by Memphis Software.

(i) Memphis Software may at any time without notice to you discontinue any or all aspects of the Memphis Software

Service or restrict your use of the Memphis Software Service in whole or in part for any breach of this agreement by you; or if Memphis Software determines in its sole and exclusive judgment that terminating your use of the Memphis Software Service is necessary for security reasons or for proper continued operation of the Memphis Software Service; or your use of the Memphis Software Service, Memphis Software Solution, or Technology is not for legitimate business purposes, or your use of the Memphis Software Service violates any laws or regulation; or if Memphis Software receives information that the Memphis Software Service or your use of the Memphis Software Service (or any part thereof) may violate any third-party right. For more information on copyright infringement, go to our Notice of Copyright Agent page.

(ii) Memphis Software may at any time, with thirty (30) days notice to you, modify or discontinue any or all aspects of the Memphis Software Service. (iii) Memphis Software may at any time, with ten (10) days notice to you, modify or discontinue any or all aspects of the Memphis Software Service or any Memphis Software Solution, if the credit card number you provide Memphis Software Company expires, or if Memphis Software is unable to charge valid charges to that credit card number, or if you otherwise fail to make payments due to Memphis Software hereunder. (iv) Upon termination of this Agreement, all rights granted to you under this Agreement shall terminate immediately. If Memphis Software terminates this Agreement or suspends your access to the Memphis Software Service, you will remain liable for the full charge for the period during which we terminate or suspend your Memphis Software Service. Following such termination or suspension, you agree not to reregister for or otherwise access the Memphis Software Services without Memphis Software 's prior written approval.

Memphis Software reserves the right to delete any data files associated with your use of the Memphis Software Service upon termination of this Agreement.

(c) Termination by You.

You may cancel your Memphis Software Service at any time after your 12-month obligation. To cancel, you must submit a written request to Customer Support at least five (5) business days before the beginning of your next billing period. If your notice to Memphis Software is within this five (5) business-day period before the beginning of your next billing period, you will be charged for the subsequent billing period, and the cancellation will take effect for the following billing period.

#### Effects of Cancellation

Early cancellation of your contract requires you to pay the full remaining balance of your contract. If you cancel your Memphis Software Service, then as of the end of the applicable billing period, you will no longer have access to any of the tools and services included in the service, therefore: (i) Memphis Software will no longer host your web site, and all of your Information will be deleted; (ii) you will no longer have access to any site building services, communication tools, or reports; (iii) (for Webmail and Ecommerce Users) you will no longer have access to your Web Mail, and any files, emails, attachments, email addresses, and any other information or content included in your Web Mail account will be deleted; (iv) (for Promote Users only) your site will no longer be automatically submitted or resubmitted to any search engines included in Search Engine Manager, and you will no longer receive any of the benefits of such service. MEMPHIS SOFTWARE IS NOT RESPONSIBLE FOR THE DELETION OF ANY FILE, ATTACHMENT, INFORMATION, CONTENT, OR ANY OTHER CONSEQUENCE OF YOUR DECISION TO CANCEL THIS SERVICE.

#### 8. Indemnification

You agree to indemnify Memphis Software and hold Memphis Software harmless against any and all liabilities, cost, and expenses, including reasonable attorney's fees related to or arising from: (i) your use of the Memphis Software Service in a way that is prohibited or restricted under this agreement; (ii) infringement of any copyright, trademark, intellectual property, or other right or patent by any material you post or use on your Member Site; (iii) any breach by you of this Agreement; and/or (iv) any indecent, obscene, or libelous material posted on your Member Site.

#### 9. Reporting Violations

Memphis Software does not actively monitor the content of Member Sites but will investigate complaints of a violation of third-party rights. Violations or infringement of a third-party copyright, other intellectual property right, or other right will be dealt with in accordance with the Memphis Software Policy.

