
Tel: (319) 334-3930 • Fax: (312) 224-8428 • www.powersurge.net • sales@powersurge.net

Nine Dot Systems, Inc. DEDICATED SERVER AGREEMENT

THIS AGREEMENT, is between Nine Dot Systems, Inc. and ("Client") identified on page 16 of this document.

- A. WHEREAS, Nine Dot Systems, Inc. provides dedicated server[s];
- B. WHEREAS, Client desires Nine Dot Systems, Inc. to provide dedicated server[s];

NOW THEREFORE, the parties agree as follows:

Nine Dot Systems, Inc. SERVICE LEVEL AGREEMENT

This Nine Dot Systems, Inc. Service Level Agreement ("SLA") applies to all dedicated servers. The Client agrees that Nine Dot Systems, Inc. internal measurements establish the eligibility for any applicable Performance Credit.

In the event that the Client determines that a discrepancy in such measurement exists, Client shall promptly notify Nine Dot Systems, Inc. and Nine Dot Systems, Inc. and Client will mutually agree upon the validity and accuracy of the measurement, and upon Client's eligibility for any applicable Performance Credits.

Nine Dot Systems, Inc. may amend this SLA at any time. Updated copies of the SLA will be located at <http://www.powersurge.net>

1. Definitions.

1.1 DEFCON 5

("Standard Network Based Security") is defined as the overall core network security that Nine Dot Systems, Inc. provided every customer. This security is provided on the network level and includes secure router configurations, frequent network scans, and overall knowledge of maintaining a secure network. This service does not imply any server based security, firewalls, DDOS/Attack protection on the server level, or Anti-Virus based protection. 24/7/365 Technical Support

("Hard/Soft Manual Reboots in 10 Minutes or less") is defined as your request being processed in 10 minutes or less for server reboot requests. The Nine Dot Systems, Inc. Support team prefers the soft/hard reboot system as it preserves overall integrity of hardware and operating systems. The 10 minute turnaround time is defined as the time you place the request until the power or reboot command is issued. In some cases additional time is required by operating system software to perform necessary functions on the server. Best effort is made to make server reboots as quick as possible.

("Online Bandwidth Monitoring Tool") is defined as the real-time MRTG graphs provided for you to review bandwidth usage. Nine Dot Systems, Inc. charges bandwidth on a per GB basis. A conversion must take place to view your GB's per month which can be done by contacting support@powersurge.net.

("24/7/365 Technical Support") is defined as having direct access to our technical support team 24 hours a Day, 7 Days a week, 365 days a year. Support is provided via toll free number, ticket system, and e-mail. All support provided is free of charge pending the server task that is being requested takes less than 15 Minutes. All requests that take greater than 15 minutes are considered a portion of your pre-paid support or charged at \$50 per 30 minutes. All billable tasks performed require prior approval from client with proper authentication.

("15 minute or Less Advanced Technical Support") is defined as the "FREE" support provided with your dedicated server solution. In the event that tasks are projected in taking longer than 15 minutes they are considered part of our pre-paid support or charged at \$50 per 30 minutes. All billable tasks performed require prior approval from client with proper authentication.

("No monitoring/recovery included") is defined as Nine Dot Systems, Inc. not providing the monitoring of uptime or failed services. In the event of a server failure customer will initiate contact with Nine Dot Systems, Inc. and provide the procedure to perform. Recovery of server may be billable and is dependant on the nature of the

procedure that takes place.

("Self Maintained root/administrator access to server") is defined as you maintaining root/administrator access on the server. It is not required on DEFCON 5 that you maintain or allow access to your server.

1.2 DEFCON 4

("Monitoring and Server Recovery for 1 Service") is defined as port based monitoring on your server for 1 service/daemon. Server Port Monitoring is performed every 3 minutes and a failure is defined as 3 consecutive failures (9 minutes). In the event of a failure if no communication is made with the Technical Support Department the procedures you have outlined will be performed. It the responsibility of server owner to define the action to perform in the event of a failure.

("Standard Network Based Security") is defined as the overall core network security that Nine Dot Systems, Inc. provided every customer. This security is provided on the network level and includes secure router configurations, frequent network scans, and overall knowledge of maintaining a secure network. This service does not imply any server based security, firewalls, DDOS/Attack protection on the server level, or Anti-Virus based protection.24/7/365 Technical Support

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("Online Bandwidth Monitoring Tool") is defined as the real-time MRTG graphs provided for you to review bandwidth usage. Nine Dot Systems, Inc. charges bandwidth on a per GB basis. A conversion must take place to view your GB's per month which can be done online at <http://www.Nine Dot Systems, Inc./scripts/compare.php>.

("On-Demand O/S updates and patches") is defined as customer initiated request for O/S updates and patches. 1 Request Requests are accepted for standard kernel upgrades, service packs, and hot fixes as they are released by vendors. All updates and patches for this service are specific to operating systems.

("15 minute or Less Advanced Technical Support") is defined as the "FREE" support provided with your dedicated server solution. In the event that tasks are projected in taking longer than 15 minutes they are considered part of our pre-paid support or charged at \$50 per 30 minutes. All billable tasks performed require prior approval from client with proper authentication.

