



2001 Grove Street • 3rd Floor
Wantagh, NY 11793
Tel. (516) 873-2090 Fax. (801) 383-5468
www.cmcdataworks.com

HOSTING AGREEMENT

This Hosting Agreement ("Agreement") governs your purchase and use of all Web site hosting services, including the Dedicated Hosting Services, Co-Location Services, Shared Hosting Services, Email Services, Domain Name Services and Database Services (collectively, the "Services").

THIS AGREEMENT IS ENTERED INTO BETWEEN CMC DATAWORKS, INC. ("CMC") AND YOU THE CUSTOMER ("CUSTOMER"). CMC IS WILLING TO ENTER INTO THIS AGREEMENT ONLY ON THE CONDITION THAT CUSTOMER PAYS THE APPROPRIATE FEES AND ACCEPTS ALL OF THE TERMS IN THIS AGREEMENT.

PLEASE READ THE TERMS CAREFULLY. BY READING THIS AGREEMENT, USING CMC SERVICES AFTER OCTOBER, 1st 2003, OR BY USING ANY CMC SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

CMC may modify any or all 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 CMC Web site (the "Site"). CMC may post modifications to referenced policies and guidelines without notice to you. Your continued use of the Services following CMC's notice of any modifications constitutes your acceptance of the stated modifications.

1. TERM AND PAYMENT FOR SERVICES

1.1 Term. This Agreement will be for an "Initial Term" of either: (a) 30 days if you register for Shared Hosting Services, (b) 12 months from the order date if you register for Dedicated Hosting or Co-Location Services, or (c) as otherwise agreed upon at the time you register for the Services. This Agreement will be automatically renewed (the "Renewal Term") at the end of the Initial Term for the same period as the Initial Term, unless you provide CMC with notice of termination either: (a) at least 30 days before the end of the Initial Term or the Renewal Term, whichever is then applicable, if you registered for and are receiving Shared Hosting Services other than Shared Hosting Services pre-paid for a 1-year period, or (b) at least 60 days before the end of the Initial Term or Renewal Term, whichever is then applicable, if you registered for and are receiving Dedicated Hosting Services or have pre-paid for a 1-year period of Shared Hosting Services. You must provide CMC with your notice of termination by submitting your written notice by mail to CMC. Upon mailing your notice, you will be required to provide CMC with sufficient customer identification information so that CMC may properly identify you and your account. Any notice of termination will be effective upon CMC's receipt of notice.

1.2 Termination Policy. If you terminate the Services before the end of the Initial Term or the Renewal Term, whichever is then applicable: (a) CMC will not refund to you any fees paid in advance of termination, and (b) you will be required to pay the lesser of twice the standard monthly charge or 100% of CMC's standard monthly charge for each month remaining in the term, unless otherwise expressly provided in this Agreement. But if you have pre-paid for a 1-year period of Shared Hosting Services, you are entitled to a pro-rata refund of the remaining months in the annual period, calculated at the standard monthly rate for the Shared Hosting Services, not the discounted annual rate. You must submit your termination request to CMC in the manner described in Section 1.1. CMC may terminate this Agreement at any time and for any reason by providing to you 30 days prior written notice of termination. If CMC terminates this Agreement,



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CMC 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.

1.3 Liability and Obligations on Termination. If the Agreement expires or is terminated for any reason, CMC 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. If you terminate this Agreement, CMC will not relieve you of any obligations to pay fees and costs accrued before the termination date or any other amounts you owe to CMC under this Agreement.

1.4 Charges. You will pay all charges for your use of the Services at the then current CMC 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 CMC's net income.

1.5 Payment. You will pay all charges for Services in advance according to the then current price for the Services. When registering for Services, you must choose to pay for the Services either by credit card or upon your receipt of an invoice. If you choose to pay by credit card, you authorize CMC to charge your credit or debit card to pay for any charges that may apply to your account. CMC may accumulate any supplemental charges that you incur in your use of the Services until the charges exceed \$35 and then charge your card. You must notify CMC 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 CMC from charging your account. If you choose to be invoiced for Services, CMC will send an invoice to you for the Services for the period for which you have registered for the Services. CMC may also send periodic invoices to you for any applicable Supplemental Charges associated with your use of the Services. You will pay to CMC the amount indicated in each invoice by the due date reflected on the invoice. If you fail to pay any fees and taxes within 7 days from the applicable due date for credit card or invoice payments, CMC will assess late charges equal to the greater of 1.5% per month or \$100. Your failure to fully pay any fees and taxes within 15 days after the applicable due date is a material breach of this Agreement, justifying CMC in suspending its performance and terminating this Agreement. If CMC terminates for your material breach, you must still pay past due fees plus interest. You are responsible for any costs CMC DATAWORKS, 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.

2. USE OF SERVICES

2.1 Applicable Policies and Guidelines. The CMC Acceptable Use Policy (the "Acceptable Usage") governs the general policies and procedures for use of the Services. CMC's On-line Privacy Statement governs how CMC 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 CMC's Web site at www.cmcdataworks.com. **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. CMC MAY TERMINATE YOUR ACCOUNT FOR ANY VIOLATION OF THE USAGE GUIDELINES OR THIS AGREEMENT.**

2.2 Material and Product Requirements. You must ensure that all material and data placed on CMC's equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by CMC. CMC will make no effort to validate any of this information



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for content, correctness or usability. If your material is not "server-ready", CMC may reject this material. CMC will notify you of its refusal of the material and afford you the opportunity to modify the material to satisfy CMC'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. CMC does not provide this knowledge or customer support outside of the Services.

