

## USER AGREEMENT

**THIS USER AGREEMENT (THIS "AGREEMENT")** IS A LEGAL AGREEMENT BETWEEN, ON THE ONE HAND, YOU (A CORPORATION OR OTHER LEGAL ENTITY) ("**YOU**") AND ON THE OTHER HAND, POWERTENDER AB, 559072-8118 ("**POWERTENDER**"), FOR THE USE OF THE SERVICE (AS DEFINED BELOW).

BY CLICKING ON THE "I ACCEPT" BUTTON OR OTHERWISE USING THE SERVICE, YOU AGREE TO COMPLY WITH AND BE BOUND BY THE TERMS OF THIS AGREEMENT IN RELATION TO YOUR USE OF THE SERVICE. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICE.

### 1. GENERAL

#### 1.1 Description of the Service

1.1.1 PowerTender provides an electronic platform that connects companies who are offering products ("**Sellers**") with companies that wish to procure such products ("**Buyers**"). The foregoing is hereinafter referred to as the "**Service**". You, and other Buyers and Sellers, may hereinafter also be referred to as "**User(s)**".

1.1.2 The Service is accessible at [www.buypowerproduct.com](http://www.buypowerproduct.com) or any other websites through which PowerTender makes the Service available (the "**Website**"). The Service enables Sellers to publish ads and offer their products or services, and enables Buyers to review the ads and available information from the sellers.

1.1.3 You acknowledge and agree that the Service is not intended for consumers or for personal use.

#### 1.2 Membership and Subscriptions

A subscription account may be required in order to access and use certain features of the Service, or to publish ads for which the user pays a fee. Requests for publish ads and Registration is made via the Website and may require that You accept Additional Terms (as defined in Section 1.3) relating to the chosen account.

#### 1.3 Additional Terms and Conditions

Your requests to publish ads, a subscription, the use of the Website, and certain features of the Service, may be governed by and subject to additional terms and conditions, standards, guidelines or policies (including privacy policies and cookie policies), posted on the Website or otherwise provided to You by PowerTender ("**Additional Terms**"). If there is a conflict between the terms and conditions of this Agreement and such Additional Terms, then the latter terms will take precedence with respect to the specific area governed by such Additional Terms.

### 2. MODIFICATIONS TO THIS AGREEMENT

PowerTender reserves the right, at its sole discretion, to change, modify or otherwise alter this Agreement at any time. PowerTender will post the modified Agreement on the Website, at which time the modifications shall become effective immediately. You are encouraged to review this Agreement on a regular basis to keep yourself apprised of any changes. Your continued access and use of the Service following the posting of an updated Agreement constitutes Your acceptance of the modified Agreement. If the modified terms are not acceptable to You, Your only recourse is to terminate the Agreement pursuant to Section 13.1, cease using the Service. The foregoing shall, however, not apply to changes or modifications to the provisions regulating PowerTender's processing of personal data on your behalf (Sections 9.12 to 9.21). Any changes to these provisions require both parties' express consent.

### 3. THE USE OF THE SERVICE AND USER CONDUCT

3.1 Subject to the terms and conditions of this Agreement and Your compliance herewith, PowerTender hereby grants You the right to access and use the Service through the Website solely for Your business purposes.

- 3.2 PowerTender undertakes to implement and maintain security and business continuity measures and other technical and organizational measures, in accordance with best industry practices, in order to maintain the security and integrity of the Service and to protect against accidental, unauthorized or unlawful alteration, loss or destruction of User Data (as defined in Section 4.1) within its control and comply with all applicable laws and regulations in making the Service available to You. PowerTender will not be responsible or liable for any failure to meet the foregoing responsibilities caused, in whole or in part, by the performance, adequacy, accuracy, concurrency or other matters for which You are responsible, including Your systems and User Data.
- 3.3 You undertake not to use the Service (i) for other than the intended purpose; or (ii) in breach of this Agreement or any applicable law, regulation, generally accepted practices, or guidelines in the relevant jurisdiction. You further undertake that You will not:
- a) engage in any activity that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service;
  - b) interfere with or damage the Website or Service, including without limitation by the use of viruses, Trojan horses, other harmful code, denial-of-service attacks, backdoors, spoofing, or similar methods or technology;
  - c) use the Service for any activities that are harmful, abusive, offensive, fraudulent, illegal or unlawful, or that promotes such activities;
  - d) infringe or misappropriate the rights of any other person or entity, including without limitation their intellectual property, privacy, or contractual rights;
  - e) systematically retrieve data or other content from the Website or the Service to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database or the like; or
  - f) attempt to decompile, disassemble or reverse engineer any of the software used to provide the Service or the Website, except to the minimum extent permitted by applicable mandatory law.

