

Service Level / Client Record Agreement

Whereas, DataMine develops and hosts Internet websites, and

Whereas, Client desires to purchase various products and services from DataMine.

NOW, THEREFORE, it is agreed:

1. **Products and Services** - DataMine shall provide certain products and services to Client as listed in the attachment hereto (“Products”) entitled Client Record Order for Services (“Order”). Client shall approve and sign the Order, and the terms of the Order are incorporated herein by reference. In the event any terms of the Order herein conflict with those of this Agreement, the terms in the Order shall govern.
2. **Terms** DataMine hereby sells to Client and Client accepts the Products as provided by DataMine under this Agreement, including:
 - a. the Order incorporated herein, as well as any other Additional Orders and proposal addendum, and;
 - b. Client hereby acknowledges that Client has received a copy of, has reviewed and shall abide by DataMine’s policies with respect to the Products (“Policies”), which Policies are attached hereto and incorporated herein by reference. DataMine agrees to notify Client, in writing or by electronic mail, of any and all changes in DataMine’s Policies and all material technical issues that might affect the operations of Client within fifteen (15) days of the date any such policy change occurs or technical issue arises.
3. **Technical Assistance** - DataMine shall provide website-related technical support to the Client or its agent based on the services provided. DataMine staff will be available for urgent matters by phone during posted business hours and by electronic-mail during non-business hours. Technical support outside of the scope of services provided is available at the applicable billable rate.
4. **Price** - Prices are listed in the Order, which Order is incorporated herein by reference. Prices are subject to change upon thirty (30) days written or electronic mail notice from DataMine to Client.
5. **Accounts and Payment** - Client agrees to pay DataMine all charges incurred for the Products. DataMine shall invoice Client and payment shall be due upon Client’s receipt of such invoice. Client shall be responsible for payment of any and all sales and/or use taxes applicable to the Products. All payments shall be made in United States (“US”) currency.
6. **Term** - The term of this Agreement is set forth in the Order attached hereto and incorporated herein by reference.
7. **Confidentiality** - In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to

software computer programs, object code, source code, marketing plans, business plans, financial information, specifications, flow charts and other data ("Confidential Information"). Except as otherwise provided herein, all Confidential Information supplied by one party to another pursuant to this Agreement shall remain the exclusive property of the disclosing party. The receiving party shall use such Confidential Information only for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information or any part thereof to any third party. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to a receiving party or rightly received by a receiving party from a third party; or (iii) is independently developed by a receiving party.

Specifically, Client's sales and marketing data, Client lists, private electronic-mail messages and information concerning Client's business affairs, finances, method of operation and other confidential information of Client shall be kept confidential by DataMine and not disclosed to any person or entity unless ordered to do so by an appropriate court order. Notwithstanding the foregoing, DataMine shall have access to all data stored on its servers, including order information, for statistical purposes, and may publicly disclose aggregate sales data, without reference to any individual website.

8. **Disclaimer** - With respect to web hosting, DataMine provides services to Client on an "as is" basis. DataMine EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. No advice or information given by DataMine shall create a warranty, nor does DataMine warrant that the Products will be uninterrupted or error free or that any information, software, or other material accessible from the Products is free of viruses, worms, Trojan s, or other harmful components. Accordingly, except where arising from the gross negligence of DataMine, DataMine shall not be liable for direct, indirect, special, incidental, consequential, punitive, or exemplary damages of any kind whatsoever, including loss of business, lost profits, lost data, failure of security, or attorney's fees, whether or not foreseeable, in any way due to, resulting from, or arising in connection with the Products, including web hosting services.

Client understands that the Internet contains unedited materials, some of which are sexually explicit or may be offensive to some people. These materials are accessed at Client's own risk. DataMine has no control over and accepts no responsibility whatsoever for such materials.

9. **Indemnification** - Client agrees that it shall defend, indemnify, save and hold DataMine harmless from any and all demands, liabilities, costs and claims, including reasonable attorney's fees asserted against DataMine, its agents, its Clients, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by or to Client, it's agents, employees or assigns. Client agrees to defend, indemnify and hold DataMine harmless from any and all liabilities, costs and expenses, including reasonable attorneys' fees related to or arising from (a) any violation of this Agreement by Client (b) the use of the Products or the Internet or the placement or transmission of any message, information, software, or other materials on the Internet by Client, (c) negligent acts or omissions of Client and/or Client's customer in connection with the construction, installation, maintenance, presence, use or removal of systems, channels, or terminal equipment of software not provided by DataMine which are connected or are to be connected to the service, (d) claims for infringement of patent, copyright or other proprietary right arising from Client's use of equipment and software, apparatus and systems not provided by DataMine in connection with the service, and (e) any injury to person or property caused by any

products and/or services sold or otherwise distributed by Client in connection with DataMine's server. Likewise, DataMine agrees that it shall defend, indemnify, save and hold Client harmless in the same manner expressed above.