("On-Demand Security Audit") is defined as a customer initiated request of a Security Audit on the server. Security Audits are comprised of standard tools and basic security scans to review and look for abnormalities on the server. This service does not include the repair, but can include OS patches and upgrades it is determined this will correct or enhance the security on the server. (1 Per Month)

("Shared root/administrator access to server") is defined as you maintaining root/administrator access on the server. To participate in this level of DEFON it is required that we maintain on file root/administer access.

1.3 DEFCON 3

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("Server Port Monitoring") is defined as the dedicated server participation in the monitoring of services via standard TCP/IP ports. Server Port Monitoring is performed every 3 minutes and a failure is defined as 3 consecutive failures (9 minutes). In the event of a failure if no communication is made with the Technical Support Department the procedures you have outlined will be performed. It the responsibility of server owner to define the action to perform in the event of a failure. This service include up to 4 Port/Services/Daemons that can be monitored.

("Standard Network Based Security") is defined as the overall core network security that Nine Dot Systems, Inc. provided every customer. This security is provided on the network level and includes secure router configurations, frequent network scans, and overall knowledge of maintaining a secure network. This service does not imply any server based security, firewalls, DDOS/Attack protection on the server level, or Anti-Virus based protection.24/7/365 Technical Support

("24/7/365 Technical Support") is defined as having direct access to our technical support team 24 hours a Day, 7 Days a week, 365 days a year. Support is provided via toll free number, ticket system, and e-mail. All support provided is free of charge pending the server task that is being requested takes less than 15 Minutes. All requests that take greater than 15 minutes are considered a portion of your pre-paid support or charged at \$50 per 30 minutes. All billable tasks performed require prior approval from client with proper authentication.

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("Host Based IDS") is defined as Intrusion Detection Systems that are used to sniff out network packets giving you a good understanding of what is really happening on a server. IDS have the capability of distinguishing different types of network traffic on the same port number. IDS have the ability to drop malicious packets that may cause your network harm. Customers using Windows 2000/2003 will be provided with an installed copy of Black ICE Defender and customers using Linux will be provided with port sentry.

("Auto O/S updates and patches") is defined as automatic operating system updates and patches as part of our routine procedures. This will be a part of a schedules update that takes place on a regular basis. As new kernels, security patches, service packs, and hot fixes are released the servers will be updated automatically. Notification of updates are provided when they occur.

("Resource Monitoring") is defined as the addition of the dedicated server to our NAGIOS (www.nagios.org) based monitoring system. NAGIOS will monitor the overall disk space, processor utilization, and memory usage with notification when thresholds are exceeded. This service is customized on a per server basis and requires the submission of a "Monitoring Configuration/Procedure" template.

("On-Demand Vulnerability Assessments") is a customer initiated request for an in depth security audit of a server. These assessments include deep scans, intrusion detection, reviews of logs files, root check kits, and utilize the a set of tools developed by our level 3 Administrators. Upon completion customer will receive a report, along with suggestion on how to increase security on the server.

("Systems Administrative Service") is defined as advanced technical support for dedicated servers. This support can be used for any number of support and includes server troubleshooting, software configuration, OS configuration, OS reinstalls, and any task that does not fall under the "free support" provided with the server. For various levels of DEFCONS an allotted amount of time is provided. (1 Hour Per Month)

("On-Demand Server Health Check") is defined as a customer initiated request to review the overall health of the server. This can and may include review of memory usage, processor usage, disk space, and general

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configuration of the server. Server Health Checks allow a Level 3 Administrator to review the overall health of the machine and provide you an opinion, procedures, and overview of the server.

("Shared root/administrator access to server") is defined as you maintaining root/administrator access on the server. To participate in this level of DEFCON it is required that we maintain on file root/administer access.

1.4 DEFCON 2

("Server Port Monitoring") is defined as the dedicated server participation in the monitoring of services via standard TCP/IP ports. Server Port Monitoring is performed every 3 minutes and a failure is defined as 3 consecutive failures (9 minutes). In the event of a failure if no communication is made with the Technical Support Department the procedures you have outlined will be performed. It the responsibility of server owner to define the action to perform in the event of a failure. This service include up to 6 Port/Services/Daemons that can be monitored.

("Standard Network Based Security") is defined as the overall core network security that Nine Dot Systems, Inc. provided every customer. This security is provided on the network level and includes secure router configurations, frequent network scans, and overall knowledge of maintaining a secure network. This service does not imply any server based security, firewalls, DDOS/Attack protection on the server level, or Anti-Virus based protection.24/7/365 Technical Support

("24/7/365 Technical Support") is defined as having direct access to our technical support team 24 hours a Day, 7 Days a week, 365 days a year. Support is provided via toll free number, ticket system, and e-mail. All support provided is free of charge pending the server task that is being requested takes less than 15 Minutes. All requests that take greater than 15 minutes are considered a portion of your pre-paid support or charged at \$50 per 30 minutes. All billable tasks performed require prior approval from client with proper authentication.

