

# CLIENT AGREEMENT

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## PROJECT MILESTONES AND PAYMENT

Each project milestone will require approval from the Client .

### PROJECT ACCEPTANCE

This project is considered to be accepted upon signing this agreement and requires an initial deposit to initiate work.

### INITIAL DRAFT

Once all images and content has been submitted, the initial working draft of your website will be available online for revision.

### REVISION PROCESS

Upon approval of revisions, the Client makes any necessary changes before Finalization.

### FINALIZATION

Upon final approval, this project will be considered complete. The remaining balance is due, including all billable expenses.

**\*ANY CHANGES TO THE PROJECT MILESTONES MAY INCUR ADDITIONAL CHARGES UNLESS OTHERWISE NOTED IN THE PROJECT PROPOSAL.**

## ACCEPTANCE PROCEDURES

Upon receiving this Agreement, the Client has thirty (30) days to accept the offer made by Punchmark, LLC. If the Client chooses not to accept the terms of this Agreement, no payment or signed documents are required. If the Client chooses to accept the terms of this Agreement, all documents must be signed and a non-refundable deposit is required before the initiation of work within the thirty (30) day period. If this Agreement is not accepted and/or the deposit is not paid prior to the thirty (30) day period, the Agreement will be considered void.

### INITIAL DRAFT AND REVISION PROCESS

Punchmark will present the Initial Draft to the Client on a specified date. The Client shall either accept the deliverable, or provide Punchmark with written notice of any changes to be made and a suggested date for completion of the changes which should be mutually acceptable to both Punchmark, LLC and the Client, or provide a written notice of Project Termination if the work is found to be reasonably unsatisfactory. The Client can Terminate the assignment only before the approval of the Design following each phase. Any other request for Project Termination shall be considered a Cancellation subject to the stipulations of the items mentioned in the Cancellation Terms.

### FINALIZATION

Upon the completion of all Designs, Layout and Alterations of the Proposed Project, Punchmark, LLC will present all Deliverables to the Client on a specified date. It is at this time the Client shall approve the Final Design or make a request for alterations beyond the scope of the Proposed Project. The Client must give a written notice stating the Additional Changes. Punchmark, LLC will advise the Client of the Additional Charges that will be invoiced, agreed to by both parties, based on the rates included in the Client Agreement. All remaining balances of this Agreement are due within thirty (30) days after the completion of the project.

## CLIENT ALTERATIONS

Changes requested by the Client shall be considered Client Alterations if they are requested after the approval of each Design. Changes and additions not due to the fault of Punchmark and requested by the Client before the approval of one of the Designs are not considered Client Alterations. The Client shall be responsible for making additional payments at the rate noted in the Project Proposal for any Client Alterations and any other changes in original assignment requested by the Client.

## ADDITIONAL SERVICES & RATES

The following is a list of services and accompanying rates, but may not be limited to this list, provided or performed by Punchmark, LLC, its employees and its consultants. Website monthly services can be found at [punchmark.com/plans](http://punchmark.com/plans).

FILE FORMATTING	\$75 / HOUR	PHOTO EDITING	\$100 / HOUR
RESEARCH AND DEVELOPMENT	\$100 / HOUR	CONCEPTUALIZATION	\$115 / HOUR
COPY WRITING	\$115 / HOUR	GRAPHIC DESIGN	\$125 / HOUR
INTERACTIVE WEB DESIGN	\$145 / HOUR	PROJECT MANAGER	\$150 / HOUR
WEB PROGRAMMING	\$160 / HOUR	MARKET RESEARCH	\$225 / HOUR
WEBSITE UPDATE	\$25 PER UPDATE	ADDITIONAL CD/DVDS	\$50 EACH

IN-HOUSE PHOTOGRAPHY	\$500 / HALF-DAY   \$950 / FULL-DAY
FONTS, STOCK & PURCHASED IMAGES	PRICED PER ITEM
SPECIALTY ARTIST	PRICED PER PROJECT
MARKETING REPORT	PRICED PER PROJECT
TRADEMARK AND COPYRIGHTING	PRICED PER PROJECT

