

PhotoBiz® Terms of Use

Date of Last Revision: March 8, 2016

Please read the following Terms of Use carefully before you use PhotoBiz's services.

Welcome to PhotoBiz.com. PhotoBiz, LLC is a North Carolina Limited Liability Company that does business as PhotoBiz.com. PhotoBiz, LLC will be referred to in these Terms of Use as "PhotoBiz".

Among other things, through its Web interface (referred to herein as "Website"), PhotoBiz provides a platform for uploading, sharing, and viewing various types of content. PhotoBiz uses the latest technology, which includes HTML5 websites. Registered users of the Website agree to a monthly plan (per account) that provides certain services (referred to herein as "Plan"). PhotoBiz's dynamic and collaborative service enables registered users and unregistered users (visitors and registered users are collectively referred to as "User(s)") to access a host of functionalities, including but not limited to various types of media submitted by Users. These Terms of Use (referred to herein as "the Agreement") applies to all Users (both registered users and unregistered users). Some parts of the Agreement are only applicable to registered users.

PhotoBiz provides services to you subject to the notices, terms, and conditions set forth in the Agreement. In addition, when you use any of PhotoBiz's services, you will be subject to the rules, guidelines, policies, terms, and conditions applicable to such service, and they are incorporated into the Agreement by this reference. PhotoBiz reserves the right to change this Website and the Agreement at any time. **ACCESSING, BROWSING, OR OTHERWISE USING THE WEBSITE INDICATES YOUR AGREEMENT TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, SO PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PROCEEDING.**

1. Agreement

The content on PhotoBiz's Website, including without limitation any text, software, scripts, graphics, photos, sounds, music, videos, interactive features, and the like, and the trademarks, service marks, and logos contained therein (collectively, "Content"), is owned by or licensed to PhotoBiz and is subject to copyright, trademark, and other intellectual property rights under United States, foreign laws, and international conventions.

The Agreement governs your use of the Website and all PhotoBiz software, tools, functions, products, and services (collectively, the "Services"). By using the Website or any of the Services, you agree to be bound by the Agreement. The terms of the Agreement may be modified by PhotoBiz from time to time without notice to you. Please read the Agreement carefully and check the Website frequently to stay abreast of any changes or modifications. If you do not agree to be bound by the Agreement, then do not use the Website.

PhotoBiz may, in its sole discretion, modify or revise the Agreement at any time, and you agree to be bound by such modifications or revisions. If you do not accept and abide by the

Agreement, you may not use the Website. You also must be 18 years of age or older to use the Services.

In consideration of the license granted herein below and your use of the Website and the Services, you represent you are of legal age to form a binding contract and you agree to comply with the Agreement. If you do not agree to the Agreement, PhotoBiz does not agree to provide you with access to the Website or the Services.

PhotoBiz reserves the right at any time to:

- (a) Change the Agreement. Your continued use of the Website or Services following any such change will signify your acceptance of such change;
- (b) Change the Services, including eliminating or discontinuing any Content or feature of the Services;
- (c) Impose fees, charges, or other conditions for use of the Services (with reasonable notice); and/or
- (d) Modify the Website with or without notice to you and without liability to you or any third party.

2. License

PhotoBiz grants you a personal, non-exclusive, non-transferable, limited, and revocable license to view the Content and Website subject to the Agreement. You may access or use the Website on any devices as authorized by PhotoBiz or its Content delivery providers.

PhotoBiz does not claim ownership of any content you make available via the Services. However, with respect to the content you make available via the Services, you grant PhotoBiz a worldwide, royalty-free, and non-exclusive license to publicly display such content on the World Wide Web (i.e. through your publishing of your site). PhotoBiz will not otherwise use your content without your permission. This license exists only for as long as you elect to continue to use the Services and shall terminate at the time your Plan is terminated.

3. Accuracy of Information/Registration

You represent and warrant the information that you provide to us during registration and at all other times will be true, accurate, current, and complete, and you have all necessary right, power, and authority to enter into the Agreement and to perform the acts required of you hereunder. You also agree to maintain and promptly update your registration data to keep it true, accurate, current, and complete. This is especially important with respect to your email address, since that is the primary way in which PhotoBiz will communicate with you about your Plan and your orders.

4. Payment Terms

(a) Set-up & Activation Charges: All charges for the setup and use/access for Services are payable upon opening your PhotoBiz account, in full, and subject to an active Plan. These fees must be paid with one credit card or debit card (no splitting is allowed). Cash or a check cannot be accepted for payment. These fees cannot be paid over time; no partial payments are accepted. These charges are for a service that is completed upon activation and is therefore non-refundable (except where indicated in this Agreement). Any fees paid do not guarantee use of any particular Service or product. Any Service or product may be discontinued at any time for any reason. At its sole discretion, PhotoBiz may offer you a credit for another active Service or product, up to the amount you paid in setup fees, if a Service or product is discontinued.

(b) Monthly Plan: All charges for your monthly Plan (as more fully described on the Website) must be paid in advance according to the most current price of the Plan. You (referring to registered users) must manage your Plan(s) by yourself by upgrading or downgrading your Plan(s) accordingly. Upon registration, you must pay for your Plan by credit card, check card, or debit card. PhotoBiz accepts Visa, MasterCard, American Express, and Discover. Upon paying for your Plan, you thereby grant permission to PhotoBiz to charge any fees in accordance with your Plan. These fees must be paid all on one card, but the card can be switched from month to month. You will receive an email notification after each recurring charge.

(c) Payment Date: Except as otherwise provided herein below, all fees payable under the Agreement shall be paid by you to PhotoBiz on the day your Plan is setup (billing date), as the case may be. All successive monthly fees must be paid by, and will be charged completely to your credit card on or before, the monthly "anniversary" of the date on which the Plan was set up. For example, if your Plan was set up on January 17, the monthly fees for each successive month must be paid by the 17th day of that month. Special pricing or promotional offers are to be paid under the terms set forth in the offer itself. Except as expressly provided in the Agreement, setup fees, and/or other charges, including fees for monthly Plan(s), are non-refundable without limitation.

(d) Payments: All fees for Services will be paid through our merchant service provider to PhotoBiz in U.S. dollars. You hereby authorize PhotoBiz to bill your credit card or bank debit card each successive billing period until termination of your Plan. You agree to immediately notify PhotoBiz of any changes in your credit card number or expiration date. If the card is not honored for any reason, PhotoBiz will attempt to notify you. If an alternative billing method has not been established by you and PhotoBiz within eight (8) days from the date the credit card is not honored, PhotoBiz shall be entitled to terminate your Plan at that time, except as may be otherwise provided herein.

(e) Termination of Service Due to Cancellation or Non-Payment / Reactivation: If you fail to make your Plan payment, your website will be subject to immediate take down; however, PhotoBiz may keep your website up for a period of time, so that you can make your Plan payment without interruption to your website.

(f) Sales/Use Taxes: Pursuant to federal, state, and/or local tax regulations, PhotoBiz may collect sales and/or use taxes from you. Taxes for software as a service (SaaS) is a constantly shifting and developing area of law. PhotoBiz, in its sole discretion, will make a decision as to whether it is applicable to your particular payment. If collected, the taxes will be remitted to the

appropriate taxing agency. If it is not collected, you are solely responsible for your tax liability, if applicable. Please contact a qualified tax professional if you have any questions or concerns about your tax liability.

Reactivation / Content Deletion:

You will be allowed to reactivate your Plan, for a fee, within one hundred and eighty (180) days of failure to make your Plan payment or cancellation. The fee is: \$10.00 for reactivations between thirty (30) and sixty (60) days, \$20.00 for reactivations between sixty-one (61) and one hundred and twenty (120) days, and \$40.00 for reactivations between one hundred twenty-one (121) and one hundred and eighty (180) days. After one hundred and eighty (180) days, you will be charged the same as a new customer would be charged to reactivate their account or start a new account.

Loss of Content, Services, Products, and Discontinued Products:

As stated above, if you fail to make your Plan payment, your website will be subject to immediate take down. Fifteen (15) days after you fail to make your Plan payment or cancel your website, your brand-free purchase, if any, will be terminated forever, regardless of whether you reactivate your account. If you want brand-free service again, you will be required to pay for the brand-free service again at current rates, if offered at all. If you fail to make your Plan payment within sixty (60) days, all discontinued Services (services that are no longer offered) will be forever removed from your account (e.g. the old PhotoBiz Cart), regardless of whether you reactivate your account. One hundred and eighty (180) days after non-payment or cancellation, all of your content (i.e. account information, including text and pictures) may be permanently deleted. At that time, if you want to open a new PhotoBiz account/Plan, you will be required to pay the current setup fee for a new Plan as if you were a new customer. Termination of your Plan(s) shall not relieve you of your obligation to pay all outstanding invoices.

(f) If at any time PhotoBiz receives a “chargeback” from our merchant provider and is charged a fee, that fee (not to exceed twenty-five dollars (\$25.00)) will be charged to your Plan. In addition, PhotoBiz will revoke your Plan access and will deny you the ability to reactivate your Plan.

5. Plan Security

When you register with PhotoBiz you are asked to set up a password. You are solely responsible for maintaining the confidentiality of the password associated with your Plan and for restricting the access to your password and to your computer while logged into the Website. You agree to accept responsibility for all activities that occur under your Plan and/or from your computer. We use reasonable security measures to protect against unauthorized access to your Plan. You agree to immediately notify PhotoBiz of any unauthorized use of your Plan or password, or any other breach of security, and you accept all risks of unauthorized access to the registration data and any other information you provide to PhotoBiz.

You acknowledge, consent, and agree that PhotoBiz may access and disclose your Plan information and Content if required to do so by law or in a good faith belief that such access or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the

Agreement; (c) respond to claims that any content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or safety of PhotoBiz, its Users, and the public. Further, PhotoBiz may share (but will not sell for money) your personally identifiable information with our affiliates and those companies that assist us in providing the Services to you (e.g., domain and hosting services, our financial institutions to effect payment for Services, etc.).

6. Plan/Account Control

PhotoBiz recognizes that you might want a developer/web designer to set up your PhotoBiz website. When the Plan is being set up, it must be set up in your name and not in the name of developer/web designer. This policy makes clear that you control the Plan. PhotoBiz does not allow developer/web designers or anyone else to resell its services. In disputes of control on one account by two or more people, the person who pays the monthly plan will be considered the controller, and any domain work to separate the account will be charged at a rate of \$25 per domain. In the case of business partners who want to split their account, the controller of the account will be considered the person who originally held the credit card when the account was setup. In the case of a dispute where the credit card account is held jointly, the person who initially setup the account will be considered the controller. PhotoBiz may, in its sole discretion, be able to make special arrangements for setup of another account in case of a business partner split.

7. Electronic Commerce

You will be solely responsible for the development, operation, and maintenance of your online store, products, contents, and materials appearing online or on your products, including without limitation: (a) the accuracy and appropriateness of content and materials appearing within the store or related to your products; (b) ensuring that the content and materials appearing within the store or related to your products do not violate or infringe upon the rights of any third party; (c) ensuring that the content and materials appearing within the store or related to your products are not defamatory, libelous, or otherwise illegal; (d) the final calculation and application of shipping and sales tax; (e) accepting, processing, and filling any customer orders, and for handling any customer inquiries or complaints arising therefrom; (f) the security of any customer credit card numbers and related customer information you may access as a result of conducting electronic commerce transactions through your website. You agree to keep all such information confidential and will use a high degree of care and security, at least as high as you use with your own confidential information.

8. Third Party Services

The Website may contain links to third party websites or provide content from third party websites that are not owned or controlled by PhotoBiz. PhotoBiz has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party

websites. You may order goods and services through PhotoBiz from other persons ("Seller") not affiliated with PhotoBiz. All matters concerning the goods and services desired from Seller, including but not limited to purchase terms, payment terms, warranties, guarantees, maintenance and delivery, are solely between you and Seller. PhotoBiz makes no warranties or representations whatsoever with regard to any goods or services provided by any Seller. You will not consider PhotoBiz, nor will PhotoBiz be construed as, a party to such transactions, whether or not PhotoBiz may have received some form of revenue or other remuneration in connection with the transaction, nor shall PhotoBiz be liable for any costs or damages arising out of, either directly or indirectly, any such transaction. By using the Website, you expressly relieve and release PhotoBiz and its affiliates from any and all liability arising from your use of any third-party website. Accordingly, we encourage you to be aware of when you are no longer on the Website, and to read the terms and conditions and privacy policy of each other website that you visit.

