

ClientWhys End User Service Agreement

PLEASE REVIEW THIS END USER SERVICES AGREEMENT (THIS "AGREEMENT") CAREFULLY, AS IT CONSTITUTES A LEGAL AGREEMENT BETWEEN "CUSTOMER" (AS DEFINED IN THE SERVICE ORDER LINKED TO THIS AGREEMENT), AND CLIENTWHYS, INC. CORPORATION ("ClientWhys").

CUSTOMER INITIATED AN ORDER TO USE CLIENTWHYS SERVICES (THE "SERVICES"). IN ORDER TO USE THESE SERVICES, CUSTOMER MUST FIRST READ THIS AGREEMENT AND ACCEPT THESE TERMS. THIS IS AN AGREEMENT FOR SERVICES AND CUSTOMER IS NOT BEING GRANTED A LICENSE TO ANY SOFTWARE UNDER THIS AGREEMENT.

1. **Services.** During the term of this Agreement and subject to the terms and conditions set forth herein and any guidelines, rules or operating policies that ClientWhys may establish and post from time to time on <http://www.ClientWhys.com> (the "Site"), including, without limitation ClientWhys's anti-spam policy, privacy policy and prohibited content and commerce statement (collectively, the "Policies"), ClientWhys agrees to use commercially reasonable efforts to provide Customer with the Services. From time to time, ClientWhys may modify the terms and conditions of this Agreement and/or the Policies. All such changes shall become effective upon posting of the revised Agreement and/or Policies, as the case may be, on the Site, and Customer's use of the Services thereafter shall be subject thereto. Customer agrees that its purchase of the Services is neither contingent upon the delivery of any future functionality or features, nor is it dependent upon any oral or written comments made by ClientWhys with respect to future functionality or features.

2. **Professional Services.** In addition to the Services, Customer may purchase certain premium services by making its selection therefor in accordance with the instructions posted at <http://www.ClientWhys.com> (the "Professional Services"), which Professional Services may be customized pursuant to a mutually agreed upon written statement of work, provided to Customer upon the earlier of its request or its selection of desired Professional Services and acceptance of this Agreement (each, a "Statement of Work"). The Professional Services are provided by ClientWhys separate and distinct from the Services and are not required for Customer's use or enjoyment of the Services. In the event of any conflict between the terms and conditions of this Agreement and a Statement of Work, the terms and conditions of this Agreement shall govern, unless the parties expressly agree otherwise in such Statement of Work. Any Statement of Work may be modified or amended with the written consent of each of ClientWhys and Customer.

3. **Free Trial Period.** In the event Customer elects to use the Services on a trial basis, Customer will not be billed for such Use for a period of thirty (30) days commencing on the date Customer accepts this Agreement (as indicated below) (the "Trial Period"). During the Trial Period, Customer may use the Services subject to the subscriber limits

posted on the Site. The subscriber limits for the Trial Period are subject to change at any time. Once Customer completes its free trial period or exceeds the free subscriber limit (even if Customer manually removes names from its subscriber list), whichever occurs first, the Trial Period will terminate. Upon such termination, Customer may purchase a monthly or annual subscription for the Services. Customer's access to the Services will be disabled until payment is received.

4. Purchase. Pricing for the Services is based upon subscriber levels purchased by Customer, as indicated by Customer in the Service Order. If the number of subscribers stored in Customer's account exceeds the subscriber level purchased, Customer's account will be automatically upgraded to the next subscriber. Customer's subscriber level may be upgraded at any time during the term of this Agreement.

5. Fees and Payment. In consideration for the Services to be provided by ClientWhys, Customer agrees to pay the monthly subscription fees set forth in the Service Order (the "Subscription Fees"). Paid Subscription Fees are non-refundable. Customer acknowledges that from time to time, delivery of email messages sent using the Services may be blocked or prevented at destination email servers. Customer's payment obligation set forth herein continues regardless of whether delivery of such email messages is prevented or blocked by a third party. In consideration for the Professional Services to be provided by ClientWhys, if any, Customer agrees to pay the fees posted at <http://www.ClientWhys.com> set forth in the Statement of Work or as otherwise provided to Customer by ClientWhys, (the "Professional Fees," together with the Subscription Fees, the "Fees. Payments for Fees and reimbursements for expenses, if any, will be billed monthly and will be due immediately upon receipt of invoice, or may be pre-paid in advance. The Fees shall include all applicable foreign, federal, state and local taxes payable with respect to this Agreement. Any payment not received by ClientWhys from Customer by the due date may be subject, at ClientWhys's sole discretion, to a late fee equal to 1.5% (or the maximum rate permitted by law) of the amount then due, for each month overdue. In the event Customer fails to make timely payments when due, ClientWhys may, at its election, discontinue, terminate or suspend the Services and delete all Customer Data (as defined below) from its systems, in each case, without incurring any liability to Customer. Despite any such discontinuation or suspension, Customer acknowledges and agrees that it will be required to pay the Subscription Fees for the remainder of the term of this Agreement. For amounts outstanding after sixty (60) days from Customer's receipt of the invoice therefore, Customer shall be responsible for and agrees to pay reasonable costs and expenses of collection, including, but not limited to court and attorneys' fees and expenses. From time to time, and at any time, ClientWhys may require from Customer reasonable credit guarantees before continuing its provision of the Services or the Professional Services hereunder.