("Hard/Soft Manual Reboots in 10 Minutes or less") is defined as your request being processed in 10 minutes or less for server reboot requests. The Nine Dot Systems, Inc. Support team prefers the soft/hard reboot system as it preserves overall integrity of hardware and operating systems. The 10 minute turnaround time is defined as the time you place the request until the power or reboot command is issued. In some cases additional time is required by operating system software to perform necessary functions on the server. Best effort is made to make server reboots as quick as possible.

("Host Based IDS") is defined as Intrusion Detection Systems that are used to sniff out network packets giving you a good understanding of what is really happening on a server. IDS have the capability of distinguishing different types of network traffic on the same port number. IDS have the ability to drop malicious packets that may cause your network harm. Customers using Windows 2000/2003 will be provided with an installed copy of Black ICE Defender and customers using Linux will be provided with port sentry.

("Auto O/S updates and patches") is defined as automatic operating system updates and patches as part of our routine procedures. This will be a part of a schedules update that takes place on a regular basis. As new kernels, security patches, service packs, and hot fixes are released the servers will be updated automatically. Notification of updates are provided when they occur.

("Resource Monitoring") is defined as the addition of the dedicated server to our NAGIOS (www.nagios.org) based monitoring system. NAGIOS will monitor the overall disk space, processor utilization, and memory usage with notification when thresholds are exceeded. This service is customized on a per server basis and requires the submission of a "Monitoring Configuration/Procedure" template.

("On-Demand Server Health Check") is defined as a customer initiated request to review the overall health of the server. This can and may include review of memory usage, processor usage, disk space, and general configuration of the server. Server Health Checks allow a Level 3 Administrator to review the overall health of the machine and provide you an opinion, procedures, and overview of the server.

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("On-Demand Security Audit") is defined as a customer initiated request of a Security Audit on the server. Security Audits are comprised of standard tools and basic security scans to review and look for abnormalities on the server. This service does not include the repair, but can include OS patches and upgrades if it is determined this will correct or enhance the security on the server.

("Systems Administrative Service") is defined as advanced technical support for dedicated servers. This support can be used for any number of support and includes server troubleshooting, software configuration, OS configuration, OS reinstalls, and any task that does not fall under the "free support" provided with the server. For various levels of DEFCONS an allotted amount of time is provided. (3 Hours Per Month)

("Server Anti-virus Protection") is defined as file based anti-virus software that will be installed on the server to protect your server from malicious viruses. Virus definitions will be updated on a monthly basis as well as a full scan of the server will take place. Customer will be provided alerts to any viruses that are found and quarantined.

("O/S Hardening Services") is defined as customer initiated request to secure the server with patches, permission tweaks, application scans, and review of log files. A level 3 system administrator will spend time reviewing the configuration of the operating system, applying best practice procedures, and making sure the server is secured to highest degree.

("Shared root/administrator access to server") is defined as you maintaining root/administrator access on the server. To participate in this level of DEFCON it is required that we maintain on file root/administer access.

1.5 DEFCON 1

("Server Port Monitoring") is defined as the dedicated server participation in the monitoring of services via standard TCP/IP ports. Server Port Monitoring is performed every 3 minutes and a failure is defined as 3 consecutive failures (9 minutes). In the event of a failure if no communication is made with the Technical Support Department the procedures you have outlined will be performed. It is the responsibility of server owner to define the action to perform in the event of a failure. This service includes up to 8 Port/Services/Daemons that can be monitored.

("Standard Network Based Security") is defined as the overall core network security that Nine Dot Systems, Inc. provides every customer. This security is provided on the network level and includes secure router configurations, frequent network scans, and overall knowledge of maintaining a secure network. This service does not imply any server based security, firewalls, DDOS/Attack protection on the server level, or Anti-Virus based protection. 24/7/365 Technical Support

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("Hard/Soft Manual Reboots in 10 Minutes or less") is defined as your request being processed in 10 minutes or less for server reboot requests. The Nine Dot Systems, Inc. Support team prefers the soft/hard reboot system as it preserves overall integrity of hardware and operating systems. The 10 minute turnaround time is defined as the time you place the request until the power or reboot command is issued. In some cases additional time is required by operating system software to perform necessary functions on the server. Best effort is made to make server reboots as quick as possible.

("Host Based IDS") is defined as Intrusion Detection Systems that are used to sniff out network packets giving you a good understanding of what is really happening on a server. IDS have the capability of distinguishing different types of network traffic on the same port number. IDS have the ability to drop malicious packets that

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may cause your network harm. Customers using Windows 2000/2003 will be provided with an installed copy of Black ICE Defender and customers using Linux will be provided with port sentry.

("Auto O/S updates and patches") is defined as automatic operating system updates and patches as part of our routine procedures. This will be a part of a scheduled update that takes place on a regular basis. As new kernels, security patches, service packs, and hot fixes are released the servers will be updated automatically. Notification of updates are provided when they occur.

