

Last Updated: *Wednesday, August 14, 2013*

## **Web Hosting Terms of Service**

Jonah Coyote Design provides a platform for internet web hosting services to its customers and clients. Additionally, Jonah Coyote Design may provide services involving registration, transfer or renewal of domain name and customer support services at your option. Your use of all of the services is governed by this Web Hosting Terms of Service (the "Web Hosting Terms of Service") and our provided Acceptable Use Policy ("AUP").

**1. Domain Name Services.** If your request for services includes for Jonah Coyote Design to register, renew or transfer a domain name ("Domain Name Services"), Jonah Coyote Design will submit the request to Tucows.com Co (the "Registrar") on your behalf. Our sole responsibility is to submit the request to the Registrar. Jonah Coyote Design is not responsible for any errors, omissions or failures of the Registrar. You are responsible for closing any account with any prior reseller of Registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar. The charge for registering a new domain and submitting the request is \$10/yr. and will be renewed unless Jonah Coyote Design is notified otherwise.

**2. Term.** The initial term of each of your Services shall begin on the date (the "Services Commencement Date") that Jonah Coyote Design generates an e-mail welcome message announcing the activation of the Service you ordered or receives your billing information to be requested by Jonah Coyote Design and shall continue for the number of months stated in the Order Form (the "Initial Term") or as requested by you via email or in person for each such Service. Upon expiration of the Initial Term, this Web Hosting Terms of Service shall automatically renew for successive renewal terms of the same length as the Initial Term (each a "Renewal Term") unless you provides written notice of non-renewal at least thirty (30) days prior to the expiration of the Initial Term or Renewal Term, as the case may be. The Initial Term and any Renewal Term may be referred to collectively herein as the "Term."

### **3. Fees**

**(a) Recurring Fees.** The fee for the Services specified in your Order Form(s) or as indicated in your invoice is the "Recurring Fee." Beginning on the Services Commencement Date, unless otherwise specified by Jonah Coyote Design, you agree to pay the Recurring Fee in advance on the first day of each billing cycle (the "Due Date"), without invoice. The billing cycle for Recurring Fees will either be monthly or yearly depending on the service you have requested.

**(b) Non-Recurring Fees.** If Jonah Coyote Design performs Domain Services, you will be charged a "Domain Registration Fee" as specified in your invoice for services. If you use bandwidth or disk space in excess of that provided in your invoice, you agree to pay a fee ("Overage Fee") for such excess amounts as specified in your invoice. Jonah Coyote Design may charge set-up fees ("Set Up Fee") for certain of the Services; a fee for credit card charge backs ("Charge Back Fee"); and other non-recurring fees relating to the Services. Domain Registration Fees, Overage Fees, Set Up Fees, Charge Back Fees, Reinstatement Fee (as defined below) and all other non-recurring fees relating to the Services are collectively referred to as "Non-Recurring Fees." You agree to pay Non-Recurring Fees when they are incurred.

**(c) Fee Increases.** Recurring Fees and Non-Recurring Fees are collectively referred to as the "Fees" or individually as "Fee." Jonah Coyote Design may increase any or all of the Fees by giving notice to you not less than forty-five (45) days prior to the beginning of a Renewal Term applicable to the particular Fee which is subject to increase. Such Fee increase shall be effective on the first day of the applicable Renewal Term. Unless you give notice to Jonah Coyote Design of your intent not to renew the Services as provided in Section 3, you are deemed to have accepted the increased Fee for the applicable Renewal

Term and any subsequent Renewal Terms (unless the Fees are increased in the same manner for a subsequent Renewal Term).

**4. Payment of Fees.** Payment of the Fees shall be made to Jonah Coyote Design by credit or debit card (the "Card") in United States dollars. You authorize Jonah Coyote Design to charge Fees to the Card during the Term. Jonah Coyote Design may charge the Card for (i) Recurring Fees five (5) days prior to or after the Due Date and (ii) Non-Recurring Fees as incurred by you. At its option, Jonah Coyote Design may abstain from charging the Card until the next Due Date or until the Fees exceed \$50.00. Fees paid are nonrefundable. Fees charged but not disputed within sixty (60) days after the date that they are charged are conclusively deemed accurate. You are required to provide Jonah Coyote Design with changes to billing information, such as credit card expiration and change in billing address. Unpaid Fees shall accrue interest at the lesser of the highest rate allowed by applicable law and 1.5% per month. You agree to pay our reasonable costs of collection of overdue amounts, including collection agency fees, attorneys' fees and court costs. All charges for web hosting services and domain registration will appear on your statement under the name "Web Hosting Billing Systems."