## **CLIENT AGREEMENT**

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### **CANCELLATION**

The Client may declare the Cancellation of the project for reasons not related to Project Termination defined in the Acceptance Procedures. In the event of Cancellation of this project by the Client, any payments made prior to Cancellation shall be retained by Punchmark. In addition, if Cancellation is prior to the delivery of the Final Design, a Cancellation fee of fifty percent (50%) of the balance of the Total Amount of the Project shall be paid by the Client. If the Cancellation is after the approval of the Final Design, the Cancellation fee shall be one hundred percent (100%) of the balance of Total Amount of the Project. Regardless of when the Project is Cancelled, all Billable Expenses already incurred by Punchmark, LLC or Punchmark, LLC is liable to pay for, shall be paid by the Client in full. In the event of Cancellation, Punchmark, LLC retains ownership of all copyrights and any original artwork created by Punchmark, LLC.

### **PROJECT TERMINATION**

In the event that the work in progress is found by the Client to be reasonably unsatisfactory in accordance with the Acceptance Procedures, the Client may pay a Project Termination Fee to Terminate the Project. Any payments made prior to the Project Termination shall be retained by Punchmark, LLC. If the Project Termination occurs prior to the approval of the Final Design, the Client shall pay a Termination Fee of thirty percent (30%) of the balance of the Total Amount of the Project. If Project Termination occurs after the approval of the Final Design, the Termination Fee shall be one hundred percent (100%) of the Total Amount of the Project. Regardless of when the assignment is Terminated, all Billable Expenses already incurred by Punchmark, LLC or Punchmark, LLC is liable to pay for, shall be paid by the Client in full. In the event of Project Termination, Punchmark, LLC retains ownership of all copyrights and any original artwork created by Punchmark, LLC.

### **ESTIMATED COST**

The Estimated Cost of this project is based on the terms stated in the Project Proposal. Any Additional Services will incur an Additional Charge. Billable Expenses including but not limited to printing, courier, communications and travel are NOT included in the Estimated Cost. The Client's approval shall be obtained for any increases in fees or expenses that exceed the original estimate by twenty percent (20%) or more. All items may be subject to State and Federal Taxes.

### **TIMEFRAME**

The estimated time for the completion of the project will be based on the project size, scope, Client participation, number of alterations, and required hours. All estimates of timeframe will be stated within the Project Proposal.

### **PRINTING COST**

Cost for print production will be determined on a per-project basis. Variables in pricing include but are not limited to the choices of paper, number of colors, specified inks and varnishes, document size and shape, number of pages, and print quantity. Upon the completion of Final Design, Punchmark, LLC will provide the Client with an estimate of printing costs. The Client retains the right to seek other offers before choosing to accept or decline the offer made by Punchmark, LLC.

### **WARRANTY OF ORIGINALITY**

Punchmark warrants and represents that, to the best of its knowledge, the work assigned hereunder is original and has not been previously published, or that consent to use has been obtained on an unlimited basis; that all work or portions thereof obtained through the undersigned from third parties is original or, if previously published, that consent to use has been obtained on an unlimited basis; that Punchmark, LLC has full authority to make this agreement; and that the work prepared by Punchmark, LLC does not contain any scandalous, libelous, or unlawful matter. This warranty does not extend to any uses that the Client or others may make of Punchmark's product which may infringe on the rights of others.

**\*THE CLIENT EXPRESSLY AGREES THAT IT WILL HOLD PUNCHMARK, LLC HARMLESS FOR ALL LIABILITY CAUSED BY THE CLIENT'S USE OF PUNCHMARK, LLC'S PRODUCT TO THE EXTENT THAT SUCH USE INFRINGES ON THE RIGHTS OF OTHERS.**

## **CLIENT AGREEMENT**

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### **OWNERSHIP OF ARTWORK**

The Client acknowledges and agrees that Punchmark, LLC retains ownership of all original artwork, in any media, including digital files, whether preliminary or final. The Client waives the right to challenge the validity of Punchmark, LLC's ownership subject to this agreement because of any change or evolution of the laws. Punchmark, LLC retains the right to use any artwork created in this Project as part of their own promotional uses. Display of this artwork can be used in any media including, but not limited to, printed materials, digital formats and web. Any restrictions from the Client should be discussed and recorded in writing before accepting the Proposal by Punchmark, LLC. This includes any confidential Client information.