9. Termination, Limitation of Liability, No Guarantee Against Data Loss

PhotoBiz reserves the right to terminate your Plan if PhotoBiz learns that you have provided false or misleading registration information. PhotoBiz reserves the right, at its sole discretion, to immediately, without notice, suspend or terminate (a) the Agreement; and/or (b) your Plan without the ability by you to access the Website and/or any other service provided to you by PhotoBiz upon any breach by you of the Agreement or your failure to pay for Services. Further, PhotoBiz reserves the right to terminate your Plan and access to and/or use of the Website and remove and discard any of your content at any time for any reason, including without limitation any failure to comply with any part of the Agreement.

PhotoBiz also reserves the right to discontinue providing all or part of the Website. PhotoBiz reserves the right, in its sole discretion, to change or discontinue the Website and Content at any time, without notice. You agree that any termination of your access to or use of the Website and any discontinuation by PhotoBiz in providing the Website may occur without notice to you and that PhotoBiz shall be under no obligation to: retain any of your content, provide any further access to any content, or return any content to you. You agree that PhotoBiz shall not be liable to you or any third party for any such termination or for any interruption or discontinuation of the Website.

If PhotoBiz terminates your Plan because you have breached the Agreement, you shall not be entitled to a refund of any unused portion of subscription fees or set-up costs, including the purchase of a brand-free Plan or any other PhotoBiz product purchased.

While accidental data loss is very unlikely, PhotoBiz does not guarantee that any data you store with PhotoBiz will not be lost. Data might include customer information, account information, sales information, transaction histories, text, images, etc. Always keep all of your data backed up. Export data regularly. You agree that PhotoBiz shall not be liable for the loss of your data.

If you have a PhotoBiz maintained domain, but cancel it or fail to pay for it, it will expire. You may not be able to get it again. Before any termination of a domain product, it is solely your responsibility to effect transfer of the domain into your name, if you so choose. It is your responsibility to contact PhotoBiz for any assistance you may need in this regard before termination. You agree to pay a service fee of at least \$25 for each U.S. domain transfer and

\$50 for each foreign domain transfer. You will be charged at current rates, solely determined by PhotoBiz, not to exceed \$200. PhotoBiz will not make or assist with any domain name server (DNS) changes. Domain transfers shall only be made to the registered account holder with a complete eNom or Go Daddy account, respectively.

If you wish to transfer your PhotoBiz account to anyone else (i.e. making a plan ownership change), you agree to pay PhotoBiz a \$50 service fee. To effect the transfer, PhotoBiz must have a digitally signed email from the account holder from the account email. As with any domain transfer, it must be made via transfer within the same provider (e.g. eNom to eNom).

After any termination, unless otherwise stated herein or stated to you, you will not be eligible to reinstate your account or for any discount in creating a new account. If you later choose to set up a new account, you will have to pay for all products and services as if you are new customer. Please contact the PhotoBiz sales department, who in its sole discretion may make an exception to this rule.

10. Cancellation Policy

You may choose to cancel your Plan at any time, upon written request to PhotoBiz. All cancellation requests should be sent to:

PhotoBiz Customer Service
516 W. Friendly Avenue
Greensboro, NC 27401

Or

You can call PhotoBiz support and verbally request cancellation. All cancellations must be submitted in writing in one of the above-stated ways or it will not be valid.

Your request will be processed within three (3) business days of receipt. For cancellations made any time in the middle of a billing cycle, your Plan will be terminated at that point and no further payment will be drafted or billed. NO PRORATED REFUNDS WILL BE GIVEN. Also, no refunds or credits will be given for the termination of a brand-free Plan or any other PhotoBiz product purchased.

For customers who pay monthly per product (as opposed to being a monthly image plan), you have the option of deleting products. When you delete a product, all of your data within that product will be immediately destroyed. You will not be able to recover the data. If you reinstate the product at a later date, you will be required to again pay the product setup fee. PhotoBiz may offer an option to place your account on standby, thereby temporarily avoiding data deletion and repaying the product setup fee. Under no circumstances will such standby status last longer than 6 months, and may be given for a shorter period of time. Any customer whose domain PhotoBiz has been providing, who elects to be on standby, will lose that service forever. PhotoBiz will not renew that customer's domain, but will transfer the domain upon request for a fee (see below in this Section).

Before cancellation or deletion, it is your responsibility to have backups of all content on the Website. After cancellation or deletion, any content you have left on the Website may no longer be retrieved. We will not be held liable for any loss of content.

If you have an account where PhotoBiz maintained your domain associated with your Plan, PhotoBiz will no longer maintain your domain after any cancellation. After any cancellation, it is solely your responsibility to effect transfer of the domain into your name, if you so choose. It is your responsibility to contact PhotoBiz for any assistance you may need in this regard.

After any cancellation, unless otherwise stated to you, you will not be eligible to reinstate your account or for any discount in creating a new account. If you later choose to set up a new account, you will have to pay for all products and services as if you are a new customer. Please contact the PhotoBiz sales department, who in its sole discretion, may make an exception to this rule.

11. 14-Day Money Back Guarantee

If you do not feel PhotoBiz has delivered the service you expected, or the service does not fit your needs, you may request to terminate your Plan within the first 14 days from your initial order date and request a refund. The guarantee is offered to first-time PhotoBiz clients only. This guarantee does not apply if you have used a free trial period. There will be no refunds when canceling your Plan with PhotoBiz after the first 14 days of your initial order date. All cancellation requests should be sent to:

PhotoBiz Customer Service
516 W. Friendly Avenue
Greensboro, NC 27401

Or

Submitted through the "SUPPORT" button within your account (select cancellations from the subject menu). All refunds must be submitted in writing in one of these two ways.

Your request will be processed within three (3) business days of receipt. Your Plan will be terminated at that point and no further payment will be drafted or billed. **YOU WILL NOT BE ELIGIBLE IF YOU SIGN-UP AGAIN AND SEEK AN ADDITIONAL 14-DAY REFUND.**

In order to be eligible for a refund, you must clear your account by deleting all content (images and text) from the Website. Before cancellation, it is your responsibility to have backups of all content on the Website. After cancellation, any content you have left on the Website may no longer be retrieved. We will not be held liable for any loss of content.

