

**Hearken Media**  
**Web Hosting Agreement**  
**Last Modified: 2020-09-23**

This Web Hosting Agreement (this “**Agreement**”) is between Jonathan Hall dba Hearken Media, a Sole Proprietorship formed under the laws of the Province of **British Columbia** with its mailing address at PO Box 562, Telkwa, BC V0J 2X0 (“Hearken Media”) and the person (individual or legal person) who orders Hearken Media's web hosting service (“**Customer**”). This Agreement governs Customer’s use of Hearken Media’s web hosting service.

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**1. Services.** Subject to the terms of this Agreement, and contingent on Customer’s satisfaction of Hearken Media’s credit approval requirements, Hearken Media agrees to provide the web hosting services described in the Service Quote for the fees stated in the Service Quote.

**2. Term.**

The initial service term of the Agreement shall begin on the date that Hearken Media generates an e-mail message to Customer announcing the activation of Customer’s account (the “**Service Commencement Date**”) and shall continue for the number of months stated in the Service Quote (the “**Initial Term**”). Upon expiration of the Initial Term, this Agreement shall automatically renew for an unlimited number of successive renewal terms of the same length as the Initial Term (each a “**Renewal Term**”) unless Hearken Media or Customer provides the other with written notice of non-renewal at least seven (7) days prior to the expiration of the Initial Term or then-current Renewal Term, as

applicable. The Initial Term and any Renewal Term may be referred to collectively in this Agreement as the “**Term.**”

### **3. Payments.**

#### **(a) Fees.**

Fees are payable in advance on the first day of each billing cycle. Customer’s billing cycle shall be as indicated on the Service Quote, beginning on the Service Commencement Date. Hearken Media may require payment for the first billing cycle before beginning service. If the Service Quote provides for credit/debit card billing, Customer authorizes Hearken Media to bill subsequent fees to the credit/debit card on or after the first day of each successive billing cycle during the Term of this Agreement; otherwise Hearken Media will invoice Customer via electronic mail. Invoiced fees may be issued on or before the 1<sup>st</sup> day of each billing cycle, and the fees shall be due on the 14<sup>th</sup> day following invoice date, but in no event earlier than the first day of each billing cycle.

Payments must be made in Canadian dollars. Customer is responsible for providing Hearken Media with changes to billing information (such as credit card expiration, change in billing address) At its option, Hearken Media may accrue charges to be made to a credit/debit card until such charges exceed \$10.00. Hearken Media may charge interest on overdue amounts at the lesser of 1.5% per month or the maximum non-usurious rate under applicable law. Hearken Media may suspend the service without notice if payment for the service is overdue. Fees not disputed within sixty (60) days of due date are conclusively deemed accurate. Customer agrees to pay Hearken Media’s reasonable reinstatement fee following a suspension of service for non-payment, and to pay Hearken Media’s reasonable costs of collection of overdue amounts, including collection agency fees, attorney fees and court costs.

(b) **Fee Increases.** Hearken Media may increase its fees for services effective the first day of a Renewal Term by giving notice to Customer of the new fees at least forty five (45) days prior to the beginning of the Renewal Term, and if Customer does not give a notice of non-renewal as provided in Section 2 above, the Customer shall be deemed to have accepted the new fee for that Renewal Term and any subsequent Renewal Terms (unless the fees are increased in the same manner for a subsequent Renewal Term).

(c) **Taxes.** At Hearken Media’s request Customer shall remit to Hearken Media all sales, VAT or similar tax imposed on the provision of the services (but not in the nature of an income tax on Hearken Media), regardless of whether Hearken Media fails to collect the tax at the time the related services are provided.

(d) **Early Termination.** Customer acknowledges that Hearken Media may terminate this Agreement at any time if Customer violates this Agreement or the Acceptable Use Policy posted at <http://hearkenmedia.com/web-hosting-aup> (the “**AUP**”), which is hereby incorporated by reference in this Agreement. Customer acknowledges that the amount of the fee for the service is based on Customer’s agreement to pay the fee for the entire Initial Term, or Renewal Term, as applicable. In the event Hearken Media terminates the Agreement for Customer’s breach of the Agreement in accordance

with Section 9 (Termination), or Customer terminates the service other than in accordance with Section 9 (Termination) for Hearken Media's breach, the unpaid fees for each billing cycle remaining in the Initial Term or then-current Renewal Term, as applicable, are due on the business day following termination of the Agreement.

