Web Development and Hosting Agreement Terms and Conditions

This Web Development and Hosting Agreement is entered and agreed upon between PDNC and Client in conjunction with PDNC's Master Services Agreement. When a Client Purchase Order or Schedule of Services identifies Web Development and Hosting as a service to be provided, this Agreement is incorporated by this reference into PDNC's Master Services Agreement.

PDNC is designed to serve the web hosting needs of small businesses and non-profit organizations. It is not appropriate to use our basic hosting services to support large enterprises or internationally based businesses with a sustained demand that places undue burden on our systems or negatively impacts use by small, independently owned and operated businesses. If you intend to do more traffic for a larger site, please ask us for a more robust hosting package.

PDNC is a shared web hosting service, which means that a number of Clients web sites and other email or storage services are hosted from the same server. PDNC uses abuse controls to help ensure that use of our services does not adversely affect the performance of our system or other Clients sites. It is not appropriate to use an account primarily as an online storage space or for archiving electronic files without prior consent and agreement with PDNC.

Disk space:
If you use your services consistently with the Terms of Service set forth herein below and these paragraphs, your site can grow as large as necessary to meet your small business needs, but to ensure a great experience for all, we will place some constraints on how fast you can grow. Most of our Clients sites grow at rates well within our rules, but our abuse controls may cause a brief delay while we evaluate if expansion is appropriate. If you need room for a faster growth rate, you must work with PDNC to ensure your needs are met.

Data transfer:
In most cases, if you use our services consistently with the Terms of Service and these paragraphs, visitors to your web site will be able to download and view as much content from your site as they like. However, in certain circumstances, our server processing power, server memory, or abuse controls could limit downloads from your site. You can also upload as much as content as you like each month, subject only to the Terms of Service and the rules that control how fast your site can grow (see above).

ACCEPTABLE USE POLICY & TERMS OF SERVICE

The following is the entire Acceptable User Policy (AUP) agreement between PDNC and the personal or corporate account holder (YOU/YOUR Client). PDNC provides World Wide Web Hosting, Marketing, and Development. PDNC has certain legal and ethical responsibilities consisting with the use of its servers and equipment involved in these services. PDNC general policy is to act as a provider of Internet presence. PDNC reserves the rights to suspend or cancel a Client's access to any or all services provided by PDNC when we decide that the account has been inappropriately used.

A. SERVER ABUSE

Any attempt to undermine or cause harm to a server or Client of PDNC is strictly prohibited. PDNC will strongly react to any use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include Internet scamming (tricking other people into releasing their passwords), password theft, security hole scanning, etc. Any unauthorized use of accounts or computers

by YOU, whether the attacked account or computer belongs to PDNC, will result in action against YOU. Possible actions include warnings, account suspension or cancellation, as well as civil or criminal legal action, depending on the seriousness of the attack.

IMPORTANT NOTE – PDNC has the right to discontinue service or deny access to anyone who violates our policies, or the terms and conditions shown below WITHOUT WARNING or PRIOR NOTICE. No refunds of fees paid will be made if account termination is due to violation of the terms described herein. YOU may not run IRC, bots or clients on shared servers. Unacceptable uses also include, but are NOT limited to: Bulk emailing, unsolicited emailing, newsgroup spamming, pornographic content, illegal content, copyright infringement, trademark infringement, warez sites (including links to/from), cracks, software serial numbers, proxy-relaying, link farming (the act of or by use of scripts), link grinding, link-only sites, spamdexing, FFA (Free-For-All) and/or anything else determined by PDNC in its sole discretion to be unacceptable use of our services, including abuse of server resources.

B. WEB APPLICATIONS and WEB ACCESSIBLE SCRIPTS

All web applications that are out-of-date and actively being exploited will be shut down immediately without prior notice. YOU are responsible for and should evaluate YOUR web-based applications and scripts on a regular basis to ensure their security and orderliness. Shared hosting accounts may also be terminated if it includes the following content or have links to the following content: Providing material that is grossly offensive to the Web community including blatant expressions of bigotry, racism, hatred, or profanity; promoting or providing instructional information about illegal activities; promoting physical harm or injury against any group or individual; displaying material containing obscene nudity or pornographic material (not applicable to managed dedicated servers); displaying material that exploits children under 18-years of age; acts of copyright infringement including offering pirated computer programs or links to such programs; information used to circumvent manufacturer-installed copy-protect devices, including serial or registration numbers for software programs, or any type of cracker utilities.

C. STORAGE SPACE ABUSE

PDNC will not tolerate any form of storage space abuse. At least 90% of YOUR web pages (HTML) must be linked with files (GIF, JPEG, etc.) stored on PDNC servers. Websites that are found to contain either/or no HTML documents, a large number of unlinked files are subject to files deletion or account cancellation at the discretion of PDNC Management (MANAGEMENT), with or without prior notice. For basic hosting Clients, YOUR disk space will be unlimited unless you begin reaching bandwidth use limits. PDNC will be the sole arbiter as to what constitutes a violation of this provision.