The 14-Day Money Back Guarantee also applies to any PhotoBiz product, except domains and email accounts. Product refunds are offered for first time product purchases only (per person, not account). All product refund requests should be made by submitting a "SUPPORT" ticket within your account. The product will be removed upon reimbursement of payment to your credit card. You will not be able to retrieve any content contained within the product after it has

been removed. Before cancellation of the product, it is your responsibility to: 1) back up all content within the product and to 2) delete all content from within the product. After cancellation, any content you have left within the product may no longer be retrieved. We will not be held liable for any loss of content.

12. Transfer of Membership

Subject to the prior approval of PhotoBiz (which shall not be unreasonably withheld or delayed), you may transfer or sell your PhotoBiz Plan (one time per account), provided the new owner agrees to abide by all of the terms of the Agreement. PhotoBiz will not charge a fee for any such approved transfer or sale, provided no domain work is required of PhotoBiz. This privilege of transferability is unique to you and, except as otherwise specified in this paragraph, your Plan with PhotoBiz is non-transferable and is not subject to any right of survivorship, and any rights to your PhotoBiz Plan, ID or Contents within your Plan shall terminate upon your death.

13. Reselling

PhotoBiz prides itself on its quality service, support, and products. Because quality is one of PhotoBiz's primary goals, Users are not allowed to resell its services. Anyone reselling our monthly plans will be terminated immediately without refund.

14. Account Verification, Access, and Security

PhotoBiz will need to verify the Plan owner's identity before discussing any Plan information or billing issue. PhotoBiz requires the Plan owner or authorized agent verify the full account name, account identification number, and last 4 digits of the credit card on file to ensure we are talking to the Plan owner or an authorized agent.

Anyone that calls PhotoBiz and provides the above-stated information will have full access to and control of the Plan. Therefore, be very careful who you give your account information to. Do not provide your account information to someone who you do not intend to have full access to and control of the Plan. PhotoBiz will not be responsible for any: changed, deleted, or stolen Plan information or Content.

15. Domain Name Usage and Ownership

PhotoBiz may offer branded domain names for a fee. You may also obtain your own branded domain and PhotoBiz will allow you to use it with the service at no additional charge. PhotoBiz recommends that you have a branded domain, in order to build your brand. PhotoBiz will host your PhotoBiz website and set up your domain to display your Website by DNS (Domain Name System) name change. Upon publishing your website, it may take up to forty-eight (48) hours

for your website to be viewable online. This is out of PhotoBiz control and due to global domain registry system limitations. PhotoBiz takes no responsibility and shall not in any event be liable for failure of any owner to renew his or her domain or for an owner otherwise allowing his or her domain to expire.

For Plans where PhotoBiz is managing your domain, upon any cancellation or termination, PhotoBiz will, only if requested, do an account change to you (for US domains only) and you will be responsible to “pick it up” and transfer the domain to your own account. You will be required to create an account with the same domain registrar the domain is held in. The transfer comes with an administrative fee of at least \$25.00 and not to exceed \$50.00 per domain. Failure to do so could result in the expiration of the domain. You are solely responsible for monitoring the domain to prevent it from expiration. PhotoBiz will not renew any domain of any cancelled or suspended account, and will not be responsible or liable for the domain expiration.

16. Website Template Policy

PhotoBiz offers website templates as a service only and the templates can only be used within the PhotoBiz server environment. In order to keep your website online you must have an active monthly Plan with PhotoBiz. Paying to use the website templates does not license you to use it outside of your Plan with PhotoBiz, nor does it give you rights to ownership of the template or any supporting programming. In addition, you are not permitted to copy the template or design and use in your own site, alternative site, marketing materials, non-PhotoBiz splash pages, blogs, or elsewhere.

17. Copyright / Digital Millennium Copyright Act

YOU SHALL NOT USE THE WEBSITE AND/OR SERVICES TO TRANSMIT, ROUTE, PROVIDE CONNECTIONS TO, OR STORE ANY MATERIAL THAT INFRINGES COPYRIGHTED WORKS OR IN ANY WAY VIOLATES OR PROMOTES THE VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

PhotoBiz respects and vigorously protects the intellectual property rights of third parties. PhotoBiz will respond expeditiously to all claims of copyright infringement that are reported to PhotoBiz. Under the terms of the Digital Millennium Copyright Act of 1998 (“DMCA”), PhotoBiz has adopted a formal procedure described below to manage any claimed copyright violations involving materials made available on the PhotoBiz Website.

Only the copyright owner or someone specifically authorized to act on behalf of the copyright owner may submit a DMCA notice under the DMCA. If you are the copyright owner or so authorized to act on the owner’s behalf, you may submit a DMCA takedown notice with respect to any material that you believe has been posted on the Website without your consent. In order to be effective such a notice must contain all of the following:

(a) A physical or electronic signature of the owner or a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

(b) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

(c) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;

(d) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;

(e) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

(f) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Regardless of whether PhotoBiz's clients may be liable for such infringement under a local country's law or United States law, its response to these notices may include removing or disabling access to material claimed to be the subject of infringing activity and/or terminating its registered User. In the event that materials are taken down as the result of a valid DMCA takedown notice, the registered User of the material may submit a counter notice and a request that the material be re-posted. A valid counter notice under the DMCA must contain the following information:

(a) A physical or electronic signature of the subscriber (registered User);

(b) An identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled; and

(c) A statement under penalty of perjury that the User has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;

(d) The registered User's name, address, telephone number, and a statement that the User consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the User's address is outside of the United States, for any judicial district in which the service provider may be found, and that the User will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

Upon any re-posting of the information, the person submitting the initial take down notice may notify us that relief has been sought in the form of a court action seeking an order restraining the infringing activity at which time the information will be taken down pending a decision by that court.

All notices should be submitted in written and electronic form to:

PhotoBiz Compliance
516 W. Friendly Avenue
Greensboro, NC 27401
And to copyrightinfringement@photobiz.com.

PhotoBiz may also document notices of alleged infringement on which it acts. Please note that in addition to being forwarded to the person who provided the allegedly infringing content, a copy of the legal notice may be sent to a third party which may publish and/or annotate it.

