

# POWER.NET HOSTING AGREEMENT

This Hosting Agreement (“Agreement”) governs your purchase and use of all hosting and related services (the “Services”), as described in the Order Form, that you order and DHM Information Management, Inc. dba POWER.NET (“POWER.NET”) accepts.

POWER.NET may modify any of the terms and conditions contained in this Agreement and any policy or guideline incorporated by reference, at any time in its sole discretion and may also determine whether and when the modifications apply to existing or future customers. Any modifications are effective upon posting of the revisions on the POWER.NET Web site (the “Site”). POWER.NET will post a notice of modifications to this Agreement on the Site for 30 days. POWER.NET may post modifications to referenced policies and guidelines without notice to you. Your continued use of the Services following POWER.NET’s posting of any modifications constitutes your acceptance of the modifications.

## **1. Term and Payment for Services**

**Term.** This Agreement will be for an “Initial Term” of 12 months from the order date and will be automatically renewed (the “Renewal Term”) at the end of the Initial Term for the same period as the Initial Term. You may cancel this Agreement with written notice of termination at least 30 days before the end of the Initial Term or the Renewal Term, whichever is then applicable. To protect you, POWER.NET requires that you provide POWER.NET with your notice of termination by registered mail. Any notice of termination will be effective upon POWER.NET’s receipt of notice.

**Termination Policy.** POWER.NET may terminate this Agreement at any time and for any reason by providing to you 30 days’ prior written notice of termination. If POWER.NET terminates this Agreement, POWER.NET will refund to you the pro-rata portion of pre-paid fees attributable to Services not yet rendered as of the termination date, unless otherwise expressly provided in this Agreement. If you terminate the Services before the end of the Initial Term or the Renewal Term, whichever is then applicable: (a) POWER.NET will not refund to you any fees paid in advance of termination, and (b) you will be required to pay the lesser of 3 times the standard monthly charge or 100% of POWER.NET’s standard monthly charge for each month remaining in the term, unless otherwise expressly provided in this Agreement.

**Liability and Obligations on Termination.** If the Agreement expires or is terminated for any reason, POWER.NET is not liable to you because of the expiration or termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with your business, or for any other reason whatsoever flowing from the termination or expiration. Upon the termination of this Agreement, you must return to POWER.NET all copies of any Deliverables POWER.NET provided to you. If you terminate this Agreement, POWER.NET will not relieve you of any obligations to pay fees and costs accrued before the termination date or any other amounts you owe to POWER.NET under this Agreement.

**Charges.** You will pay all charges for your use of the Services at the then current POWER.NET prices, which will be exclusive of any applicable taxes. You are responsible for paying all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services, other than taxes based on POWER.NET’s net income.

**Payment.** You will pay all charges for Services in advance according to the then current price for the Services. If you choose to pay by credit card, you authorize POWER.NET to charge your credit or debit card to pay for any charges that may apply to your account. POWER.NET may accumulate any supplemental charges, as described in the Order Form, that you incur in your use of the Services (“Supplemental Charges”) until the charges exceed \$20 and then charge your card. You must notify POWER.NET of any changes to your card account (including, applicable account number or cancellation or expiration of the account), your billing address, or any information that may prohibit POWER.NET from charging your account. If you choose to be invoiced for Services, POWER.NET will send an invoice to you for the Services for the period for which you have registered for the Services. POWER.NET may also send periodic invoices to you for any applicable Supplemental Charges associated with your use of the Services. You will pay to POWER.NET the amount indicated in each invoice by the due date reflected on the invoice. If you fail to pay any fees and taxes within 10 days from the applicable due date for credit card or invoice payments, POWER.NET will assess late charges equal to the lesser of 1.5% per month or the maximum allowable under applicable law. Your failure to fully pay any fees and taxes within 10 days after the applicable due date is a material breach of this Agreement, justifying POWER.NET in suspending its performance in part or in full and

terminating this Agreement. If POWER.NET terminates for your material breach, you must still pay past due fees plus interest. You are responsible for any costs POWER.NET incurs in enforcing collection, including reasonable attorneys' fees, court costs and collection agency fees. If you reinstate Services, you must pay any fees associated with reinstating Services.

