

Yellow Jacket Productions, Inc.

10358 S. Kelliwood Way
Highlands Ranch, CO 80126
720.344.1771



HOSTING AGREEMENT

Please note that the content of this (and all other pages on this site) is protected by copyright.

1. DEFINITIONS.

- 1.1 "Customer" means the persons, entity or agents and authorized representatives accepting this agreement.
- 1.2 "Content" means all text, pictures, sound, graphics, video, links, and other data stored by Customer on Yellow Jacket Productions, Inc.'s server computers.
- 1.3 "Website" means pages presenting the Content stored by Customer on Yellow Jacket Productions, Inc.'s server computers.
- 1.4 "User" means users of Customer's Website.
- 1.5 "User Content" means all text, pictures, sound, graphics, video, links, and other data stored by Users on Yellow Jacket Productions, Inc.'s server computers.
- 1.6 "Confidential Information" means information that Customer takes reasonable steps to maintain in confidence and identifies in writing to Yellow Jacket Productions, Inc. as confidential.

2. WEB HOSTING.

2.1 - Hosting.

Yellow Jacket Productions, Inc. will provide dedicated or shared server computers, as specified in Exhibit A, with an Internet address for storage and access of Content, User Content, and the Website. The Website, Content, and User Content must be "server-ready." Yellow Jacket Productions, Inc. will provide bandwidth and storage as specified in Exhibit A. If Customer requires additional bandwidth or storage, Yellow Jacket Productions, Inc. will negotiate in good faith to amend this Agreement unless Yellow Jacket Productions, Inc.'s server computers cannot accommodate the requested bandwidth or storage.

2.2 - Website Backup.

Yellow Jacket Productions, Inc. will backup the Website in a commercially reasonable manner. However, Yellow Jacket Productions, Inc. is not responsible for lost Content or lost User Content. Website backups will be stored by Yellow Jacket Productions, Inc. for no longer than 14 days. Yellow Jacket Productions, Inc. will provide, at Customer's expense, an electronic copy of the backup Website to Customer upon written request by Customer. Backups are intended for disaster recovery, not the restoration of individual files.

2.3 - Server Logs.

As requested by Customer, Yellow Jacket Productions, Inc. will deliver to Customer in electronic form the Server Log of Website activity. Customer will be entitled to one month of log storage free of charge. Yellow Jacket Productions, Inc. may, at its option, charge a fee to Customer for additional space required to store oversized logs.

2.4 - Standards.

Yellow Jacket Productions, Inc.'s services will conform to the following:

2.4.1 - Availability of Website.

Yellow Jacket Productions, Inc. will provide hosting services for the Website that meet reasonable commercial standards for, among other matters, packet loss, accessibility, latency, availability, and throughput.

2.4.2 - Security.

Yellow Jacket Productions, Inc. will take commercially reasonable steps to prevent unauthorized access to the Website, Content, User Content, and Confidential Information stored on Yellow Jacket Productions, Inc.'s server computers.

2.4.3 - Server/Network Computer Outages.

Yellow Jacket Productions, Inc. will employ best efforts in providing advance notice to Customer of scheduled server computer/network outages.

2.4.4 - Disclaimers.

Yellow Jacket Productions, Inc. provides no equipment, software, or communication connections to Customer. Yellow Jacket Productions, Inc. makes no representations, warranties or assurances that the Customer's equipment, software, and communication connections will be compatible with Yellow Jacket Productions, Inc.'s hardware and service.

3. OWNERSHIP OF CONTENT.

Yellow Jacket Productions, Inc.'s inclusions in the nominal "Setup Fee" for customers who are hosting with Yellow Jacket Productions, Inc. generally includes what would cost thousands of dollars elsewhere. This content (including but not limited to custom URL registrations, custom logos, graphics, and website templates) is included for customers who sign up and host with Yellow Jacket Productions, Inc. and is considered under the terms of the hosting agreement "work for hire". If Customer chooses not to host with Yellow Jacket Productions, Inc. but still wishes to secure any logos, graphic, and website template created by Yellow Jacket Productions, Inc. during the proof of concept phase, they can purchase this content ala-carte for a fee that includes time and materials used to create it.

Unless explicitly created by Yellow Jacket Productions, Inc. as a "work for hire", or created under the aforementioned nominal "Setup Fee", all Content and User Content stored by Customer on Yellow Jacket Productions, Inc.'s server computers shall at all times remain the property of Customer. Customer grants to Yellow Jacket Productions, Inc. a non-exclusive, worldwide license to the Content and User Content only to the extent necessary for Yellow Jacket Productions, Inc. to host the Website.

4. CONTENT CONTROL.

4.1 - Lawful Purpose.

Customer will only use Yellow Jacket Productions, Inc.'s hardware and services for lawful purposes and Customer will not store or provide any Content or User Content or link to any material that violates foreign, federal, state or local law, any applicable Terms of Service and any modifications thereof, Yellow Jacket Productions, Inc.'s posted Acceptable Use Policy, or any other Yellow Jacket Productions, Inc. policy.

Use of administrator-level logins, which will be granted to users upon request, and with demonstrated competency of use, to remove content from Yellow Jacket Productions, Inc.'s servers and host elsewhere constitutes a breach of contract, and all content owned by Yellow Jacket Productions, Inc., (including but not limited to custom URL registrations, custom logos, graphics, and website templates) will be considered "work for hire" in this situation and also will be considered purchased, and will the Customer will be billed a fee that includes time and materials used to create it.

4.2 - Remedy for Violation.