**5. Taxes.** You agree to pay to Jonah Coyote Design all sales, VAT or similar tax imposed on the provision of the Services (but not in the nature of an income tax on Jonah Coyote Design), regardless of whether Jonah Coyote Design fails to collect the tax at the time the Services are provided.

**6. Law/AUP.** You agree to use the Services in compliance with applicable law and our AUP, which is provided to you by Jonah Coyote Design along with the Web Hosting Terms of Service. You agree that Jonah Coyote Design 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 your use of the Services. Amendments to the AUP are effective on the earlier of our notice to you that an amendment has been made, or the first day of the next Renewal Term. You agree to cooperate with our reasonable investigation of any suspected violation of the AUP. In the event of a dispute between the parties regarding interpretation of the AUP, our commercially reasonable interpretation of the AUP shall prevail.

**7. Your Information.** You represent and warrant to Jonah Coyote Design that (i) all information you provide to Jonah Coyote Design for purposes of establishing and maintaining the Services is accurate; (ii) if you are an individual, you are at least eighteen years of age; (iii) you will not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles in any country listed in Country Groups D:4 and D:3 of Supplement No. 1 to Part 740 of the United States Export Administration Regulations, and (iv) you will not provide access to the Services to any person (including a natural person or government or private entity) located in or a national of embargoed or highly restricted country under United States Export Regulations, which include as of June, 2008, Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria. You agree that Jonah Coyote Design may, without notice and without liability to you report to the appropriate governmental authorities any conduct by you that Jonah Coyote Design reasonably believes violates applicable law, and provide any information that it has about you in response to a formal or informal request from a law enforcement or government agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

**8. Indemnification.** You agree to indemnify and hold harmless Jonah Coyote Design, its affiliates, and each of their respective officers, directors, agents, partners, shareholders and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements ("Claims") 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 Services, including without limitation Claims related to Web space content that violates any copyright, trademark or service mark; any proprietary right of any person or entity; and any state and/or federal laws or regulations, including US Export Regulations.

## **9. Disclaimer of Warranties.**

JONAH COYOTE DESIGN MAKES ABSOLUTELY NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES. SPECIFICALLY Jonah Coyote Design DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW JONAH COYOTE DESIGN DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS.

## **10. Limitation of Damages.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR 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 WEB HOSTING TERMS OF SERVICE, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE WEB HOSTING TERMS OF SERVICE, THE MAXIMUM AGGREGATE LIABILITY OF JONAH COYOTE DESIGN, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, PARTNERS, SHAREHOLDERS AND EMPLOYEES, UNDER ANY THEORY OF LIABILITY (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT OF FEES PAID BY YOU FOR THE SERVICES FOR THE THREE MONTHS PRIOR TO THE OCCURRENCE GIVING RISE TO THE CLAIM.

## **11. Suspension/Termination.**

**(a) Suspension of Services.** You agree that Jonah Coyote Design may suspend the Services if: (i) Jonah Coyote Design reasonably believes that the Services are being used in violation of the AUP; (ii) you fail to cooperate with any reasonable investigation of any suspected violation of the AUP; (iii) Jonah Coyote Design reasonably believes that suspension of the Services is necessary to protect its network or its other customers, (iv) as required by a law enforcement or government agency, or (v) if the Card cannot be charged for payment in accordance with Section 5. You agree to pay a reasonable fee for reinstatement ("Reinstatement Fee") following any suspension.

**(b) Termination by You.** The Web Hosting Terms of Service may be terminated by you at any time as long as all Fees then due together with unpaid Recurring Fees for the remainder of the Initial Term or the Renewal Term, as the case may be, are fully paid on the business day following the termination date.