For the avoidance of doubt, the foregoing undertaking also means that you may not post, upload, publish, submit or transmit any User Data (as defined in Section 4.1) that directly or indirectly results in any of the acts described in subsections (a) through (f) above.

- 3.4 You alone are responsible for Your use of the Service, all activities that occur under Your subscription, and Your interaction with other Users. PowerTender is not required to actively monitor nor exercise any editorial control whatsoever over the content of any communication or material or information created, obtained or accessible through the Service, except as required by applicable mandatory law.

#### 4. USER DATA

- 4.1 You acknowledge and agree that You alone are responsible for any and all data or other information that You post, upload, publish, submit or transmit or otherwise make available as part of Your use of the Website and Service, including without limitation the contents of any ad (the “**User Data**”). Without limiting the generality of the foregoing, You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all User Data and the means of acquisition for such data, and You warrant that neither the User Data, nor the posting, uploading, publishing, submission, transmission or use of such User Data will infringe, misappropriate or violate any third party rights or result in the violation of any applicable laws and regulations.
- 4.2 PowerTender reserves the right, at any time and without prior notice, to remove or disable access to any User Data if PowerTender, at its sole discretion but acting reasonably, deems objectionable for any reason, in violation of this Agreement, user guidelines or similar, any applicable law or regulation, or otherwise harmful to the Website, the Service, other Users or PowerTender.
- 4.3 By making available User Data on or through the Service or the Website, you hereby grant to PowerTender a worldwide, irrevocable, perpetual (for the term of protection), non-exclusive, royalty-free license, with the right to sub-license, to use, reproduce, modify, distribute, publicly display and perform, and otherwise exploit such User Data (i) for the provision of the Service; and

(ii) to create and use Aggregate Information (as defined below) for research, marketing, analysis, benchmarking, statistics and other purposes reasonably required to develop, deliver and provide ongoing innovation and new features in the Service. For the avoidance of doubt, the foregoing shall include a right for PowerTender to market and sell, as part of the Service, Aggregate Information to other Users of the Service. **“Aggregate Information”** means any information or data derived from User Data, including Confidential Information (as defined in Section 10.1), compiled into data summaries or summary reports, where the compiled information is not specific to a User or other person (whether natural or legal person), does not include personally identifiable information and cannot be used, alone or in conjunction with other information, to identify any User or specific person.

- 4.4 You may, from time to time, make known to PowerTender suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to PowerTender with respect to the Service, PowerTender Content (as defined in Section 8.1), or the Website (collectively **“Suggestions”**). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, PowerTender shall have a royalty-free, worldwide, irrevocable, perpetual license, with the right to sub-license, to use, reproduce, modify, distribute, publicly display and perform, and otherwise exploit, any Suggestions without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development (**“Improvement”**) incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to You or any other person or entity.

## **5. TRANSACTIONS BETWEEN USERS**

- 5.1 PowerTender is solely the provider of a platform that facilitates transactions between Sellers and Buyers. All transactions are made between the Seller and the Buyer. PowerTender (i) does not represent either the Buyer or the Seller in specific transactions; (ii) is not a party to any agreements entered into between Users; and (iii) does not act as a contracting agent or insurer for any of the Users.
- 5.2 You acknowledge that ads are submitted by other Users of the Service. PowerTender makes no endorsement or guarantee as to the accuracy, truthfulness, completeness or reliability of any ad published by Users. PowerTender is not responsible for the quality, safety, lawfulness or availability of the products specified in ads, or the ability of Sellers to complete a sale or the ability of Buyers to complete a purchase.
- 5.3 The Users are solely responsible for deciding the terms and conditions of the transactions conducted on, through or as a result of the use of the Service, including, without limitation, terms regarding payment, returns, warranties, shipping, insurance, fees, taxes, title, licenses, fines, permits, handling, transportation and storage. PowerTender accepts no responsibility and has no liability with regard hereto.
- 5.4 You acknowledge that You are fully assuming (i) the risks of conducting any purchase and sale transactions in connection with or as a result of Your use of the Service; (ii) the risks of liability or harm of any kind in connection with any subsequent activity relating to products that are the subject of such transactions.