### **CREDITS**

Punchmark, LLC and any other consultants shall receive a credit line with any editorial usage of the provided artwork. If similar credit lines are to be given with other types of usage, it must be indicated in writing prior to the completion of the Proposed Project. Additionally, Punchmark, LLC retains the rights to promote all materials created for this project in any printed or electronic format. This includes any representation posted on punchmark.com or any other medium that is available via the world wide web. Punchmark, LLC also retains the rights to include a credit line along the bottom of the page including a link to Punchmark, LLC's company website.

### **COPY PROTECTION**

The Client must protect all final art which is subject of this Agreement against duplication and alteration.

### **CODE OF FAIR PRACTICE**

The Client and Punchmark, LLC agree to comply with the provisions of the Standards of Fair Practice of the American Institute of Graphic Arts and/or the Code of Fair Practice of the Graphic Artists Guild. Although Punchmark, LLC and the Client are not required to be members of these organizations, the guidelines of Fair Practice should be observed.

INFORMATION PERTAINING TO THESE GUIDELINES CAN BE FOUND VIA THE INTERNET BY VISITING:

<http://www.aiga.org/content.cfm/standards-professional-practice>

[http://www.gag.org/about/fair\\_code.php](http://www.gag.org/about/fair_code.php)

### **MODIFICATIONS OF THE AGREEMENT**

Modifications of the Agreement must be written, except that the invoice may include, and the Client shall pay, fees or expenses that were orally authorized by the Client in order to progress promptly with the work.

### **COMPANY INFORMATION**

#### **PUNCHMARK, LLC**

1811 SARDIS ROAD NORTH, SUITE 235

CHARLOTTE NORTH CAROLINA 28270

**PHONE** 704.910.4774

**EMAIL** INFO@PUNCHMARK.COM

**WEBSITE** WWW.PUNCHMARK.COM

## STANDARD TERMS AND CONDITIONS

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This agreement by and between Punchmark, LLC and The Client sets forth the terms and conditions under which Punchmark, LLC shall provide certain professional services.

### SCOPE OF SERVICES

All services to be provided hereunder shall be as authorized and defined in the attached Project Proposal, which shall be executed by the parties and which shall constitute a part of these Terms and Conditions. The Project Proposal and this appendix shall be construed as being consistent; however, in the event such construction is unreasonable, the provisions of the Project Proposal shall control.

Punchmark, LLC and the Client must work together to complete the web design project in a timely manner. We agree to work expeditiously to complete the web design project no later than sixty (60) days after the Client has submitted all necessary materials. Typically this time frame is four to eight (4-8) weeks based on each individual project. If the Client does not supply Punchmark, LLC with complete text and graphic content for this web design project within thirty (30) days of the date of the transaction, the entire amount of the transaction is considered earned. All sales are final. In the event that a Client is unable to provide us with the necessary materials or content for a website, Punchmark, LLC holds the right to place "filler content" in the website to push the process along. Our team works with clients in a very customized and complete manner. We will offer all possible assistance up to the maximum hours allocated for your project in the development of content and advice so that your project can be completed the correct way.

### TIME FOR PAYMENT

An initial deposit is required to initiate work. The remaining balance is due at the completion of the project. All invoices for Billable Expenses are payable within thirty (30) days of receipt. A 1.5% monthly service charge is payable on all overdue balances of payments and Billable Expenses. Punchmark, LLC retains all rights to all intermediate deliverables submitted at project end. The grant of any license or right of copyright to the Client is conditioned on receipt of full payment by the Client of the Total Amount and all Billable Expenses.

*\*THE CLIENT SHALL ASSUME RESPONSIBILITY FOR ALL COLLECTION OF LEGAL FEES NECESSITATED BY DEFAULT IN PAYMENT.*

### BILLABLE EXPENSES

The Client shall reimburse Punchmark, LLC for all direct and indirect Billable Expenses arising from this project, regardless of whether the project is Cancelled or Terminated. Billable Expenses include but are not limited to costs of acquiring images or subcontracting talent, software or run-time license costs, the payment of any sales tax due on this assignment, any travel, research, postage and delivery, photocopying, and storage media expenses. Pricing and rates for these Additional Services are included with each Project Proposal.

### ALL SALES ARE FINAL

Since each project is customized for its owner, it can not be reused or resold.

## **STANDARD TERMS AND CONDITIONS**

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### **CONFIDENTIALITY OF DATA**

Both parties acknowledge that in connection with the performance of its duties hereunder it may be provided with or have access to written information and data which is proprietary to the other and which is so marked as proprietary. Both parties agree to keep confidential all such information and data and shall not disclose same either in whole or in part to any third party without the others written consent.

Both parties agree that without the other's prior written consent, it will not copy or reproduce any information or data or sell, assign, disclose, disseminate, give or transfer any such information or data or any portion thereof to any third party, at any time whether before or after termination of this agreement.

Both parties further agree that upon termination of this agreement or completion of any task assigned hereunder, it will return upon request all applicable information, data, related notes, and work papers belonging to the other.

### **ELECTRONIC MEDIA**

It is the Client's responsibility to maintain a copy of the original computer files, artwork and transparencies. Punchmark, LLC is not responsible for accidental loss or damage to media supplied by the Client or for errors on supplied artwork furnished by The Client. Until Punchmark, LLC can evaluate digital input, no claims or promises are made about our ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize Client-supplied files will be charged at our current rates. Punchmark, LLC does not archive your work for longer than it takes to produce the final product.

### **INDEMNIFICATION**

The Client represents that it has the legal right to produce all services ordered from Punchmark, LLC. In the event that a charge, claim or demand, or arbitration, action or proceeding (collectively, a "Claim") is made or commenced against Punchmark, LLC based upon, relating to or arising from the alleged wrongful acts of the customers, or alleging that the product produced by Punchmark, LLC ordered by the customer: (a.) infringes any copyright, trademark, patent or other proprietary right or intellectual property right of any person or entity; or (b.) contains matter that is libelous, slanderous, defamatory, scandalous or obscene, the customer shall indemnify and hold Punchmark, LLC harmless from and against any loss, damages, cost and expense arising from or related to the Claim including without limitation; (1.) defending Punchmark, LLC against any such Claim (2.) paying any judgment or award against The Client; and (3.) reimbursing Punchmark, LLC for any legal fees and expenses it reasonably incurs in responding.

### **PUNCHMARK, LLC REPRESENTATIONS**

- A. Punchmark, LLC represents that it shall exert its best efforts to diligently perform its assigned duties under this agreement.
- B. Punchmark, LLC warrants that all services under this Agreement shall be performed in a professional and workmanlike manner.
- C. Except as provided above, PUNCHMARK, LLC MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **LIMITATION OF LIABILITY**

The Client agrees that it shall not hold Punchmark or its agents or employees liable for any incidental or consequential damages which may arise from Punchmark, LLC's failure to perform any aspect of the Project in a timely manner, regardless of whether such failure was caused by intentional or negligent acts or omissions of Punchmark, LLC or a third party. Punchmark, LLC's liability under this agreement for and all damages, whether direct or indirect, including consequential, shall be limited to the charges paid or to be paid to Punchmark, LLC under this agreement by The Client for the services which gave rise to such damages.

### **NON-SOLICITATION OF EMPLOYEES AND CONTRACTORS**

During the period this agreement is in effect, and for a period of twelve (12) months after, The Client agrees it will not, without the prior written consent of Punchmark, LLC, solicit Punchmark, LLC employees or contractors for the purpose of offering them employment or contractual engagement. In the event of breach of this item, Punchmark, LLC shall be paid a sum equal to 30% of the gross billings or salary of resource in question for a period of twelve (12) months from the initial breach, payable retroactive to the original breach and on a monthly basis for future work completed.