PhotoBiz may suspend and/or terminate the Plan of a first-time offending registered User. Barring special circumstances, repeat offenders will be terminated.

18. Trademarks

PhotoBiz®, Passionate Support®, all PhotoBiz logos, and any other product or service names or marks, logos, or slogans of PhotoBiz contained in the Website are trademarks and/or service marks of PhotoBiz and may not be copied, imitated, or used, in whole or in part, without the prior written permission of PhotoBiz. You may not use any metatags or any other “hidden text” utilizing “PhotoBiz” or any other name, trademark or product or service name of PhotoBiz without our prior written permission. In addition, the look and feel of the Website, including all page headers, custom graphics, button icon, and scripts, is copyrighted. The service mark, trademark, and/or trade dress of PhotoBiz and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, service marks, registered trademarks, and service marks, product names and company names or logos mentioned in the Website are the property of their respective owners. Reference to any products, services, processes, or other information, by trade name, trademark, manufacturer, and supplier or otherwise does not constitute or imply endorsement, sponsorship, or recommendation thereof by us.

19. Prohibited Content and Behavior, Including Copyright and Trademark Infringement, Nudity, Unlawful Conduct, Obscenity, Spamming, Etc.

You are solely responsible for all of the content you upload, share, or copy using the Services and any consequences that results. You must have the legal right to display each image that you upload or share, and to copy each image that you order prints of. Professional images that are provided to you by professional photographers or made available through websites, magazines, books, or other resources, are protected by copyright and should not be uploaded, shared, or copied using the Services.

You affirm, represent, and/or warrant that: (i) you own or have all necessary licenses, rights, consents, and permissions to use and authorize PhotoBiz to use all patent, trademark, trade secret, copyright, moral rights, or other proprietary rights in and to any and all such content to enable inclusion and use of the content in the manner contemplated by the Website and the Agreement; and (ii) you have the written consent, release, and/or permission of each and every identifiable person in the content to use the name or likeness of each and every such

identifiable person to enable inclusion and use of the content in the manner contemplated by the Website and the Agreement.

As a condition of your use of the Services, you shall not upload, post, sell, order for print, email, link to or otherwise transmit any content that contains or depicts nudity, regardless of the content's artistic merit.

Also, as a condition of your use of the Services, you shall not display, upload, post, sell, order for print, store, email, link to or otherwise transmit any content that:

(a) is unlawful, illegal, racist, sexist, harmful, threatening, harassing, derogatory, defamatory, obscene, vulgar, pornographic, invasive of another's privacy, hateful, depicts graphic or gratuitous violence, or is otherwise objectionable;

(b) you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as, but not limited to, insider information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);

(c) infringes any trademark, trade secret, copyright, or other proprietary rights of any party;

(d) harms minors in any way, including, but not limited to, content that violates federal and state child pornography laws, child sexual exploitation laws and laws prohibiting the depiction of minors engaged in sexual conduct;

(e) forges headers or otherwise manipulates identifiers in order to disguise the origin of any content transmitted through the Website;

(f) falsely states or otherwise misrepresents your affiliation with any person or entity;

(g) is unsolicited commercial email or "spam" or is used for the purpose of engaging in any practice that is in any way connected with "spam";

(h) contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, limit the functionality of, or monitor, or persistently reside in or on any computer software or hardware; or

(i) exceeds the scope of the Services you have signed up for.

You also agree that you will not:

(a) link, or attempt to link, the PhotoBiz site to any site offering any images or photographs displaying any nudity;

(b) link, or attempt to link, any site offering any images or photographs displaying any nudity to the PhotoBiz site; and/or

(c) sell, offer for sale, or link to any services of a sexual nature (including all escort services, regardless of whether sexual services are explicitly offered), sex toys, or other sexually related content.

PhotoBiz reserves the right to refuse to provide Services, fulfill any order, or any part of any order, if it believes that the Agreement has been violated. In addition, PhotoBiz reserves the right to disclose information in any Plan or order information when it believes in good faith that the law or legal process requires it, or when it is necessary to do so to protect the rights or property of PhotoBiz or others.

Failure to fulfill any of the obligations in this Section will constitute grounds for blocking your access to the Services, removal of posted material, and/or non-fulfillment of your order (or any part of your order) without prior notice to you and in the sole discretion of PhotoBiz. PhotoBiz shall determine in its sole discretion what action, if any, shall be taken in the event of any discovered or reported violation of the above-mentioned terms.

20. Mutual Respect in Communications

PhotoBiz strives to provide its customers with the best customer support in the industry (Passionate Support®). Its customer support agents are highly trained professionals. All PhotoBiz representatives are committed to being courteous and respectful in all of their communications with you. PhotoBiz expects that you will also show respect in your communications with PhotoBiz representatives.

PhotoBiz will not tolerate rude or disrespectful communications from you or your agents. Rude or disrespectful communications include, but are not limited to: profanity, threats, personal put-downs, belittling language, provoking language, harassing language, defamation, libel, obscenities, vulgarities, pornography, pornographic language, language invading another's privacy, hateful language, racist language, sexist language, or false statements.

If PhotoBiz determines you are being rude or disrespectful to its representatives or other customers, it may warn you, suspend your account, terminate your account, or take other action as appropriate. The actions described above will constitute grounds for suspension or termination of your account. PhotoBiz reserves the right to suspend or terminate your account for rude or disrespectful behavior at any time and without notice. PhotoBiz maintains solely in its discretion the determination of what is rude or disrespectful communication.

21. Equipment and Software

You agree to provide, at your own expense, Internet access, compatible software, and compatible equipment to access and use the Website. You may need to download certain software to use enhanced features and the Website. You may need to obtain updates or upgrades from time to time in order to continue using the Website. PhotoBiz may modify its system requirements to utilize the Website at any time. PHOTOBIZ MAKES NO WARRANTY THAT ANY PARTICULAR COMPUTER, PORTABLE DEVICE, OR OTHER RECORDING

DEVICE WILL BE COMPATIBLE WITH THE SOFTWARE AND SERVICE PROVIDED TO YOU, THAT ANY DEVICE USING THE SOFTWARE AND SERVICE WILL FUNCTION, OR THAT THE WEBSITE WILL WORK ON THE EQUIPMENT AND SOFTWARE USED BY YOU.

