

# ***EHRREICH CONSULTING***

P.O. Box 4353  
Costa Mesa, CA 92628-4353  
Phone: (714) 964-6079  
Fax: (714) 963-6334

## ***Software Service Agreement***

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between

\_\_\_\_\_ (hereinafter called 'Client') and Ehrreich Consulting.

During the term of the Agreement, Ehrreich Consulting agrees to provide services as described herein.

### **WITNESSETH:**

WHEREAS, the Client desires that Ehrreich Consulting provide certain computer software services, including services relating to the use of computer software (such as software, including all know-how, trade secrets, copyrights, and patentable inventions, being hereinafter referred to collectively as Program Materials); and

WHEREAS, both Ehrreich Consulting and Client desire to set forth in writing the terms and conditions of their dealings;

NOW THEREFORE, in consideration of the premises hereof and the mutual covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### **SECTION 1 Software Services**

1.1 On the terms and conditions set forth herein, the Client hereby engages Ehrreich Consulting to provide the use of that certain computer software commonly known as "MemberMaster", and Ehrreich Consulting hereby accepts such engagement. Ehrreich Consulting agrees to use its best efforts in the performance of the services called for hereunder.

1.2 Ehrreich Consulting agrees to make the MemberMaster software available for use to Client via electronic connections by means of that certain electronic communications network commonly known as the "Internet". Further, Ehrreich Consulting agrees to make electronic storage space available to Client on a computer server owned by Ehrreich Consulting for electronic data directly related to Client's use of the MemberMaster software.

1.3 Ehrreich Consulting agrees to make items as set forth in sections 1.1 and 1.2 above available to an unlimited number of Client's users, but only 6 concurrently.

1.4 Client agrees to secure and maintain any third party licenses, communications equipment, computer equipment, and computer software required to enable Ehrreich Consulting to perform its' obligations under this agreement.

1.5 Client agrees that it will not store pornographic material on Ehrreich Consulting's computer.

1.6 Client agrees to comply with all United States Federal and California State laws.

1.7 Ehrreich Consulting makes no claim as to merchantability of the MemberMaster software. Client accepts use of the MemberMaster software on an "As Is" basis.

1.8 Nothing herein shall require Ehrreich Consulting to accept any work presented it by the Client. Ehrreich Consulting has the express right to refuse work without penalty.

1.9 Nothing herein shall be deemed to preclude Ehrreich Consulting from retaining any other Clients for the purpose of providing computer related services, such as, but not limited to, programming.

1.10 Client hereby grants agents of Ehrreich Consulting both physical and electronic access to its' computer data related to the services being rendered by Ehrreich Consulting under this Agreement.

1.11 Client hereby recognizes and agrees that Ehrreich Consulting shall not be responsible for communication connections from Client's computer(s) to Ehrreich Consulting's computer(s). This shall include, but not be limited to, any hardware and software required for said communication.

1.12 Client agrees that Client is responsible for security related to its' data located on Ehrreich Consulting's computer(s).

## **SECTION 2**

### **Term of Agreement**

2.1 The term of this Agreement shall be for the period of one (1) year and shall be automatically extended for annual periods thereafter.

## **SECTION 3**

### **Independent Contractor**

3.1 Ehrreich Consulting agrees that it shall be acting as an independent contractor, and shall not be considered or deemed to be an agent, joint venture, or partner of the Client. Ehrreich Consulting shall have no authority to contract for or bind the Client or otherwise authorize to act for or on behalf of the Client.

## **SECTION 4 Compensation**

4.1 The Client agrees to pay Ehrreich Consulting \$25.00 each month (or portion thereof) during the term of this Agreement. After the first fiscal year of this agreement Ehrreich Consulting may, from time to time, change the rate of compensation.

4.2 The Client agrees to pay, in full, Ehrreich Consulting the monthly rate (as noted in item 4.1 above) in advance to the month of service.

4.3 The Client agrees that Client shall have no right to refunds under this agreement. The Client hereby waives any and all claims to any moneys it gives to Ehrreich Consulting.

4.4 Upon the date of execution of this instrument, should the published rate of compensation on the internet web site "www.membermaster.com" be greater from the amount in item 4.1 above, then the rate of compensation so published shall be the commencement rate of compensation of this agreement.

## **SECTION 5 Ownership Of Program Materials**

5.1 Client agrees that all Program Materials, reports and other data or material generated or developed by Ehrreich Consulting shall be and remain the property of Ehrreich Consulting. Client specifically agrees that all copyrightable material generated or developed under this Agreement shall, upon creation, be owned exclusively by Ehrreich Consulting.

5.2 If and to the extent Client may, under applicable law, be entitled to claim any ownership interest in the Program Material, reports, and other data or materials generated or developed by Ehrreich Consulting under this Agreement, Client hereby transfers, grants, conveys, assigns, and relinquishes exclusively to Ehrreich Consulting all of the Client's right, title, and interest in and to such material, under patent, copyright, trade secret, and trademark law, in perpetuity or for the longest period otherwise permitted by law.