10. **License Agreement and Terms of Use**

General: Client has license to use all data and information of the site for the purpose of advertising for Client. It may reproduce images and data from the website for the aforementioned purposes. The data contained within the database structure and images supplied by Client are property of Client. DataMine has sole copyrights of ownership and intellectual property rights to use, reproduce and market any data, database structures, dynamic pages, code, or images it has developed. DataMine may also show the website solution as an example for sales and marketing purposes.

Logos and Proprietary Image Development: Client has full rights and access to the use of any logo, graphical image or photographic image supplied by Client to DataMine. Any logo, graphical image or photographic image generated by DataMine is intellectual property, and as such belongs to DataMine, unless otherwise expressed in proposal. Stock photography is licensed directly to Client when purchased at cost by Client. Client has license to use created images to the extent allowed in the original contract. DataMine has full rights to use and reproduce any image it has developed or improved for future projects, so long as the activity does not adversely affect the interests of the Client in any way.

Programming Code: This contract entitles the Client full rights and access to the use of the database application(s) residing on servers hosted and/or controlled by DataMine and accessible via web-based administrative tool(s) developed for that purpose. The source code, data structures, and associated programming is intellectual property, and as such belongs to DataMine. The proprietary code and property rights can be purchased at a negotiated rate not less than 2 ½ times the total cost of development. DataMine has full rights of ownership to use and reproduce any code it has developed or improved for future projects so long as the activity does not compromise or divulge confidential information of the Client.

11. **Suspension and Termination**

Suspension: All accounts are subject to suspension after payment on Client's account is forty-five (45) days past due. In the event of suspension, the Client account will not be viewable. Service fees shall accrue during any suspension period.

Termination: DataMine may remove or to refuse to post any information or materials, in whole or in part, or terminate this Agreement in its entirety if:

- a) Client's use of the Products, including Client's merchandise, information, and/or services offered through the Products, result in a breach of the terms, conditions and/or representations in this Agreement, including the Policies incorporated herein, or constitute a violation of any federal, state, common or international laws or regulations;
- b) Client's use of the Products, including Client's merchandise, information, and/or services offered through the Products are, within DataMine's sole discretion, offensive, unacceptable, or undesirable, to other users and/or DataMine;

- c) Client has engaged in any unsolicited email practice (SPAM) using DataMine's name or logo; and/or
- d) Client's account is more than sixty (60) days past due.

DataMine or Client may terminate this Agreement at any time:

- e) by giving thirty (30) days written notice to the other party, via regular US mail, and on official DataMine/Client letterhead referencing the Client account number, password, date of account termination and website address to be terminated. Termination by the Client is subject to Client's payment of a cancellation fee equal to one month of service fees for each canceled accounts, as such fees are listed in the Order.

In the event DataMine elects to terminate Client's access to Client's account pursuant to any subparagraph (a) - (d) hereinabove, DataMine shall provide Client forty-eight (48) hours written or electronic-mail notice of its intention to terminate; and if Client remedies the violation within such forty-eight (48) hour period, DataMine shall not terminate access.

12. **Relationship of the Parties** - Client is an independent business entity and not a partner, joint venture, franchisee, agent, or employee of DataMine. Client shall not represent its relationship with DataMine as anything other than an independent business entity or client. As well, DataMine shall not refer to Client as anything other than a client or independent business entity. Client is solely responsible for any and all taxes and expenses that may arise from Client's purchase and use of the Products.

13. **Force Majeure** - In no event shall DataMine be deemed liable or at fault for any failure to perform or any delay in the performance of its obligations hereunder where such failures or delays are due to strikes, compliance with applicable laws, inclement weather, acts of God or any other factor beyond its reasonable control, foreseeable, or unforeseeable.

14. **Severability** - In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect.

15. **No Waiver** - DataMine's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right inuring to DataMine.

