

The Computer Tutor, Inc.

Standard Web Hosting and Electronic Commerce Agreement

Carefully read the following terms and conditions of this agreement. By accessing and using the web hosting and electronic commerce services of The Computer Tutor, Inc. ("The Computer Tutor"), you ("Customer") indicate the acceptance of the following terms and conditions and you agree to be bound by them. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE THE COMPUTER TUTOR WEB HOSTING AND ELECTRONIC COMMERCE SERVICES** and promptly advise us that you have not agreed.

This agreement constitutes the complete and exclusive statement of the agreement between you and The Computer Tutor with respect to The Computer Tutor web hosting and electronic commerce services and **SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT**, oral or written, and any other communications relating to the subject matter of this agreement.

Now, therefore, in consideration of the mutual covenants set forth herein, The Computer Tutor and Customer agree as follows:

1. Order Acceptance, Payment.

- A. All orders are subject to acceptance by The Computer Tutor. An order will be deemed accepted by The Computer Tutor when written confirmation of this order, in the form of a credit card charge or invoice for the 1st months service is sent to Customer.
- B. The Computer Tutor shall direct bill or charge Customer's credit card for the applicable set-up fees and monthly fees according to the Package(s) selected by Customer and provided by The Computer Tutor. Such fees and charges shall include, without limitation, the fees for connectivity, design services, and charges by any and all third parties whose materials are included as part of the Package(s). The Computer Tutor reserves the right to change the amount of, or basis for determining, any fees or charges and institute new fees and charges upon prior notice to Customer. All monthly fees and set-up fees shall be due in advance of the month incurred and all additional charges shall be due at the end of the month in which such charges are incurred. Except as provided in Section 3, the set-up fees are nonrefundable and The Computer Tutor does not issue pro rata refunds for fees paid in advance. If payment by Customer's credit card is denied, or Customer's check is returned to The Computer Tutor for any reason, including charge back or Customer otherwise fails to make any payments owing to The Computer Tutor, The Computer Tutor may, at The Computer Tutor's discretion, suspend or terminate access to The Computer Tutor Services and/or terminate this Agreement. Customer's right to use The Computer Tutor Services is subject to any limits established by The Computer Tutor or by the issuer of Customer's credit card. Interest charges of 1% per month will accrue daily on any unpaid balance, which is more than thirty (30) days overdue.

2. The Computer Tutor Services.

- A. During the term of this Agreement, The Computer Tutor shall provide software services to Customer according to the Package(s) accepted by Customer (the "The Computer Tutor Services"). "Package" means one of The Computer Tutor business and/or electronic commerce service offerings, as can be found on the attached standard services document or on our Web site at <http://www.thetutorinc.com>. The specific Package to be provided to Customer shall be established by correspondence between The Computer Tutor and Customer. Such Package shall be deemed incorporated by reference into this Agreement, as if fully set forth herein. The Computer Tutor and Customer shall retain copies of such Package(s) for future reference.
- B. At Customer's request, The Computer Tutor will acquire an Internet Second-Level Domain Name ("Domain Name"), from the Contracted Registrar on behalf of Customer. Customer's request for and/or acceptance of a Domain Name obtained by The Computer Tutor shall in all cases constitute Customer's waiver of any and all claims which Customer may have, or which may later arise, against The Computer Tutor or its third party providers, for any and all damages, losses, claims or expenses arising out or related to the acquisition, registration and/or use of the Domain Name. Any cost incurred by The Computer Tutor to obtain, renew, transfer or maintain the Domain Name on behalf of Customer shall be charged to Customer. Request for and acceptance of a domain name requires The Computer Tutor to supply the domain name to the Contracted Registrar, which in turn supplies the Domain Name to third parties.

3. Limited 30-Day Money-Back Guarantee. The Computer Tutor offers a thirty (30) day money back guarantee on each Package. If Customer is not completely satisfied with The Computer Tutor Services provided under such Package within the first thirty (30) days, Customer may cancel this Agreement by notifying The Computer Tutor by calling (601)992-3340, e-mailing customerservice@thetutorinc.com or writing to the address listed in Section 8C. In such case, Customer will receive a full refund of any amounts paid pursuant to this Agreement, except for set-up fees, which are nonrefundable. After the initial thirty (30) day period, The Computer Tutor Services shall be deemed accepted for all purposes, provided no written claim has been received by The Computer Tutor within such thirty (30) day period.