D. BANDWIDTH ABUSE

The intention of PDNC is to provide a large bandwidth to transfer web documents, and not an offsite storage area for electronic files. If YOU violate this condition, YOU will be notified and given 48 hours to remedy the problem. Failure to do so will result in YOU being billed for the overages. If YOU do not qualify for the free service, traffic will go unmonitored until YOU reach the amount of quota allocated to YOUR specific PLAN. Thereafter, normal data transfer cost of $10.00/1GB/month will be billed to YOUR account. If YOU want to pre-pay for bandwidth overages, YOU will be billed $5.00/1GB/month. YOU will have 3 days to pay for your overages. Failure to do so will result in YOUR website being disabled after 3 days of YOUR first notice. PDNC will be the sole arbiter as to what constitutes a violation of this provision, and shall have the sole discretion to make such determination .

99.99% UPTIME GUARANTEE

(1.) COVERAGE – This 99.99% uptime guarantee applies to any Client in good financial standing with PDNC at the time of a service outage.

(2.) SERVICE LEVEL AGREEMENT (SLA) & SPECIFICATIONS – PDNC endeavors to have the content of YOUR website available for http access by any party in the world 99.99% of the time. Network downtime (unavailability) is defined as 100% packet loss from PDNC to its backbone providers. Downtime is measured past 10 minutes after notification of network failure via PDNC online ticketing system. If the ticketing system itself is unreachable, the ticket must be started by calling the PDNC phone number. PDNC administrators will determine the end of the downtime by a traceroute to YOUR machine from outside the PDNC network.

(3a.) SHARED HOSTING CREDITS – In the event that YOUR website is unavailable for less than 99.99%, PDNC will credit the following months service fee as follows. YOUR credit shall be retroactive and measured in 24 hours a day of a calendar month, with the maximum credit not exceeding 50% of the monthly service charge for the affected month.

Monthly Uptime Credit:
- 95% to 99.9% – YOUR account will be credited 10% of your monthly hosting fee
- 90% to 94.9% – YOUR account will be credited 20% of your monthly hosting fee
- 89.9% or below – YOUR account will be credited 50% of your monthly hosting fee

(3b.) MANAGED DEDICATED SERVERS – For managed dedicated server Clients, if the uptime is between 98.9% and 99.9% for any particular month, credit shall be retroactive and equivalent to the difference between the guaranteed level of availability of the Clients services during the month and the calculated actual level of availability of the Clients services, multiplied by the actual charges incurred by YOU for the services during that monthly period. In addition, for managed dedicated servers, YOU may be entitled to additional credits as calculated below measured 24-hours a day in a calendar month, with the maximum credit not to exceeding 25% of the monthly service charge for the affected month.

For YOU to receive a credit on YOUR account, YOU must request such credit within seven (7) days after YOU experienced the downtime. You must request credit by sending an email message to hosting@pdnc.com. For security, the body of this message must contain YOUR account number, the dates and times of the unavailability of YOUR website, and such other Client identification requested by PDNC. Credits will usually be applied within sixty (60) days of YOUR credit request. Credit to YOUR account shall be YOUR sole and exclusive remedy in the event of an outage.

(4.) RESTRICTIONS – Credit shall not be provided to YOU in the event that you have any outage resulting from:
- scheduled maintenance as posted from time to time at PDNC,
- your behavior or the performance or failure of your equipment, facilities or applications,
- circumstances beyond reasonable control of PDNC, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications or third party services, including DNS propagation, domain name registration/transfer, failure of third party software or hardware or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of your web site,
- YOU breaking any agreement policy in PDNC Terms & Conditions and AUP causing a machine to fail as a result.

E. TECHNICAL SUPPORT BOUNDARIES

PDNC provides technical support for YOU that encompasses within our area of expertise only. Such expertise includes assistance, troubleshooting, and debugging of our cPanel control panel interface, servers within our immediate responsibility and any other hosting related issues.

However, under no circumstances is PDNC either obligated to help YOU in the installations of new application modules, templates and/or programming languages, or in providing assistance for any errors produced by any applications that have been modified by YOU previously.

F. CGI SCRIPTS
Each shared web hosting account comes with its own CGI-BIN. YOU are free to use any CGI scripts YOU wish; however, we reserve the rights to disable without prior notice any CGI script that affects normal shared server operation. (This section does not apply to managed dedicated servers)

G. FILE SERVER
Subject to the limitations described elsewhere herein, PDNC installed and provides special file-servers in our network infrastructure for YOUR benefit as a means of storage for electronic files and applications. This service is only available for PDNC SHARED-HOSTING Clients.All electronic files stored within PDNC file-servers must be legally owned by or licensed to the Client and be accompanied with a valid license and/or copyright. This includes and is not limiting to MP3, AVI, MID, MIDI, MPG, MPEG, MOV, EXE, ISO files. Should PDNC discover any unlicensed and/or illegal files within YOUR account, PDNC may delete such files without any notification to Client. File-servers will not be backed up. YOU are advised to have YOUR own backup locally or elsewhere other than within the PDNC servers.