("Resource Monitoring") is defined as the addition of the dedicated server to our NAGIOS (www.nagios.org) based monitoring system. NAGIOS will monitor the overall disk space, processor utilization, and memory usage with notification when thresholds are exceeded. This service is customized on a per server basis and requires the submission of a "Monitoring Configuration/Procedure" template.

("On-Demand Server Health Check") is defined as a customer initiated request to review the overall health of the server. This can and may include review of memory usage, processor usage, disk space, and general configuration of the server. Server Health Checks allow a Level 3 Administrator to review the overall health of the machine and provide you an opinion, procedures, and overview of the server.

("On-Demand Security Audit") is defined as a customer initiated request of a Security Audit on the server. Security Audits are comprised of standard tools and basic security scans to review and look for abnormalities on the server. This service does not include the repair, but can include OS patches and upgrades if it is determined this will correct or enhance the security on the server.

("Systems Administrative Service") is defined as advanced technical support for dedicated servers. This support can be used for any number of support and includes server troubleshooting, software configuration, OS configuration, OS reinstalls, and any task that does not fall under the "free support" provided with the server. For various levels of DEFCONS an allotted amount of time is provided. (5 Hours Per Month)

("Server Anti-virus Protection") is defined as file based anti-virus software that will be installed on the server to protect your server from malicious viruses. Virus definitions will be updated on a monthly basis as well as a full scan of the server will take place. Customer will be provided alerts to any viruses that are found and quarantined.

("O/S Hardening Services") is defined as customer initiated request to secure the server with patches, permission tweaks, application scans, and review of log files. A level 3 system administrator will spend time reviewing the configuration of the operating system, applying best practice procedures, and making sure the server is secured to highest degree.

("No root/administrator access to server") is defined as not having direct root/admin access to the server. In some cases you may be provided with a 2nd level (Reseller) login for creation of accounts. All Administrator level duties will be carried out by the Nine Dot Systems, Inc. Support Staff.

("Hardware Based Firewall Protection") is defined as the inclusion of a hardware based firewall for protecting your server. Firewall increase security and properly configured will prevent disaster from occurring. With this service our administrators will configure and maintain the hardware based firewall.

1.1.3 Co-Location Services ("Co-Location Services") is defined as servers that are property of the Clients while rackspace, bandwidth, and Ethernet ports are rented from Nine Dot Systems, Inc. on a monthly basis. All services performed on the server come without warranty or guarantee. Client is responsible for supplying replacement parts, hot swappable hardware, and all required software media. All services performed on the co-located servers are subject to a \$100.00 an hour labor fee, which must be approved by the customer in question before said services are provided. Co-Location Clients that utilize Nine Dot Systems, Inc. have an option to participate in **DEFCON Management Services**, as detailed above. This is subject to the approval of a Nine Dot Systems, Inc. System Administrator and will incur an additional monthly fee.

1.2. Nine Dot Systems, Inc. Network ("Nine Dot Systems, Inc. Network") is defined as the equipment, software, and facilities within the Nine Dot Systems, Inc. network segment, including Nine Dot Systems, Inc. contracted ISP services to which the Nine Dot Systems, Inc. network segment is connected and collectively utilized by Nine Dot Systems, Inc. to provide dedicated and co-location services.

1.3. Service Availability ("Service Availability") is the total time in a calendar month that the Nine Dot Systems, Inc. is available through the Internet, provided that Client has established connectivity. Nine Dot Systems, Inc. takes responsibility for the Service Availability within its immediate network segment, and cannot be held liable for problems directly related to an upstream bandwidth provider. The Nine Dot Systems, Inc. Network will be available to clients free of Network Outages for 99.9% of the time.

1.4. Service Downtime ("Service Downtime") is any unplanned interruption in Service Availability during which the Client is unable to access the services as described in preceding section 1.3, provided the interruption is determined to have been caused by a problem in the immediate Nine Dot Systems, Inc. network segment as confirmed by Nine Dot Systems, Inc.. Service Downtime is measured as the total length of time of the unplanned interruption in Service Availability during a calendar month. Nine Dot Systems, Inc. provides direct support and expertise in any software it directly provides, while any unplanned outages due to third-party software failure are the direct responsibility of the software publisher and not of Nine Dot Systems, Inc..

1.5. Scheduled Service Downtime ("Scheduled Service Downtime") is any Nine Dot Systems, Inc. interruption of Services. Scheduled Service Downtime occurs during a Nine Dot Systems, Inc. standard server maintenance window, which occurs in conjunction with a 24 hour notice to the Client via electronic communication. Said downtime is coordinated with the Client to the best of Nine Dot Systems, Inc. abilities as to align the window of maintenance with the Client's explicit wishes.

1.6. Performance Credit ("Performance Credit") occurs when 99.9% uptime is not met. Nine Dot Systems, Inc. will refund the customer 5% of the monthly fee for each 30 minutes of downtime (up to 100% of the customer's monthly fee). Network downtime is measured from the time a trouble ticket is opened by a customer to the time the server is once again able to transmit and receive data.