## STANDARD TERMS AND CONDITIONS

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### NONASSIGNABILITY

This agreement may not be assigned without the prior written consent of the other party.

### NOTICES

Any notice required or permitted to be given hereunder shall be either 1) delivered personally or 2) sent by prepaid certified mail, return receipt requested, and shall not be deemed to have been given until received by the other party. Each party shall specify the address and addressee for receipt of such notices prior to the commencement of this agreement.

### FORCE MAJEURE

Neither party shall be responsible for neither delays nor failure in performance resulting from acts beyond its control. Such acts shall include but not limited to Acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations, fire, earthquakes or other disasters.

### CLAIMS

Claims for defects, damages, or shortages must be made by the Client in writing no later than 30 calendar days after delivery. If no such claim is made, Punchmark, LLC and The Client will understand that the job has been accepted. By accepting the job, the Client acknowledges that Punchmark, LLC'S performance has fully satisfied all terms, conditions and specifications.

### CLIENT PREPARATION

Punchmark requests that the Client be prepared to identify the following items prior to the initial meeting.

TARGET AUDIENCE	DESIRED MESSAGE	NUMBER OF PAGES	PROJECT DIMENSIONS
PROJECT BUDGET	PROJECT DEADLINE	DESIGN EXAMPLES	BRAND GUIDELINES

### CLIENT RESPONSIBILITIES

- A. The Client must provide prompt access to its duly authorized personnel for the purpose of obtaining approvals and additional information required to effect completion of work.
- B. The Client is responsible for securing any appropriate authorization permits or releases associated with the performance of work.
- C. Review Copy for Wording and Spelling Errors
- D. Review all Designs for Correct use of Logo, Color, Images, Size and Functionality

### WAIVER

The Client, after fully disclosure, specifically warrants that it has been informed by Punchmark, LLC that Punchmark, LLC is not liable for the following conditions or circumstances: (i) any problems arising out of [The Client's] website ranking on Google, Yahoo, or any other internet search engine; (ii) interruption to internet, e-mail, and/or website access caused by a third party internet service provider, web-hosting service, or any other party other than Punchmark, LLC who may help provide e-mail and web-hosting services to The Client; (iii) any problems with spam e-mails, viruses, or other problems associated with [The Client's] e-mail and/or website access not directly submitted or caused by Punchmark, LLC, but that arose through the use and/or access of any third party internet service provider, e-mail or web-hosting service or other third party who provides services to The Client through PUNCHMARK, LLC. (iv) any problems arising out of the use of The Client provided images, videos, audio or other content files.

### STANDARD WORK HOURS

Unless otherwise noted in the Project Proposal, the standard work hours for Punchmark, LLC personnel are Monday through Thursday 9:00am to 6:00pm local time, and Friday 9:00am to 5:00 pm, excluding any holidays.

## STANDARD TERMS AND CONDITIONS

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### ARBITRATION AND DISPUTES

Punchmark, LLC and the The Client agree that any and all disputes, claims or controversies (hereinafter referred to as a “claim”) arising under or relating to the relationship between Punchmark, LLC and The Client and any related documents, security instruments, loans, accounts for notes, including by way of example and not as limitation:

- (i) the relationships resulting from this agreement and the transaction arising as a result thereof;
- (ii) the terms of this agreement; or

(iii) the validity of this agreement or the validity or enforceability of this arbitration agreement, shall be subject to binding arbitration to be determined by one arbitrator, in accordance with and pursuant to the then prevailing rules of the Commercial Rules of the American Arbitration Association, to be held and arbitrated in Charlotte, Mecklenburg County, North Carolina. The Client agrees that they will not assert a claim on behalf of, or as a member of, any group or class.