22. Website Content (including all products)

PhotoBiz does not control the content of any User's Plan and does not have any obligation to monitor, supervise, or control content posted or stored on its servers at the direction of its Users. Accordingly, PhotoBiz does not guarantee the accuracy, integrity, or quality of such content. All content provided by a User of the Services is the sole responsibility of that User. This means that you, and not PhotoBiz, are entirely responsible for all content that you upload, post, email, or transmit via the Services and for complying with all applicable federal and state laws, including, without limitation, copyright laws.

You represent and warrant that any and all display, performance, and/or other use of any and all music, images, trademarks, service marks, fonts, and all other content and material you make available on or through the Website does not violate any rights of any third parties, and that you have secured all necessary permission to lawfully display, perform, and/or use (and, as applicable, allow others to use) said content and material.

PhotoBiz assumes no responsibility for monitoring the Website or Services for inappropriate content or conduct. If at any time PhotoBiz chooses, in its sole discretion, to monitor the Website or Services, however, PhotoBiz assumes no responsibility for the content, no obligation to modify or remove any inappropriate content, and no responsibility for the conduct of the User submitting any such content.

You acknowledge and agree that PhotoBiz and its designees shall have the right (but not the obligation), in their sole discretion, to refuse to publish, to remove, or to block access to any content that is available via the Website or the Services at any time, for any reason, or for no reason at all, with or without notice.

Without limiting the foregoing, PhotoBiz shall have the right, in its sole discretion and without notice, to remove any content that violates the Agreement. Upon discovery of such content, PhotoBiz shall be further entitled to terminate your Plan. You warrant that your content does not violate any laws, both international and domestic. Under no circumstances will PhotoBiz be liable in any way for any content, including without limitation, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of any content posted, emailed, or transmitted via the Services.

The Content on the Website is provided to you AS IS for your information and personal use only and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited in any manner for any other purposes whatsoever without the prior written consent of PhotoBiz. PhotoBiz reserves all rights not expressly granted in and to the Website and the Content. You agree to not engage in the use, copying, or distribution of any of the Content other than expressly permitted herein, including any use, copying, or distribution of any Content of third parties obtained through the Website for any commercial purposes. You agree not to circumvent, disable, or otherwise interfere with security-related

features of the Website or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Website or the Content therein.

You acknowledge and agree that the Services and the software used in connection with the Services contain proprietary and confidential information that is protected by applicable intellectual property laws and other laws. Except as expressly permitted herein by PhotoBiz, you agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services or the software.

PhotoBiz reserves the right to refuse to fulfill any order, or any part of any order, if it believes that the Agreement has been or will be violated. In addition, PhotoBiz reserves the right to disclose any account or order information when it believes in good faith that the law or legal process requires it, or when it is necessary to do so to protect the rights or property of PhotoBiz or others.

23. Shopping Cart

PhotoBiz's Shopping Cart (if set-up fee is paid for) will enable users to sell products through the internet. You shall not sell or attempt to sell, and we will not power any user that attempts to (a) sell, any products requiring a special permit or license such as (but not limited to) alcohol, firearms, pharmaceuticals, tobacco, and chemicals, or anything illegal, (b) anything requiring additional state or federal licensing or a specific age requirement, or (c) any other goods or services prohibited elsewhere in the Agreement, including but not limited to any goods or services of a sexual or pornographic nature. PhotoBiz reserves the right to refuse to fulfill any order, or any part of any order, if it believes that the Agreement has been, is being, or will be violated in any way. In addition, PhotoBiz reserves the right to disclose any account or order information when it believes in good faith that the law or legal process requires it, or when it is necessary to protect the rights or property of PhotoBiz or others.

24. Brand-Free Accounts

PhotoBiz may offer brand-free accounts in exchange for a fee. The fee may be either a one-time or a monthly fee. If you have paid a one-time fee for a brand-free account with a Grandfathered Pricing Plan (see Section 30) and wish to switch to a new pricing plan, you will be required to pay a monthly fee (in essence, your purchase of a brand-free account only applies to the Grandfathered Pricing Plan). The brand-free service applies to all products your account. PhotoBiz reserves the right to revoke the brand-free service at any time. In such case, you will not be entitled a refund; however, in its sole discretion, PhotoBiz may decide to give you a percentage of the monies you actually paid. Previously, PhotoBiz offered the brand-free service product by product. Customers who purchased brand-free service for particular products may continue to receive such service. If those customers wish to add brand-free services, they must purchase the service-wide brand free and any amounts they have paid for brand free will be deducted from that cost. Your brand-free service will be terminated forever if you: are terminated, are suspended for non-payment for more than 15 days, or choose to cancel. After such termination of your brand-free service, you would be required to pay for it

again if you would like brand-free service again. If you are interested in brand-free service, please contact our billing department.

25. Virtual Credits

PhotoBiz may issue you a virtual credit for one reason or another. Virtual credits may be applied toward the purchase of a product or toward payment of a monthly fee. Virtual credits may only be held by active PhotoBiz customers. Upon cancellation or termination, all virtual credits will be forever removed from your account. Virtual credits are non-refundable and have no cash value.

26. Annual Plan Option

PhotoBiz may offer an annual plan option where you can pre-pay for a year's worth of service. If you choose to do so, YOU WILL NOT RECEIVE A REFUND FOR A PLAN DOWNGRADE OR CANCELLATION. You should only choose the annual plan option only if you do not intend on downgrading your plan or cancelling. Every calendar year after you start your annual plan, you will be automatically renewed for another year, unless you contact PhotoBiz and switch back to a monthly plan. You may downgrade just prior to your annual renewal period (and not lose any value). If you upgrade, you will be charged a pro-rated fee based on the time remaining within your pre-paid service year. If you decide to cancel your PhotoBiz account anytime during the membership calendar year, you will not receive a refund for the used portion of the annual membership fee.

27. Digital Download Service

The Services in your Plan may include the ability for your customers to download digital files provided by you. The source file may be located on a third-party server or on PhotoBiz servers. Your customer or third parties may download the file and give it or sell it to others. Also, your customer or third parties may discover a way to obtain the file directly from a third-party server. PhotoBiz is not responsible for any loss, liability, or copyright infringement that may result from the use of this service. PhotoBiz may take measures to attempt to increase the level of security of the files; however, PhotoBiz is unable to guarantee the security of the files. If you do not wish to take the risk of loss, liability, or copyright infringement, then do not use this service.