4. Third Party Providers. In order to access and use the The Computer Tutor Services, Customer may be required to subscribe to other services offered under separate agreements, including, but not limited to, an Internet Service Provider such as Bell South Fast Access. This Agreement does not in any way modify the terms of such agreements. In addition, Customer acknowledges that in order to access certain of the The Computer Tutor Services, Customer may have to agree to and execute agreements with third party providers who may charge Customer fees and charges which are in addition to the fees and charges imposed by The Computer Tutor.

5. Rules and Regulations. From time to time The Computer Tutor may impose reasonable rules and regulations regarding the use of the The Computer Tutor Services. Such rules and regulations are called acceptable use policies which prohibit the use of objectionable language and sexually explicit material and will be furnished upon request by customer. All such acceptable use policies are incorporated by reference into this Agreement as if fully set forth herein.

6. License Grant. During the term of this Agreement, The Computer Tutor grants to Customer a non-exclusive, personal, non-transferable license to access and use the The Computer Tutor Services solely on and as part of The Computer Tutor's World Wide Web site and servers. The Computer Tutor may modify the The Computer Tutor Services at any time for any reason and may provide modified versions of the The Computer Tutor Services to Customer.

The Computer Tutor Web Hosting and Electronic Commerce Agreement

7. **Intellectual Property Rights.** Customer acknowledges and agrees that the The Computer Tutor Services constitute confidential and proprietary information of The Computer Tutor and its licensors and embodies trade secrets and intellectual property of The Computer Tutor and its licensors protected under United States copyright and other laws and international treaty provisions. Customer further acknowledges that all right, title, and interest in and to all parts of the The Computer Tutor Services, including, without limitation, associated intellectual property rights, are and shall remain with The Computer Tutor and its licensors. Customer shall not, and shall cause its employees and agents not to, disclose or transfer any portion of the The Computer Tutor Services to any third party. Customer further agrees not to translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, sublicense, distribute, remarket or otherwise dispose of any portion of the The Computer Tutor Services. Customer hereby acknowledges that, if The Computer Tutor at any time or from time to time performs any customizations or modifications to The Computer Tutor Services, all rights and interests to such customizations or modifications shall be the sole property of The Computer Tutor.

8. **Term and Termination**

- A. This Agreement shall have an initial term of one (1) month and shall thereafter automatically renew for successive one (1) month periods. This Agreement and Customer's access to the The Computer Tutor Services shall terminate as follows: (i) Either party may terminate upon thirty (30) days prior notice; (ii) The Computer Tutor may immediately and without prior notice terminate upon a violation by Customer of The Computer Tutor's acceptable use policies; (iii) The Computer Tutor may terminate immediately and without prior notice in accordance with Section 1; and (iv) The Computer Tutor may terminate immediately if, after 15 days prior notice to Customer, Customer has failed to correct any breach of this Agreement.
- B. Upon any termination in accordance with Section 8(A)(i), The Computer Tutor shall permit Customer forty-eight (48) hours to download or otherwise copy any of Customer's information and data residing on The Computer Tutor's facilities prior to removing such information and data from The Computer Tutor's facilities. Upon termination by The Computer Tutor under Sections 8(B)(ii), (iii) or (iv), The Computer Tutor may immediately remove all of Customer's data and information from The Computer Tutor's facilities and Customer shall have no right to copy or download such data or information, and, in such event, all such information and data, including all copyrighted or copyrightable material therein, shall then become the property of The Computer Tutor. In cases where Customer's account has been cancelled, and Customer is requesting reactivation, The Computer Tutor, at its option, may reactivate the same account, only if the account had been cancelled less than sixty (60) days prior. After sixty (60) days, Customer will be required to set up a new account.
- C. To cancel The Computer Tutor web hosting, domain name services or electronic commerce services, Customer should call the The Computer Tutor at (601)992-3340 or send a request via mail to The Computer Tutor, P. O. Box 4471, Brandon, MS 39047, Attention: Web Hosting Cancellations. For assurance of delivery, The Computer Tutor recommends that requests for cancellation are sent via certified mail.
- D. Sections 1, 7, 8, 9, 10, 11, 12, 13, 14 and 15 shall survive any termination of this Agreement.

9. **Exclusion of Warranties.** THE COMPUTER TUTOR PROVIDES THE COMPUTER TUTOR SERVICE ON AN "AS IS" BASIS, AND WITHOUT ANY WARRANTY OF ANY KIND, whether express or implied, including, but without limitation, any implied warranty of merchantability, or fitness for a particular purpose.

