

# CONTRACT AGREEMENT



THIS AGREEMENT is made and entered into between JACMS OÜ, and/or its subsidiaries located at Narva mnt 13, Tallinn, 10151, Estonia, hereinafter referred to as ("JACMS" or "Company" or "Provider") and you, [SUBSCRIBER] hereinafter referred to as ("Subscriber") on [DATE], who wish to use the below-described Service(s) of the Company in accordance with this Agreement. Company and Subscriber are collectively referred to in this Agreement as the "parties".

"Agreement" shall refer to the complete and entire understanding between the parties. The term "Agreement" shall not refer to any statement, supposition, or understanding not recorded in writing.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

## SERVICE DESCRIPTION

JACMS provides Internet Web hosting, and associated services, hereafter referred to as the "Service" or "Services". For this purpose, Company manages a network of dedicated server computers (collectively, the "Network") located in Nuremberg, Germany, and integrated with the Internet. This Network sends and receives data and information via the World Wide Web. Subscriber wishes to connect to the Web and establish an Internet Web presence by utilizing the various resources of Company's Network and Company's Services. By confirming the orders on Company's website Subscriber affirmatively select the type, description, duration of Services, and payment term option.

Company is giving Subscriber 99% uptime guarantee. Excluded are times at which the server cannot be accessed by the Company either due to technical or other problems or at times which cannot be influenced by Company (Force Majeure, faults from third parties, etc.). Company reserves a right to limit the access to Services, as long as the safety of the net running, the maintenance of the net integrity, especially the avoidance of serious net interruptions, the software or the saved data these require.

Managed service does not include items such as (but not limited to) setting up e-mail accounts when a web-based control panel is available, creation of deployment procedures or scripts for non-open source or Subscriber's supplied software, installation of web based scripts, programming or design services, troubleshooting Subscriber's installed software, or clustering servers and related items.

## DOMAIN NAMES

Upon registering a domain name, Subscriber is bound by the terms of the registration service's then current domain name policy and the policies of the national DNS registration authorities. Company will not refund any fees paid with respect to the registration of a domain name Subscriber is unable to use. If the new domain is registered by Subscriber, there will be no handling fee. If the domain is registered by Company on Subscriber's behalf a handling fee will be incurred. Due to the unpredictable nature of the transfer process, no guarantees are made regarding the amount of time a specific transfer may take. If the transfer of the domain is done by Company on Subscriber's behalf, a handling fee will be incurred. If Subscriber cancels service during the transfer period for any reason, all charges are considered earned.

## PRIVACY

Company is concerned with the privacy of on-line communications and Web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, Company urges to assume that all on-line communications are insecure. Company cannot take any responsibility for the security of information transmitted over Company's facilities.

## LAWFUL PURPOSE

Company services may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of any applicable law, regulation, or Agreement is prohibited. This includes, but is not limited to: copyrighted material or material protected by trade secret and other statute or dissemination of harmful or fraudulent content. Using Company's Service for the purpose of participating in any activity dealing with subject matters that are prohibited under applicable law is prohibited. Any conduct that constitutes harassment, fraud, stalking, abuse, or a violation of federal export restriction in connection with use of Company's Service or products is prohibited. Using the Company's network to solicit the performance of any illegal activity is also prohibited, even if the activity itself is not performed. In addition, knowingly receiving or downloading a file that cannot be legally distributed, even without the act of distribution, is prohibited. Subscriber is responsible for usage of the Company's servers and any statement made by Subscriber on Company servers may be deemed "publication" of the information entered. Acknowledging the foregoing, Subscriber specifically agrees not to use Company servers in any manner that is illegal or libellous. Company reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrongdoing. The Subscriber agrees to indemnify and hold Company harmless from any claims resulting

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from the use of the Service, which damages the Subscriber or any other party.

The Subscriber is obliged to inform the Company immediately and completely in case of any court, or out of court actions that have been brought upon him due to the usage of the contractual services.

## SPAMMING

Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming") is prohibited. The term "spamming" also includes, but is not limited to, maintaining an open SMTP policy, engaging in spamming using the service of another ISP or IPP and referencing in the spam a Web site hosted on a Company's server, and selling or distributing software (on a Web site residing on a Company's server) that facilitates spamming. Violators will face immediate suspension. Company reserves the right to determine, in its sole and absolute discretion, what constitutes a violation of this provision.

## SYSTEM AND NETWORK ABUSE

Violations of system or network security are prohibited and may result in criminal and civil liability. Examples of system or network security violations include, without limitation the following: unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the Company; interference with service to any Subscriber, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting. Company reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected violation.

## VIRUSES AND OTHER DESTRUCTIVE ACTIVITIES

Use of Company's services or equipment for creating or sending Internet viruses, worms or Trojan horses, or for pinging, flooding or mail bombing, or engaging in denial of service attacks is prohibited. It is also prohibited for any Subscriber to engage in other activity that is intended to disrupt or interfere with, or that results in the disruption of or interference with, the ability of others to effectively use Company's services and equipment (or any connected network, system, service or equipment) or conduct their business over the Internet. Violators will be liable for any damage done to the equipment of the Company and its Subscribers.

## COPYRIGHT VIOLATION

Distribution and/or posting of copyrighted or the aforementioned infringements will not be tolerated. Company reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected violation.

## ADULT CONTENT

Pornography and sex-related merchandising are prohibited on Company's servers, that includes but not limited to any form of textual representation of adults only material, sites that may infer sexual content or provide links to adult content elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to Company's servers or any other server on the Internet, or provide links to such sites.

## DISCLOSURE TO LAW ENFORCEMENT

Subscriber agrees that the Company may disclose any and all Subscriber information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the Subscriber. In addition, Company shall have the right to terminate all service set forth in this Agreement.

## LIMITATION OF LIABILITY

With respect to the Services to be provided hereunder, Subscriber understands and acknowledges that JACMS MAKES ABSOLUTELY NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. Subscriber further agrees that Company shall not be liable to Subscriber for any claims, damages, or loss of profit which may be suffered by Subscriber or any other entity in any respect for direct, indirect, consequential, actual, or punitive damages arising out of or in relation to the Services provided hereunder, including, but not limited to, losses or damages resulting from loss of data due to delays, non-deliveries, or Service interruptions. The utilization of any data or information received by Subscriber from use of the Services to be provided by JACMS is at Subscriber's sole and absolute risk. Company specifically disclaims and denies any responsibility for the completeness, accuracy, or quality of such data or information.

## PAYMENTS

Company provides and Subscriber agrees to the one of the following three (3) payment term options:

Option 1. Monthly term shall begin on the date of application. Subscriber pays for every month of Services in one prepayment, such payment being non-refundable, at Company's sole discretion. Thereafter, renewal EVERY MONTH IN DURATION shall be

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automatic unless one of the parties cancels within 30 calendar days of the end of the then-current term.

Option 2. Term of six (6) months shall begin on the date of application. Subscriber pays for the six months of Services in one initial prepay instalment, such payment being non-refundable, at Company's sole discretion. Thereafter, renewal terms SIX MONTHS IN DURATION shall be automatic unless one of the parties cancels within 30 calendar days of the end of the then-current term.

Option 3. