

MemberClicks General Terms & Conditions

version 2.1

THESE GENERAL TERMS AND CONDITIONS, ALONG WITH THE GENERAL BILLING POLICIES, THE ORDER FORM, AND ANY APPLICABLE ADDENDA, ARE COLLECTIVELY REFERRED TO AS THE "AGREEMENT."

1. PARTIES.

The parties to this Agreement are MemberClicks, Inc. ("MemberClicks") and the client listed on the Order Form ("Client").

2. SERVICES.

MemberClicks will provide the services requested by Client on the Order Form and described on each applicable Addendum (the "Services"). The Services may include access to specific web pages hosted by MemberClicks and made available to Client and its authorized members ("Custom Web Pages"). Any references to the MemberClicks Website shall mean or any successor URL used by MemberClicks.

3. PAYMENT OF FEES.

Client agrees to pay MemberClicks the fees for the Services listed on each applicable Addendum ("Fees"), which shall be due and payable in accordance with the General Billing Policies. If Client in good faith disputes any charges, it shall timely pay all undisputed charges, and also within twenty (20) days of the invoice date give MemberClicks notice of the disputed amount(s) and reason(s) therefore. MemberClicks shall review any such notice promptly. If MemberClicks determines that Client was billed in error, a credit memo for the amount billed incorrectly will be applied to invoice in which the incorrect charge appeared. If Client does not give MemberClicks written notice of a dispute with respect to MemberClicks charges or taxes within sixty (60) days of the date of an invoice, such invoice shall be deemed to correct and binding on Client. In the event Client fails to pay an invoice as set forth on the invoice, MemberClicks may issue a notice of default, and may, at MemberClicks' option, suspend the Services (without any refund or credit to Customer) if Customer has not fully paid all invoices not disputed in good faith within ten (10) days of the default notice, and/or terminate this Agreement as set forth herein. Client shall pay all local, state, federal and non-United States taxes or similar assessments or charges (including any interest and penalties imposed thereon), other than taxes based on the net income of MemberClicks, arising out of this Agreement.

4. CHANGES TO FEES.

MemberClicks may change any of the Fees by giving thirty (30) days notice to affected clients, which may be given in writing or by email to the address on file. It is the client's responsibility to keep their account information current. MemberClicks is not responsible for notices that are undeliverable due to clients account information not being current. In such event, Client may terminate the applicable Addendum by written or email notice no later than thirty (30) days after receipt of MemberClicks' notice to increase fees. If Client fails to deliver a termination notice to MemberClicks within that thirty day period, then Client shall have accepted the increased Fees.

5. TERM.

The term of this Agreement (the "Term") shall begin on the date indicated on the Order Form (the "Effective Date") and continue until the date the final Addendum expires or terminates, or until this Agreement is terminated as provided below.

6. TERMINATION.

6.1 Termination for Convenience. Notwithstanding anything herein to the contrary, Client may terminate this Agreement or any Addendum at any time without cause by following the steps required in the General Billing Policies.

6.2 Termination for Cause. Either party may terminate this Agreement for breach, provided the non-breaching party provides prior written, email, and/or other notice of such breach to the other party and an opportunity to cure such breach within ten (10) days of notice for breach of payment obligations, and thirty (30) days of notice for all other breaches. If the breaching party is not able to cure the breach within such time period, the non-breaching party may terminate this Agreement immediately. In addition to any other rights it may have under this Agreement or applicable law, MemberClicks may terminate this Agreement, terminate any or all of the Addenda, or suspend service in the event of (i) a payment default that is not cured by Client within ten (10) business days of notice thereof, (ii) Client's failure to comply with any other obligation of Client under this Agreement, or (iii) Client ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) days or making an assignment for the benefit of its creditors.