## **6. SERVICE FEES AND PAYMENT**

- 6.1 PowerTender charges certain fees in consideration for the use of the Service (**“Service Fees”**). The Service Fees are established based on published ads or other advertising material, The applicable Service Fee for the relevant activity will be displayed to You before You place Your order.
- 6.2 Accrued Service Fees are invoiced either on a monthly or quarterly basis, at PowerTender’s sole discretion. Fees are payable in advance and will be invoiced following Your request to publish an ad. Payments shall be made within 30 days from the date of invoice. All payments made under this Agreement shall be in US Dollar (USD) unless otherwise agreed. You may not set off or withhold any claims against any amount payable to PowerTender.
- 6.3 In event of a delay in payment, default interest and other compensation shall be paid in accordance with applicable law. In addition hereto, in case of repeated or material delays,

PowerTender reserves the right to (i) suspend Your use of the Service until full payment is made; or (ii) terminate the Agreement and discontinue the Service, without incurring any liability.

6.4 PowerTender may adjust the Service Fees from time-to-time, by giving 30 days' notice. Such notice shall be given in accordance with Section 15. If you do not accept the adjusted Service Fees, Your only recourse is to terminate the Agreement pursuant to Section 13.1, cease using the Service.

6.5 The Service Fees do not include any local, state, or foreign taxes, levies or duties of any nature (including any applicable value-add taxes) ("**Taxes**"). You are responsible for paying all Taxes relating to the Service, excluding only taxes based on PowerTender's income, property or employees. If PowerTender has the legal obligation to pay or collect Taxes for which You are responsible, the appropriate amount will be invoiced to You by PowerTender and paid by You to PowerTender unless You timely provide PowerTender with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **7. RESTRICTION OF ACCESS TO THE SERVICE**

7.1 PowerTender may carry out planned measures that affect the availability of the Service, if required for technical, maintenance (including without limitation updates and upgrades), operational or safety reasons. PowerTender shall perform such measures promptly and in a manner that limits the disruption, and undertakes to notify You within a reasonable time before initiating the required work. PowerTender offers the Service to Users world-wide, but when determining the time of day for carrying out measures pursuant to this Section 7.1, PowerTender will endeavour to avoid disrupting work when a majority of the Users would be affected.

7.2 You acknowledge and agree that PowerTender may, at its sole discretion, disable or restrict Your access to the Service due to (i) non-payment (cf. Section 6.3) or other breach of the Agreement; or (ii) risk of more than insignificant damage to PowerTender or other Users, and that in such case the User may be prevented from accessing the Service. PowerTender undertakes to notify You as soon as possible if the access to the Service is disabled or restricted.

7.3 You will not be entitled to any compensation or refunds (whether monetary or in the form of extra days of Service/extended subscription term) for the period during which You could not use the Service pursuant to a restriction or disabling of the Service in accordance with this Section 7.

## **8. CONTINUAL DEVELOPMENT**

You acknowledge and agree that PowerTender may continually develop, deliver and provide to Users ongoing innovation to the Service in the form of new features, functionality, capabilities and services. Accordingly, PowerTender reserves the right to modify the Service from time to time. PowerTender shall notify You of any material modifications to the Service that adversely affect its core functionality, as determined by PowerTender in its sole discretion, at least thirty (30) calendar days prior to the effectiveness of such modification; provided, however, that PowerTender may make modifications with less or no notice in the event the modification is required to comply with applicable laws or regulations, or to address a data protection or security issue. If the modified Service is not acceptable to You, Your only recourse is to terminate the Agreement pursuant to Section 13.1, cease using the Service. rights to the website and the service

8.1 The Service and the Website, and any content (such as text, graphics, images, audio, video, information and other materials) made available by PowerTender in connection therewith, as well as the underlying code, tools or other materials necessary to effect the look and feel of the Website (collectively the "**PowerTender Content**") may be protected by copyright, trademark, and other laws. You acknowledge and agree that the Service, the Website and the PowerTender Content, including all associated intellectual property rights, are the exclusive property of PowerTender and its licensors.

