WEBSITE HOSTING AGREEMENT
Updated: 09/2023

This Hosting Service Agreement ("Website Hosting Agreement") governs your use of Short Hills Design's ("The Host") Hosting Services ("Hosting Services").

YOU ACKNOWLEDGE AND AGREE THAT BY USING THE HOSTING SERVICES YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, INCLUDING ANY MODIFICATIONS TO THESE TERMS, YOU ARE NOT AUTHORIZED TO USE THE SERVICES.

1. **ENGAGEMENT; SERVICES.**

    (a) The Host shall provide the services set forth in **Exhibit A** (" Hosting Services"), as described **in Exhibit B** ("Service Level Agreement").

    (b) **Subcontractors.** You acknowledge that the Host may engage third party suppliers and other vendors and subcontractors ("Subcontractors") from time to time to provide certain services in the performance of the Services. The Host shall supervise such Subcontractors and endeavor to guard against any loss to you as the result of the failure of Subcontractors to properly execute their commitments, but the Host shall not be responsible for their failure, acts or omissions, except where such failure, acts or omissions are due to the Host's willful misconduct or negligence.

2. **PRICE; PAYMENT.**

    (a) **Price.** You shall pay the Host for the Services according to the terms set forth in **Exhibit A**.

    (b) **Invoices.** The Host shall send a yearly invoice in the amount equal to the fees listed in **Exhibit A**. Within 30 days of its receipt, you shall pay each accurate and undisputed invoice.

    (c) **Disputes.** If you dispute a particular invoice, you shall pay the Host for the parts of the invoice that are accurate and not in dispute.

    (d) **Price Changes**. The Host may change prices annually after the Initial Term (as defined below) expires. However, increases in fees during a Renewal Term (as defined below) are limited to a 12% increase over the rates during the immediately preceding Term. The Host shall provide you with at least 90 days' notice before the price change will take effect (the "**Price Change Notice Period**"). If you reject the price change in writing during the Price Change Notice Period, this agreement will automatically terminate at the end of the term in which the Price Change Notice Period expires.

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(e) **Third Party Licenses**. From time to time, you shall be required to purchase applicable third-party licenses for any third-party products that are necessary for the Host to host your website. Such third-party products may include but are not limited to: server-side applications, backup applications, or any other copyrighted work which the Host deems necessary to purchase on your behalf. No purchased will be made without your prior written consent before incorporating such third-party product.

(f) If the Host cannot provide the availability level indicated in the Service Level Agreement, and you comply with its credit request procedures, you shall receive a credit based upon the credit percentages in Exhibit B. The Host shall include any credit due under that agreement on the next invoice.

3. TERM; TERMINATION.

(a) **Term.** This agreement will continue for an initial term of 1 year (the **"Initial Term").** Unless either party gives written notice to the other at least 30 days before the end of the Term, this agreement will renew automatically for an additional 1-year term (each a "**Renewal Term").** This automatic extension will continue to apply at the end of each Renewal Term until the agreement is terminated.

(b) **Termination Procedures.** This agreement may be terminated:

(i) by either party, on provision of 30 days written notice before the end of a Term;
(ii) by either party for a material breach of any provision of this agreement by the other party, if the other party's material breach is not cured within 30 days of receipt of written notice:
(iii) by you, immediately on written notice to the Host, if there is less than 99% uptime in any Services during any one-month period during any term (excluding scheduled maintenance); or
(iv) by you immediately on written notice to the Host, if there is a breach of the Host's security systems that results in the actual or potential unauthorized disclosure of your Content (as defined below.)

(c) **Effects of Termination.** After the termination of this agreement for any reason:

(i) the Host shall export and return any content then in its possession to you at your expense, and the Host shall delete that content from the Host's servers and data storage devices, unless you notify the host in writing no more than 30 days after the termination of this agreement, of your desire to maintain the content on the Host's equipment. If the Host maintains this content, the Host shall make the content reasonably available to you and you shall pay the Host's customary rates for these services and reimburse Host for the cost of making the content available; and you shall promptly pay the Host according to the terms of Exhibit A for Services rendered before the effective date of the termination.

4. CUSTOMER SERVICE.

The Host shall consult with you via telephone or electronic mail about how to use the system per the terms set forth in the Service Level Agreement but will not assist with any services not maintained or controlled by the Host as part of this Agreement. Third-party applications, mail-enabled printers/scanners, web services, and custom transport rules may be supported but will be scoped and billed separately.

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5. **SECURITY; BACK-UP, PCI COMPLIANCE and HIPAA**

(a) **Security.** The Host shall locate all content on secure servers with limited access and required access authentication.