**(c) Termination by Jonah Coyote Design.** The Web Hosting Terms of Service may be terminated by Jonah Coyote Design prior to the expiration of the Initial Term or any Renewal Term without liability as follows: (i) upon seventy-two (72) hours notice if you are overdue on the payment of any Fee; (ii) you materially violate any provision of the Web Hosting Terms of Service or the AUP, and fail to cure the violation within ten (10) days after receipt of a written notice from Jonah Coyote Design describing the violation in reasonable detail in our sole discretion; (iii) upon twenty-four (24) hours notice if the Services are used in violation of a material term of the AUP more than once, or (iv) upon twenty-four (24) hours notice if you violate Section 8 (Your Information).

**12. Intellectual Property Use and Ownership.** Neither party shall (i) use the other party's name, trademarks, trade names or logos in either its own legal name or in any fictitious or assumed name without the party's consent; (ii) knowingly remove or alter any logo, trademark, trade name, copyright, or other proprietary notice, legend, or symbol from any of the other party's products or documentation; or (iii) take any action, or intentionally omit to take any action that would jeopardize, limit, or interfere in any manner with the ownership of the other party's products, services, documentation, or intellectual property. Title to and ownership of all copies of any products, services, software, documentation, or Internet services developed by or for Jonah Coyote Design during the Term, whether in machine-readable or printed form, and including without limitation any derivative works, compilations, or collective works thereof, and all related technical know-how, and all rights therein (including without limitation rights in patents, copyrights and trade secrets applicable thereto), are and shall remain the exclusive property of Jonah Coyote Design and its suppliers. You shall not take any action to jeopardize, limit, or interfere in any manner with our ownership and rights therein.

**13. Confidential Information.** "Confidential Information" means all information disclosed by one party to the other, whether before or after the effective date of the Order Form, that the recipient should reasonably understand to be confidential, including: (i) for you, all information transmitted to or from, or stored on, your the Jonah Coyote Design system, (ii) for Jonah Coyote Design, unpublished prices and other terms of service, audit and security reports, product development plans, data center designs (including non-graphic information you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (iii) for both parties, information that is marked or otherwise conspicuously designated as confidential. Information that is developed by a party on its own, without reference to the other's Confidential Information, or that becomes available to a party other than through violation of these Web Hosting Terms of Service or applicable law, shall not be "Confidential Information" of the other party. Each party agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of its legal rights under these Web Hosting Terms of Service or your invoice for services, or as may be required by law. Each party agrees not to disclose the other party's Confidential Information to any third person except as follows: to its respective service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in these Web Hosting Terms of Service; to law enforcement or government agency if requested, or if a party reasonably believes that the other party's conduct may violate applicable criminal law; as required by law; or in response to a subpoena or other compulsory legal process, provided that the disclosing party must give the other party written notice of at least seven days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

**14. Back Up Copy.** You agree to maintain a current copy of all of your content hosted by Jonah Coyote Design.

**15. Notices.** Notices to Jonah Coyote Design shall be given by means of electronic mail to the e-mail address provided by Jonah Coyote Design. Notices to you shall be given via electronic mail to the individual designated as the Primary Contact. 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.

**16. Force Majeure.** Jonah Coyote Design shall not be in default under the Web Hosting Terms of Service if the failure to perform is due to any event beyond our control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, failure of network providers, 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.

**17. Governing Law/Venue.** The Web Hosting Terms of Service shall be governed by the laws of the State of Wisconsin, exclusive of its choice of law principles, and the laws of the United States of America, as applicable. The United Nations Convention on the International Sale of Goods shall have

no application to the Web Hosting Terms of Service. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THE WEB HOSTING TERMS OF SERVICE SHALL BE THE STATE AND FEDERAL COURTS IN DANE COUNTY, WISCONSIN, AND EACH PARTY IRREVOCABLY CONSENTS TO SUCH PERSONAL JURISDICTION AND WAIVES ALL OBJECTIONS THERETO.

### **Compliance with this General Contract**

By ordering website hosting services from Jonah Coyote Design, you are acknowledging these service terms and conditions presented herein and agree to comply therewith. Failure to comply with this general contract constitutes a breach of agreement and releases Jonah Coyote Design of any obligation to fulfill services requested and constitutes a waiver of all liability on the part of Jonah Coyote Design until compliance is reestablished in accordance with the terms and conditions set herein. If the client does not wish or cannot comply with these terms and conditions, they are released to seek the services of an alternate supplier.

If there are any comments or concerns regarding this general contract, you may direct them by email to [jonah@jonahcoyote.com](mailto:jonah@jonahcoyote.com) or by phone to 608-335-0735.