8.2 All trademarks, service marks, logos, trade names, and any other proprietary designations of PowerTender used on or in connection with the Website, the Service, and the PowerTender Content are trademarks (registered or unregistered) of PowerTender, and may not be used or displayed by You without PowerTender's express written consent. Trademarks, service marks, logos, trade names and any other proprietary designations of third parties used on or in connection with the Website, the Service, and PowerTender Content are used for identification purposes only

and may be the property of their respective owners. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Website, the Service, or the PowerTender Content.

- 8.3 No licenses or rights are granted to You by implication or otherwise under any intellectual property rights owned or controlled by PowerTender or its licensors, except for the licenses and rights expressly granted in this Agreement or other written contracts between the Parties.

## 9. PERSONAL DATA

- 9.1 Personal data means all types of information which can, directly or indirectly, be used to identify a living physical person (“**Personal Data**”). The use of the Service entails various types of Personal Data being processed for various purposes.

- 9.2 PowerTender may – as data controller – collect the following information, including Personal Data, about You or Your physical representatives, team members and employees etc. (“**Data Subjects**”):

- a) If You request to publish an ad or are otherwise required to register in order to use the Service or complete an online application form, PowerTender may collect Personal Data, such as name, e-mail address, country of residence and other information which is voluntarily submitted to PowerTender.
- b) Certain information may be collected when the Service is used, including (i) information about how You in particular use the Service; (ii) details of the queries You make; (iii) content You post, upload and/or contributes to the Service; (iv) technical data, which may include the Your URL, IP address, unique device ID, network and computer performance, browser type, language and identifying information and operating system; and (v) location information.

- 9.3 If PowerTender acts as a processor of Personal Data on Your behalf, Section 9.12 – 9.21 will apply.

- 9.4 PowerTender will process the information described in Section 9.2 for the following purposes: (i) to enable and provide the Service and integration with third party services, and to provide, personalise and improve Your experience with the Service; (ii) to send alerts or messages to You by email or otherwise, including to provide You with marketing of products and services and to inform You about updates of the Service or of the Agreement; (iii) to improve and develop the Service or new services and products and to analyse Your use of the Service; (iv) to ensure the technical functioning of the Service and to monitor and prevent use of the Service in breach of the Agreement; (v) to enforce the Agreement, including to protect the rights, property and safety of PowerTender and others; (vi) to fulfil its obligations as a data processor of certain Personal Data (User Personal Data as defined in Section 9.12); and (vii) to fulfil requirements by law.

- 9.5 PowerTender will not sell, trade or lease the Personal Data to third parties. However, PowerTender may share Personal Data with our trusted subcontractors (including Internet service providers) in order to provide the Service and for the purposes set out in this Agreement. They may need access the Personal Data in order to perform such services, but they will not be allowed to use the Personal Data for any other purpose. Subject to Section 9.15 below (when PowerTender act as a processor) processing of Personal Data may take place in countries other than the Data Subject’s home country. Such transfer will always be made according to current data legislation to ensure that the information is appropriately protected while in transit and while in the destination country. PowerTender will take all reasonable measures to ensure that the Personal Data is protected when transferred to a country outside EU/EEA, for example by entering into the Standard Contractual Clauses with the recipient. The Standard Contractual Clauses can be found here: [http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index\\_en.htm](http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm).

- 9.6 You acknowledge and agree that PowerTender in the course of providing the Service within the scope of this Agreement will log, collect, process and use any anonymized information (i.e. such information that does not identify a natural person) and data relating to the Service. Such collection and processing will take place automatically, without any notice to You, and PowerTender will be free to use the anonymized information in its business.