The findings of the arbitrator shall be final and binding on all parties to this agreement, and may include an award of costs and legal fees. Such fees and costs will be awarded on any judgment in favor of Punchmark, LLC. This agreement to arbitrate and any award, finding, or verdict of or from the arbitration will be specifically enforceable under the prevailing law of any court having jurisdiction over Punchmark, LLC and/or The Client. Notice of the demand for arbitration will be filed by the party asserting the claim with the other party to this agreement and with the American Arbitration Association, using the forms required by the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim in question has arisen, and in no event shall any such demand be made after the date when the institution of legal or equitable proceedings based on such claim would be barred by the applicable Statute of Limitations. Any arbitration proceeding brought under this agreement, and any award, finding, or verdict of or from such proceeding, shall remain confidential between the parties and shall not be made public. Both Punchmark, LLC and The Client are hereby agreeing to choose arbitration, rather than litigation or some other means of dispute resolution, to address the grievances or alleged grievances. The parties believe this will allow a faster and more cost effective method of addressing a claim. By entering into this agreement and this arbitration provision, both parties are giving up their constitutional right to have any dispute decided in a court of law before a jury, and instead are accepting the use of arbitration, other than as set forth immediately below.

Notwithstanding anything herein to the contrary, Punchmark, LLC retains the option to use judicial or non-judicial relief to enforce the monetary obligation represented by this agreement. Such judicial relief would take the form of a lawsuit. The institution and maintenance of such claim for judicial relief and a court to foreclose on any collateral or to enforce or collect upon any outstanding monetary debt or judgment shall not constitute and waiver of the right of any party to compel arbitration of any claim subject to arbitration of this agreement, including the filing of a counterclaim by The Client in a suit brought by Punchmark, LLC pursuant to this arbitration provision.

## HOSTING SERVICE AGREEMENT

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By and between PUNCHMARK, LLC and their web hosting customer, who henceforth shall be referred to as "Customer". The parties agree to the following, which shall apply throughout the term of this agreement:

### DEFINITIONS

- A. "Hosting Services" shall refer to services offered by Punchmark, LLC, as listed on our hosting page or in this attached Statement of Work.
- B. "Customer", as mentioned above, shall refer to the end user who is utilizing the web hosting services provided by Punchmark, LLC

### PRICES

All prices for Hosting Services provided by Punchmark, LLC to its Customers are in U.S. Dollars. Customers must pay for services provided by Punchmark, LLC in U.S. Dollars.

### ORDER ACCEPTANCE AND PAYMENT

- A. All orders are subject to acceptance by Punchmark, LLC. An order will be deemed accepted when written (e-mail) confirmation of the order is sent to the Customer. Punchmark, LLC may refuse to accept, or delay for any period of time, any order for any reason.
- B. Payment and Terms: Payment shall be made to Punchmark, LLC in dollars only. Payments are due upon account activation and future account renewal, and may be made monthly or annually through a personal/business check, money order or Credit card. If shortfalls in payment to Punchmark, LLC of the full invoice amount occur due to bank fees, transfer fees, or the like, Punchmark, LLC will re-invoice The Customer for the shortfall. Should payment in full of any invoice (aside from the shortfalls mentioned above) not be received by Punchmark, LLC within thirty (30) days after account activation or renewal, Punchmark, LLC may discontinue, withhold, or suspend services to the Customer.
- C. Setup fees, for any Hosting Services, are not refundable, regardless of the length of time the service is used by the Customer.
- D. Payment in Advance. Monthly or Annual Service billing precedes the month or year in which the service is provided. Any additional product or hourly services requested must be paid for in advance prior to the delivery of requested product or service.
- E. The Customer is responsible for providing Punchmark, LLC with the proper and correct Billing and Payment Information. Any and all fees incurred due to incorrect Billing and/or Payment information are the sole responsibility of the Customer.

### DOMAIN NAME REGISTRATIONS

Punchmark, LLC may acquire an internet domain name on behalf of the Customer as specified in the Customer's request for services. The Customer may acquire the domain name without the assistance of PUNCHMARK, LLC. The Customer is responsible for any and all fees necessary for the acquisition of the domain name. Any costs incurred by PUNCHMARK, LLC in the process of obtaining or maintaining a domain name for the Customer shall be immediately reimbursed to PUNCHMARK, LLC upon receipt of invoice for said services and fees.