28. User Responsibility (photo uploads, images in discontinued products)

Photos uploaded through the Website are not original photo quality specifications, but rather are "versions" of the real photos uploaded at a lesser quality than the original. Uploads are seen online at a resolution of 72 dpi and in some cases 150 dpi. It is necessary, and it is your sole

responsibility, to save all original photos or CD's if needed for later use. Once the photos are uploaded they cannot be returned to or reproduced back in their original state.

Periodically, PhotoBiz will discontinue products, which may contain images you uploaded. PhotoBiz will provide ample notice to you that the product will be discontinued and that you should delete the images within the product. If you do not, you will be charged for image storage at the current rate. No discounts will be given if you fail to delete the images in a discontinued product. After a product has been discontinued, upon request only, PhotoBiz will delete the images in the discontinued product. Notwithstanding, PhotoBiz is not obligated to notify you that you have images in discontinued products. As a courtesy, PhotoBiz may independently delete the images in discontinued products in your account. In such case, PhotoBiz will not be responsible to you for the consequences of said deletion.

29. PhotoBiz's Services & Limitations

PhotoBiz may offer services like "Web Stylist Service", "Social Media Package", "SEO Service", and "Logo Identity" (herein referred to as "Services", or individually "Service"), in which PhotoBiz would perform the Services in exchange for fixed-price fees. In addition to these Terms of Use, the separate document entitled "[PhotoBiz Services Agreement](#)" contains terms and limitations related to PhotoBiz's Services. Please carefully read the PhotoBiz Services Agreement before paying for any PhotoBiz Service. By paying for PhotoBiz's Services you are agreeing to these Terms of Use and the PhotoBiz Services Agreement.

30. Grandfathered Customers

PhotoBiz customers with monthly membership accounts based on number of images/files, at this time, will be allowed to keep their existing pricing structure (which may be called "Classic" on the PhotoBiz website but referred to herein as "Grandfathered Pricing Plan"). New customers will not be allowed to have a Grandfathered Pricing Plan. PhotoBiz reserves the right to change the pricing and structure of the Grandfathered Pricing Plan. PhotoBiz reserves the right to change this specific policy. PhotoBiz also reserves the right to eliminate this policy thereby migrating all customers to its current pricing plans.

If a customer with a Grandfathered Pricing Plan chooses to migrate to a new pricing plan, he or she may never return to the Grandfathered Pricing Plan. Please note that the features, benefits, and pricing of the Plan corresponding to the Grandfathered Pricing Plan are separate and distinct from those of the Plan corresponding to the newer pricing structure. Please consider such a decision very carefully.

You shall not be allowed to simultaneously have accounts under both the Grandfathered Pricing Plan and the newer pricing structure. Grandfather Pricing Plan eligible customers must choose between the two pricing plan structures.

31. Refer A Friend Program

PhotoBiz may offer a Refer A Friend or similar referral program in which PhotoBiz will give you something for referring a new customer to PhotoBiz. The current Refer A Friend program has the following rules/limitations: 1) only active PhotoBiz clients are eligible to participate; 2) the new PhotoBiz client must remain active for at least sixty (60) days, at which time the referral credit will be issued to your account; 3) the client must be a new PhotoBiz client; 4) the referral credit cannot be combined with any other promotional offers; 5) you cannot refer yourself; 6) a referral credit cannot be issued for you adding PhotoBiz accounts (which is currently not allowed – only one account per customer is allowed); 7) referral credits are not eligible to members of the same household; and 8) referral credit is strictly limited to virtual credit and has no cash value (see section on virtual credit in these Terms).

32. PhotoBiz Provided Email

PhotoBiz may offer an email service to you. It may be hosted and managed by a third party, although it may be labeled as a PhotoBiz product (commonly known as “white labeling”). Whether offered directly through PhotoBiz or whether white labeled, PhotoBiz shall not be responsible for any disruption of email service or data loss (as stated in Section below entitled “Limitation of Liability and Damages”, which is fully applicable to email and all other PhotoBiz services and products). If you do not make your scheduled payment, your access to your email account will be shut off within 3 days. In 60 days, all of your email data will be forever deleted and discarded. So, please be sure to either make your payment, or export your data in a timely fashion. The money back guarantee and free trial period does not apply to email accounts.

33. PhotoBiz Forms & Contacts & Email Marketing

PhotoBiz may offer various services to you like Forms, Contacts (management system), and Email Marketing. PhotoBiz shall not be responsible for any disruption or data loss (as stated in Section below entitled “Limitation of Liability and Damages”), which is fully applicable to all PhotoBiz services and products. The number of submissions on the basic Forms service shall be limited to 500 per month. Additional monthly submissions may be available for an additional fee.

As an email service provider, PhotoBiz must prevent spam-related abuse to protect the deliverability of all its customers’ legitimate emails. Therefore, PhotoBiz does not tolerate spamming and other prohibited communications. Also, you may not use an outside unsubscribe process, nor send emails to be delivered as text, SMS, or MMS messages. Please see Section 19 for additional details on spamming and prohibited communications.

34. PhotoBiz Point of Sale (Credit Card Swiper and App)

PhotoBiz may offer various services to you like the PhotoBiz Point of Sale, which includes a credit card swiper. The swiper does not use EMV (chip) security technology. Therefore, you may become liable for fraudulent charges if a chip card is swiped on your non-EMV card swiper.

This can be avoided by keying in the transaction. Please be aware that PhotoBiz may release an EMV compliant swiper. In which case, there will be no refunds for non-EMV swipers or discounts on EMV compliant swipers.

35. Promotional Free Trial Period

You may have been offered a free trial period to use PhotoBiz products and/or services. A free trial period is distinguished from a money back guarantee in that a free trial period does not require an immediate credit card charge and an agreement to pay on a monthly basis. Please note that free trial periods do not apply to all customers, but only to those customers to whom it was specifically offered. Please note that the free trial period does not apply to domains and email accounts.

If after the specific period of time offered in the free trial period you would like to keep the service, you must make your first month's payment with a credit card (i.e. sign up/activate your product). Otherwise, your service will be immediately discontinued. If you sign up after the trial period, the money back guarantee will not apply to you, because you have had a chance to try out the service. You may only use the free trial period once per product.