- 9.7 PowerTender takes all appropriate technical and organisational security measures which are necessary to safeguard the Personal Data against unauthorised access, modification, or destruction. However, providing Personal Data over digital channels always entails a risk since it is not possible to completely protect technical systems from unauthorised access.
- 9.8 Data Subjects are entitled, once each year and free of charge, to request information of which Personal Data, if any, about them is processed by PowerTender and to have any incorrect information corrected. If the Data Subject would like to know how the Data Subject's Personal Data is processed by PowerTender, the Data Subject can send a written, signed request to PowerTender (see **Contact Information** on the Website).
- 9.9 The Personal Data will not be stored for longer than is necessary considering the purposes of the processing and PowerTender will delete Personal Data in the manner which follows from applicable legislation.
- 9.10 When approving this Agreement, You approve PowerTender's use and processing of information in accordance with the description provided in this Section 9.
- 9.11 You are liable to ensure that any Data Subject who are Your physical representatives, team members and employees etc., whose Personal Data may be processed by PowerTender, are made aware of the contents of this Section 9 and provide necessary consents, at the latest when their Personal Data is provided to PowerTender.
- 9.12 For Personal Data contained in User Data ("**User Personal Data**"), for example contact details to employees or representatives of You contained in ads, You will act as data controller, and PowerTender will act as data processor. You hereby represent and warrant that You have collected such User Personal Data in accordance with applicable data protection laws. PowerTender will process User Personal Data in accordance with Your instructions and You agree that this Agreement is Your complete and final instructions to PowerTender in relation to processing of User Personal Data on Your behalf.
- 9.13 PowerTender will not access or use User Personal Data, except as necessary to provide the Service. PowerTender will not disclose User Personal Data to any third party, except to other Users (Sellers and/or Buyers with whom the User wishes to interact as a consequence of using the Service) or if necessary to comply with law or a valid and binding order of a law enforcement agency. If compelled to disclose User Personal Data to a law enforcement agency, then PowerTender will give You reasonable notice of the demand to allow for You to seek a protective order or other appropriate remedy unless PowerTender is legally prohibited from doing so.
- 9.14 PowerTender will restrict its personnel from processing User Personal Data without authorization from PowerTender. PowerTender will also impose contractual obligations upon its personnel to protect User Personal Data, including obligations regarding confidentiality, data protection and data security.
- 9.15 PowerTender will store and process User Personal Data within EU/EEA, and will not transfer User Personal Data outside EU/EEA unless it is necessary to comply with law or a valid and binding order of a law enforcement agency as described in Section 9.13 above.
- 9.16 Section 9.7 will apply for PowerTender's processing activities as a processor of User Personal Data.
- 9.17 PowerTender shall, to the extent required under applicable data protection laws and upon Your request, assist You in fulfilling Your legal obligations under such laws, including but not limited to Your obligation to respond to requests for exercising the Data Subject's rights to information regarding processing of their User Personal Data. PowerTender shall be entitled to reasonable compensation on a time and material basis, applying PowerTender's at the time applicable hourly rates, for assistance to You under this Section 9.17.
- 9.18 PowerTender has engaged a third party hosting provider (Amazon Web Services Inc.) to host the Service. PowerTender has imposed the same obligation on the hosting provider as applicable to itself under Sections 9.12 - 9.21. Further to this, the hosting provider is certified under ISO 27001. PowerTender will not change hosting provider without giving prior written notification to all Users of the Service.

- 9.19 If PowerTender becomes aware of any unlawful access to, or disclosure or alteration of any User Personal Data processed by PowerTender or its hosting provider ("**Security Incident**"), PowerTender will without undue delay (i) notify You of the Security Incident; and (ii) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. PowerTender's obligation to report or respond to a Security Incident under this Section 9.19 is not and will not be construed as an acknowledgement by PowerTender of any fault or liability of PowerTender with respect to the Security Incident. Notification of a Security Incident will be made to e-mail address submitted by User when registering for the Service.
- 9.20 In Your capacity as the data controller, You are entitled to take measures necessary to verify that PowerTender is able to comply with its obligations under Section 9.12 - 9.21, and that PowerTender has in fact undertaken the measures to ensure such compliance. PowerTender undertakes to make available to You all information and all assistance reasonably necessary to demonstrate compliance with the obligations laid down in Section 9.12 - 9.21 and allow for and contribute to audits, including on-site inspections, conducted by You or another auditor mandated by You. PowerTender shall be entitled to reasonable compensation on a time and material basis, applying PowerTender's at the time applicable hourly rates for such assistance.
- 9.21 Upon termination of this Agreement, PowerTender will delete all User Personal Data processed on Your behalf, or – if requested by You, assist You in transferring User Personal Data to You. PowerTender shall be entitled to reasonable compensation on a time and material basis, applying PowerTender's at the time applicable hourly rates for such assistance.