**4. Law/AUP.** Customer agrees to use the service in compliance with applicable law and the AUP. Customer agrees that Hearken Media may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time to time to further detail or describe reasonable restrictions and conditions on Customer's use of the Services. Amendments to the AUP are effective on the earlier of Hearken Media's notice to Customer that an amendment has been made, or the first day of any Renewal Term that begins subsequent to the amendment. Customer agrees to cooperate with Hearken Media's reasonable investigation of any suspected violation of the AUP. In the event of a dispute between Hearken Media and Customer regarding the interpretation of the AUP, Hearken Media's commercially reasonable interpretation of the AUP shall govern.

**5. Customer Information.** Customer represents and warrants to Hearken Media that the information he, she or it has provided and will provide to Hearken Media for purposes of establishing and maintaining the service is accurate. If Customer is an individual, Customer represents and warrants to Hearken Media that he or she is at least 19 years of age. Hearken Media may rely on the instructions of the person listed as the Primary Customer Contact on the Order with regard to Customer's account until Customer has provided a written notice changing the Primary Customer Contact.

**6. Indemnification.** Customer agrees to defend, indemnify and hold harmless Hearken Media, its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys fees) brought by a third party under any theory of legal liability arising out of or related to the actual or alleged use of Customer's services in violation of applicable law or the AUP by Customer or any person using Customer's log on information, regardless of whether such person has been authorized to use the services by Customer.

**7. Disclaimer of Warranties.** HEARKEN MEDIA DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. TO THE EXTENT PERMITTED BY APPLICABLE LAW HEARKEN MEDIA DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS.

**8. Limitation of Damages.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT

COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF HEARKEN MEDIA AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT PAYABLE BY CUSTOMER FOR THREE MONTHS OF SERVICE.

CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR INTERACTIONS WITH END USERS OF CUSTOMER'S SITE OR SERVICE. TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, CUSTOMER HEREBY RELEASES HEARKEN MEDIA FROM ANY AND ALL CLAIMS OR LIABILITY RELATED TO ANY PRODUCT OR SERVICE OF AN END USER, ANY ACTION OR INACTION BY AN END USER, INCLUDING END USER'S FAILURE TO COMPLY WITH APPLICABLE LAW, AND ANY CONDUCT OR SPEECH, WHETHER ONLINE OR OFFLINE, OF ANY END USER.

## **9. Suspension/Termination.**

**(a) Suspension of Service.** Customer agrees that Hearken Media may suspend or terminate services to Customer without notice and without liability if: **(i)** Hearken Media reasonably believes that the services are being used in violation of the AUP; **(ii)** Customer fails to cooperate with any reasonable investigation of any suspected violation of the AUP; **(iii)** Hearken Media reasonably believes that the suspension of service is necessary to protect its network or its other customers, or **(iv)** as requested by a law enforcement or regulatory agency. Customer shall pay Hearken Media's reasonable reinstatement fee if service is reinstated following a suspension of service under this subsection.

**(b) Termination.** The Agreement may be terminated by Customer prior to the expiration of the Initial Term or any Renewal Term without further notice and without liability if Hearken Media fails in a material way to provide the service in accordance with the terms of the Agreement and does not cure the failure within ten (10) days of Customer's written notice describing the failure in reasonable detail. The Agreement may be terminated by Hearken Media prior to the expiration of the Initial Term or any Renewal Term without further notice and without liability as follows: **(i)** upon ten (10) days notice if Customer is overdue on the payment of any amount due under the Agreement; **(ii)** Customer materially violates any other provision of the Agreement, including the AUP, and fails to cure the violation within thirty (30) days of a written notice from Hearken Media describing the violation in reasonable detail; **(iii)** upon one (1) days notice if Customer's Service is used in violation of a material term of the AUP more than once, or **(iv)** upon one (1) days notice if Customer violates Section 5 (Customer Information) of this Agreement. Either party may terminate this agreement upon ten (10) days advance notice if the other party admits insolvency, makes an assignment for the benefit of its creditors, files for bankruptcy or similar protection, is unable to pay debts as they become due, has a trustee or receiver appointed over all or a substantial portion of its assets, or enters into an agreement for the extension or readjustment of all or substantially all of its obligations.