6.3 Effect of Termination. In the event of termination of this Agreement, Client and its members' passwords will be deactivated, Client's basic monthly fee will not be refunded or prorated for the remainder of the month in which the Agreement is terminated, Client and its members shall no longer have access to or be able to use any of the Services upon termination of this Agreement by MemberClicks for any reason, no later than thirty (30) days following the termination date. Client upon request shall receive a copy of all Client data stored on MemberClicks' computer system, provided the account is up to date, all fees, penalties and late fees have been paid in full, and Client pays all applicable service fees (if applicable) with such request.

7. RESPONSIBILITY FOR MEMBERS.

Client is responsible for all acts or omissions of its members. Client will immediately notify MemberClicks if Client becomes aware of any violation of the terms of this Agreement, including violations by its members of the Acceptable Use Policy located on the MemberClicks Website. MemberClicks reserves the right to terminate any member's access to the Services if, in MemberClicks' sole discretion, such member is violating the Acceptable Use Policy and continues to have access to the Services even after notification by MemberClicks to Client that such member's access should be terminated. Numerous violations and Client's failure to remedy or prevent such violation may result in termination.

8. PRIVACY AND SECURITY.

MemberClicks will not transmit, modify, reproduce, display, copy, promote, use, sell, market to, or distribute Client's member's information to third parties, including members' passwords, except to MemberClicks' third party service providers. MemberClicks will not send any communications to Client's members without the prior written or email consent of Client. MemberClicks uses measures such as anti-virus software and firewalls to increase the security of the MemberClicks Website. However, due to the nature of the Internet and its associated technologies, MemberClicks cannot and does not guarantee the security of the Services, the MemberClicks Website, the data stored on MemberClicks' computer system, the Custom Web Pages or the Client Content.

9. LICENSE TO CLIENT MATERIALS.

Client hereby grants to MemberClicks a non-exclusive, worldwide, royalty-free license for the term of this Agreement to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display and otherwise use the Client Content links as necessary to render the Services to Client under this Agreement. "Client Content" means all text, pictures, sound graphics, video and other data, whether owned by Client or a third party, supplied by Client to MemberClicks to be included in the Custom Web Pages, as such materials may be modified from time to time.

10. OWNERSHIP.

The Client Content and Client's online directory is the property of the Client and its members. MemberClicks is the owner of all right, title and interest in and to the MemberClicks Website, the Custom Web Pages, the Services, any software or technology used to provide the Services, the MemberClicks name, services marks, logos, and all associated copyrights, trademarks, and other intellectual property rights. MemberClicks does reserve the right to hold and not release any Client Content should Client be in breach of this Agreement. Further, MemberClicks reserves the right to permanently delete any Client Content without release to Client if Client fails to comply with the requirements of Section 6.3.

11. ADVERTISEMENTS.

Some services may include the ability for Client to upload and display banner advertisements ("Advertisements") on the Custom Web Pages. Client is solely responsible for the terms and conditions pursuant to which it provides the Advertisements, securing appropriate releases/permissions/licenses required in order to use, copy, perform and display the Advertisements, and the content of the Advertisements, which will be considered Client Content.

12. PROMOTIONAL MATERIALS.

Client shall have the right to use the MemberClicks name, trademarks, service marks and logo (together, the "MemberClicks Marks") in order to promote any of the MemberClicks services to its members. Prior to any such use, Client must obtain MemberClicks written approval. Client understands and agrees that any use of MemberClicks marks in connection with this Agreement shall not create any right, title or interest, in or to the use of the MemberClicks Marks and that all such use and goodwill associated with the MemberClicks Marks will inure to the benefit of MemberClicks.

13. DISCLAIMER OF WARRANTIES.

THE SERVICES, INCLUDING ALL CONTENT INCORPORATED IN THE SERVICES AND TECHNOLOGY USED TO PROVIDE THE SERVICES, ARE PROVIDED "AS-IS" AND "WITH ALL FAULTS". MEMBERCLICKS DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT. MEMBERCLICKS DOES NOT WARRANT THAT THE USE OR OPERATION OF THE SERVICES, THE MEMBERCLICKS WEBSITE OR THE CUSTOM WEB PAGES WILL BE WITHOUT INTERRUPTION, SECURE OR ERROR-FREE.