## **10. CONFIDENTIALITY**

- 10.1 As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") under this Agreement, (i) which is in tangible form and marked as "confidential" at the time it is disclosed; (ii) which is disclosed orally or in other intangible form, provided that such information is identified as confidential when disclosed, and is subsequently confirmed as being confidential in a written communication from the Disclosing Party to the Receiving Party within fifteen (15) days of the disclosure; or (iii) which must reasonably be understood by the Receiving Party to be confidential or proprietary given the nature of the information and the circumstances under which it is disclosed regardless of whether it is identified as confidential by the Disclosing Party. Confidential Information shall include, but not be limited to the terms and conditions of this Agreement (including Service Fees and other terms), the contents of ads, and the Disclosing Party's business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that a Receiving Party can show (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 10.2 Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information; provided that a Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, agents and/or representatives who have a need to know such Confidential Information for purposes of this Agreement and who are bound to a written agreement protecting such Confidential Information as required hereby. In addition, without the Disclosing Party's written permission, the Receiving Party shall not use any Confidential Information of the Disclosing Party other than in connection with the Receiving Party's performance hereunder and for the purposes described herein.
- 10.3 If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's expense, if the Disclosing Party wishes to contest the disclosure.
- 10.4 If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this Section 10, the Disclosing Party shall have the right, in addition to

any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

- 10.5 This Section 10 shall remain in effect during the term of this Agreement and (i) for a period of three (3) years thereafter for Confidential Information that does not constitute a trade secret or know-how; and (ii) for so long as such Confidential Information is not in the public domain for Confidential Information that constitutes a trade secret or know-how.

## **11. INDEMNIFICATION**

YOU AGREE TO RELEASE, DEFEND, INDEMNIFY, AND HOLD POWERTENDER AND ITS AFFILIATES AND SUBSIDIARIES, AND THEIR OFFICERS, DIRECTORS, AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE LEGAL AND ACCOUNTING FEES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH (i) YOUR ACCESS TO OR USE OF THE WEBSITE, SERVICES, OR POWERTENDER CONTENT; (ii) YOUR VIOLATION OF THIS AGREEMENT; (iii) THE USER DATA; AND/OR (iv) YOUR INTERACTION WITH ANY USER.

## **12. DISCLAIMERS AND LIMITATIONS OF LIABILITY**

- 12.1 YOU ACKNOWLEDGE AND AGREE THAT POWERTENDER HAS NO LIABILITY, AND YOU AGREE NOT TO ATTEMPT TO IMPOSE ANY LIABILITY OR SEEK LEGAL REMEDY FROM POWERTENDER, FOR ANY ACTIONS OR OMISSIONS OF OTHER USERS OR OTHER THIRD PARTIES WHICH CAUSE YOU HARM.

- 12.2 THE SERVICE IS PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, POWERTENDER HEREBY SPECIFICALLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, UNDERTAKINGS AND GUARANTIES, INCLUDING, WITHOUT LIMITATION, ANY WITH RESPECT TO TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

