



## Web Hosting



This Hosting Agreement is made on \_\_\_\_\_ (the "Effective Date") between Branchout Studios, LLC whose principal place of business is at 4500 Industrial Rd, Fort Smith, Arkansas ("Branchout Studios") and \_\_\_\_\_ (hereinafter "Client").

### Hosting Services

Branchout Studios shall provide Client with certain website hosting services and systems (including website server space, email capability, internet access, and domain name registration (hereinafter the "Deliverable").

### Subscription Fees

Client shall pay Branchout Studios a monthly subscription fee of \$ \_\_\_\_\_ (the "Subscription Fee") for the Deliverable provided under this agreement.

**Fee Schedule.** Client shall pay the Subscription Fee to Branchout Studios as follows:

**Billing Date.** The Subscription Fee will be automatically billed on the **1st day of each month**.

**Payment Information.** Client's payment is due on the **15th day of each month** in immediately available funds to the account Branchout Studios lists immediately below:

Account Number: \_\_\_\_\_

Routing Number: \_\_\_\_\_

### Late Payments.

Late payments may be accepted by Branchout Studios at their sole discretion. A Late Fee of \$10 per month will accrue on the 20th day of a month in which a payment is not made on or before the 15th day of the month.

### Right to Suspend.

If Client fails to make payments by the 30th day of any month, Branchout Studios may suspend the Deliverable until Client pays all outstanding fees. If Client fails to make payments when due three (3) times over any six-month period, Branchout Studios may suspend the Web Hosting until Client pays all outstanding fees plus a \$30 reinstatement fee. Branchout Studios has the absolute Right to Suspend. A decision not to suspend service when legally entitled to do so in a particular occurrence does not prevent Branchout Studios from electing to do so upon a separate occurrence.

### Interest on Late Payments.

Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1% per month (12.68% annually) or the maximum allowed by Arkansas law, whichever is less.

### AutoPay Available.

Branchout Studios will set up Recurring Payments at no fee to Client. Client must notify Branchout Studios of their intent to use AutoPay and provide information requested of them to Branchout Studios in order to facilitate that process.





## Client Restrictions

**Prohibited Use.** Client will not use the service for any unlawful or harmful purpose, or any purpose that would put Branchout Studios in a bad light or that harms or impedes the hosting service.

### **Breach of These Restrictions.**

If Branchout Studios reasonably believes Client has breached any restrictions under this section Client Restrictions, Branchout Studios may delete or amend any relevant Client Content, or suspend Client's use of and access to the web hosting service while investigating the issue.

### **Status of Breach.**

If after Branchout Studio's reasonable investigation of the issue it discovers Client has actually breached this section Client Restrictions, Branchout Studios may consider it a material breach of this agreement.

### **Limitation of Liability**

Limitation on Branchout Studios' Liability. Branchout Studios will not be liable for any damages that result from any downtime or failure of performance of the web hosting service, or Client otherwise not being able to use or access the web hosting service.

## Intellectual Property

**Each Party Retains Intellectual Property.** Each party will retain exclusive interest in and ownership of its Intellectual Property developed before this agreement or outside the scope of this agreement.

**License to Branchout Studios.** Client hereby grants to Branchout Studios a non-exclusive, non-transferable, non-sublicensable, world-wide, and royalty-free license to use Client's pre-existing Intellectual Property solely for the purpose of providing the website and/or web hosting service.

**Developed Intellectual Property.** If any Intellectual Property is developed under this agreement, whether by one party on its own or jointly-developed by both parties, the parties shall cooperate to execute a separate agreement regarding the ownership of and any licenses regarding that newly-developed Intellectual Property. Absent an executed separate agreement, if Branchout designs, provides, or creates content, Branchout Studios retains the copyright to it. The Client is entitled only to keep the exact content as they provided to Branchout Studios. Any changes, attachments, graphics, lettering, music, video or enhancements to the original content provided to Branchout Studios by Client will become and remain the property of Branchout Studios.

**Use of Logos.** Client hereby grants Branchout Studios a non-exclusive, non-transferrable, non-sublicensable, and royalty-free license to use and reproduce Client's name, logos, and trademarks on Branchout Studios' customer lists, advertising, and website.

## Term

**Initial Term.** The initial term of this agreement will begin on \_\_\_\_\_ the Effective Date and continue twelve (12) months, unless terminated earlier (the "Initial Term").

**Automatic Renewal.** Subject to paragraph Election Not to Renew, at the end of each Term this agreement will automatically renew for a renewal term of twelve (12) months, unless terminated earlier ("Renewal Term").

**Election Not to Renew.** Either party may elect not to renew this agreement, by providing notice to the other party at least ten (10) Business Days' before the end of the Term.