14. LIMITATION OF LIABILITY.

MEMBERCLICKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES WILL NOT BE LIABLE FOR ANY LOSSES, DAMAGES, COSTS, OR EXPENSES RELATING TO (A) THE SERVICES, (B) THE TECHNOLOGY USED TO PROVIDE THE SERVICES, (C) THE CLIENT CONTENT, (D) THE RESULTS THAT MAY BE OBTAINED OR DECISIONS MADE USING ANY PART OF THE SERVICES, OR (E) ANY DAMAGES RESULTING FROM UNAUTHORIZED THIRD PARTY MISUSE OF THE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL MEMBERCLICKS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OR LOST PROFITS, THAT RESULT FROM THIS AGREEMENT, INCLUDING THE USE OF, OR INABILITY TO USE ANY OF THE SERVICES, OR ACTION OR INACTION WITH RESPECT TO THE MEMBERCLICKS WEBSITE, EVEN IF MEMBERCLICKS IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY. MEMBERCLICKS' TOTAL

LIABILITY TO CLIENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO MEMBERCLICKS UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE LIABILITY ARISES.

15. INDEMNITY.

Client shall indemnify and defend MemberClicks and the officers, directors, attorneys and employees of MemberClicks (each, an "Indemnified Party") against any claim, suit or proceeding brought against any of the Indemnified Parties and agrees to pay all reasonable costs (including reasonable attorney's fees) finally awarded against any of the Indemnified Parties or which any of the Indemnified Parties shall incur or suffer which arise out of, result from or are related to: (i) any material breach by Client of this Agreement; (ii) the results obtained, products obtained, transactions attempted or processed, or decisions made by Client or any other of its users of any Service; (iii) any claim, cost, expense, damages or loss arising as a result of any act, omission, misuse or use of any portion of the Services by Client or any of Client's members; (iv) any claim of any nature brought by any third party or entity who may suffer damages of any sort as a direct or indirect result of Client's activities relating to or in connection with any Service, including but not limited to any dispute with one or more of Client's members; (v) the Advertisements; or (vi) any claims of infringement of any copyright, patent or trade secret or other proprietary rights arising from the Client Content, the Hosted Content or from any unauthorized modification, enhancement or misuse of any Service by Client. Client shall not settle any such claim without MemberClicks' prior written consent. MemberClicks shall promptly notify Client in writing of any claim arising or potentially arising under this indemnity.

16. MISCELLANEOUS.

16.1 Disputes. This Agreement shall be governed by the laws of the State of Georgia, USA. The parties consent to personal jurisdiction to the appropriate state and federal courts in Fulton County, Georgia and waive any objection in any proceeding in such courts.

16.2 Notices. Except as otherwise specifically provided in this Agreement, all notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by email or fax, upon confirmation of receipt, (b) on the first business day following the date of dispatch if delivered by a recognized next day courier service, or (c) on the third (3rd) business day following the date of mailing if delivered by registered or certified mail return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Client:

The address and/or email address listed on the Order Form

If to MemberClicks:

MemberClicks, Inc.