1.7. Monitoring Service ("Monitoring Service") is the service Nine Dot Systems, Inc. provides in order to analyze availability of TCP/IP based services and applications through its internal monitoring system. To participate in this, Nine Dot Systems, Inc. must have valid, administrative access to repair the server in the event of a service or operating system failure.

1.8. Billable System Administration ("Billable System Administration") is operation, configuration, performance tuning, security configurations, and any interaction with the operating system or software installed on the server in question that is not already provided within the service plan of the server in question. Support provided to the client that requires Nine Dot Systems, Inc. to login to the server can normally be considered Billable System Administration. Fees for said services are billed out at a \$50.00 minimum charge with hourly rates of \$100.

2. Service Downtime Performance Credit.

2.1. In the event of Service Downtime in which monthly Service Availability is less than 99.9%, Client will receive a Performance Credit as described in section 1.6 of this document.

3. Service Exclusions.

3.1. This SLA does not cover Service Downtime caused by problems in the following:

3.1.1. Client's local area network.

3.1.2. Client-provided Internet connectivity or end-user software.

3.1.3. Entities inside Client's internal network including, but not limited to, firewall configuration and bandwidth shaping, local area workstations, or other servers, equipment, and software that have a potential bearing on the local networking environment.

4. Service Downtime Exclusions.

4.1. The following are excluded from the monthly calculation of Service Availability:

4.1.1. Any utilized Scheduled Service Downtime.

4.1.2. Any problems beyond the immediate Nine Dot Systems, Inc. network segment.

4.1.3. Any interruptions, delays or failures caused by Client or Client's employees, agents, or subcontractors, such as, but not limited to, the following:

4.1.3.1. Inaccurate configuration.

4.1.3.2. Non-compliant use of any software installed on the server.

4.1.3.3. Client initiated server over-utilization.

4.1.3.4. Any problems related to attacks on the machine such as hacking, bandwidth-based attacks of any nature, and service or operating system exploits.

5. Billable System Administration which is defined in section 1.8 includes the following.

5.0.1 System Administration of the client's server.

5.0.2 Software installations performed by Nine Dot Systems, Inc..

5.0.3 Virus and Security Scans of the server.

5.0.4 Configuration of the operating system, services provided on the server, and custom software installed on the server.

5.0.5 Security auditing and resource management of the server.

5.0.6 Patches, upgrades, and service pack installations.

6. Server Hardware for Dedicated Servers.

6.01 Hardware is defined as the Processor(s), RAM, hard disk(s), motherboard, NIC card and other related hardware included under the server lease. This guarantee excludes the time required to rebuild a RAID array.

6.0.2 Hardware replacement will occur within 24 hours of the reported problem, Nine Dot Systems, Inc. will refund 25% of the monthly fee per additional 24 hours of down time (up to 100% of customer's monthly fee).

6.03 Restoration is defined as returning the server to its original configuration, as per the date the server first went live on the network. If hardware failure causes corrupted operating system, data files, or damaged service configurations, Nine Dot Systems, Inc. will restore the system to original state.

6.04 Nine Dot Systems, Inc. is not responsible for the restoration of data to server. If hardware failure is experienced and subsequent data loss occurs, client is ultimately responsible for data restoration. Nine Dot Systems, Inc. shall not be liable for loss of data under any circumstance.

6.05 Nine Dot Systems, Inc. does not take responsibility for the overall security of servers. If servers are compromised in any way, Nine Dot Systems, Inc. reserves the right to immediately audit the server. Our medium

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to upper-tier dedicated service plans receive monthly security auditing as part of the overall Personal System Administrator's program but security is the responsibility of the client. Nine Dot Systems, Inc. reserves the right to cancel service if servers are compromised via the implementation of weak password schemes or via other blatant disregard to simple security measures. A fee of \$100 per hour will be incurred in respect to any security related work performed due to any such server being compromised.

Terms of Service

Nine Dot Systems, Inc. agrees to furnish services to the client, subject to the following TOS (Terms of Service).

Use of Nine Dot Systems, Inc. Service constitutes acceptance and agreement to Nine Dot Systems, Inc. AUP, Nine Dot Systems, Inc. TOS (Terms of Service) as well as Nine Dot Systems, Inc. (Service Level Agreement).

All provisions of this contract are subject to the TOS (Terms of Service) of Nine Dot Systems, Inc., AUP (Acceptable Use Policy) and Nine Dot Systems, Inc. (Service Level Agreement). The AUP may be changed from time to time at the discretion of the Company. Client understands that change to the AUP by the Company shall not be grounds for early contract termination or non-payment.

This Agreement shall be construed in all respects in accordance with the laws of the state of Iowa, county of Black Hawk applicable to contracts enforceable in that state. Venue will be Black Hawk County, Iowa.

Disclosure to Law Enforcement: The AUP specifically prohibits the use of our service for illegal activities. Therefore, Client agrees that the Company may disclose any and all Client 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 to the Client. In addition Nine Dot Systems, Inc. shall have the right to terminate all service set forth in this Agreement.