When your trial period expires, all of your content will be permanently deleted. Before the trial period expires, it is your responsibility to have backups of all content on the Website. After the trial period expired, any content you have left on the Website may no longer be retrieved. We will not be held liable for any loss of content.

36. Limitation of Liability and Damages

You expressly agree that the use of the Services is at your sole risk. The Services are provided on an "as is" and "as available" basis. PhotoBiz expressly disclaims all warranties of any kind, express or implied, including without limitation any warranty of merchantability, fitness for a particular purpose, or non-infringement. You expressly agree that PhotoBiz (or its officers, directors, managers, affiliates, or suppliers) will not be liable to you for any indirect, special, consequential, incidental, or exemplary damages OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF BUSINESS OR BUSINESS OPPORTUNITIES, PUNITIVE DAMAGES, OR LEGAL EXPENSES, WHETHER FORESEEABLE OR NOT, FOR ANY REASON.

OCCASIONAL SERVICE OUTAGES MAY OCCUR THAT PHOTOBIZ CANNOT CONTROL. IF ANY OUTAGES OCCUR, PHOTOBIZ WILL WORK TO TRY TO RESTORE SERVICE PROMPTLY. PHOTOBIZ MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. PHOTOBIZ WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR NOT, WHICH MAY RESULT FROM THE UNAVAILABILITY OR MALFUNCTION OF THE WEBSITE AND/OR THE SERVICES. IN NO EVENT WILL PHOTOBIZ OR ITS OFFICERS, DIRECTORS, MANAGERS, AFFILIATES, OR SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR

THEFT OR DESTRUCTION OF, ANY CONTENT MADE AVAILABLE FOR DISTRIBUTION OR DISPLAY THROUGH THE SERVICES.

You understand and agree that the submission of digital images to PhotoBiz, and the upload/download of any material through the Services are done at your own discretion and risk. You are solely responsible for any loss or damage to your images, your computer system, or other data that may result from the upload/download of any material. You are solely responsible for creating back-ups of your digital images. You acknowledge and agree that PhotoBiz accepts no responsibility or liability for, and employs no control over, the Content of the information passing through the PhotoBiz host servers, network hubs, or the Internet. All services performed hereunder are performed "as is" and without warranty against failure of performance including, BUT NOT limited to, any failure due to computer hardware or communication systems. Except as expressly provided in the Agreement, PhotoBiz does not make, and hereby disclaims, and you hereby waive all reliance on, any representations or warranties, arising by law or otherwise, in reference to the Services, including without limitation, implied warranties of merchantability, fitness for a particular purpose, non-infringement, or developing from course of dealing, course of performance, or usage in trade.

THE FOREGOING LIMITATION OF LIABILITY AND DAMAGES SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

37. Indemnification

You agree to indemnify and hold harmless PhotoBiz, its members, affiliates, officers, directors, agents, employees, successors and assigns, from and against any and all claims, demands, liabilities, losses, costs, expenses (including reasonable attorneys' and experts' fees and court costs), causes of action, or judgments directly or indirectly made by any third party due to or arising out of your use of the Website or Services, your violation of the Agreement, your violation of any third party right, including without limitation any copyright, property, or privacy right or any claim that any content submitted by you caused damage to a third party. The obligations set forth herein shall survive the Agreement and your use of the Website.

38. Entire Agreement

The Agreement, including the PhotoBiz Privacy Policy, which is incorporated herein, and any future amendments constitute the entire agreement between you and PhotoBiz and governs your use of the Services, superseding any prior agreements between you and PhotoBiz with respect to the Services. Any modification of the Agreement must be in writing and signed by an authorized PhotoBiz representative.

39. Choice of Law and Arbitration

The Agreement and the relationship between you and PhotoBiz shall be governed by the laws of the State of North Carolina without regard to the State's conflict of law provisions.

You agree that any dispute arising out of the Agreement or your use of the Website or the Services requires that such claim be resolved exclusively by binding arbitration. The arbitration shall be conducted by a single arbitrator in Greensboro, North Carolina, U.S.A., in accordance with the rules of the American Arbitration Association ("AAA"). No claims of any other parties may be joined or otherwise combined in the arbitration proceeding. Unless otherwise expressly required by applicable law, each party shall bear its own attorneys' fees without regard to which party is deemed the prevailing party in the arbitration proceeding. Subject to the Agreement, the arbitrator shall be authorized to award either party any remedy permitted by applicable law.

BECAUSE THE USE OF THE WEBSITE REQUIRES THE ARBITRATION OF ANY CLAIMS OR DISPUTES EXISTING BETWEEN US, NEITHER PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR BEFORE A JUDGE OR JURY OR TO PARTICIPATE IN A CLASS ACTION OR ANY OTHER COLLECTIVE OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, INCLUDING WITHOUT LIMITATION THE RIGHT TO CONDUCT DISCOVERY OR TO APPEAL, MAY BE LIMITED OR UNAVAILABLE IN ARBITRATION.

Should this arbitration agreement be deemed invalid or otherwise unenforceable for any reason, it shall be severed and the parties agree that exclusive jurisdiction and venue for any claims will be in state or federal courts in Greensboro, Guilford County, North Carolina, and you and PhotoBiz agree to submit to the personal and exclusive jurisdiction and venue of such courts, and you waive any objections that you might otherwise have thereto.

Notwithstanding the foregoing, in recognition of the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside. If you are a resident of any country outside the United States, you understand and agree that we store and process your information on computers located in the United States, and that by providing any information to PhotoBiz, you acknowledge and consent to the transfer of such information to the United States.

40. Waiver and Severability of Terms

PhotoBiz's failure to enforce any right or provision in the Agreement shall not constitute a waiver of such right or provision or of any other rights or provisions in the Agreement. If a court of competent jurisdiction should find that one or more rights or provisions set forth in the Agreement are invalid, you agree that the remainder of the Agreement shall be enforceable and that the invalid provision shall be enforceable to the fullest extent permitted by law.

41. Limitations on Actions

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or in connection with the Agreement which you assert must be commenced within one (1) year after such claim or cause of action arose or be forever barred.

42. Section Titles

The section titles in the Agreement are for convenience only and have no legal or contractual effect.