**Term Definition.** "Term" means either the Initial Term or the then-current Renewal Term.



## Termination

**Termination on Notice.** Either party may terminate this agreement for any reason on ten (10) Business Days' notice to the other party.

**Termination for Material Breach.** Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or if a breach continues for a period of five (5) Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

## Effect of Termination

**Termination of Obligations.** Subject to paragraph Payment Obligations, on the expiration or termination of this agreement, each party's rights and obligations under this agreement will cease immediately.

**Payment Obligations.** On the expiration or termination of this agreement, each party shall pay any amounts it owes to the other party, including payment obligations for services already rendered, work already performed, goods already delivered, or expenses already incurred, and refund any payments received but not yet earned, including payments for services not rendered, work not performed, or goods not delivered, expenses forwarded.

## Indemnification

**Indemnification by Client.** Client (as an indemnifying party) shall indemnify Branchout Studios (as an indemnified party) against all losses and expenses arising out of any proceeding brought by either a third party or Branchout Studios, and arising out of Client's breach of its obligations, representations, warranties, or covenants under this agreement.

**Mutual Indemnification.** Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of any proceeding brought by either a third party or an indemnified party, and arising out of the indemnifying party's willful misconduct or gross negligence.

## Notice and Failure to Notify

**Notice Requirement.** Before bringing a claim for indemnification, the indemnified party shall notify the indemnifying party of the indemnifiable proceeding, and deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

**Failure to Notify.** If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying party will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

**Exclusive Remedy.** The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section.

## General Provisions

**Entire Agreement.** The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement represent the final expression of the parties' intent and agreement between the parties relating to the subject matter of this agreement, contain all the terms the parties agreed to relating to the subject matter, and replace all the parties' previous discussions, understandings, and agreements relating to the subject matter.



## Counterparts

**Signed in Counterparts.** This agreement may be signed in any number of counterparts.

**All Counterparts Original.** Each counterpart is an original.

**Amendment.** This Agreement can be amended only by a writing signed by both parties.

**Binding Effect.** This Agreement will benefit and bind the parties and their respective heirs, successors, and permitted assigns.

**Third Party Beneficiaries.** Unless explicitly stated otherwise elsewhere in this agreement, no Person other than the parties themselves has any rights or remedies under this agreement.

## Notices

**Method of Notice.** The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, (iv) fax or (v) electronic mail to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

**Receipt of Notice.** A notice given under this agreement will be effective on the other party's receipt of it or, if mailed, on the earlier of the other party's receipt of it and the tenth (10th) Business Day after mailing it.

## No Partnership

**No Relationship.** Nothing in this agreement creates any special relationship between the parties, such as a partnership, joint venture, or employee/employer relationship between the parties.

**No Authority.** Neither party will have the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.

## Dispute Resolution

**Mediation.** Any dispute or controversy arising out of this agreement and subject matter of the agreement will be submitted to mediation with a Court-Certified Mediator in Arkansas prior to filing litigation. If a party makes a written request of the other party to participate in mediation and that is not answered within thirty (30) days or is denied, the party seeking mediation may file litigation and request that the Court enforce the parties' agreement herein that the costs of mediation would be paid by the party who refused to submit to mediation prior to the filing of the lawsuit.

## Governing Law and Consent to Jurisdiction and Venue

**Governing Law.** This agreement, and any dispute arising out of the website development or web hosting arrangement between Branchout Studios and Client, shall be governed by laws of the State of Arkansas.

**Consent to Jurisdiction.** Each party hereby irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located within Sebastian County, State of Arkansas in connection with any matter arising out of this Agreement or the transactions contemplated under this Agreement.



**Waiver**

**Affirmative Waivers.** Neither party's failure or neglect to enforce any of rights under this agreement will be deemed to be a waiver of that party's rights.

**Written Waivers.** A waiver or extension is only effective if it is in writing and signed by the party granting it.

**No General Waivers.** A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

**No Course of Dealing.** No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**Force Majeure.** A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affects the performance of any of its obligations under this agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

**Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

**Conflict of Terms.** If there is any inconsistency between the terms of this agreement and those in any schedule to this agreement or in any document entered into under this agreement, the terms of this agreement will prevail. The parties shall take all necessary steps to conform the inconsistent terms to the terms of this agreement.

**Attorney Fees.** If either party brings an Action to enforce their rights under this agreement, the prevailing party may recover its expenses (including reasonable attorneys' fees) incurred in connection with the Action and any appeal from the losing party.

This agreement has been signed by the parties.

\_\_\_\_\_  
Branchout Studios Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Representative Print Name

\_\_\_\_\_  
Representative Print Name



## Amendments



**Notes**