#### 10. Proprietary Rights

As between the parties, Memphis Software acknowledges that it claims no proprietary rights in your Information or any intellectual property right contained therein. As between the parties, you acknowledge and agree that Memphis Software and its licensors own all right, title, and interest in: (a) the Memphis Software Service or any Memphis Software Solution; (b) the Technology available on the Memphis Software Service or Memphis Software Solution; (c) and all content, including but not limited to text, software, music, sound, photographs, video, graphics, or other material contained or maintained on the Memphis Software Service or

Memphis Software Solution (collectively "Memphis Software Content"), excluding all Member Information. In addition, you agree that the Memphis Software Content and Technology available on the Memphis Software Service or any Memphis Software Solution is protected by U.S. and international copyrights, trademarks, service marks, patents, or other proprietary rights and laws; therefore, you are permitted to use this Memphis Software

Development Company Content and Technology only as expressly authorized by Memphis Software or its licensors. You also understand and agree that the compilation, collection, selection, arrangement, assembly, and coordination of all Memphis Software Content available on the Memphis Software Service or Memphis Software Solution is the exclusive property of Memphis Software and its licensors and protected by U.S. and international copyright laws. You agree that, except as expressly authorized by Memphis Software, all the Memphis Software Content and Technology available on the Memphis Software Service or Memphis Software Solution may be used by you only for your internal business and data-gathering purposes. You may make copies of selected portions of the Memphis Software Content,

provided that such copies are made only for your internal use and only if you maintain any proprietary notices contained in such Memphis Software Content; otherwise you may not make, use, sell, copy, reproduce, distribute, transmit, or create derivative works from this Memphis Software Content or Technology without expressly being authorized to do so by Memphis Software.

### **11. Trademarks and Service Marks**

Memphis Software (SM), and other pending and/or registered trademarks and service marks, and other graphics, logos, and service names used by Memphis Software on the Memphis Software Service or Memphis Software Solutions to identify the products or services of Memphis Software (collectively the "Memphis Software Trademarks") are the trademarks of Memphis Software. You agree not to use the Memphis Software Trademarks in connection with your products or services or any third-party products or services or in any manner that disparages or discredits Memphis Software. All other brands and names (including third-party product names) used on the Memphis Software Service are the property of their respective owners.

### **12. Limitation on Liability**

- (a) YOU ARE SOLELY RESPONSIBLE FOR THE PROPER CONDUCT OF YOUR BUSINESS AND ALL OTHER MATTERS UNDER YOUR CONTROL. REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, YOU AGREE THAT IN NO EVENT WILL MEMPHIS SOFTWARE, OUR AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OR LICENSORS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE MEMPHIS SOFTWARE SERVICE, TECHNOLOGY, OR CONTENT AVAILABLE ON THE MEMPHIS SOFTWARE SERVICE ("MEMPHIS SOFTWARE AFFILIATES"), BE LIABLE TO YOU IN ANY MANNER WHATSOEVER: (I) FOR ANY DECISION MADE OR ACTION OR NONACTION TAKEN BY YOU IN RELIANCE UPON THE INFORMATION PROVIDED THROUGH THE MEMPHIS SOFTWARE SERVICE; (II) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY; (III) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES AND LOSS OF PROFITS, EVEN IF MEMPHIS SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE AGGREGATE LIABILITY OF MEMPHIS SOFTWARE AND THE MEMPHIS SOFTWARE AFFILIATES ARISING FROM OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR CLAIM) IS LIMITED TO ANY AMOUNTS YOU HAVE PAID TO MEMPHIS SOFTWARE DURING THE TERM OF THIS AGREEMENT FOR ANY MEMPHIS SOFTWARE SERVICE, MEMPHIS SOFTWARE SOLUTION, OR TECHNOLOGY.
- (c) SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; IN THOSE JURISDICTIONS OUR LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.
- (d) IN NO EVENT IS MEMPHIS SOFTWARE OR ANY MEMPHIS SOFTWARE AFFILIATE LIABLE FOR ANY DAMAGES ARISING FROM YOUR FAILURE TO PERFORM YOUR RESPONSIBILITIES IN CONNECTION WITH THIS AGREEMENT, OR ARISING FROM ANY CAUSE BEYOND MEMPHIS SOFTWARE'S CONTROL.
- (e) THIS SECTION APPLIES TO ALL CLAIMS BY YOU IRRESPECTIVE OF THE CAUSE OF ACTION UNDERLYING YOUR CLAIM, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT (EVEN IF IN THE NATURE OF A BREACH OF CONDITION OR A FUNDAMENTAL TERM OR A FUNDAMENTAL BREACH), OR TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, STRICT LIABILITY, FRAUD, MISREPRESENTATION, AND/OR OTHERWISE.