Should Yellow Jacket Productions, Inc. become aware that Customer has violated Part 4.1, Yellow Jacket Productions, Inc. may, at its option, remove the Content or User Content in violation, immediately terminate hosting Customer's Website under Part 6.3, and/or notify authorities. If hosting is terminated, Yellow Jacket Productions, Inc. may, in its sole discretion, reinstate hosting upon adequate showing of Customer's right to use the Content or User Content.

If Content is moved from Yellow Jacket Production, Inc.'s servers to another hosting company, then Yellow Jacket Productions, Inc. may bill the Customer for any content (including but not limited to custom URL registrations, custom logos, graphics, and website templates) which is owned by Yellow Jacket Productions, Inc., at a rate including the time and materials used to create it.

5. PAYMENTS.

5.1 - Fees.

Customer shall pay fees agreed upon during account signup, after notification and receipt of the first bill, and/or for specific works for hire on an ala carte basis. Yellow Jacket Productions, Inc. will invoice monthly (unless otherwise agreed), and payment is due sixty (60) days from invoicing. In the case of credit card payments Yellow Jacket Productions, Inc. will automatically charge Customer Credit Card on file all fees associated with the account on the due date. Yellow Jacket Productions, Inc. may, at its option, charge a 10% fee for late payments.

5.2 - Returned Checks and Declined Credit Cards may incur a fee.

5.3 - Account Updates.

It is the responsibility of the customer to maintain accurate billing information with Yellow Jacket Productions, Inc. This may include updated credit card information, email address and mailing address.

5.4 - Taxes.

Customer is solely liable for any taxes or fees payable for products or services sold by Customer on the Website.

6. TERM AND TERMINATION.

6.1 - Term.

The initial term is agreed upon either a) upon payment of any invoice relating to hosting of Customer's website by Yellow Jacket Productions, Inc., or b) by explicit "Proof of Concept/work for hire" agreement. After the initial term, this Agreement will automatically renew on a month-to-month or annual basis (depending on the Customer's last invoicing term selection with Yellow Jacket Productions, Inc.) until terminated.

6.2 - Termination by Customer.

During the initial term, Customer may terminate this Agreement upon the material breach of Yellow Jacket Productions, Inc., if such material breach remains uncured for thirty (30) days following written notice to Yellow Jacket Productions, Inc. This cure period shall be extended by delay caused by events beyond the control of Yellow Jacket Productions, Inc. including, but not limited to, natural disasters, governmental prohibitions or regulations, viruses that did not result from the acts or omissions of Yellow Jacket Productions, Inc., or technical faults of Yellow Jacket Productions, Inc.'s service providers or vendors. After the initial term, Customer may terminate this Agreement upon fourteen (14) days written notice to Yellow Jacket Productions, Inc. If Content is moved from Yellow Jacket Production, Inc.'s servers to another hosting company, then Yellow Jacket Productions, Inc. may bill the Customer for any content (including but not limited to custom URL registrations, custom logos, graphics, and website templates) which is owned by Yellow Jacket Productions, Inc., at a rate including the time and materials used to create it.

6.3 - Termination by Yellow Jacket Productions, Inc.

Yellow Jacket Productions, Inc. may immediately terminate this Agreement for cause at any time without penalty. Causes justifying immediate termination include, but are not limited to: violation of any foreign, federal, state, or local law; non-payment of fees due under Part 5 of this Agreement; breach of this Agreement; violation of the Terms of Service found at <http://www.yjprod.com/docs/legal/TOS.pdf> and any written modifications thereof; and violation of any other Yellow Jacket Productions, Inc. policy. Yellow Jacket Productions, Inc. may terminate this Agreement without cause at any time upon thirty (30) days written notice to Customer. If Content is moved from Yellow Jacket Production, Inc.'s servers to another hosting company, then Yellow Jacket Productions, Inc. may bill the Customer for any content (including but not limited to custom URL registrations, custom logos, graphics, and website templates) which is owned by Yellow Jacket Productions, Inc., at a rate including the time and materials used to create it.

7. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WEB REFINEMENTS, AND ITS OWNERS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS, AND THE LIKE, MAKE NO WARRANTY IN CONNECTION WITH WEB REFINEMENTS HARDWARE OR SERVICES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF TITLE, NON-INGRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY. WEB REFINEMENTS, ITS OWNERS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS, AND THE LIKE SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST BUSINESS, LOST DATA OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE WEB REFINEMENTS HARDWARE OR SERVICES. CUSTOMER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE RETURN OR REDUCTION OF FEES PAYABLE TO WEB REFINEMENTS.

9. CUSTOMER INDEMNITY.

Customer shall defend Yellow Jacket Productions, Inc. against any third party claim, action, suit or proceeding arising as a result of Customer's use Yellow Jacket Productions, Inc.'s hardware or services and indemnify Yellow Jacket Productions, Inc. for all losses, damages, expenses, and costs incurred by Yellow Jacket Productions, Inc. as a result of a final judgment entered against Yellow Jacket Productions, Inc. in any such claim, action, suit or proceeding.

10. GENERAL PROVISIONS.

10.1 - Governing Law.

This Agreement will be governed and construed in accordance with the laws of the State of Colorado. Both parties agree to submit to personal jurisdiction in Douglas County, Colorado, and further agree that any cause of action or dispute arising under this Agreement will be litigated or arbitrated in Douglas County, Colorado, United States of America.

10.2 - Severability and Waiver.

If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

10.3 - Relationship of Parties.

No agency, partnership, joint venture, or employment relationship is created by this Agreement and neither party has the power to bind the other party.

10.4 - Attorneys Fees and Costs.

In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled, in addition to its court costs, to such reasonable attorneys' fees, expert witness fees and legal expenses as may be fixed by a court of competent jurisdiction.