Service Rates: Client acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to Client. Client is aware that the Company may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon Company achieving and maintaining its cost of service goals including but not limited to rates charged to company by its suppliers.

Payment: Establishment of this service is dependent upon receipt by the Company of payment of stated charges. Subsequent payments are due on a reoccurring date that coincides with the date of signup.

Payments and Fees: Credit cards that are declined for any reason are subject to a \$10.00 declination fee. Service will be interrupted on accounts that reach **5 days past due**. Service interrupted for nonpayment is subject to a \$50 reconnect charge. Accounts that are not collectable by Nine Dot Systems, Inc. will be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay the company a "Processing and Collection" Fee of not less than \$50 nor more than \$150. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS.

Refund and Disputes: All payments after the initial 30 days of service to Nine Dot Systems, Inc. are nonrefundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in Nine Dot Systems, Inc. sole discretion is a valid charge under the provisions of the TOS and/or AUP, you agree to pay Nine Dot Systems, Inc. an "Administrative Fee" of not less than \$50 and not more than \$150.

Failure to Pay: The Company may temporarily deny service or terminate this Agreement upon the failure of Client to pay charges when due. Such termination or denial will not relieve Client of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

Account Cancellation: All requests for canceling accounts must be made in writing with at least 3 days notice but not more than 5 days prior written notice and sent to

Nine Dot Systems, Inc.
DBA: PowerSurge Web Solutions

2300 Swan Lake Blvd. Ste 102 Independence, Iowa 50644

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Nine Dot Systems, Inc. Cancellations

2300 Swan Lake Blvd. Ste 102

Independence, IA 50644

or you may fax the cancellation request to 312-224-8428. You must have all account information to cancel which should include IP Address of Server, Hostname, Administrator Password(root).

Client acknowledges that the service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the company and that damages resulting from any interruption of service are difficult to ascertain. Therefore, Client agrees that the company shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the company. Client further acknowledges that the company's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by Client for services during the period damages occurred. In no event shall the company be liable for any special or consequential damages, loss or injury.

Support Boundaries: Nine Dot Systems, Inc. provides 24/7 technical support to our Clients. We limit our technical support to our area of expertise. The following is our guidelines when providing support: Nine Dot Systems, Inc. provides support related to your server or functioning.

Nine Dot Systems, Inc. does not offer tech support for application specific issues such as CGI programming, Cold Fusion, ASP, .NET, PHP, MySQL, Microsoft SQL or any other programming/database application. Nine Dot Systems, Inc. does not provide technical support for YOUR Clients.

Nine Dot Systems, Inc. partners with a number of software companies and acts as the frontline of support for these products. Nine Dot Systems, Inc. will provide best effort support for applications but does not warrant bug fixes or advanced problem resolution of these products. Escalation of such issues the companies that have programmed the software are subject to the standard \$100.00 per hour rate which includes the total amount of time spent. Resolution of bugs and advanced support issues is dependant upon the developers of the software.

Any request of technical support warrants the possibility of being charge a system administration fee if the request related to Operating System functionality, software application functionality, or Control Panel functionality. If a staff member of Nine Dot Systems, Inc. is required to login to your server for over 15 minutes and provide support, system administration fees can be applied to your account.

SPAM and Unsolicited Commercial Email (UCE): Nine Dot Systems, Inc. takes a zero tolerance approach to the sending of Unsolicited Commercial Email (UCE) or SPAM over our network. Very simply this means that Clients of Nine Dot Systems, Inc. may not use or permit others to use our network to transact in UCE. Clients of Nine Dot Systems, Inc. may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service.

Violation of Nine Dot Systems, Inc. SPAM policy will result in severe penalties. Upon notification of an alleged violation of our SPAM policy, Nine Dot Systems, Inc. will initiate an immediate investigation (within 48 hours of notification). During the investigation, Nine Dot Systems, Inc. may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, Nine Dot Systems, Inc. may, at its sole discretion, restrict, suspend or terminate customer's account. Further, Nine Dot Systems, Inc. reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. Nine Dot Systems, Inc. will notify law enforcement officials if the violation is believed to be a criminal offense.

First violations of this policy will result in an "Administrative Fee" of \$250 and your account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of \$500 and immediate

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termination of your account. Users who violate this policy agree that in addition to these "Administrative" penalties, they will pay "Research Fees" not to exceed \$175 per hour that Nine Dot Systems, Inc. personnel must spend to investigate the matter. PLEASE, DO NOT SPAM from your account.

As our Clients are ultimately responsible for the actions of their clients over the Nine Dot Systems, Inc. network, it is advisable that Clients develop a similar, or stricter, policy for their clients.

Network

IP Address Ownership: If Nine Dot Systems, Inc. assigns Customer an Internet Protocol address for Customer's use, the right to use that Internet Protocol address shall belong only to Nine Dot Systems, Inc., and Customer shall have no right to use that Internet Protocol address except as permitted by Nine Dot Systems, Inc. in its sole discretion in connection with the Services, during the term of this Agreement. Nine Dot Systems, Inc. shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by Nine Dot Systems, Inc., and Nine Dot Systems, Inc. reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion. Our allocation of IP addresses is limited by ARIN's new policies. These new policies state that use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to you is that you MUST use name-based hosting where possible. We will periodically review IP address usage, and if we find that clients are using IP addresses where name-based hosting could be used, we will revoke authorization to use those IP addresses that could be used with name-based hosting.