### **13. Warranties/Disclaimers**

- (a) Hosting Members only: If you have purchased hosting from Memphis Software, then Memphis Software offers you the following Performance Guarantee:

Once your site is published, you can expect 99 percent availability in any calendar month, excluding scheduled maintenance or outages beyond our control or other third-party service provider outages. Your published site is available when end users are able to download your homepage from Memphis Software

If you're published site is available less than 97 percent but more than 95 percent of any calendar month, you will receive a Memphis Software credit of 10 percent of your monthly Memphis Software Service fee for the affected month. Once a Memphis Software credit is given, it will be applied to your next billing cycle. If a credit is necessary, you will receive the appropriate credit within 6 to 8 weeks of the end of the month in which the Performance Guarantee was breached. In no event will Memphis Software refund any portion of the Memphis Software Service fee. Availability shall be calculated solely by Memphis Software. This Performance Guarantee does not apply to any technology offered to you in a "preview" or "beta" mode. The remedy stated above is your sole remedy for any breach of the Performance Guarantee.

(b) THE OPINIONS AND VIEWS EXPRESSED IN ANY MEMBER SITE DO NOT REFLECT THOSE OF MEMPHIS SOFTWARE, AND Memphis Software DOES NOT REVIEW, VERIFY, ENDORSE, OR OTHERWISE VOUCH FOR THE CONTENT OF ANY MEMBER SITES. MEMPHIS SOFTWARE IS NOT RESPONSIBLE FOR EVERYTHING CONTAINED IN THEIR OWN MEMBER SITE. MEMBERS MAY BE HELD LEGALLY LIABLE FOR THE CONTENTS OF THEIR MEMBER SITE AND MAY BE HELD LEGALLY ACCOUNTABLE IF THEIR MEMBER SITE INCLUDES, FOR EXAMPLE, ANY DEFAMATORY COMMENTS OR MATERIAL PROTECTED BY COPYRIGHT, TRADEMARK, PATENT, OR TRADE SECRET OR OTHER LAWS WITHOUT THE EXPRESS PERMISSION OF THE AUTHOR OR OWNER.

(c) MEMPHIS SOFTWARE IS NOT RESPONSIBLE FOR THE DELIVERY OR QUALITY OF ANY GOODS OR SERVICES SOLD OR ADVERTISED THROUGH THE MEMPHIS SOFTWARE NETWORK OR THROUGH ANY MEMPHIS SOFTWARE AFFILIATE PROGRAM OR THROUGH THE MEMBER SITES.

(d) EXCEPT FOR 14(a), ALL MEMPHIS SOFTWARE SERVICE, CONTENT, AND TECHNOLOGY PROVIDED IN ASSOCIATION WITH THE MEMPHIS SOFTWARE SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW AND EXCEPT AS SPECIFICALLY SET FORTH HEREIN, NEITHER MEMPHIS SOFTWARE NOR MEMPHIS SOFTWARE

LICENSORS MAKE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND WITH RESPECT TO THE MEMPHIS SOFTWARE, CONTENT, TECHNOLOGY, OR PRODUCTS THAT MEMPHIS SOFTWARE OR ITS LICENSORS OR ANY OTHER THIRD PARTY PROVIDES, AND MEMPHIS SOFTWARE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL IMPLIED AND EXPRESS WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT WITH RESPECT TO THE SAME. WITHOUT LIMITING THE FOREGOING, NO WARRANTY IS GIVEN THAT THE MEMPHIS SOFTWARE SERVICE OR TECHNOLOGY IS ERROR-FREE. MEMPHIS SOFTWARE AND ITS LICENSORS DISCLAIM ANY WARRANTY OF TITLE OR ANY OTHER WARRANTIES OR ANY THIRD PARTY'S OFFERING (S) OR PRODUCT (S).

(e) MEMPHIS SOFTWARE DOES NOT GUARANTEE THAT ITS SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO YOUR INFORMATION. MEMPHIS SOFTWARE AND ITS LICENSORS ARE NOT RESPONSIBLE FOR INVALID DESTINATIONS AND TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF YOUR INFORMATION CARRIED OVER INTEREXCHANGE CARRIERS', LOCAL EXCHANGE CARRIERS', OR OTHER PROVIDERS' FACILITIES.

(f) THE DOCUMENTS AND GRAPHICS APPEARING ON THE MEMPHIS SOFTWARE SERVICE MAY INCLUDE TECHNICAL INACCURACIES, TYPOGRAPHICAL ERRORS, AND OUT-OF-DATE INFORMATION; THEREFORE YOU EXPRESSLY ASSUME ALL RISK FOR SUCH USE OF THE MEMPHIS SOFTWARE SERVICE, MEMPHIS SOFTWARE SOLUTION, OR TECHNOLOGY.