### ***Use of Services***

**Applicable Policies and Guidelines.** The POWER.NET Acceptable Use And Service Guidelines (the "Usage Guidelines") govern the general policies and procedures for use of the Services. POWER.NET's On-line Privacy Statement governs how POWER.NET collects, stores, processes and uses information associated with your use of the Services. The Usage Guidelines and the On-line Privacy Statement are posted on POWER.NET's Web site at [www.power.net](http://www.power.net) (or such other location as POWER.NET may specify) and may be updated from time-to-time. **YOU SHOULD CAREFULLY READ THE USAGE GUIDELINES. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE USAGE GUIDELINES AND ANY MODIFICATIONS TO THE TERMS. POWER.NET MAY TERMINATE YOUR ACCOUNT FOR ANY VIOLATION OF THE USAGE GUIDELINES OR THIS AGREEMENT.**

**Material and Product Requirements.** You must ensure that all material and data placed on POWER.NET's equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by POWER.NET. POWER.NET will make no effort to validate any of this information for content, correctness or usability. If your material is not "server-ready," POWER.NET may reject this material. POWER.NET will notify you of its refusal of the material and afford you the opportunity to modify the material to satisfy POWER.NET's requirements. Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols and software. This level of knowledge varies depending on the anticipated use and desired content of your Web site. You must have the necessary knowledge to create and maintain a Web site. POWER.NET does not provide this knowledge or customer support outside of the Services.

**Bandwidth, Storage, and E-Mail Usage.** For Services, you will not exceed the bandwidth, storage and E-mail usage limits in the Order Form. If you use any bandwidth or storage space in excess of the agreed upon number of megabytes per month or if you exceed E-Mail storage and attachment size limitations, POWER.NET may, in its sole discretion, assess you with additional charges, suspend the Service, or terminate this Agreement. If POWER.NET elects to take any corrective action, POWER.NET will not refund any unused pre-paid fees. Your use of your account and access to it is your responsibility. You are responsible for any unauthorized access to your account resulting in bandwidth, storage and/or E-mail usage exceeding the limits in the Order Form and resultant charges.

**Security.** You are solely responsible for any security breaches affecting servers or accounts under your control. If your server or website is responsible for or involved in an attack on or unauthorized access into another server or system, POWER.NET will shut it down immediately. You will pay any charges resulting from the cost to correct security breaches affecting POWER.NET or any of its other customers.

**Commercial Advertisements via E-Mail.** You will not use POWER.NET services, your account or server to send or facilitate in any way the transmission of unsolicited commercial email. POWER.NET will enforce substantial penalties, including charging you for related network costs and terminating your account, for violations.

### ***3. Intellectual Property Rights***

**Your License Grant to POWER.NET.** You grant to POWER.NET a non-exclusive, worldwide, and royalty-free license for the Initial Term and the Renewal Term, if applicable, to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly: (a) grant to POWER.NET a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that this caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

**Your Warranties And Representations to POWER.NET.** You warrant, represent, and covenant to POWER.NET that: (a) you are at least 18 years of age; (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) you will be financially responsible for the use of your account; (e) you have acquired or will acquire all authorization(s) necessary for hypertext links to third-party Web

sites or other content; (f) you have verified or will verify the accuracy of materials distributed or made available for distribution via the Services, including your content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (g) your content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

**POWER.NET Materials And Intellectual Property.** All materials, including any computer software (in object code and source code form), data or information that POWER.NET or its suppliers or agents develop or provide under this Agreement (the “Deliverables”), and any know-how, methodologies, equipment, or processes POWER.NET uses to provide the Services to you, including all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto will remain POWER.NET’s or its suppliers’ sole and exclusive property.

If Customer pays POWER.NET the fees set forth in the order summary, POWER.NET grants to Customer a limited, personal, non-exclusive, non-transferable license to use the Deliverables as set forth in the Customer order summary. Except as provided in this Agreement, the Deliverables may not be copied, reproduced, modified, published, uploaded, posted, transmitted, or distributed in any way, without POWER.NET’s prior written permission. Except as expressly provided in this Agreement, POWER.NET does not grant any express or implied right to Customer under any patents, copyrights, trademarks, or trade secret information. Other rights may be granted to Customer by POWER.NET in writing.