5.3 To the extent that any preexisting rights are embodied or reflected in the Program Materials, Client hereby grants to Ehrreich Consulting the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (2) authorize others to do any or all of the foregoing.

5.4 Client is hereby granted a license to utilize, for its' sole use, that certain computer software commonly known as "MemberMaster", created by Ehrreich Consulting. Said license is non-transferable. Said license shall only be granted upon payment in full from Client to Ehrreich Consulting for said service. Said license shall terminate upon termination of this agreement.

5.6 In no event, regardless of permissiveness to use, shall the property of one party be transmuted into the property of the other.

5.7 Client hereby acknowledges that Ehrreich Consulting is the sole owner of that certain computer software commonly referred to as "MemberMaster". Client further acknowledges that the MemberMaster computer software and documentation is the sole intellectual, copyrighted property of Ehrreich Consulting.

## **SECTION 6**

### **Protection of Material**

6.1 From the date of execution hereof and for as long as the information or data remain *Trade Secrets, or Confidential*, both parties shall not disclose, or permit any person to obtain any *Trade Secrets or Confidential*, information or data developed or generated hereunder (whether or not the information or data is in written or tangible form), except as specifically authorized by Client or Ehrreich Consulting.

6.2 As used herein, "Trade Secret" shall mean a whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, or improvement relating to the development, design, construction, and operation of both parties that is valuable and not generally known to the competitors of the parties.

6.3 Ehrreich Consulting agrees that all the information disclosed by the Client to Ehrreich Consulting and identified in writing as proprietary or "RESTRICTED" shall be held in confidence and used only in the performance of the work performed under this Agreement. Ehrreich Consulting shall exercise the same standard care to protect such proprietary disclosure as is used to protect its own proprietary data.

## **SECTION 8**

### **Scope Of Agreement**

8.1 This agreement is intended by the parties hereto to be the final expression of their agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements or agreements to the contrary heretofore made. This Agreement may be amended only in writing signed by the parties to this Agreement.

8.2 For purposes of enforcing this Agreement, all sections of this Agreement shall be construed as covenants independent of one another and as obligations distinct from all other contract and agreements between the parties hereto.

## **SECTION 9**

### **Termination**

9.1 Client may terminate this agreement after the first fiscal year by means of a minimum of thirty (30) days notice in writing prior to the expiration of this Agreement as it may be extended. Client may not terminate this agreement prior to 365 days after the execution of this agreement by both parties.

9.2 Ehrreich Consulting may terminate this agreement at any time by means of a written notice.

9.3 In the event of termination under this Section by either party prior to the expiration of the term hereof, Client shall be obligated to compensate Ehrreich Consulting at the rate established herein for services rendered prior to the date of such termination.

## **SECTION 10 Governing Law**

10.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of California.

10.2 When, in the course of providing services under this Agreement, national law of the United States of America, supersedes the laws of the State of California, said national law, such as, but not limited to USC, shall govern this Agreement. This section shall be interpreted as superior to section 10.1 of this Agreement.

## **SECTION 11 Severability**

11.1 In the event that any portion of this agreement is found to be unlawful by a court of competency, the remaining portions shall remain in full force and effect, with as much of their original intent as permitted by law.

## **SECTION 12 Liability**

12.1 The services and products provided under this agreement by Ehrreich Consulting shall be on an "As Is" basis. In no event shall Ehrreich Consulting be liable for any direct, indirect, incidental, special, or consequential damages arising from or in any way connected with its' performance under this Agreement, such as, but not limited to, the loss of anticipated profits or other economic loss. Client hereby indemnifies, and holds harmless Ehrreich Consulting from any damages by means of the use of any service or product covered by this agreement.

12.2 Client indemnifies, and holds harmless Ehrreich Consulting from any damages arising from unauthorized access to Client's data located on any Ehrreich Consulting computer.

12.3 NO WARRANTY IS EXPRESSED OR IMPLIED. EHRREICH CONSULTING SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12.4 Client is aware of California Civil Code § 1542, which applies to the waiver of unknown claims, and Client does intend for this document to waive and release all claims, known and unknown. I/we understand that Civil Code of State of California Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor.

**SECTION 13**  
**Other Agreements**

13.1 The parties may formalize other agreements with each other upon mutual written consent. These may include, but are not limited to, commissions, licensing, or proceeds sharing, for products described herein or products not described herein.

**SECTION 14**  
**Assignment**

14.1 This agreement may not be assigned, nor partially assigned to any other party.

**SECTION 15**  
**Litigation Venue**

15.1 Although no litigation is contemplated by this agreement, both parties agree that any litigation that may arise by either party as the result of this agreement shall be litigated in the State of California, County of Orange.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

*[Ehrreich Consulting]*

*[Client]*

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Ehrreich Consulting  
Organization Name

\_\_\_\_\_  
Organization Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for correspondence:

Address for correspondence:

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Phone: \_\_\_\_\_

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