6. Customer Data. ClientWhys will not own any data, information or material that Customer submits to ClientWhys in the course of its provision of the Services (the "Customer Data"). Customer will be solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, and sole

intellectual property ownership thereof. Further, Customer will be solely responsible for maintaining, securing and storing all Customer Data. ClientWhys will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

7. Passwords. In connection with ClientWhys's provision to Customer of the Services, ClientWhys will send to Customer's designated email address of record in Customer's account information, information such as user-IDs and/or passwords which will enable Customer to access the Software (the "Passwords"). Customer agrees to maintain the Passwords in strict confidence and not to provide the Passwords to any third party. Customer will notify promptly ClientWhys upon the loss or compromise of any Passwords and Customer will be solely responsible for all actions and fees incurred as a result of such use of the Passwords. Any unauthorized use of the Passwords by Customer will constitute a material breach of this Agreement.

8. Proprietary Rights. This is an agreement for services and Customer is not granted any license hereunder. All software embedded in the Services (the "Software"), and the Services, are and shall remain the sole and exclusive property of ClientWhys. Accordingly, Customer acknowledges that ClientWhys owns all right, title and interest in and to the Software and the Services, including, without limitation, all United States and international patent rights, copyrights, trademark rights, trade secret rights, and all other proprietary rights pertaining thereto. Except as expressly granted in this Agreement, Customer will not have or acquire any rights or interest in or to the Software or the Services. Customer acknowledges that the Software contains proprietary information and trade secrets of ClientWhys. Customer will not take any actions inconsistent with ClientWhys's ownership of each of ClientWhys's rights in and to the Software. Customer agrees that Customer will not directly or indirectly: (i) assign, distribute, license, sublicense, transfer, sell, rent, lease, time share, grant a security interest in, or otherwise transfer any rights in or to the Software, or make the Software available to third parties except as authorized by this Agreement; (ii) modify, translate, reverse engineer, decompile or disassemble the Software for any purpose, including without limitation, the creation of derivative works or similar products; (iii) upload, link to or post any portion of the Software on a bulletin board, intranet, extranet or web site; (iv) use or distribute the Software in violation of any applicable laws, regulations or export restrictions; or (v) possess or use the Software in any format other than machine-readable format. All rights in the Software not explicitly granted herein, are reserved by ClientWhys. If you are using the Services in any country within the European Union, the prohibitions set forth herein will not affect your rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.

9. Use of Services. Customer acknowledges and agrees that it will use the Services only to access, employ, utilize, or display the Software solely for Customer's "internal business purposes" by Customer's employees or by independent contractors hired by Customer. For the avoidance of doubt, the term "internal business purposes," as used herein, does not include, among other things, the right to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store

infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send messages to any purchased (email) lists, distribution lists, newsgroups, or spam email addresses; or (iv) send or store material containing malicious code, including, without limitation, software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; or (v) upload any unlicensed images, photographs, logos or other companies proprietary products. Customer agrees to report immediately to ClientWhys, and to use best efforts to stop immediately, any violation of the terms and conditions set forth in this Section 9. In the event of any suspected violation of the terms, conditions and restrictions set forth in this Section 9, ClientWhys may immediately disable Customer's access to the Services and suspend its provision thereof.

10. No Tampering. Each email message that is sent using the Services must contain an "unsubscribe" link that allows visitors to remove themselves from Customer's mailing list and a link to ClientWhys's Policies. Customer agrees that it will not remove, disable or attempt to remove or disable either link. Further, each such email message may contain an automatic identifying footer such as "Powered by ClientWhys." Customer agrees that it will not remove, disable or attempt to remove or disable such footer.

11. Confidential Information. Each of ClientWhys and Customer, as a Receiving Party (as defined below), will hold confidential, not use except as otherwise authorized herein, and protect from disclosure to unauthorized third parties the Confidential Information (as defined below) of the Disclosing Party (as defined below). In the event that the Receiving Party is required by law to disclose Confidential Information of the Disclosing Party, the Receiving Party will provide the Disclosing Party with prompt written notice of such pending disclosure. For purposes hereof, "Confidential Information" means any information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") that relates to such Disclosing Party's business affairs, internal operations, personnel, financial matters, technology, research and development, product plans or offerings, markets, or know-how. Confidential Information will not include information that: (i) was publicly available, or that subsequently becomes publicly available, except by wrongful disclosure hereunder by the Receiving Party; (ii) was in the Receiving Party's possession prior to receipt of the same hereunder, as evidenced by the Receiving Party's prior written records; (iii) was received from a third party who was not known by the Receiving Party to be under any obligation of confidentiality with respect to such information; (iv) can be proven by competent evidence to have been independently developed by the Receiving Party; (v) is furnished by the Disclosing Party to a third party without restriction on the third party's right of disclosure; (vi) is approved in writing for release by the Disclosing Party; or (vii) is required to be disclosed by order of court or law.