- a) POWERTENDER SHALL NOT BE RESPONSIBLE FOR ENSURING AND DOES NOT REPRESENT OR WARRANT THAT (i) THE SERVICE WILL MEET YOUR BUSINESS REQUIREMENTS; (ii) THE SERVICE WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE OR THAT THE RESULTS OBTAINED FROM ITS USE WILL BE ACCURATE OR RELIABLE; OR (iii) ALL DEFECTS AND DEFICIENCIES IN THE SERVICE, ITS OPERATION OR FUNCTIONALITY, CAN BE FOUND OR CORRECTED;
  - b) POWERTENDER WILL NOT BE RESPONSIBLE FOR ANY LOSS OF DATA THAT IS NOT DUE TO A BREACH OF THIS AGREEMENT;
  - c) POWERTENDER DOES NOT GIVE ANY WARRANTIES REGARDING ANY DATA AND/OR INFORMATION PUBLISHED OR OTHERWISE MADE AVAILABLE ON THE WEBSITE OR ON ANY EXTERNAL WEBSITES LINKED TO OR REFERRED TO ON THE WEBSITE.
- 12.3 NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE TO THE OTHER PARTY FOR ANY LOSS, DAMAGE OR INCONVENIENCE SUFFERED BY THE OTHER OR BY ANY THIRD PERSON, TO THE EXTENT THAT SUCH LOSS, DAMAGE OR INCONVENIENCE IS CAUSED BY THE FAILURE OF THE OTHER PARTY TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.
- 12.4 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL POWERTENDER BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF CAPITAL, LOSS OF ACTUAL OR ANTICIPATED PROFITS OR INCOME, LOSS OF USE, BUSINESS INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURES, DAMAGES OF GOODWILL, PROCUREMENT OF SUBSTITUTE SERVICES, HOWEVER CAUSED, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING THE USE OR INABILITY TO USE THE SERVICE), UNDER



STATUTE OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT POWERTENDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR WHETHER SUCH DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF POWERTENDER.

- 12.5 TO THE EXTENT POWERTENDER IS LIABLE TO YOU FOR ANY DAMAGES, POWERTENDER'S TOTAL AND AGGREGATE LIABILITY, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT OR ANY OTHER CAUSE OF ACTION OR OMISSION SHALL BE LIMITED TO THE AGGREGATE SERVICE FEES THAT YOU HAVE PAID TO POWERTENDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT CAUSING THE DAMAGE, OR 500 USD IF NO SUCH PAYMENTS HAVE BEEN MADE.
- 12.6 IF POWERTENDER IS PREVENTED FROM FULFILLING ITS OBLIGATIONS UNDER THE AGREEMENT DUE TO A CIRCUMSTANCE BEYOND POWERTENDER'S CONTROL, INCLUDING BUT NOT LIMITED TO LIGHTNING STRIKE, LABOUR DISPUTE, FIRE, NATURAL DISASTER, CHANGES IN REGULATIONS, GOVERNMENTAL ACTIONS AND/OR A FAILURE OR DELAY IN SERVICES PROVIDED BY A SUBCONTRACTOR DUE TO A CIRCUMSTANCE STATED HEREIN, THEN THIS SHALL CONSTITUTE A GROUND FOR RELEASE RESULTING IN AN EXTENSION OF THE DEADLINE FOR PERFORMANCE AND RELEASE FROM DAMAGES AND OTHER REMEDIES. IF THE PERFORMANCE OF THE AGREEMENT IN SUBSTANTIAL ASPECTS IS PREVENTED FOR A PERIOD EXCEEDING THREE (3) MONTHS DUE TO A CIRCUMSTANCE STATED HEREIN, EACH PARTY SHALL HAVE THE RIGHT TO TERMINATE THE AGREEMENT.
- 12.7 THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH IN THIS SECTION 12 FORM AN INTEGRAL PART OF THIS AGREEMENT AND SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. POWERTENDER WOULD NOT BE ABLE TO ENTER INTO THIS AGREEMENT ABSENT THE PROVISIONS OF THIS SECTION 12. EACH OF THE PARTIES CONSIDERS THAT THE LIMITATIONS AND EXCLUSIONS ARE REASONABLE GIVEN THE CIRCUMSTANCES UNDER WHICH THE AGREEMENT IS ENTERED INTO.