This is a license, not a transfer of title, and is subject to the following restrictions: Customer may not (a) modify the Deliverables except with the tools incorporated into the Deliverables; (b) use Deliverables for any third party commercial purpose; (c) decompile, reverse engineer, or disassemble software Deliverables; (d) remove any copyright or other proprietary notices from the Deliverables; or (e) transfer the Deliverables to another person. Customer will prevent any unauthorized copying of the Deliverables.

Except for initial edits made before final delivery, we are not obligated to correct any bugs, defects or errors in the Services or Deliverables or to otherwise support or maintain the Services or Deliverables. We will provide reasonable technical support to you in the form of telephone consulting and “e-mail” during POWER.NET’s normal business hours and at our standard pricing.

With respect to any POWER.NET logos and hypertext link logos, POWER.NET grants Customer a non-assignable, non-exclusive, royalty free license solely to use the logos or link logo as a hypertext link icon to allow users to link from Customer’s web page to the POWER.NET web pages, based on the following terms and conditions: (a) Customer acknowledges the validity and POWER.NET’s exclusive ownership of all right, title, and interest in and to all POWER.NET, logos and link logo marks (the “Marks”) and, during or after the term of this Agreement, will not contest, or help others to contest, the ownership or the validity of any registrations or rights of POWER.NET, now owned or obtained relating to the Marks. (b) Customer will not use any names, marks, terms, graphics, or other materials on its Web page or site that are likely to cause confusion with or dilute the distinctiveness of the Marks or to damage the reputation or commercial image of POWER.NET or any of its products. (c) POWER.NET, in its sole discretion, may terminate this license immediately for any reason. Upon termination of this license, Customer will immediately cease all further use of the Marks, or any other similar mark, name or logo, including any name or mark comprising the term “POWER.NET”.

POWER.NET will also maintain and control ownership of all Internet protocol (“IP”) numbers and addresses that POWER.NET may be assign to you. POWER.NET may, in its sole discretion, change or remove any and all IP numbers and addresses.

#### **4. Enforcement**

**Investigation of Violations.** POWER.NET may investigate any reported violation of this Agreement, or its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers or third parties. POWER.NET will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process.

**Actions.** POWER.NET may restrict or remove from its servers any content that violates this Agreement or related policies or guidelines, or is otherwise objectionable or potentially infringing on any third party’s rights or that potentially violates any laws. If POWER.NET becomes aware that you have possibly violated this Agreement, any related policies or guidelines, third party rights or laws, POWER.NET may immediately take corrective action, including: (a) issuing warnings, (b) suspending or terminating the Service, (c) restricting or prohibiting any and all uses of content hosted on POWER.NET’s systems, and (d) disabling or removing any hypertext links to third-party Web sites, any of your content distributed or made available for distribution via the Services, or other content not supplied by POWER.NET that, in POWER.NET’s sole discretion, may violate or infringe any law or third-party rights or that otherwise

exposes or potentially exposes POWER.NET to civil or criminal liability or public ridicule. It is POWER.NET's policy to terminate repeat infringers. These rights of action, however, do not obligate POWER.NET to monitor or exert editorial control over the information made available for distribution via the Services. If POWER.NET takes corrective action because of a possible violation, POWER.NET will not refund to you any fees you paid in advance of the corrective action.

**Disclosure Rights.** To comply with applicable laws and lawful governmental requests, to protect POWER.NET's systems and customers, or to ensure the integrity and operation of POWER.NET's business and systems, POWER.NET may access and disclose any information it considers necessary or appropriate, including, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and content residing on POWER.NET's servers and systems. POWER.NET may report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. To the extent any inconsistency exists between any terms of POWER.NET's On-line Privacy Statement and POWER.NET's right to disclose under this section, POWER.NET's right to disclose under this section will control.

## ***5. Disclaimed Warranties***

POWER.NET exercises no control over, and accepts no responsibility for, the content of the information passing through POWER.NET's host computers, network hubs and points of presence, or the Internet.

ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, ANY FAILURE BECAUSE OF COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. ALL MATERIALS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, WHICH POWER.NET DISCLAIMS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, POWER.NET DOES NOT MAKE AND DISCLAIMS, AND YOU WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. POWER.NET IS NOT LIABLE FOR: ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, LOST PROFITS) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF POWER.NET HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. POWER.NET'S LIABILITY WILL NOT EXCEED THE AMOUNT CUSTOMER PAID TO POWER.NET DURING THE 3-MONTH PERIOD BEFORE THE ACTION AROSE. CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS AGREEMENT AND ABSENT SUCH LIMITATIONS POWER.NET WOULD NOT ENTER INTO THIS AGREEMENT.