12. Use of Certain Information. In the course of using the Services, Customer may provide to ClientWhys certain information, including, but not limited to, contact information (not including customer's clients contact information) and technical information (the "Information"). Customer agrees that ClientWhys may use the

Information in connection with its provision of the Services. If Customer purchased the Services as a result of the marketing efforts of an ClientWhys marketing partner, Customer agrees that ClientWhys may disclose the Information to such marketing partner. Notwithstanding the foregoing, ClientWhys will not provide any Information to any third party without Customer's authorization and will use reasonable efforts to prohibit any third party that receives any such Information from selling or redistributing such Information without Customer's authorization.

13. Use of Client Contact Information. Where a customer provides the customer's client names and address (either mailing or electronic) which is a permitted disclosure under IRC Sec. 7216, ClientWhys will abide by the provisions of IRC Sec. 6713 and Sec. 7216 and is aware, that as a third party provider, ClientWhys is considered a tax return preparer under IRC Sec. 7216 because ClientWhys will be performing auxiliary services in connection with tax return preparation. ClientWhys will not provide any customer client contact Information to any other third party without first obtaining the approval of the customer and ensuring that any third party who is to receive the disclosures of client names and addresses will receive a notice as to the applicability of sections 6713 and 7216 to them, including a description of the requirements and penalties of section 6713 and 7216. The third party is considered a tax return preparer under section 7216 because they are performing auxiliary services in connection with tax return preparation.

14. Representations, Warranties and Covenants. Customer represents, warrants and covenants to ClientWhys that: (i) if an individual, Customer is at least eighteen (18) years old; (ii) if an entity, it is a company duly organized and validly existing in good standing under the laws of the state in which it was organized; (iii) it has full power and authority to enter into this Agreement, which, upon its execution hereof, will constitute a legal, valid and binding obligation enforceable against it in accordance with the terms hereof; (iv) all information provided by it in the Service Order and otherwise during the term of this Agreement, is and will be truthful and accurate; (v) its use of the Services will at all times be in accordance with the terms and conditions of this Agreement, the Policies and all applicable laws, rules and regulations; and (vi) it is not directly or indirectly (as an owner, strategic partner or otherwise) engaged in any business relationship or activity that competes with the Services.

15. Disclaimer of Warranties. THE SERVICES (AND THE PROFESSIONAL SERVICES, AS APPLICABLE) ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ClientWhys AND ITS AFFILIATES, DISTRIBUTORS, DEALERS AND SUPPLIERS (COLLECTIVELY, THE "REPRESENTATIVES") DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, OR NON-INFRINGEMENT, WITH RESPECT TO THE SERVICES. THE REPRESENTATIVES DO NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS NOR DO THEY GIVE ANY WARRANTY ABOUT THE RESULTS

THAT MAY BE OBTAINED BY USING THE SERVICES.

16. Limitation of Liability. IN NO EVENT WILL ClientWhys OR ANY REPRESENTATIVE BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICES (OR THE PROFESSIONAL SERVICES, IF APPLICABLE), OR TO THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS, EVEN IF ClientWhys OR ITS REPRESENTATIVE HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FURTHER, IN NO EVENT WILL ANY REPRESENTATIVE'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR CLAIMS, LOSSES, OR DAMAGES OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, INDEMNITY OR OTHERWISE, ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE SERVICES, EXCEED THE ACTUAL FEES CUSTOMER PAID TO ClientWhys FOR THE SERVICES AS OF THE DATE OF THE CLAIM, LOSS, OR DAMAGE. In the event of any failure, or ClientWhys non-provision, of the Services (or the Professional Services), Customer's sole and exclusive remedy shall be for ClientWhys to use commercially reasonable efforts to repair or provide the Services.

17. Indemnification. Customer agrees to indemnify, defend and hold harmless ClientWhys, the Representatives, and its and their respective affiliates, officers, directors, stockholders, employees, consultants, representatives and agents from any and all claims, liability, damages and/or costs (including, but not limited to, reasonable attorneys' fees) arising from Customer's negligence or intentional misconduct, Customer's violation of this Agreement or the Policies, Customer's breach of any of its representation, warranties or covenants set forth herein, or Customer's infringement of any intellectual property rights or other rights of any person or entity.