Bandwidth Usage

Customer agrees that bandwidth that exceeds the given rate on a monthly basis will pay an "overage" as detailed on the Nine Dot Systems, Inc. website. Nine Dot Systems, Inc. will monitor Customer's bandwidth via MRTG. Nine Dot Systems, Inc. shall have the right to take corrective action if Customer's bandwidth is excessive and interrupts service for other customers. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken in Nine Dot Systems, Inc. sole and absolute discretion. If Nine Dot Systems, Inc. takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action. In the event that a customer exceeds the included allocation, Nine Dot Systems, Inc. may, at its sole discretion, collect a deposit, in an amount determined by Nine Dot Systems, Inc., against customer's credit card on file with Nine Dot Systems, Inc..

System and Network Security

Users are prohibited from violating or attempting to violate the security of the Nine Dot Systems, Inc. Network. Violations of system or network security may result in civil or criminal liability. Nine Dot Systems, Inc. will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:

Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.

Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.

Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".

Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.

Taking any action in order to obtain services to which such User is not entitled.

Addition of IP addresses that have not been specifically assigned to the server.

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Notification of Violation: Nine Dot Systems, Inc. is under no duty to look at each customer's or user's activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities.

First violation: Any User, which Nine Dot Systems, Inc. determines to have violated any element of this Acceptable Use Policy, shall receive an email, warning them of the violation. The service may be subject at Nine Dot Systems, Inc. discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations.

Second Violation: Users that Nine Dot Systems, Inc. determines to have committed a second violation of any element of this Acceptable Use Policy shall be subject to immediate suspension or termination of service without further notice.

We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a customer's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as is feasible.

Suspension of Service or Cancellation: Nine Dot Systems, Inc. reserves the right to suspend network access to any customer if in the judgment of the Nine Dot Systems, Inc. network administrators the customer's server is the source or target of the violation of any of the other terms of the AUP or for any other reason which Nine Dot Systems, Inc. chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The customer will not be credited for the time the customer's machines were suspended.

Nine Dot Systems, Inc. reserves the right to amend its policies at any time. All Sub-Networks, resellers and managed servers of Nine Dot Systems, Inc. must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

Indemnification: Nine Dot Systems, Inc. wishes to emphasize that in agreeing to the Nine Dot Systems, Inc. Acceptable Use Policy (AUP) and Terms of Service (TOS), customer indemnifies Nine Dot Systems, Inc. for any violation of the Acceptable Use Policy (AUP) and Terms of Service (TOS) that results in loss to Nine Dot Systems, Inc. or the bringing of any claim against Nine Dot Systems, Inc. by any third-party. This means that if Nine Dot Systems, Inc. is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against Nine Dot Systems, Inc., plus all costs and attorney's fees.

Miscellaneous Provisions: You must provide us with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference.

A waiver by the Company of any breach of any provision of this Agreement by Client shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

Client shall not transfer or assign this Agreement without the prior written consent of the Company. Company may assign Agreement at anytime without consent from or notice to Client. Company reserves right to cancel Clients rights under this contract at anytime without further obligation.

Nine Dot Systems, Inc. assumes no responsibility for any material input by others and not posted to the Nine Dot Systems, Inc. Network by Nine Dot Systems, Inc.. Nine Dot Systems, Inc. is not responsible for the content of any other websites linked to the Nine Dot Systems, Inc. Network; links are provided as Internet navigation tools only. Nine Dot Systems, Inc. disclaims any responsibility for any such inappropriate use and any liability to any person

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or party for any other person or party's violation of this policy.

Nine Dot Systems, Inc. is not responsible for any damages your business may suffer. Nine Dot Systems, Inc. does not make implied or written warranties for any of our services. Nine Dot Systems, Inc. denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Nine Dot Systems, Inc..

Responsibility for Content: You, as Nine Dot Systems, Inc. customer, are solely responsible for the content stored on and served by your Nine Dot Systems, Inc. server.

WARRANTIES

Nine Dot Systems, Inc. has the right to enter into this Agreement and to grant the rights granted in it.

Nine Dot Systems, Inc. shall, in good faith, comply with the terms of this Agreement. The goods and services provided by Nine Dot Systems, Inc. are provided "AS IS", WITHOUT WARRANTY OF ANY KIND TO CLIENT OR ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) NON-INFRINGEMENT; 6) QUIET ENJOYMENT; AND 8) TITLE.

