

# Ken Jones/Kay Jay Systems Website Hosting Terms and Conditions

Revision Date: 1<sup>st</sup> May 2014

This Hosting Agreement governs your purchase and use, in any manner, of all Web site hosting, ordered by you and accepted by Ken Jones/Kay Jay Systems and describes the terms and conditions that apply to such purchase and use of the Services. You AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. Ken Jones/Kay Jay Systems reserves the right to change or modify any of the terms and conditions contained in this Agreement at any time and from time to time in its sole discretion, and to determine whether and when any such changes apply to both existing or future customers. Ken Jones/Kay Jay Systems may make changes or modifications to referenced policies and guidelines without notice to you. Your continued use of the Services following Ken Jones/Kay Jay Systems' posting of any changes or modifications will constitute your acceptance of such changes or modifications.

1. Payment. As consideration for Ken Jones/Kay Jay Systems providing the Hosting Services hereunder, Customer agrees to pay Ken Jones/Kay Jay Systems the aggregate monthly fee based on the monthly hosting services and the terms selected.

2. Provision of Services. Ken Jones/Kay Jay Systems will provide Customer with the Services ordered that are described in the Hosting Package Features elsewhere in this document. Customer understands and agrees that Ken Jones/Kay Jay Systems will host and create the Web site solely in accordance with the information provided by Customer.

3. Rights to the Web Site and Content. With the exception of any Third-Party Materials and Background Technology as set forth in Section 4, Customer owns the Customer Content. "Customer Content" means all content or information (including, without limitation, any text, music, sound, photographs, video, graphics, data, or software), in any medium, provided by Customer to Ken Jones/Kay Jay Systems. "Third-Party Materials" means any content, software, or other computer programming material that is owned by an entity other than Ken Jones/Kay Jay Systems, and licensed by Ken Jones/Kay Jay Systems or generally available to the public, including Customer, under published licensing terms, and that Ken Jones/Kay Jay Systems will use to display or run a Web site. Ken Jones/Kay Jay Systems owns the rights to the design of the web site. If a customer stops paying the monthly fee for the web site upon cancellation the customer is not entitled to use the web site for any purposes whatsoever.

4. Limited License to the Background Technology. "Background Technology" means computer programming/formatting code or operating instructions developed by or for Ken Jones/Kay Jay Systems and used to host or operate the Web site or a Web server in connection with a Web site. Background Technology includes, but is not limited to, any files necessary to make forms, buttons, checkboxes, and similar functions and underlying technology or components, such as style sheets, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines, and menu utilities, whether in database form or dynamically driven. Background Technology does not include any Customer Content. Customer may not duplicate or distribute any Background Technology to any third party without the prior written consent of Ken Jones/Kay Jay Systems. All rights to the Background Technology not expressly granted to Customer hereunder are retained by Ken Jones/Kay Jay Systems. Without limiting the foregoing, Customer agrees not to reverse-engineer, reverse-assemble, decompile, or otherwise attempt to derive any source code of the Background Technology, except as allowed by law.

5. Limited License to Content. Customer hereby grants to Ken Jones/Kay Jay Systems the limited, nonexclusive right and license to copy, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use and exploit Web site, any Customer Content, or any Customer Marks provided to Ken Jones/Kay Jay Systems hereunder, solely for the purpose of rendering Ken Jones/Kay Jay Systems' Services under this Agreement. Such limited right and license shall extend to no other materials or for any other purpose and will terminate automatically upon termination of this Agreement for any reason. 6. Content Standards. Customer agrees not to provide Customer Content, and Ken Jones/Kay Jay Systems will not intentionally provide to Customers any content, that (a) infringes on any third party's intellectual property or publicity/privacy rights; (b) violates any applicable law or regulation; (c) is defamatory, violent, clearly harmful, or obscene or pornographic or infringes on citizens' rights; or (d) contains any viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines that are intended to damage or interfere with any system, data, or personal information. If Customer is international, then Customer agrees to comply with all applicable local and national laws. Ken Jones/Kay Jay Systems reserves the right to refuse any other subject matter it deems inappropriate.

7. Support. Ken Jones/Kay Jay Systems agrees to provide reasonable technical support by email to Customer during Ken Jones/Kay Jay Systems's normal technical support hours. Ken Jones/Kay Jay Systems will provide customer support by telephone if the customer purchased telephonic support time.

8. Term and Termination. (a) This Agreement is effective as of the Effective Date and shall continue unless terminated; (b) Ken Jones/Kay Jay Systems may terminate this Agreement after five (5) days' written notice to Customer if Customer materially breaches this Agreement, including, without limitation, failure to pay, and fails to cure such breach during such five (5) day period; and (c) upon the termination of this Agreement, Customer will pay Ken Jones/Kay Jay Systems for all Services provided to Customer by Ken Jones/Kay Jay Systems prior to termination. Sections 2, 3, 4, 5, 9, 11, and 12 will survive termination of this Agreement.

9. Warranty Disclaimer. Except as expressly provided in this Agreement, the Services are provided "as is," and Ken Jones/Kay Jay Systems expressly disclaims all warranties and conditions of any kind, express, implied, or statutory, including, without limitation, the implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose. Interruption of Service: You hereby acknowledge and agree that Ken Jones/Kay Jay Systems will not be liable for any temporary delay, outages or interruptions of the Services. Each party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein. Unless an approval process is specified herein or in a Statement, all Hosting provided by Ken Jones/Kay Jay Systems to a Customer will be deemed accepted when delivered.

10. Indemnity. (a) Customer Indemnity. Customer will defend Ken Jones/Kay Jay Systems against any third-party claim, action, suit, or proceeding alleging any breach of the covenants contained in Section . Subject to Section 11, Customer shall indemnify Ken Jones/Kay Jay Systems for all losses, damages, liabilities, and all reasonable expenses and costs incurred by Ken Jones/Kay Jay Systems as a result of any such third-party claim, action, suit, or proceeding. (b) Ken Jones/Kay Jay Systems' Indemnity. Ken Jones/Kay Jay Systems will defend Customer against any third-party claim, action, suit, or proceeding alleging any breach of the covenants contained in Section 6. Subject to Section 11, Ken Jones/Kay Jay Systems shall indemnify Customer for all losses, damages, liabilities, and all reasonable expenses and costs incurred by Customer as a result of any such third party claim, action, suit, or proceeding. (c) Mechanics of Indemnity. The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt, written notice of any claim, action, suit, or proceeding for which the indemnified party is seeking indemnity; (ii) granting control of the defense and settlement to

the indemnifying party; and (iii) reasonably cooperating with the indemnifying party at the indemnifying party's expense.

11. Limitation of Liability. Ken Jones/Kay Jay Systems's LIABILITY HEREUNDER SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO Ken Jones/Kay Jay Systems DURING THE THREE (3) MONTH PERIOD BEFORE THE ACTION AROSE. Ken Jones/Kay Jay Systems SHALL NOT BE LIABLE FOR (A) ANY LOSS OF USE, LOSS OF DATA, OR INTERRUPTION OF BUSINESS OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), REGARDLESS OF THE FORM OR ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF Ken Jones/Kay Jay Systems HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS AGREEMENT, AND ABSENT SUCH LIMITATIONS, Ken Jones/Kay Jay Systems WOULD NOT ENTER INTO THIS AGREEMENT.