(g) MEMPHIS SOFTWARE MAY PROVIDE LINKS TO OTHER WEB SITES OR RESOURCES. YOU ACKNOWLEDGE AND AGREE THAT MEMPHIS SOFTWARE IS NOT RESPONSIBLE FOR THE AVAILABILITY OF SUCH EXTERNAL SITES OR RESOURCES, AND DOES NOT ENDORSE AND IS NOT RESPONSIBLE OR LIABLE FOR ANY CONTENT, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE FROM SUCH SITES OR RESOURCES. YOU ALSO AGREE THAT MEMPHIS SOFTWARE SHALL NOT BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION

WITH USE OF OR RELIANCE ON ANY SUCH CONTENT, GOODS, OR SERVICES AVAILABLE ON SUCH EXTERNAL THIRD-PARTY SITES.

(h) If you purchase Memphis Software Promote makes no warranty or guarantee as to the effect of Search Engine Manager on your business results.

#### **14. Miscellaneous**

(a) This Agreement shall be governed by and construed in accordance with U.S. federal and Tennessee laws, excluding its conflict-of-law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any law or regulation that provides that the language of a contract shall be construed against the drafter shall not apply to this Agreement. You agree to submit to the exclusive jurisdiction of the federal and state courts of the state of Tennessee, which are located in Memphis, TN. If local laws prohibit your participation in any part of the Memphis Software Service, or use of them, then you are responsible for complying with such laws and the terms of this Agreement.

(b) Any and all disputes between you and Memphis Software will be settled by arbitration in Memphis, TN., in accordance with the regulations of the American Arbitration Association then in force, and you agree that all negotiations, discussions, and settlements shall be subject to obligations of confidentiality and shall not be disclosed to any third party.

(c) If any provision(s) of this Agreement is held to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

(d) All notices to you shall be in writing and shall be made either via email or conventional mail, or by posting such notices on the Memphis Software Service. Memphis Software may broadcast notices or messages through the Memphis Software Service to inform you of changes to this Agreement, the Memphis Software

Service, or other matters of importance; such broadcasts shall constitute notice to you. All notices to Memphis Software from you must be made in writing via our Customer Support form.

(e) Memphis Software's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Memphis Software in writing.

(f) Except in the event that you purchase any Memphis Software Solution, this Agreement comprises the entire agreement between you and Memphis Software and supersedes all prior agreements between the parties regarding the subject matter contained herein. Should you choose to purchase any Memphis Software Solution, you will be bound by all terms and conditions relating to the provision of such Memphis Software Solution.

(g) Your membership in the Memphis Software Service and any of your rights hereunder may not be assigned or transferred to any third party. Memphis Software reserves the right to assign this agreement to any third party that acquires all or substantially all of its relevant business or assets.

(h) The section titles in this Agreement are solely used for the convenience of the parties and have no legal or contractual significance.

(i) You represent and warrant that you are over the age of 18 years, have read this Agreement, and agree to be bound by its terms and conditions.

**---- Please Acknowledge Below ----**



THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS AGREEMENT AND ANY ADDENDUM IF CHECKED AND AGREE TO BE BOUND BY ITS TERMS. EACH PARTY FURTHER WARRANTS THAT IT HAS FULL CORPORATE POWER AND AUTHORITY TO ENTER INTO AND DELIVER THIS AGREEMENT AND TO PERFORM ITS OBLIGATIONS HEREUNDER, AND THAT THE PERSON WHOSE SIGNATURE APPEARS BELOW IS DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT PARTY

In Witness whereof, the parties have entered this Agreement as of the date set forth:  
(Please type or print all information except signatures)

\_\_\_\_\_  
(Printed) Selected Template Solution

Auth. Customer | Memphis Software

(Circle) Who Manages Domain Name

Yes | No

(Circle) Require Domain Name

\_\_\_\_\_  
Domain Name Extension (if Applicable)

Yes | No

(Circle) Require SSL

\_\_\_\_\_  
(Printed) Name of Authorized Customer Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signed) Name of Authorized Customer Representative

Booker Miller  
(Signed) Authorized Memphis Software Representative

CEO / President \_\_\_\_\_  
Title of Authorized Date

**\*\* All requested information and a signed copy of the last page of this contract must be submitted via fax or email to start hosting process \*\***