H. BACKGROUND RUNNING PROGRAMS
We may allow programs to run continually in the background. These are considered on a case-by-case basis and an extra amount may be charged to Client based on system resources used and operational maintenance needed. (This section does not apply to managed dedicated servers).

I. PAYMENT POLICIES
All accounts are set up on a pre-pay basis. Setup fees are charged for all new accounts, as well as major account changes (as determined in PDNC's sole discretion), and are non-refundable. All pricing is guaranteed for the term of prepayment. PDNC reserves the right to change prices upon 30 days' written or electronic notice to Client at any time, unless other terms have been agreed upon between PDNC and Client. Any account not brought current within 30 days of e-mail notice that such account is past due is subject to suspension. In the event of suspension, YOUR website will not be visible to or accessible by the public, and PDNC may withhold YOUR access to program and data files comprising YOUR website until PDNC has received payment in full. If payment in full is not received within six (6) months of the date that payment is due, PDNC may permanently delete the files comprising YOUR website from its system, and shall have no responsibility for providing YOU with backups of those files. YOU are responsible for all fees owed on the account from the time it is established to the time that YOU services are terminated. All payment is to be made in U.S. currency.

Nothwithstanding the foregoing, if YOU are storing data, electronic files and applications other than websites on PDNC's file servers, if YOUR account is not brought current within thirty (30) days of written or electronic service upon YOU by PDNC of a notice of delinquency, PDNC may, in its sole discretion, delete such data, electronic files and applications from its servers without backup and without further notice to Client,

YOU agree to pay PDNC $50 per returned check and per credit card chargeback received.
All PDNC accounts are setup on anniversary billing cycles. YOUR billing cycle corresponds to the contract length that was initially chosen at setup. YOUR account will automatically renew at this length.

There is no fee to change to a shorter billing cycle at the end of the current cycle. However, if you wish to change to a shorter billing cycle during a current cycle, there will be a $50.00 fee. Please contact the billing department at accounting@pdnc.com should you wish to change your anniversary billing cycle.

J. CANCELLATION OF SERVICE

PDNC reserves the right to cancel a service at any time, after thirty (30) days' written notice to Client. All fees paid in advance of cancellation will be pro-rated and paid by PDNC if we institute our right of cancellation. Any violation of policies which results in extra costs billed to YOU (i.e. transfer, space etc.). All PDNC PLANS are backed by a 30-day money back guarantee. If YOU are not completely satisfied with our services or support within the first 30 days of YOUR contract, YOU will be given a full refund of the contract amount excluding setup fees, domain registration fees, add-on/upgrade fees and overages. Setup fees are refundable only if the account order is cancelled prior to account activation. If YOU cancel, the full contract amount less any setup fees and overages will be refunded if PDNC is notified within the first 30 days following activation. This policy does not apply to any additional services such as overages, referrer logs, real audio/video, additional disk space, additional pop accounts, or domain registration fees. For credit card payment, refunds will be made to made available by the Client after the 120th day. Refund policy will not be made available to Clients using wire transfers. All account cancellations must be done via our cancellation form at YOUR hosting account control panel. Phone or email requests will not constitute notice of cancellation, and will not be accepted by PDNC.

K. PROMOTIONAL RATES & SPECIAL OFFERS

PDNC may offer subsequent promotional rates or special offers, the terms of which may or may not be more favorable than the terms and conditions for YOUR Services. Any such promotions or modifications shall not affect YOUR obligations under this Agreement. Promotional fees may be subject to additional terms and conditions which, to the extent they conflict with the terms of this Agreement, shall govern. Different promotional fees and special offers may not be combined.

L. INTELLECTUAL PROPERTY RIGHTS

Material accessible to you through PDNC services may be subject to protection under the United States or other copyright laws, or laws protecting trademarks, trade secrets and proprietary information. Except when expressly permitted by the owner of such rights, YOU must not use PDNC or its servers and network in a manner that would infringe, violate, dilute or misappropriate any such rights, with respect to any material that you access or receive through the PDNC network. If YOU use a domain name in connection with PDNC or similar service, YOU must not use that domain name in violation of any trademark, service mark, or similar rights of any third party. NETWORK SECURITY Clients may not use the PDNC network with an attempt to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for YOU, logging into a server or account YOU are not expressly authorized to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organizations security policy. YOU may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network. PDNC will cooperate fully with investigations for violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Users who violate system or network security may incur criminal or civil liability.