## ***6. Limitation and Exclusion of Liability***

**Limitations.** IN NO EVENT WILL POWER.NET OR ITS SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. NEITHER POWER.NET NOR ITS SUPPLIERS WILL HAVE LIABILITY WITH RESPECT TO POWER.NET'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF POWER.NET HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF POWER.NET AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID TO POWER.NET UNDER THIS AGREEMENT DURING THE 3 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY POWER.NET UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU RELEASE POWER.NET AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1.

**Interruption of Service.** POWER.NET and its suppliers are not liable for any temporary delay, outages or interruptions of the Services. Further, POWER.NET is not liable for any delay or failure to perform its obligations under this Agreement, where the delay or failure results from any act of God or other cause beyond its reasonable control (including, any mechanical, electronic, communications or third-party supplier failure).

## **7. Indemnification.**

You release and hold harmless, and agree to indemnify, POWER.NET and its affiliates and suppliers (and their respective employees, directors and representatives) against any and all claims, actions, proceedings, suits, liabilities, damages, settlements, penalties, fines, costs or expenses (including, reasonable attorneys' fees and other litigation expenses) incurred by POWER.NET or its suppliers, arising out of or relating to: (a) your violation or breach of any term, condition, representation or warranty of this Agreement, or any applicable policy or guideline; (b) your improper or illegal use the Services; or (c) your violation, alleged violation, or misappropriation of any intellectual property right (including trademark, copyright, patent, trade secrets) or non-proprietary right of a third party (including defamation, libel, violation of privacy or publicity).

## **8. MISCELLANEOUS PROVISIONS**

**Entire Agreement.** This Agreement, in conjunction with all policies and guidelines incorporated by reference, constitutes the entire agreement between you and POWER.NET with respect to the subject matter of the Agreement, and there are no representations, understandings or agreements that are not fully expressed in this Agreement and the related policies and guidelines.

**No Fiduciary Relationship; No Third-Party Beneficiaries.** POWER.NET is not the agent, fiduciary, trustee or other representative of you. Except for the rights of POWER.NET's suppliers under sections 6 and 7, nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person (other than the parties to this Agreement) any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and all of its representations, warranties, covenants, conditions and provisions are intended to be and are for the sole and exclusive benefit of the parties to this Agreement.

**Amendments.** Except as expressly provided in this Agreement, no amendment, change, waiver, or discharge of this Agreement is valid unless in writing and signed by the parties.

**Identification.** POWER.NET may, free of any obligation to pay compensation, use your name and identify you as a POWER.NET client, in advertising, publicity, or similar materials distributed or displayed to prospective clients.

**Choice of Law and Forum.** THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE UNITED STATES AND THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN THE FEDERAL OR STATE COURTS LOCATED IN LOS ANGELES COUNTY, CALIFORNIA, AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF THESE COURTS.

**Compliance With Laws.** You will comply with all applicable laws and regulations and will indemnify and save POWER.NET harmless from your failure to so comply. POWER.NET will not have to perform any obligations set forth in this Agreement if the performance would violate any present or future law, regulation or policy of any applicable government.

**Non-Assignment.** You may not assign this Agreement or any right or obligation under this Agreement, by operation of law or otherwise, without POWER.NET's prior written consent. POWER.NET may assign its rights and obligations under this Agreement, and may utilize affiliates and agents in performing its duties and exercising its rights, without your consent. This Agreement are binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns.

**No Waiver.** POWER.NET's failure to enforce the strict performance of any provision of this Agreement does not constitute a waiver of POWER.NET's right to subsequently enforce the provision or any other provisions of this Agreement.

**Severability.** If any term or provision of this Agreement is deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement, if applicable, will remain in full force and effect and, if the subject term or provision is

deemed to be invalid, void or unenforceable only with respect to a particular application, the term or provision will remain in full force and effect with respect to all other applications.

**Headings.** The section headings used in this Agreement are for reference and convenience only and will not enter into the interpretation of the Agreement.

**Survival.** All provisions of this Agreement relating to your warranties, intellectual property rights, limitation and exclusion of liability, your indemnification obligations and payment obligations will survive the termination or expiration of the Agreement.