(b) **Back-Up.** If you request, the Host shall restore content to you using the Host's data back-ups. The Host shall maintain a copy of the past 7 days of all content. The Host does not provide email hosting services.

(c) **PCI Compliance and HIPAA.** It is your responsibility to determine if any HIPAA or PCI considerations may or may not be necessary for your particular use case. **The Hosting Services are not intended to provide a PCI (Payment Card Industry) or HIPAA (Health Insurance Portability and Accountability Act) compliant environment and therefore should not be used or considered as one.**

6. **CONTENT.**

(a) **Content.** You represent that you are the owner or valid licensee of all data or content you will upload in connection with the Services (collectively, the **"Content"**) and that you have secured all necessary licenses, consents, permissions, waivers, and releases for the use of the Content.

(b) The Host may use your intellectual property to do the following, to the extent necessary to perform the Services:

(i) digitize, convert, install, upload, select, order, arrange, compile and synchronize, use, reproduce, store, process, retrieve, transmit, and hyperlink the Content; and

(ii) make archival or back-up copies of the Content.

7. **CONFIDENTIAL INFORMATION.**

(a) **Definition.** "Confidential Information" means this agreement and all of your nonpublic information, in whatever form, pertaining to your business, including information relating to your finances, customer records, and information, and all associated documentation and materials that you designate as being confidential when disclosing it to the Host or that, under the circumstances of disclosure, ought to be treated as confidential by the Host. Confidential Information also includes any information relating to your parent, subsidiaries, and affiliates. Confidential Information does not include information or data that is:

i.   known to the Host before its disclosure by you without an obligation of confidentiality under another agreement;
ii.   independently developed by the Host without use of any Confidential Information;
iii. in the public domain when the Host seeks to disclose or make use of it, other than as a result of disclosure by the Host; or
iv.   received by the Host from a third party with a legal or contractual right to disclose that information or data.

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(b) **Disclosure.** The Host shall not use or disclose your Confidential Information except in connection with the exercise of its rights or the performance of its obligations under this agreement. The Host shall not disclose your Confidential Information to any person other than its employees, agents, or independent contractors who have a need to know it in connection with this agreement, and who are under obligations of confidentiality substantially similar to this section. The Host shall protect the confidentiality of your Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in any case with reasonable care. All Confidential Information made available under this agreement, including copies, shall be returned or destroyed by the Host, and certified as having been returned or destroyed, promptly after the termination of this agreement.

(c) **Exceptions.** The Host will not be in violation of this section if it discloses Confidential Information that is required to be disclosed because of a valid order by a court or other governmental body or by applicable law or by the rules of any nationally recognized stock exchange. However, under these circumstances, the Host shall notify you in writing of that disclosure to permit you to seek confidential treatment of that information.

8. **NATURE OF RELATIONSHIP.**

The relationship of the parties under this agreement is one of independent contractors, and no joint venture, partnership, agency, employer-employee, or similar relationship is created in or by this agreement. Neither party may assume or create obligations on the other party's behalf, and neither party may take any action that creates the appearance of such authority.

9. **NO CONFLICT OF INTEREST; OTHER ACTIVITIES.**

During the Term, the Host may engage in other website hosting activities, except that the Host may not accept work, enter into contracts, or accept obligations inconsistent or incompatible with the Host's obligations or the scope of Services to be rendered for you under this agreement.

10. **INDEMNIFICATION.**

(a) **Of Host by You.** You shall at all times indemnify the Host against a Loss or Litigation Expense caused by any breach of any of the representations or agreements made by you under this agreement.

(b) **Third Party Investigations.** In addition, you shall reimburse the Host for all costs and expenses (including reasonable attorneys' fees and costs) incurred by the Host resulting from any third-party investigation of your acts or practices including, without limitation, any costs or expenses related to compliance with any third party subpoena or other discovery request. Should the Host be served with a third party subpoena in connection with Hosting Services it performed for you, the Host shall promptly advise you and consult with you regarding the Host's response to the subpoena to the extent the subpoena seeks your data, documents, or information pertaining to your so that you may have an opportunity to seek appropriate relief.

11. **DISCLAIMERS; DISCLAIMERS OF WARRANTIES**

(a) **Warranty.** The Host does not warrant that the content or functions contained in the updated web pages or on the web site on the Internet, and/or that services provided under this agreement, will meet

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your requirements or that the operation of the web pages and services will be uninterrupted or error-free. The entire risk as to the quality and performance of the web pages and web site and any services provided under this agreement is with you. In no event will the Host be liable to you or any third party for any damages, including any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate updated web pages or web site, or arising out of the services provided in this agreement, even if you have been advised of the possibility of such damages. If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions

(b) **Limitation of Liability.** Neither the Host, nor any of its officers, employees, affiliates, agents, or licensors, nor any third party from which the Host has obtained rights to produce the product or services referred to in this agreement, shall be liable to you or anyone else for consequential, special, incidental, indirect, or similar damages even if advised of the possibility of such damages.