- A. Domain Registration: The Customer is responsible for checking on the availability of any domain name associated with any of the services offered by Punchmark, LLC. The Customer is also responsible for correctly entering any and all domain information (this includes, but is not limited to, the spelling of the domain, proper domain extension, etc.) during the course of ordering any services offered by Punchmark, LLC. Punchmark, LLC is not responsible for domain name availability.
- B. Domain Changes: If Hosting Services are ordered using an incorrect domain name, the Customer will be invoiced for any and all fees incurred by Punchmark, LLC in the proper registration/correction/completion of the Customer's order. These fees may include, but are not limited to, any administrative costs, domain registration costs, and costs incurred in the correction of domain registration information charged by the domain Registrar.
- C. DOMAIN NAME REGISTRATION AND REGISTRATION RENEWALS ARE THE RESPONSIBILITY OF THE CLIENT AND MUST BE MANAGED AND MAINTAINED BY THE CLIENT.



## HOSTING SERVICE AGREEMENT

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### HOSTING CANCELLATIONS

If for any reason a Client decides to cancel Hosting Services, full ownership of the website and all of its files are turned over to Punchmark, LLC. The Client must provide a Cancellation Notice of cancellation via USPS Registered Mail to Punchmark, LLC's mailing address listed in this Agreement. The Cancellation Notice must be sent thirty [30] days prior to the recurring day of the billing cycle. At that point, any monies paid to Punchmark, LLC for Hosting Services cannot be refunded. All final amounts owed to Punchmark, LLC for hosting will be paid the day the Cancellation Notice has been received. This website program can only be maintained under Hosting Services provided by Punchmark, LLC. All related intellectual property cannot be transferred to another server or third party hosting company.

### LIMITATION OF PUNCHMARK, LLC'S OBLIGATIONS AND LIABILITY

A. Punchmark, LLC will utilize its best efforts to maintain acceptable performance of services contracted for, but Punchmark, LLC makes absolutely no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose. Punchmark, LLC cannot guarantee continuous service, service at any particular time, or integrity of data stored or transmitted via its system or via the Internet. Punchmark, LLC will not be liable for the inadvertent disclosure of, or corruption or erasure of, data transmitted or received or stored on its system. Punchmark, LLC shall not be liable to Customer for any claims or damages which may be suffered by Customer, including, but not limited to, losses or damages of any and every nature, resulting from the loss of data, inability to access Internet, or inability to transmit or receive information, caused by, or resulting from, delays, nondeliveries, or service interruptions whether or not caused by the fault or negligence of Punchmark, LLC.

B. Punchmark, LLC may discontinue servicing any Hosting Services, or may require fulfillment of conditions Punchmark, LLC may choose to impose as a prerequisite for continuing Hosting Services. Punchmark, LLC agrees to provide Customer with reasonable notice via e-mail or fax of any such intent to discontinue or impose conditions unless it is determined that such notice would cause harm to Punchmark, LLC. The following activities are specifically not allowed by Punchmark, LLC and will result in IMMEDIATE account termination: Running ADULT web sites, Running HATE web sites, participation in undirected bulk e-mail delivery (SPAMMING) either through the use of our mail servers or not, GAMBLING web sites, or any sites promoting or participating in ILLEGAL activities.

C. Punchmark, LLC's liability to Customer, and any end user of Hosting Services or other Punchmark, LLC services is limited to the amount paid to and received by Punchmark, LLC for services not accepted. In no event shall Punchmark, LLC be liable to Customer, or any end user or any other entity for any special, consequential, or other damages, however caused, whether for breach of contract, negligence or otherwise, even if Punchmark, LLC has been advised of the possibility of such damage.

D. Customer will take all necessary measures to preclude Punchmark, LLC from being made a party to any lawsuit or claim regarding Punchmark, LLC services provided to any Customer or end user. Customer hereby agrees to indemnify and hold harmless Punchmark, LLC from any and all claims of whatever nature brought by any of Customer's customers against Punchmark, LLC in excess of the remedy set forth in paragraph (C) under Limitation of Punchmark, LLC's Obligations and Liability.

