

**POWER Performance, LLC  
Terms of Use**

Last Modified: January 29, 2021

**1. Acceptance of the Terms of Use**

These Terms of Use ("**Terms of Use**") are entered into by and between You and/or the person upon who's behalf You are accessing the Website ("**You**") and POWER Performance, LLC ("**POWER,**" "**Company,**" "**We,**" or "**Us**"). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, "**Terms of Use**"), govern Your access to and use of SanfordPOWER.com/Irvine including any content, pages, functionality, and services offered on or through said website (the "**Website**"), whether as a guest or a registered user.

Please read the Terms of Use carefully before You start to use the Website.

**BY USING OR INTERACTING WITH THE WEBSITE, BY CLICKING TO ACCEPT TO THE PRIVACY POLICY, OR BY SUBMITTING INFORMATION ON YOUR BEHALF OR THAT OF ANOTHER PERSON, YOU ACCEPT AND AGREE TO BE BOUND AND ABIDE BY BOTH THESE TERMS OF USE AND OUR PRIVACY POLICY, FOUND AT [sanfordpower.com/privacy-policy](http://sanfordpower.com/privacy-policy), INCORPORATED HEREIN BY REFERENCE ("PRIVACY POLICY"). YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE OR THE PRIVACY POLICY, YOU MUST NOT ACCESS OR USE THE WEBSITE.**

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately. Your continued use of the Website following the posting of any revised Terms of Use means that You accept and agree to the changes. You are expected to check this page each time You access this Website so You are aware of any changes, as they are binding on You.

We reserve the right to withdraw or amend this Website, and any service, or material provided on the Website, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Website is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Website or the entire Website to You.

**2. General**

THE PURPOSE OF THIS WEBSITE IS NOT TO RECOMMEND ANY PARTICULAR SERVICE OTHER THAN TO PROVIDE YOU INFORMATION AND RESOURCES CONCERNING SERVICES. THE INFORMATION PROVIDED IN THIS SITE IS FOR INFORMATIONAL PURPOSES ONLY.

There are some service providers with whom POWER has a contractual relationship listed on the Website, if you websites of third parties listed on Our Website or enter into a relationship with that service provider, such interactions, communications, and relationships are between you and that service provider.

We make no representation whatsoever about any other website that you may access through this site. When you access a non-POWER website, please understand that it is independent from our website, and that we have no control over the content on that website. A hyperlink to a non-POWER website does not mean that we endorse or accept any responsibility for the content or use of the linked site. We do not verify the credentials, status, quality, accuracy, etc. of any information, services, or service provider listing on the Website and do not take any responsibility for any information, negligence, action or inaction, or liability, arising from, or relating to, services provided by a service provider directly to you. You are responsible to research and use Your own independent judgment regarding the representations, merits, quality, and reputation of any service provider with whom You communicate.

### **3. Access and Use**

You are responsible for both:

- Making all arrangements necessary for Your access to the Website; and,
- Ensuring that all persons who access the Website through Your internet connection are aware of these Terms of Use and comply with them.

You agree that the use of of the Website, is governed by our [sanfordpower.com/privacy-policy](http://sanfordpower.com/privacy-policy) and You consent to all actions we take with respect to Your information consistent with our Privacy Policy.

We have the right to disable your use of the Website at any time in our sole discretion for any or no reason, including if, in our opinion, You have violated any provision of these Terms of Use.

### **4. Copyright Notice**

The material on this website is copyrighted. It is protected by international copyright and trademark laws. You have permission to download information from this site for your personal, non-commercial use, provided that you agree to keep intact all copyright and other proprietary notices. Aside from downloading information for your personal, non-commercial use, you may not reproduce, republish or redistribute material from the Our site without Our express written consent of or the consent of the copyright holder, if the copyright holder is not Us.

### **5. Trademarks**

POWER Performance, LLC, POWER Sanford Health, and all related names, logos, product and service names, designs and slogans are trademarks of the Company, its licensors, third parties, or service providers. You must not use such marks without the prior written permission of the Company or their respective owner. All other names, logos, product and service names, designs and slogans on this Website are the trademarks of their respective owners.

## **6. Prohibited Uses**

As a condition of your use of this Site, you warrant to the Company that you will not use the Site for any purpose that is unlawful or prohibited by these Terms of Use.

## **7. Monitoring and Enforcement; Termination**

We have the right to:

- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Website.
- Terminate or suspend Your access to all or part of the Website for any or no reason, including without limitation, any violation of these Terms of Use.

WITHOUT LIMITING THE FOREGOING, WE HAVE THE RIGHT TO FULLY COOPERATE WITH ANY LAW ENFORCEMENT AUTHORITIES OR COURT ORDER REQUESTING OR DIRECTING US TO DISCLOSE THE IDENTITY OR OTHER INFORMATION OF ANYONE POSTING ANY MATERIALS ON OR THROUGH THE WEBSITE. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS, FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR AS A RESULT OF, ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES. WE HAVE NO LIABILITY OR RESPONSIBILITY TO ANYONE FOR PERFORMANCE OR NONPERFORMANCE OF THE ACTIVITIES DESCRIBED IN THIS SECTION.