(c) **Aggregate Liability.** You agrees that the aggregate liability of the Host, Host's parties or any third party, if any, arising out of any kind of legal claim (whether in contract, tort or otherwise) in any way connected with any part of the service(s) to be provided hereunder shall be limited to actual (direct) damages not to exceed the amount you paid the Host under this agreement in the three (3) months immediately preceding the event giving rise to such claim.

12. INTELLECTUAL PROPERTY.

(a) **No Intellectual Property Infringement by Host.** To the extent the software, programs, or applications used to access your website infringe on the rights of any such third party, the Host shall obtain a license or consent from such third party permitting the use of such items.

(b) **No Intellectual Property Infringement by You.** You represent to the Host and unconditionally guarantee that you own all text, graphics, photos, designs, trademarks, hyperlinks, or other content on your website or that you have permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify, and defend the Host and its subcontractors from any liability (including attorneys' fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by you. You further represent to the Host that its domain names or URL listings do not infringe, dilute, or otherwise violate third-party rights or trademarks.

(c) **Host Property Rights**. All tools, know-how, and technology leased or licensed to the Host with respect to the hosting of the website are the sole property of the Host, and you have no ownership or other intellectual property rights in or to such items.

(d) **Your Property Rights.** All text, graphics, photos, designs, trademarks, hyperlinks, or other content on the website are your property, and the Host has no ownership or other intellectual property rights in or to such items.

(e) **Nature of Website Content**. You shall not do any of the following:

(i) use the Hosting Services to transmit or post any material that contains or contains links to nudity, pornography, adult content, sex or extreme violence;
(ii) use the Services to transmit or post any material that violates any applicable local, state, national, or international law, or any rules or regulations promulgated under those;

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(iii) use the Hosting Services to harm or attempt to harm minors in any way;

(iv) use the Hosting Services to transmit or post any material that harasses, threatens, or encourages bodily harm or destruction of property;

(v) use the Hosting Services to make fraudulent misrepresentations or offers, including offers relating to "pyramid schemes" and "Ponzi schemes";

(vi) use the Hosting Services to access, or attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of the Host or another entity's computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data;

(vii) use the Hosting Services to transmit or post any material that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including the unauthorized copying or distribution of copyrighted material, the digitization and distribution of photographs from magazines, books, music, video or other copyrighted sources, and the unauthorized transmittal of copyrighted software;

(viii) use the Hosting Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent;

(ix) resell the Hosting Services without the Host's prior written authorization; or

(x) use the Hosting Services for any activity that adversely affects the ability of other people or systems to use the Services or the Internet. This includes "denial of service" attacks against another network host or individual You. Interference with or disruption of other network You, network services, or network equipment is prohibited.

13. GOVERNING LAW.

(a) **Choice of Law.** The laws of the state of New Jersey govern this agreement (without giving effect to its conflicts of law principles).

(b) **Choice of Forum.** Both parties consent to the personal jurisdiction of the state and federal courts in Essex County, New Jersey.

14. AMENDMENTS.

Any amendments to this agreement will be posted at https://www.shorthillsdesign.com/hosting-tos and an email notification will be sent out advising you that an update has been posted. If you reject the update, you may terminate your service within 30 days of receipt of the email notification. A refund will be issued for the remainder of the funds paid in advance starting with the next calendar month (no mid-month refunds).

15. ASSIGNMENT AND DELEGATION.

(a) **No Assignment**. Neither party may assign any of its rights under this agreement, except with the prior written consent of the other party. All voluntary assignments of rights are limited by this subsection.

(b) **No Delegation**. Neither party may delegate any performance under this agreement, except with the prior written consent of the other party.

(c) **Enforceability of an Assignment or Delegation**. If a purported assignment or purported delegation is made in violation of this section, it is void.

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16. COUNTERPARTS; ELECTRONIC SIGNATURES.

(a) **Counterparts.** The parties may execute this agreement in any number of counterparts, each of which is an original but all of which constitute one and the same instrument.

(b) **Electronic Signatures.** This agreement, agreements ancillary to this agreement, and related documents entered into in connection with this agreement are signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

17. SEVERABILITY.

If any one or more of the provisions contained in this agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions of this agreement, but this agreement will be construed as if those invalid, illegal, or unenforceable provisions had never been contained in it, unless the deletion of those provisions would result in such a material change so as to cause completion of the transactions contemplated by this agreement to be unreasonable.