CLIENT AGREES THAT ANY EFFORTS BY NINE DOT SYSTEMS, INC. TO MODIFY ITS GOODS OR SERVICES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY NINE DOT SYSTEMS, INC. WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. CLIENT FURTHER AGREES THAT NINE DOT SYSTEMS, INC. SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF NINE DOT SYSTEMS, INC. WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS GROSSLY NEGLIGENT. MODIFICATIONS MADE TO CLIENT'S WEB SITE BY CLIENT OR ANY THIRD PARTY VOIDS ANY REMAINING EXPRESS OR IMPLIED WARRANTIES. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Client. In such jurisdictions, Nine Dot Systems, Inc. liability is limited to the greatest extent permitted by law.

The parties expressly recognize that Nine Dot Systems, Inc. does not operate, control or endorse any information, products or services on the Internet, and that any entities that do offer such information, products or services are not affiliated with Nine Dot Systems, Inc.. Nine Dot Systems, Inc. does not make any express or implied warranties, representations or endorsements TO CLIENT OR ANY THIRD PARTY whatsoever with regard to any information, products or services provided through NINE DOT SYSTEMS, INC. AND OBTAINED OR CONTRACTED OVER the Internet, including, without limitation, warranties of: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; 7) QUIET ENJOYMENT; AND 8) TITLE. Nine Dot Systems, Inc. shall not be liable to CLIENT OR ANY THIRD PARTY for any cost or damage arising either directly or indirectly from any transaction involving third parties' information, products or services. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Client. In such jurisdictions, Nine Dot Systems, Inc. liability is limited to the greatest extent permitted by law.

The parties expressly recognize that Nine Dot Systems, Inc. cannot and does not guarantee or warrant that files available for downloading through Nine Dot Systems, Inc. will be free of infection, viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. Client agrees that it shall be solely responsible for implementing sufficient procedures to satisfy Client's particular requirements for accuracy of data input and output, and for maintaining a means external to Nine Dot Systems, Inc. for the reconstruction of any lost data. The parties also expressly recognize that the Internet contains unedited materials, some of which are unlawful, indecent, or offensive to Client, and access to such materials by Client is done at Client's sole risk.

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ENTIRE AGREEMENT

This Agreement and all attachments or Exhibits supersede any and all other agreements, either oral or in writing, between the parties with respect to the matters stated herein, and this Agreement contains all of the covenants and agreements between the parties with respect thereto. This Agreement may be amended or modified only in writing, and shall be effective only after affixation of both parties' signatures.

Service Plan. You may be eligible for a fixed length Dedicated Server/Co-Location Service Plan ("**Term Service Plan**") or for a month-to-month Service Plan ("**Non-Term Service Plan**"). Except as permitted by the Agreement, you must maintain service with us on your Term Service Plan for the minimum term of 1 Year associated with that Term Service Plan.

Your Service Plan sets out the charges for Services and is your Service Plan until that Service Plan is changed, you switch to a different Service Plan, or your Services terminate.

Termination. Term Service Plan. EXCEPT AS PERMITTED BY THE AGREEMENT, IF YOU TERMINATE YOUR TERM SERVICE PLAN BEFORE THE END OF THE TERM, OR IF WE TERMINATE SERVICES FOR VIOLATIONS OF THIS CONTRACT BEFORE THE END OF THE TERM, YOU WILL BE REQUIRED TO PAY THE EARLY TERMINATION FEE of 50% of the remaining contract. After the expiration of the term, the Terms relating to Non-Term Service Plans apply.

Termination. Non-Term Service Plan. If you are on a Non-Term Service Plan, you may terminate Services at any time by giving us notice.

Initial The One of the Following:

Term Service Plan (1 Year) _____ (initial here)

Non-Term Service Plan (month to month) _____ (initial here)
* (15% premium attached for month to month plans)

* 1 Year Contract will begin _____ and be up for renewal one year or 365 calendar days. This contract does not reflect the discount that will be applied should you select the Term Service Plan.

Account Information

Billing Login:

Billing Password:

Invoice Number:

Nine Dot Systems, Inc.
DBA: PowerSurge Web Solutions

2300 Swan Lake Blvd. Ste 102 Independence, Iowa 50644

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Billing Login = 5 Digit login you use to access <https://dedicated.powersurge.net/>
Billing Password = the password that was assigned to you when we created your online billing account.

To retrieve the Invoice Number login to <https://dedicated.powersurge.net/> the Invoice # is located under the “**past paid invoices**” and is your five digit billing login + six digit invoice number.

Final Information

EXHIBITS

Client agrees that the order placed online is accurate that all services requested from Nine Dot Systems, Inc. are contained within this agreement. Included with this contract you should print off and sign the first invoice that was generated for you.

Name Print

Signature

Sales Executive

Date

Instructions to complete this transaction.

- 1.) Print and review this contract, it is 15 pages in length including this page.
- 2.) Fax the last 2 pages of this contract and your ordering email you received to 312-224-8428.
- 3.) Upon completion of Fax e-mail sales@powersurge.net for confirmation.

If you have any questions about this please call 1-800-867-5055 and request to speak with a Sales Executive.

Please note that if contracts are not received within 7 days Nine Dot Systems, Inc. will disable the server without notification. It is a necessary part of business to have this contract reviewed, signed and delivered to Nine Dot Systems, Inc. within 7 days of receiving service.