16. **No Continuation** - This Agreement shall be binding only upon Client and companies owned by Client and DataMine and companies owned by DataMine and in no way transfers to respective heirs, legal representatives, successors, and assigns unless otherwise agreed by both parties in writing.

17. **Enforcement** - In the event a cause of action arises under this Agreement between the parties hereto, each party shall bear its own costs, including attorney fees, until the matter is resolved, at which time the prevailing party shall be entitled to receive reimbursement for all costs, penalties,

assessments, expenses, and/or fees incurred, including reasonable attorney fees, from any non-prevailing party.

18. **Governing Law** - This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its conflicts of law provisions.

19. **Modifications** - No alterations, amendments or modifications of this Agreement shall be effective unless such alteration, amendment or modification is reduced to writing, properly executed by the parties involved and supported by such consideration as is necessary to make any modification legally binding upon the parties. Neither the course of conduct between parties nor trade practice shall act to modify any provision of this Agreement.

20. **Final Agreement** - The terms and conditions set forth here constitute the entire understanding of DataMine and Client relating to the provision of the Products by DataMine to Client and supersede any prior contract, arrangement or purchase order between the parties and represents their complete agreement.

POLICIES

1. DataMine shall host Client's website on a server controlled by DataMine.
2. All sites hosted by DataMine shall contain DataMine's logo in the footer of the document (bottom of page). DataMine's logo shall not be larger than 150 pixels wide by 30 pixels high.
3. Clients' domain names registered with any InterNIC organizations are the property of the Client. For all domains hosted by DataMine, DataMine, as applicable, will be listed as the Technical and Zone contact for InterNIC. Client will be listed as the Billing contact for InterNIC domains and will therefore be responsible for all associated InterNIC registration and renewal fees.
4. Client shall receive a password from DataMine to provide access to Client's website for maintenance purposes. Client agrees to keep its password confidential, to allow no other person or client of DataMine to use Client's account, and to notify DataMine promptly if Client has any reason to believe that the security of its account has been compromised.
5. DataMine may, but has no obligation, to monitor the Products electronically from time to time and disclose any information necessary to satisfy any law, regulation, or other governmental request, to maintain the Products, or to protect DataMine or its subscribers. DataMine will not intentionally monitor or disclose any private electronic-mail message unless required by law.
6. In the event DataMine schedules maintenance that might affect the operations of Client, DataMine shall notify Client no later than five (5) days prior to such maintenance. DataMine reserves the right to perform emergency maintenance with no notice to Client.
7. Client shall not use pages or parts of pages generated by DataMine's merchant software on any server other than servers controlled by DataMine without DataMine's written consent.
8. Client shall not attempt to gain unauthorized access to any services controlled by DataMine.
9. Client shall not copy any of the Products or distribute or transfer the Products without DataMine's written consent.
10. DataMine does not necessarily endorse any of the items published through DataMine's server as to truth or accuracy.
11. Client shall not abuse or fraudulently use the Products in any way.
12. Client shall not post or transmit threatening or slanderous material, or material which promotes hatred against individuals or groups which may be deemed illegal according to the laws of the United States, Indiana, or any other applicable law. Client shall be responsible for awareness of any such laws.
13. Client shall not restrict or inhibit any other user from using and enjoying the services of DataMine or the Internet.

14. For merchant websites, Client shall have full power and authority 1) to offer and sell the merchandise, information and services offered at the merchant website, 2) to copy and display the materials displayed at the merchant website, and 3) to provide for credit card payment for merchandise, information, or services as specified at the merchant website.
15. For merchant websites, Client's offer and sale, display of materials or provision for credit card payment, shall not constitute a violation of any applicable law including without limitation, export control and obscenity laws.
16. Client shall not link to, post or transmit any unlawful, obscene or pornographic information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or international law, including without limitation the U.S. export control laws and regulations.
17. Client shall not post or transmit any information or software which contains a virus, worm, Trojan, or other harmful component.
18. The content of Client's website hosted by DataMine for Client, and any domain name used in connection with such merchant website, shall not infringe the rights of any other person, including without limitation trademark, copyright and trade secret rights.
19. Client shall not copy, upload, post, publish, transmit, reproduce, or distribute in any way, information, software, or other material obtained through the Internet which is protected by a trademark, copyright, trade secret right or other proprietary right or derivative works with respect thereto, without obtaining permission of the owner of any such proprietary right.
20. Client shall not use any website hosted under this Agreement to advertise web-space for any source other than DataMine.