### **13. TERMINATION**

- 13.1 In addition to any other rights that the Parties have to terminate the Agreement, as stipulated in the Agreement:
  - a) You may terminate this Agreement with immediate effect pursuant to the provisions in Section 2, 6.4 or 8, upon which termination You may have a right to a refund of prepaid fees pursuant to Section 13.2.
  - b) You may terminate this Agreement without cause and discontinue the use of the Service at any time, with immediate effect.
  - c) PowerTender may terminate this Agreement without cause upon thirty (30) days' notice to You.
  - d) Each Party may terminate this Agreement with immediate effect in the event (i) the other party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to cure such breach or provide the other party with an acceptable plan for curing such breach within thirty (30) days after receipt by the breaching party of written notice specifying the breach; (ii) a receiver, trustee, administrator, or administrative receiver is appointed for the other party or its property; (iii) the other party makes an assignment for the benefit of creditors; (iv) any proceedings should be commenced against the other party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; or (v) the other party is bankrupt, insolvent, liquidated or dissolved.
- 13.2 Termination does not relieve You of the obligation to pay any Service Fees accrued or payable to PowerTender prior to the effective date of termination. If You subscribe to the Service and have prepaid service fees, PowerTender shall refund to You on a pro-rata basis any such prepaid fees for the remainder of the then current service term if You terminate the Agreement pursuant to

Section 13.1(a) or (d) or if PowerTender terminates the Agreement pursuant to Section 13.1(c). In the event of termination of this Agreement by PowerTender pursuant to Section 13.1(d), all amounts payable by You under this Agreement will become immediately due and payable and You have no right to recover any prepaid fees.

- 13.3 If this Agreement is terminated by PowerTender pursuant to Section 13.1(c), any ads published by You prior to the date of termination will remain published on the Website (i) for the remainder of their designated service period and ten (10) days thereafter; or (ii) if no service period has been established, for thirty (30) days following the date of termination. However, during this period You will only have access to such features of the Service that are required in order for You to review and administrate the existing ads or material submitted in relation thereto. If the Agreement is terminated for any other reason, Your access to the Service will be revoked upon the date of termination, and any published ads will be removed.
- 13.4 If You have paid all fees due hereunder, PowerTender will upon Your request (which must be submitted within thirty (30) days of the effective date of termination), make available to You a facility for exporting User Data. After such thirty (30) day period, PowerTender shall have no obligation to maintain or provide any User Data and shall thereafter delete all User Data in its systems or otherwise in its possession or under its control. Notwithstanding the foregoing, return or deletion of User Personal Data shall be handled in accordance with Section 9.21.
- 13.5 All provisions regulating rights and obligations of the parties, which by their express terms or by implication are to be performed after termination of this Agreement, or are prospective in nature, will survive the termination. Specifically, and for the avoidance of doubt, the provisions of Sections 0, 10, 11, 12, 13.2, 13.4, 13.5, 14, and 16 shall survive the expiration or termination of this Agreement. If a specific time for survival is set forth in any of the surviving sections, then the provision shall cease to apply upon the expiration of such period.

#### **14. ASSIGNMENT**

You may not assign or transfer this Agreement or Your rights or obligations hereunder without PowerTender's prior written consent. Any attempt by You to do assign or transfer this Agreement or Your rights or obligations hereunder will be null and of no effect. PowerTender may assign this Agreement and its rights or obligations under this Agreement, at its sole discretion without Your prior consent and without restriction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

#### **15. NOTICES**

Unless otherwise expressly set forth in this Agreement, all notices and other communications from PowerTender to You under this Agreement shall be made in writing and be deemed to have been duly given if (i) posted on the Website, in a reasonably prominent place accessible to You; or, if PowerTender deems it appropriate, (ii) sent to the last-known email address provided by You to PowerTender. It is Your responsibility to inform PowerTender of any change in contact details, and to periodically review the Website for any notices. Notices and other communications hereunder shall be deemed to be received by You twenty-four (24) hours following PowerTender's posting of such notice on an area of the Website that is accessible to You, or the time of sending in case of transmission by e-mail.

#### **16. GOVERNING LAW AND DISPUTES**

- 16.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed and interpreted in accordance with Swedish laws without regard to its conflict of law rules.
- 16.2 Any dispute, controversy or claim arising out of or in connection with this Agreement or any non-contractual obligation arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Malmö, Sweden, and the language to be used in the arbitral proceedings shall be Swedish or English, as agreed between the parties.