

JHW Web Hosting Agreement

This web hosting agreement ("**Agreement**") is by and between JHW Development LLC, a limited liability company located at 405 Monroe Avenue, Helena, Montana 59601-5960 ("**JHW**"), and the person or entity who executed the invoice ("**Client**" or "**You**"). This Agreement is effective as of the date You executed the invoice. JHW and Client may be referred to collectively as the "**Parties**" or individually as a "**Party**."

1. **Acceptance of this Agreement.** The Agreement governs Your access to and use of the Services. Please read this Agreement carefully before You start to use the Services. **By using the Services or by executing the invoice, You accept and agree to be bound and abide by this Agreement.** If You do not want to agree to this Agreement, You must not access or use the Services. The Services are offered and available to users who are 18 years of age or older. By using the Services, You represent and warrant that You are of legal age to form a binding contract with JHW and that You have read, understood, and agree to be bound by this Agreement. If You agree to this Agreement on behalf of an entity, You represent that You have the authority to bind such entity to this Agreement. If You do not meet all of these requirements, You must not access or use the Services.
2. **Services.** Subject to the terms and conditions of this Agreement, JHW will provide Client with the following web hosting services ("**Services**"):
 - 2 GB storage, unless otherwise agreed upon in writing
 - 10 GB bandwidth
 - Scheduled weekly backups
 - On-demand backups
 - Weekday support between 9:00 am - 5:00 pm MST
3. **Term and Termination.**
 - 3.1. **Initial Term.** The term of this Agreement commences as of the effective date of this Agreement and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect for twelve (12) months ("**Initial Term**").
 - 3.2. **Renewal.** Unless either Party provides written notice of nonrenewal at least 60 days prior to the end of the then-current term, upon expiration of the Initial Term, this Agreement shall automatically renew for additional successive twelve (12) month terms (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). Renewal prices and terms of this agreement are subject to change. Renewal of services indicates Client's agreement to any Agreement revisions and price changes. Fees for Renewal Terms will be automatically invoiced to the Client's account.
 - 3.3. **Termination.** In addition to any other express termination right set forth in this Agreement:
 - 3.3.1. JHW shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause, and JHW shall exercise this

option by giving Client written notice of termination specifying the date on which termination shall become effective;

3.3.2. Client may terminate this Agreement at any time, effective on written notice to JHW; and

3.3.3. except as provided in subsection (i), either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (1) is incapable of cure; or (2) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

3.4. Effect of Expiration of Termination. Upon expiration or earlier termination of this Agreement, Client shall immediately discontinue use of the Services. No expiration or termination will affect Client's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Client to any refund. Unless Client terminates for JHW's material breach, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Client shall immediately pay such Fees, together with all previously-accrued but not yet paid Fees.

3.5. Survival. The Sections dealing with Proprietary Information, intellectual property, and any right or obligation of the Parties in this Agreement which, by its express terms, nature, or context is intended to survive termination or expiration of this Agreement, shall continue indefinitely and shall survive any termination or expiration of this Agreement.

4. Fees and Payment.

4.1. Fees. Client shall pay JHW the fees set forth in the invoice ("**Fees**") or as otherwise delineated or adjusted as set forth in this Agreement.

4.2. Renewal Fees. The Fees applicable to each Renewal Term shall automatically increase to match JHW's then-current price for similar Services, provided that in no event shall any such price adjustment exceed 15% of the previous Term's prices for the same Services.

4.3. Taxes. Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client under this Agreement, other than any taxes imposed on JHW's income.

4.4. Payment. JHW shall bill Client by invoice. Client shall pay all Fees on or prior to the due date(s) and on the terms set forth in the applicable invoice. Client shall make all payments in US Dollars by payment method agreed upon by the Parties. Client shall make payments to the address or account specified in the invoice or such other address or account as JHW may specify in writing from time to time. Client's full

payment per invoice is due within thirty (30) days of receipt, unless otherwise agreed upon in writing.

4.5. Late Payment. If Client fails to make any payment under this Agreement when due, then, in addition to all other remedies that may be available:

4.5.1. JHW may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable law;

4.5.2. Client shall reimburse JHW for all reasonable costs incurred by JHW in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and

4.5.3. if such failure continues for ten (10) days following written notice, JHW may suspend performance of the Services until all past due amounts and interest have been paid, without incurring any obligation or liability to Client or any other person by reason of such suspension.

4.6. Payment Disputes. Client shall notify JHW in writing of any dispute with any Fee invoice, along with substantiating documentation, within thirty (30) days from the date of the payment request. Client will be deemed to have accepted all Fee requests for which JHW does not receive timely notification of disputes and shall pay all undisputed amounts due under such Fee requests within the periods described in this Agreement.

5. Proprietary Information. Proprietary information exchanged under this Agreement shall be treated as such by Client. Such information includes, but is not limited to, the provisions of this Agreement, Services information, estimates, and pricing.