## **8. Reliance on Information Posted**

We do not warrant the accuracy, completeness or usefulness of information on this Website. Any reliance you place on such information is strictly at Your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by You or any other visitor to the Website, or by anyone who may be informed of any of its contents.

This Website includes content provided by third parties, including materials provided by other users, third-party licensors, syndicators, aggregators and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by the Company, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of the Company.

#### **9. Information About You and Your Visits to the Website**

All information we collect on this Website is subject to our Privacy Policy. By using the Website, You consent to all actions taken by us with respect to Your information in compliance with the Privacy Policy.

#### **10. Linking to the Website**

You may link to our homepage, provided You do so in a way that is fair and legal and does not damage our reputation, or take advantage of it, but You must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part.

You agree to cooperate with us in causing any unauthorized framing or linking immediately to cease. We reserve the right to withdraw linking permission without notice.

#### **11. Links from the Website**

If the Website contains links to other sites and resources provided by third parties, or Service Providers, these links are provided for Your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links by Service Providers. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from Your use of them. If You decide to access any of the third party websites linked to this Website, You do so entirely at Your own risk and subject to the terms and conditions of use for such websites.

#### **12. Geographic Restrictions**

**CURRENTLY, THIS WEBSITE FOR USE ONLY BY PERSONS PHYSICALLY LOCATED IN THE UNITED STATES.** The owner of the Website is based in the State of South Dakota in the United States. We make no claims that the Website or any of its content is accessible or appropriate outside of the United States. Access to the Website may not be legal by certain persons or in certain countries. If

You access the Website from outside the United States, You do so on Your own initiative and are responsible for compliance with local laws.

**13. Disclaimer of Warranties**

YOUR USE OF THE WEBSITE, ITS CONTENT AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE IS AT YOUR OWN RISK. THE WEBSITE, ITS CONTENT AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE WEBSITE. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE, OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

**14. Limitation on Liability**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES OR THEIR LICENSORS, SUPPLIERS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, TRUSTEES, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES OR ANY



SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

IN THE EVENT THAT APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. HOWEVER, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE COMPANY, OR ANY AFFILIATE, LICENSOR, SUPPLIER, SERVICE PROVIDER, OR ANY OTHER PARTY INVOLVED IN CREATING THIS WEBSITE AND/OR ITS CONTENTS, TO YOU OR ANY THIRD PARTY FOR DAMAGES, LOSSES, AND CAUSES OF ACTION EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THIS WEBSITE OR \$50.00, WHICHEVER IS LESS. IN SUCH EVENT, YOU AGREE TO BRING ANY AND ALL ACTIONS WITHIN ONE (1) YEAR FROM THE DATE THE CAUSE OF ACTION FIRST OCCURRED AND THAT ACTIONS BROUGHT AFTER THIS DATE WILL BE FOREVER BARRED.

#### **15. Indemnification**

You agree to defend, indemnify and hold harmless the Company, its affiliates, licensors, service providers, and its and their respective officers, trustees, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to Your violation of these Terms of Use or Your use of the Website, including, but not limited to, any use of the Website's content, services and products other than as expressly authorized in these Terms of Use, or Your use of any information obtained from the Website.

#### **16. Governing Law; Jurisdiction; Arbitration**

**PLEASE BE ADVISED THAT THESE TERMS OF USE AND THIS SECTION CONTAINS A WAIVER OF RIGHT TO JURY TRIAL CLAUSE, CLASS ACTION WAIVER, AND AN ARBITRATION CLAUSE, ALL OF WHICH AFFECT YOUR RIGHTS REGARDING HOW TO RESOLVE ANY DISPUTE WITH US.**

All matters relating to the Website and these Terms of Use, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of South Dakota without giving effect to any choice or conflict of law provision or rule (whether of the State of South Dakota or any other jurisdiction).

Any legal suit, action or proceeding arising out of, or related to, these Terms of Use or the Website shall be instituted exclusively in the federal courts of the United States or the courts of the State of South Dakota, in each case located in the City of Sioux Falls and County of Minnehaha, although we retain the right to bring any suit, action or proceeding against You for breach of these Terms of Use in Your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over You by such courts and to venue in such courts.

**YOU AND THE COMPANY HEREBY AGREE TO WAIVE ANY RIGHT WE MAY HAVE TO LITIGATE ANY SUIT, ACTION, OR PROCEEDING BEFORE A JURY.**

**YOU ALSO AGREE TO NOT JOIN OR CONSOLIDATE ANY CLAIMS BY OR AGAINST US IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.**

At Company's sole discretion, We may require You to submit any disputes You may have arising from these Terms of Use or use of the Website, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association or similar organization applying South Dakota law.

**17. Limitation on Time to File Claims**

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE WEBSITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

**18. Waiver and Severability**

No waiver by the Company of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

**19. Entire Agreement**

These Terms of Use and our Privacy Policy, constitute the sole and entire agreement between You and POWER Performance, LLC with respect to the Website and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the Website.