While The Computer Tutor makes reasonable efforts to maintain the The Computer Tutor service, many factors are not within The Computer Tutor's control. Therefore, The Computer Tutor does not warrant, and is not responsible for any loss of data, delays, non-delivery or misdelivery of information, lack of access, slow response time, or service interruptions or errors. Loss, delay or non-delivery of data can be due to but not limited to The Computer Tutor's own negligence, viruses or other third parties. Customer's data is defined as any data held by The Computer Tutor and includes account information, web hosting data, email and domain name services. This disclaimer and waiver shall apply equally to any and all third party providers. The Computer Tutor provides no warranty to customer regarding the accuracy of usage statistics, which The Computer Tutor may provide in its discretion. Further, no advice or information given by The Computer Tutor representative shall create a warranty or serve as an amendment to this agreement.

The Computer Tutor has the right to change prices, or add or delete product features of any existing product or service. The right to change products or services extends to any software supporting a product or service. The Computer Tutor has the right to discontinue products or services and the right to remove or reassign IP addresses of a customer's web site. The Computer Tutor also has the right to deactivate a customer's service with a thirty (30) day notice.

Except for certain products and services specifically identified as being offered by The Computer Tutor, The Computer Tutor does not control any materials, information, products, or services on the Internet. The Internet contains unedited materials, some of which are sexually explicit or may be offensive to you. The Computer Tutor has no control over and accepts no responsibility for such materials. You assume full responsibility and risk for use of the services and the Internet and are solely responsible for evaluating the accuracy, completeness, and usefulness of all services, products, and other information, and the quality and merchantability of all merchandise provided through the service or the Internet.

10. **Limitation of Liability and Damages.** THE TOTAL AGGREGATE LIABILITY OF THE COMPUTER TUTOR TO CUSTOMER SHALL BE LIMITED TO THE AMOUNT PAID TO THE COMPUTER TUTOR BY CUSTOMER HEREUNDER DURING THE THREE MONTHS IMMEDIATELY PRECEDING A CLAIM IN WHICH THE COMPUTER TUTOR IS LIABLE TO CUSTOMER. IN NO EVENT SHALL THE COMPUTER TUTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF BUSINESS, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED UPON BREACH OF CONTRACT, TORT, OR OTHERWISE AND WHETHER OR NOT THE COMPUTER TUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Confidentiality.** Customer acknowledges that by reason of its relationship with The Computer Tutor, it may have access to certain information and materials relating to The Computer Tutor's business, customers, software technology and marketing which The Computer Tutor

The Computer Tutor Web Hosting and Electronic Commerce Agreement

treats as confidential (collectively "Confidential Information"). Customer shall: (i) hold in confidence, and not disclose or reveal to any person or entity, any Confidential Information without the clear and express prior written consent of a duly authorized representative of The Computer Tutor; and (ii) not use or disclose any of the Confidential Information for any purpose at any time, other than for the limited purpose of performance under this Agreement. These obligations shall continue indefinitely for so long as the Confidential Information is a trade secret under applicable law and shall continue for two (2) years following termination of this Agreement with respect to Confidential Information, which does not rise to the level of a trade secret.

12. Indemnification. Customer shall indemnify and hold The Computer Tutor harmless against all third party claims, demands, suits, actions, judgments, losses, costs, damages (direct, indirect and consequential), attorney's fees and expenses that Company may sustain or incur by reason of any breach or alleged breach of any term or condition of this Agreement (including reasonable attorney's fees) and for any act or omission of Customer or its clients which are in any way related to the The Computer Tutor Service.

13. Export Control. Customer agrees not to export or re-export any portion of the The Computer Tutor Service outside of the United States. Customer further agrees to comply with all United States and other applicable laws, rules and regulations relating to the export, re-export or transshipment of the The Computer Tutor Services.

14. Force Majeure. Either party shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, labor disputes and strikes, riots, war, and governmental requirements. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

15. Miscellaneous. Customer may not assign its rights or delegate any of its duties under this Agreement without prior written consent of The Computer Tutor, and any attempted assignment or delegation without such consent shall be void. If one or more provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. Nothing in this Agreement or in the understanding of the parties construes upon the parties the status of partners or joint ventures. The Computer Tutor may subcontract any work, obligations or other performance required of The Computer Tutor under this Agreement without consent of Customer.

Other than the termination of this agreement, all notices provided hereunder sent by email, mail or certified mail to The Computer Tutor, will be effective upon transmission.

The Computer Tutor has the right to amend the Agreement from time to time, and will do so by posting the new Agreement on the The Computer Tutor web site under the Terms and Conditions at the Policies and Agreements page.

The Agreement shall be governed by the laws of Mississippi, without giving effect to applicable conflict of laws provisions.

16. California Consumer Protection. Under California Civil Code Section 1789.3, California subscribers are entitled to the following specific consumer rights information: the complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA 95814 or by telephone at 1-916-445-1254.