6. Use Restrictions. Client agrees to not reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; remove any proprietary notices from the Services; use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; bypass or breach any security device or protection used by the Services; input, upload, transmit, or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code; damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services; or access or use the Services in any manner or for any purpose to store or transmit libelous or otherwise unlawful or tortious material, obscene, or defamatory content

7. Suspension or Termination. JHW may, directly or indirectly suspend, terminate, or otherwise deny Client's access to or use of all or any part of the Services without incurring any resulting obligation or liability, if: (i) JHW receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires JHW to do so; or (ii) JHW believes, in its good faith discretion, that: (1) Client has failed to comply with any material term of this Agreement or accessed or used the

Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instructions, provided JHW has provided Client prior written notice and provided a reasonable opportunity to cure; (2) Client is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated (any such suspension described in subclause (i), (ii), or (iii), a “**Services Suspension**”). This Section does not limit any of JHW's other rights or remedies, whether at law, in equity, or under this Agreement. JHW shall use commercially reasonable efforts to provide written notice of any Services Suspension to Client and to provide updates regarding resumption of access to the Services following any Services Suspension. JHW shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Services Suspension is cured. JHW will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Client may incur as a result of a Services Suspension.

8. **JHW Representations, Warranties, and Covenants.** JHW represents, warrants, and covenants to Client that JHW will perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement. Except for the limited warranty set forth in this Section 8, to the maximum extent provided by law, all Services are provided "as is." JHW specifically disclaims all implied warranties or merchantability, fitness for a particular purpose, title, and non-infringement, and all warranties arising from course of dealing, usage, or trade practice. Without limiting the foregoing, JHW makes no warranty of any kind that the Services or results of the use thereof will meet Client's or any other person's requirements, operate without interruption, achieve any intended result, or be compatible or work with any software, system, or other services. All third-party materials are provided "as is" and any representation or warranty of or concerning any third-party materials is strictly between Client and the third-party owner or distributor of the third-party materials.
9. **Client Representations and Warranties.** Client represents, warrants, and covenants to JHW that (i) data provided by Client will not infringe, misappropriate, or otherwise violate any intellectual property rights, any privacy or publicity, or other rights of any third-party, or violate any applicable law or other personal or proprietary right, and (ii) to the best of Client's knowledge, such data does not contain any matter that is defamatory, obscene, unlawful, threatening, abusive, or tortious. Client further represents, warrants, and covenants to JHW that it owns all data that it provides or has obtained all permissions, releases, rights, or licenses required to use such data to engage in Client's activities in connection with the Services without obtaining any further releases or consents.
10. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (iii) the execution of this Agreement by its representative whose signature is set

forth on this Agreement or applicable invoice has been duly authorized by all necessary corporate or organizational action of such Party; and (iv) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

- 11. Indemnification.** Client shall indemnify, hold harmless, and, at JHW's option, defend JHW from and against any losses resulting from any third-party claim that Client's use of the Services infringes or misappropriates such third-party's intellectual property rights and any third-party claims based on Client's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by JHW or reasonably anticipated to be used in combination with the Services; (iv) modifications to the Services made by or on behalf of Client; or (v) materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client, including JHW's compliance with any specifications or directions provided by or on behalf of Client, provided that Client may not settle any third-party claim against JHW unless JHW consents to such settlement, and further provided that JHW will have the right, at its option, to defend itself against any such third-party claim or to participate in the defense thereof by counsel of its own choice. This Section 11 sets forth Client's sole remedies and JHW's sole liability and obligation for any actual, threatened, or alleged claims that the Services infringe, misappropriate, or otherwise violate any intellectual property rights of any third-party.
- 12. Limitation of Liability.** To the greatest extent allowed by law, in no event will JHW be liable under or in connection with this Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, and otherwise, for any: (a) consequential damages; (b) increased costs, diminution in value or lost business, production, revenues, or profits; (c) loss of goodwill or reputation, (d) use, inability to use, loss, interruption, delay or recovery of any data, or (e) cost of replacement goods or services, in each case regardless of whether JHW was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable. In no event will JHW's aggregate liability arising out of or related to this Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, and otherwise exceed the total amounts paid to JHW under this Agreement in the one month preceding the event giving rise to the claim or \$200, whichever is less. The foregoing limitations apply even if any remedy fails of its essential purpose.
- 13. Miscellaneous.**

 - 13.1. Entire Agreement.** This Agreement, together with any other documents incorporated by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.
 - 13.2. Force Majeure.** Except for the payment of Fees, in no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any

failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

- 13.3. Waiver.** No waiver by any Party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 13.4. Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 13.5. Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of Montana without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Montana. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted under this Agreement will be instituted exclusively in the federal courts of the United States or the courts of the State of Montana in each case located in the City of Helena and Lewis and Clark County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- 13.6. Assignment.** JHW may assign this Agreement without written consent of Client provided the assignment is pursuant to a merger, consolidation, reorganization, asset or stock sale provided the assignee remains fully liable under the terms of the Agreement. Otherwise, neither Party may assign this Agreement without the prior written consent of the other. No assignment, delegation, or transfer will relieve Client of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.
- 13.7. Equitable Relief.** Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Sections related to Proprietary

Information, intellectual property, or, in the case of Client, Sections related to Use Restrictions, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

- 13.8. Attorneys' Fees.** In the event that any action is instituted or commenced by either Party against the other Party arising out of or related to this Agreement, the substantially prevailing Party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.
- 13.9. Reservation of Rights.** JHW reserves all rights not expressly granted to Client in this Agreement. Except for any limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Client or any or any third-party any intellectual property rights or other right, title, or interest in or to JHW's intellectual property.

**BY USING THE SERVICES OR BY EXECUTING THE INVOICE, YOU ACCEPT AND AGREE TO
BE BOUND AND ABIDE BY THIS AGREEMENT.**