M. ELECTRONIC COMMERCE

YOU will be solely responsible for the development, operation and maintenance of YOUR online store and products along with all content 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, and
(c.) ensuring that the content and materials appearing within the store or related to YOUR products are not libelous or otherwise unlawful or illegal. YOU will be solely responsible for the final calculation and application of shipping and sales tax. YOU will also be solely responsible for accepting, processing, and filling any Client orders, and for handling any Client inquiries or complaints arising there from. YOU are also responsible for the security of any Client credit card numbers and related Client information YOU may access as a result of conducting electronic commerce transactions through YOUR website. YOU will keep all such information confidential and will use the same degree of care and security as YOU use with your confidential information.

N. STATIC & DYNAMIC CONTENT CACHING

YOU expressly (i) grant to PDNC a license to cache the entirety of YOUR website, including content supplied by third parties, hosted by PDNC under this Agreement and(ii) agree that such caching is not an infringement of any of YOUR intellectual property rights or any third party's intellectual property rights.

O. IP ADDRESS OWNERSHIP

PDNC shall maintain and control ownership of all IP numbers and addresses that may be assigned to YOU by PDNC. PDNC reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

P. LAWFUL PURPOSE

PDNC reserves the right to refuse service to anyone. YOU may only use PDNC server for lawful purposes and our services may not be used for illegal purposes or in support of illegal activities. We reserve the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrongdoing. If anything is not legal in the United States of America, it is not permitted to reside on our servers. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes but not limiting material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. Examples of non-acceptable content or links: Pirated Warez, OGG, AVI, MPEG, ISO, Hacker programs or archives, Copyrighted Digital Movie Copies (DIVX) and Unlicensed MP3. The designation of any materials as such described above is left entirely to the discretion of PDNC management. If illegal content or usage is found, YOUR account will be suspended and/or terminated. YOU agree that PDNC may disclose any and all YOUR information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification.

Q. JURISDICTION AND VENUE

Regardless of the place of entry into this agreement, YOU agree that for purposes of venue this contract is entered in Santa Cruz County, California, and exclusive jurisdiction over any dispute shall lie in the courts of Santa Cruz or Santa Clara County, California. Defendants waive all objections to the venue and jurisdiction of courts and arbitration panels located in these locations,

R. LIMITATION OF LIABILITY

IN NO EVENT SHALL PDNC MAXIMUM LIABILITY PURSUANT TO THIS AGREEMENTEXCEED TWO HUNDRED FIFTY ($250.00) DOLLARS.

S. INDEMNIFICATION

YOU AGREE THAT YOU SHALL DEFEND, INDEMNIFY, SAVE AND HOLD PDNC HARMLESS FROM ANY AND ALL DEMANDS, LIABILITIES, LOSSES, COSTS AND CLAIMS, INCLUDING REASONABLE ATTORNEYS FEES ASSERTED AGAINST PDNC, ITS AGENTS, ITS CLIENTS, OFFICERS AND EMPLOYEES, THAT ARISE OR RESULT FROM ANY SERVICE PROVIDED OR PERFORMED OR AGREED TO BE PERFORMED FOR YOU BY PDNC, AND ANY PRODUCT SOLD BY YOU, YOUR AGENTS, EMPLOYEES OR ASSIGNS. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS PDNC AGAINST LIABILITIES ARISING OUT OF:
(1) ANY INJURY TO PERSON OR PROPERTY CAUSED BY ANY PRODUCTS SOLD OR OTHERWISE DISTRIBUTED BY YOU IN CONNECTION WITH PDNC SERVERS.
(2) ANY MATERIAL SUPPLIED BY THE CLIENT INFRINGING OR ALLEGEDLY INFRINGING ON THE PROPRIETARY RIGHTS OF A THIRD PARTY
(3) COPYRIGHT INFRINGEMENT AND
(4) ANY DEFECTIVE PRODUCTS SOLD TO CLIENT FROM PDNC SERVERS.

T. DISCLAIMER

PDNC WILL NOT BE RESPONSIBLE FOR ANY DAMAGES YOUR BUSINESS MAY SUFFER. OTHER THAN OUR UPTIME GUARANTEE, PDNC MAKES NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED FOR SERVICES WE PROVIDE. PDNC DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, WRONG DELIVERY, AND ANY AND ALL SERVICE INTERRUPTIONS CAUSED BY PDNC AND ITS EMPLOYEES. PDNC RESERVES THE RIGHT TO REVISE ITS POLICIES AT ANY TIME. ALL SUB-NETWORKS, RESELLERS AND DEDICATED SERVERS OF PDNC MUST ADHERE TO THE ABOVE POLICIES.FAILURE TO FOLLOW ANY TERM OR CONDITION WILL BE GROUNDS FOR IMMEDIATE ACCOUNT CANCELLATION.