Suite A160

817 West Peachtree Street, NW

Atlanta, Georgia 30308

Attention: Brandon Wycherley, VP Business Operations

Facsimile No.: (404) 879-0017

email: support@memberclicks.com

16.3 Entire Agreement; Severability; Interpretation. This Agreement, including the General Billing Policies, Order Form and the applicable Addenda, contains the entire understanding and agreement of the parties with respect to its subject matter, and supersedes any prior written or oral agreements between them with respect thereto. Except as specifically set forth in this Agreement, there are no representations, agreements, arrangements or understandings, written or oral, between the parties with respect to the subject matter of this Agreement. If any provision, in whole or in part, of this Agreement is held illegal or invalid by any court or administrative agency of appropriate jurisdiction, such provision or appropriate portion thereof will be deemed severable and the illegality or invalidity of such provision or portion thereof will not effect any of the remaining portions of this Agreement. In such event, the Agreement will be considered as if the illegal or invalid provision or portion thereof had not been contained in this Agreement. Where possible, the terms of these General Terms and Conditions and those of the Order Form, General Billing Policies and the applicable Addenda shall be interpreted in such a manner as to avoid conflict. However, in the event of a conflict between any of the above mentioned documents, the documents shall be interpreted in the following order of precedence: General Terms and Conditions, Order Form, General Billing Policies and finally the Addenda.

16.4 Authority. By entering into the Agreement, the representative of Client represents and warrants that he or she is authorized by Client to enter into this Agreement, that Client has taken all necessary action to enter into this Agreement, and Client agrees to be bound by and subject to the terms of this Agreement.

16.5 No Agency; No Third Party Beneficiaries. This Agreement shall not be construed as creating a joint venture, partnership or any other cooperative joint arrangement between the parties, and it shall be construed strictly in accordance with its terms. Client is not authorized to and will not, undertake or assume any obligation of any kind, express or implied, to conduct any business on behalf of MemberClicks. This Agreement is made solely for the benefit of MemberClicks and Client and does not and shall not be construed to grant any rights or remedies to any other person or entity.

16.6 No Waiver. The failure of either party to require the performance of any term, condition or portion of this Agreement or the waiver by either party of any breach of this Agreement will not prevent subsequent enforcement of such term, condition or provision, nor be deemed as a waiver of any subsequent breach.

16.7 Amendments. This Agreement may be modified or amended in whole or in part by MemberClicks immediately upon posting the modification or amendment on the MemberClicks Website and providing notice to Client in writing or email, unless changes are for clarification purposes only, in which case MemberClicks will not be obligated to notify Client. Client's continued use of the Services following posting of the modification or amendment shall be conclusively deemed an acceptance of the modification or amendment, and Client's only right with respect to any dissatisfaction with any such modifications is to terminate this Agreement. Notwithstanding the foregoing, the Order Form may be modified or amended only by a writing signed by both parties, or by Client submitting a subsequent Order Form using MemberClicks online Order Form or an email, in which case the subsequent Order Form will replace the prior Order Form.

16.8 Force Majeure. If either of the parties is unable to perform or observe any or all of its duties or obligations or to exercise any or all of its rights hereunder, in whole or substantial part, because of an act of God, inevitable accident, fire, lockout, strike or other labor dispute, riot or civil commotion, act of public enemy, governmental act, regulation or rule, failure in whole or in part of technical facilities, national day of mourning, vicious attacks (including, but not limited to, hacks, denial of service attacks and malicious introduction of viruses and disabling devices), or because of any other reason beyond the control of Client or MemberClicks (or its subcontractors) that is generally regarded as "force majeure," then all other obligations of the parties shall continue, and when such force majeure has ceased, then the parties shall in good faith negotiate a fair and equitable adjustment of the rights, duties and obligations under this Agreement.

16.9 Assignment. Client will have the right to assign or otherwise transfer its rights or obligations under this Agreement only with the prior written consent of MemberClicks. In the event of any assignment (whether by consent of MemberClicks or otherwise), all covenants, stipulations, and promises in this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors. MemberClicks shall have full right to assign this Agreement.

16.10 Remedies Cumulative. Subject to the express limitations set forth elsewhere in this Agreement, all remedies in this Agreement are cumulative and in addition to and not in lieu of any other remedies available to a party at law or in equity.

16.11 No Setoff. The existence of any claim, demand, action or cause of action of Client against MemberClicks, whether or not based upon this Agreement, will not constitute a defense to the enforcement by MemberClicks of any covenant or agreement of Client contained herein.

Need further Assistance?

Call us at 1.800.500.8381

or email: support@memberclicks.com

©2004 MemberClicks, Inc.