18. NOTICES.

(a) **Writing; Permitted Delivery Methods**. Each party giving or making any notice, request, demand, or other communication required or permitted by this agreement shall give that notice in writing and use one of the following types of delivery, each of which is a writing for purposes of this agreement: mail (registered or certified mail, postage prepaid, return-receipt requested), nationally recognized overnight courier (fees prepaid), facsimile, or email.

(b) **Addresses**. A party shall address notices under this section to a party at the following addresses:

  a. If to the Host: 17 Riga Court Scotch Plains, NJ 07076 or support@shorthillsdesign.com.
  b. If to you: the Host will use the mailing address or email that is used to send invoices and/or other communications.

(c) **Effectiveness.** A notice is effective only if the party giving notice complies with subsections (a) and (b) and if the recipient receives the notice.

19. WAIVER.

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, and no waiver will constitute a continuing waiver, unless the writing so specifies.

20. ENTIRE AGREEMENT.

This agreement constitutes the final agreement of the parties. It is the complete and exclusive expression of the parties' agreement about the subject matter of this agreement. All prior and contemporaneous

communications, negotiations, and agreements between the parties relating to the subject matter of this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement may not be explained, supplemented, or qualified by evidence of trade usage or a prior course of dealings. Neither party was induced to enter this agreement by, and neither party is relying on, any statement, representation, warranty, or agreement of the other party except those set forth expressly in this agreement. Except as set forth expressly in this agreement, there are no conditions precedent to this agreement's effectiveness.

21. HEADINGS.

The descriptive headings of the sections and subsections of this agreement are for convenience only, and do not affect this agreement's construction or interpretation.

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EXHIBIT A: HOSTING SERVICES

1. Website hosting – one year term @$1188year.
2. Monthly WordPress core updates and plugin updates as needed with more frequent updates as deemed necessary by the Host.
3. Rotating 7-day daily backups

EXHIBIT B SERVICE LEVEL AGREEMENT

The Hosting Services are provided subject to the following terms, referred to as a "**Service Level Agreement**".

1. HOST SERVICES AVAILABILITY.

The Host shall use reasonable efforts to provide the Hosting Services at all times during the Term. However, from time to time the Hosting services may be inaccessible or inoperable for any reason, including: (a) equipment malfunctions; (b) periodic maintenance procedures or repairs that the Host may undertake; or (c) causes beyond the Host's control or that are not reasonably foreseeable by the Host. The Host shall provide as much advance notice as customary and reasonable for any unscheduled or emergency maintenance.

2. 99% NETWORK UPTIME.

  (a) Uptime Guarantee.
    (i) The Host guarantees 99% availability of its network, excluding Excusable Downtime (as defined below).
    (ii) Network uptime includes functioning of all Host network infrastructure including VPN, routers, switches, and cabling.
    (iii) Network uptime does not apply to services or software running on a Host server or other Host hardware components.
  (b) **Downtime.** Network downtime exists when the Host cannot forward packets on the your behalf and is measured from the time you open a trouble ticket with the Host until the server network is available to you.
  (c) **Credits.** 12% of the yearly charges for other affected Host services for each 60 minutes aggregate of downtime for an affected Host server (up to 100% of the monthly charge for the server).

3. PUBLIC CLOUD HOSTING AND PRIVATE CLOUD HOSTING.
  (a) Restoration or Repair Guarantee for Public and Private Cloud Hosts
    (i) The Host guarantees the functioning of all Public hosts including compute and storage.
    (ii) Public Cloud Server Host downtime exists when a Host hardware component fails or stops working, and downtime is measured from the time you open a trouble ticket

with Host and Host identifies the cause of the failure until the server is powered on and on-line.

(iii) The Host guarantees that restoration or repair will be complete within 24 hours of problem identification or that in the event that the repair cannot be completed within this 24 hours, the website will be migrated to a different server at no cost to you. You will be given credit for 12% of the yearly fee.

(b) Public Cloud Migration.

(i) If a Public Cloud migration is required, the Host will notify you at least 24 hours in advance of beginning the migration, unless the Host determines in its reasonable judgment, that the migration must happen sooner to protect Public Cloud data or for necessary technical reasons.

(ii) The Host guarantees that the migration will be complete within 48 hours of the time that Host begins the migration.