18. Termination. Either party may terminate this Agreement at any time by providing the non-terminating party with thirty (30) days' prior written notice of such party's intent to terminate. If Customer desires to terminate this Agreement, it may do so by calling 800-442-2477. Upon termination of this Agreement, Customer's payment of all unpaid and outstanding Fees and Customer's written request received by ClientWhys within thirty (30) days of such termination, ClientWhys will provide Customer with an electronic file of the Customer Data. Customer acknowledges and agrees that after the thirtieth (30th) day following termination, ClientWhys has no obligation to retain the Customer Data and may delete and destroy such Customer Data without providing Customer with notice of such deletion.

19. Governing Law. This Agreement will be governed by the laws of the California as applied to agreements entered into and performed entirely within the State of California, without regard to any choice of law provisions thereof. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

20. Arbitration. Any dispute or controversy arising under, out of, or in connection with this Agreement shall be resolved by binding arbitration under the commercial rules of the American Arbitration Association before a single arbitrator. Any such arbitration shall be conducted in Los Angeles, California, U.S.A. Judgment upon any award may be entered in any court of competent jurisdiction. The arbitrator shall be designated by mutual agreement of the parties or, if the parties cannot agree on an arbitrator within ten (10) days after a request for arbitration hereunder, each party shall designate one (1) arbitrator and the arbitrators so designated shall designate a third arbitrator who shall conduct the arbitration. The decision of the arbitrator shall be binding and conclusive upon the parties. Notwithstanding the foregoing, ClientWhys shall have the right to seek injunctive relief or other equitable or legal remedies in a court of competent jurisdiction in the State of North Carolina, to which jurisdiction, for such purpose, Customer hereby irrevocably consents.

21. Relationship. This Agreement does not create a partnership, joint venture or agency relationship between ClientWhys and Customer. Customer does not have any right, power, or authority to act as a legal representative of ClientWhys.

22. Assignment. Customer may not transfer, assign, sublicense, or delegate any right or duty under this Agreement to another entity or person without the express written consent of ClientWhys. Any such transfer, assignment, sublicense or delegation without consent will be null and void.

23. Severability. In the event that a court of competent jurisdiction determines that any portion of this Agreement is illegal, invalid or unenforceable, such portion will not affect or impair the legality, validity or enforceability of any other provisions of this Agreement.

24. Survival. The provisions of this Agreement that by their nature and context are intended to survive the performance and termination of this Agreement, will survive the completion of performance and termination of this Agreement.

25. Entire Agreement. This Agreement, the Policies and the Statement of Work(s), if any, constitute the entire agreement and understanding between ClientWhys and Customer and supersede all prior and contemporaneous agreements, documents, and proposals, oral or written, between the ClientWhys and Customer, except for any prior agreement addressing confidentiality, which will continue in effect according to its terms following the execution, performance and termination of this Agreement.

26. No Waivers. ClientWhys's failure to exercise any of its rights under this Agreement will not constitute or be deemed to constitute a waiver or forfeiture of such rights or of any preceding or subsequent breach or default.

27. Notice. ClientWhys may provide Customer with general notice by electronic mail to Customer's e-mail address of record, or by written communication sent by first class mail or pre-paid post to Customer's address of record, or to such other address designated by Customer and communicated to ClientWhys in accordance with the

notice delivery provisions of this Section 26. Such notice shall be deemed to have been given upon the expiration of forty-eight (48) hours after mailing if sent by first class mail or pre-paid post, or twelve (12) hours after sending if sent by electronic mail. Except as otherwise provided herein, Customer must give notice to ClientWhys (such notice shall be deemed given when received by ClientWhys) at any time by any of the following: letter sent by confirmed facsimile to ClientWhys at the following fax number: (818) 743-0500; letter delivered by a nationally recognized overnight delivery service or by first class postage prepaid mail to ClientWhys at the following address: ClientWhys, Inc.; Attn: Support Department; PO Box 6768, Malibu, CA 90264. Notwithstanding the foregoing, Customer must provide ClientWhys with notice of its intention to terminate this Agreement in accordance with the terms and conditions set forth in Section 17 above. Either Customer or ClientWhys may designate a different mailing address for notice delivery by providing the other party with such different address in accordance with the notice delivery provisions of this Section 26.

28. Export Restrictions. Customer acknowledges that the Services may be subject to U.S. or other countries' export control laws and regulations. Customer agrees not to export, or transfer for the purpose of re-export, the Services (including technical data) in violation of any U.S. or other applicable export control laws and regulations.

29. Miscellaneous. Except as otherwise expressly set forth herein, this Agreement may be amended or modified only by ClientWhys and may not be modified by course of conduct. The section headings used herein are for convenience only and will not be given any legal meaning. This Agreement is made for the benefit of the parties only and there are no intended third party beneficiaries.