2.3 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, CMC may, in its sole discretion, assess you with additional charges, suspend the Service, or terminate this Agreement. If CMC elects to take any corrective action, CMC 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.

2.4 Domain Names. As part of the Services, you will provide CMC with a registered domain name or names, or CMC will register domain name(s) you select if the domain name is available for registration and does not violate any ICANN's (The Internet Corporation for Assigned Names and Numbers) or ICANN accredited registrars' policies, or any law or regulation. You will promptly reimburse CMC for any fees CMC pays to an ICANN accredited registrar or other registration services for registering and maintaining the domain name(s). If any dispute or cause of action arises out of or is related to your domain name used in connection with the Services, then upon your request, CMC will attempt to register with an ICANN accredited registrar or other registrar an alternative domain name you chose. Upon registering your domain name, you are bound by the terms of the ICANN accredited registrar used by CMC then current domain name policy and the policies of the national DNS registration authorities. CMC will not refund any fees you paid with respect to the registration of a domain name you are unable to use. If you received a "Free Domain Name Registration" offer when you signed up for the Services, and you terminate the Services within 1 year of the domain name registration, you will immediately pay CMC the full retail price for the domain name registration in effect when you registered the domain name, in addition to any other fees for early termination described in this Agreement.

2.5 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, CMC will shut it down immediately. You will pay any charges resulting from the cost to correct security breaches affecting CMC or any of its other customers.

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

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Your License Grant to CMC. You grant to CMC 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



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for the purposes of rendering and operating the Services to you under this Agreement. You expressly: (a) grant to CMC 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.

3.2 Your Warranties and Representations to CMC. You warrant, represent, and covenant to CMC 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.

3.3 CMC Materials and Intellectual Property. All materials, including any computer software (in object code and source code form), data or information that CMC or its suppliers or agents develop or provide under this Agreement, and any know-how, methodologies, equipment, or processes CMC 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 CMC's or its suppliers' sole and exclusive property. CMC will also maintain and control ownership of all Internet protocol ("IP") numbers and addresses that CMC may be assign to you. CMC may, in its sole discretion, change or remove any and all IP numbers and addresses.

4. ENFORCEMENT

4.1 Investigation of Violations. CMC 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. CMC 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.

4.2 Actions. CMC 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 CMC becomes aware that you have possibly violated this Agreement, any related policies or guidelines, third party rights or laws, CMC 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 CMC'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 CMC that, in CMC's sole discretion, may violate or infringe any law or third-party rights or that otherwise exposes or potentially exposes CMC to civil or criminal liability or public ridicule. It is CMC's policy to terminate repeat infringers. These rights of action, however, do not obligate CMC to monitor or exert editorial control over the information made available for distribution via the Services. If CMC takes corrective action because of a possible violation, CMC will not refund to you any fees you paid in advance of the corrective action.

4.3 Disclosure Rights. To comply with applicable laws and lawful governmental requests, to protect CMC's systems and customers, or to ensure the integrity and operation of CMC's business and systems, CMC may access and disclose any information it considers



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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 CMC's servers and systems. CMC 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 CMC's On-line Privacy Statement and CMC's right to disclose under this section, CMC's right to disclose under this section will control.

5. WARRANTIES

5.1 Disclaimed Warranties. CMC exercises no control over, and accepts no responsibility for, the content of the information passing through CMC'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. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CMC 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.

6. LIMITATION AND EXCLUSION OF LIABILITY

6.1 Limitations. IN NO EVENT WILL CMC 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 CMC NOR ITS SUPPLIERS WILL HAVE LIABILITY WITH RESPECT TO CMC'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF CMC HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF CMC AND ITS SUPPLIERS TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID TO CMC 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 CMC UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, YOU RELEASE CMC AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1.

6.2 Interruption of Service. CMC and its suppliers are not liable for any temporary delay, outages or interruptions of the Services. Further, CMC 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).



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7. INDEMNIFICATION

7.1 Indemnification. You release and hold harmless, and agree to indemnify, CMC 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 CMC 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

8.1 Entire Agreement. This Agreement, in conjunction with all policies and guidelines incorporated by reference, constitutes the entire agreement between you and CMC 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.

8.2 Fiduciary Relationship / Third-Party Beneficiaries. CMC is not the agent, fiduciary, trustee or other representative of you. Except for the rights of CMC'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.

8.3 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.

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

8.5 Choice of Law and Forum. THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE UNITED STATES AND THE STATE OF NEW YORK, 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 NASSAU COUNTY, NEW YORK, AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF THESE COURTS.

8.6 Compliance with Laws. You will comply with all applicable laws and regulations and will indemnify and save CMC harmless from your failure to so comply. CMC 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.

8.7 Non-Assignment. You may not assign this Agreement or any right or obligation under this Agreement, by operation of law or otherwise, without CMC's prior written consent. CMC 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.



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

8.9 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.

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

8.11 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.

Note:

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