(c) **Credits.** 12% of the yearly Public charge per additional hour of downtime for the affected Host server (up to 12% of the yearly charge for the server) if the Host exceeds the time allowed above

4. SCHEDULED MAINTENANCE.

(a) Accessibility of the Host web interface. During Scheduled Maintenance, your website might be available, but you might not be able to access it.

(i) Normal scheduled maintenance ("**Normal Maintenance Window**") occurs at least once a month. Scheduled maintenance may not always include downtime and the Host will use best efforts to communicate and minimize any downtime associated with any maintenance window to four hours or less. Any maintenance requiring downtime will be communicated in advance.

(ii) The Normal Maintenance Window is subject to change at Host's reasonable discretion, and the new Normal Maintenance Window will become effective upon posting to Host's web interface(s) or email notification. The Host will limit any maintenance occurring during the time periods between Friday and Sunday to occur between the hours of 11 pm EST Friday and 11pm EST Sunday.

(b) Infrastructure Maintenance. Includes all Host components, including the server(s). During Infrastructure Maintenance, the Host server and other Services may not be available.

(c) Scheduled maintenance does not count as downtime and is not included in the calculation of the uptime guarantees.

(d) If the Host intends to perform scheduled maintenance outside of the Normal Maintenance Window, the Host shall post a notice to the Host's web interface(s) or email notification to you with at least 48 hours' notice.

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5. EMERGENCY MAINTENANCE.

(a) The Host may perform emergency maintenance if there is an immediate, material threat to Host servers or the Host services.

(b) The Host will attempt to notify you by email before emergency maintenance, but notice depends upon the severity and critical nature of the emergency maintenance.

(c) Emergency maintenance does not count as downtime and is not included in the uptime guarantee calculations.

6. HARDWARE REPLACEMENT.

The Host may replace hardware for any reason, at any time.

7. DOWNTIME EXCLUSIONS.
(a) The unavailability of Host services due to the following will not be considered to be downtime (and credits will not be issued) ("**Excusable Downtime**"):
(b) Your applications and content, and errors from your own custom scripting or coding;
(c) Your configuration(s) outside of the Host infrastructure that affects Host services;
(d) Your acts or omissions;
(e) Force majeure;
(f) Services provided by a third party outside of the Host's control;
(g) Maintenance during the Normal Maintenance Window or emergency maintenance (as described in section 5);
(h) Downtime to install services you request;
    (i) Internet traffic exchange points external to Host, including without limitation Network Access Points ("NAPs") and Metropolitan Area Exchanges ("MAEs"), and Internet networks controlled by others; or
    (j) Suspension of services (for example, if you don't pay the Host).

8. CREDIT REQUEST AND LIMITATIONS.

(a) To receive a credit, you must open a trouble ticket for the problem and contact a Host Service Representative via support@shorthillsdesign.com within 5 days of the outage or failure and request a credit.
(b) Multiple credits will not be paid for different types of outages occurring at the same time (no overlapping credits). There are no duplicate credits for the same outage, and the greater of the applicable credits will apply.
(c) There is an overall cap on credits in a month. Credit in a month for a service cannot be more than 12% of the charges for the service for the year.

9. TROUBLE TICKETS.

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A member of the Host's Network Operations Center Service Desk staff will be available to assist you with problems and questions regarding the hosting services. The Host will supply email support to you regarding the hosting services within 24 hours of receiving a trouble ticket. If problem is determined to be non-hosting environment related a charge may be incurred at an hourly rate of $175.00.

You may open a trouble ticket using by emailing: support@shorthillsdesign.com

10. HOST WILL ONLY PAY CREDITS FOR DOWNTIME OR OUTAGES.

The Host is not liable for any damages you claim to have suffered because of Host downtime or outages, including the unavailability of software, operating systems, applications, and data.

11. INTERNET BANDWIDTH.

(a) **Metered Bandwidth**.

(i) The maximum allowed bandwidth is 10GB per month.
(ii) If bandwidth consumption is greater than the purchased amount, an overage charge is billed to you.

(b) **Internet Bandwidth Measurement**

(i) Internet bandwidth is measured by taking samples of usage minutes periodically during a calendar month and collecting a fixed number of readings (cumulative of inbound feeds and cumulative of outbound feeds at the same measured point in time). The timing and number of readings will be set forth on an attached exhibit to this agreement.
(ii) The measurements are stored and become data points. At the end of the month, all data points taken during the month are ranked in ascending order.
(iii) The Host will discard a fixed percentage for each set (inbound and outbound) of data points. The percentage will be set forth on an attached exhibit to this agreement
(iv) The highest remaining sample of t sets becomes your sustained (base) or burstable usage number for that billing cycle.
(v) You will be invoiced at the end of each month for burstable internet bandwidth usage, if any.

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