**10. Requests for Customer Information.** Customer agrees that Hearken Media may, without notice to Customer, (i) report to the appropriate authorities any conduct by Customer or any of Customer's customers or end users that Hearken Media reasonably and in good faith believes violates applicable law, and (ii) provide any information that it has about Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

**11. Back Up Copy.** Customer agrees to maintain a current copy of all content hosted by Hearken Media notwithstanding any agreement by Hearken Media to provide back up services.

**12. Changes to Hearken Media's Network.** Upgrades and other changes in Hearken Media's network, including, but not limited to changes in its software, hardware, and service providers, may affect the display or operation of Customer's hosted content and/or applications. Hearken Media reserves the right to change its network in its commercially reasonable discretion, and Hearken Media shall not be liable for any resulting harm to Customer.

**13. Notices.** Notices to Hearken Media under the Agreement shall be given via electronic mail to [support@hearkenmedia.com](mailto:support@hearkenmedia.com). Notices to Customer shall be given via electronic mail to the individual listed as the Primary Customer Contact on the Order. Notices are deemed received on the day transmitted, or if that day is not a business day, on the first business day following the day transmitted. Customer may change his, her or its notice address by a notice given in accordance with this Section.

**14. Force Majeure.** Hearken Media shall not be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond Hearken Media's control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

**15. Governing Law/Disputes.** The Agreement shall be governed by the laws of the Province of British Columbia, exclusive of its choice of law principles, and the laws of Canada, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL BE THE PROVINCIAL AND FEDERAL COURTS IN BRITISH COLUMBIA, AND EACH PARTY AGREES NOT TO DISPUTE SUCH PERSONAL JURISDICTION AND WAIVES ALL OBJECTIONS THERETO.

**16. Agreement Subject to Change.** Hearken Media may modify the Agreement at any time without notice to Customer. The current version of the Agreement shall be posted at <http://hearkenmedia.com/web-hosting-agreement> and shall come into effect at the start of the Renewal Term following the Term (Initial Term or Renewal Term) in which the modified Agreement is posted.

**17. Miscellaneous.** Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trademarks, service marks, trade secrets, inventions, copyrights, and other intellectual property. Neither party may use the other party's name or trade mark without the other party's prior written consent. The parties intend for their relationship to be that of independent contractors and not a partnership, joint venture, or employer/employee. Neither party will represent itself to be agent of the other. Each party acknowledges that it has no power or authority to bind the other on any agreement and that it will not represent to any person that it has such power or authority. This Agreement may be amended only by a formal written agreement signed by both parties. The terms on Customer's purchase order or other business forms are not binding on Hearken Media unless they are expressly incorporated into a formal written agreement signed by both parties. A party's failure or delay in enforcing any provision of the Agreement will not be deemed a waiver of that party's rights with respect to that provision or any other provision of the Agreement. A party's waiver of any of its right under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not. The captions in the Agreement are not part of the Agreement, but are for the convenience of the parties. The following provisions will survive expiration or termination of the Agreement: Fees, indemnity obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination of the Agreement. There are no third party beneficiaries to the Agreement. Neither insurers nor the customers of resellers are third party beneficiaries to the Agreement. Customer may not transfer the Agreement without Hearken Media's prior written consent. Hearken Media's approval for assignment is contingent on the assignee meeting Hearken Media's credit approval criteria. Hearken Media may assign the Agreement in whole or in part.

This Agreement together with the Service Quote and AUP constitutes the complete and exclusive agreement between the parties regarding its subject matter and supercedes and replace any prior understanding or communication, written or oral.