E. While Punchmark, LLC provides backup services, and makes every effort to provide previous copies of customer files (up to two weeks and for a specified dollar amount as specified on their web site), to its customers (with the exception of .log files), it is not guaranteed that these copies will be available as there are unknown issues that may arise preventing complete or acceptable restorations.

F. Restoration of data from the backups Punchmark, LLC provides are done during normal business hours and based on the average ticket time for all Support requests. Restore requests are handled via the account manager Punchmark, LLC makes available for use by all Shared and Dedicated Hosting customers. During off hours, every attempt is made to restore data as quickly as possible. However, off hours are used to run the backups of all server data on the Punchmark, LLC network. Therefore, while we are backing up server data, our ability to restore data at the same time that backups are running is limited and will generally take considerably longer than requests made during normal business hours.

### PROPERTY RIGHTS

Punchmark, LLC owns all rights, titles and interests in Punchmark, LLC's trade names, service marks, inventions, copyrights, trade secrets, patents, and know-how relating to the design, function, or operation of Hosting Services and of the hardware and software systems and resources necessary to provide the individual service elements of which they consist. This agreement does not constitute a license to Customer to use Punchmark, LLC's trade names or service marks.

## HOSTING SERVICE AGREEMENT

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### CONFIDENTIALITY

Customer acknowledges that by reason of its relationship with Punchmark, LLC hereunder, it may have access to certain information and materials relating to Punchmark, LLC's business, plans, customers, software, and marketing strategies that is confidential and of substantial value to Punchmark, LLC, which value would be impaired if such information were disclosed to third parties. Customer agrees that it will not use in any way for its own account nor for the account of any third party, nor disclose to any third party, any such information revealed to it by Punchmark, LLC. Customer further agrees that it will take every reasonable precaution to protect the confidentiality of such information. In the event of termination of this agreement, there shall be no use or disclosure by the Customer of any such confidential information in its possession, and all confidential materials shall be returned to Punchmark, LLC or destroyed. The provisions of this section shall survive the termination of the agreement for any reason. Upon any breach or threatened breach of this section, Punchmark, LLC shall be entitled to injunctive relief, which relief shall not be contested by Customer.

### RELATIONSHIP OF THE PARTIES

The relationship between Punchmark, LLC and Customer is that of vendor and vendee. They shall not be construed as being joint ventures, franchiser/franchisee, or employer/employee. This agreement is a commercial agreement between businesses, not a consumer agreement. Customer has no authority, apparent or otherwise, to contract for or on behalf of Punchmark, LLC, or in any other way legally bind Punchmark, LLC in any fashion, nor shall Customer be authorized to make any representations about Punchmark, LLC or its services other than to set forth Punchmark, LLC's responsibilities as outlined in this agreement.

### APPLICABLE LAW, JURISDICTIONAL MATTERS

This agreement takes effect when accepted by Punchmark, LLC in North Carolina. It is to be governed by and construed under the laws of the State of North Carolina and the United States of America. The federal and state courts of the State of North Carolina shall have exclusive jurisdiction to adjudicate any non-arbitrable dispute arising out of this agreement. Customer hereby expressly consents to (1) the jurisdiction of the courts of North Carolina and (2) service of process being effective upon it by registered mail sent to the address set forth at the beginning of this document, as may be changed from time to time by written notice actually received by Punchmark, LLC. To the extent permissible by the law of Customer's jurisdiction, Customer waives any requirement that service of process or of any documents be made upon it pursuant to the provisions of the Hague Convention.

### ENTIRE AGREEMENT; MODIFICATIONS

This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them. Punchmark, LLC may make changes to this agreement upon thirty (30) days' written notice to Customer, advising of the change and the effective date thereof. Utilization of Punchmark, LLC services by Customer and/or its Customers following the effective date of such change shall constitute acceptance by Customer of such change(s). Otherwise, this agreement may not be modified except by the written consent of both parties.

### COMPANY INFORMATION

#### PUNCHMARK, LLC

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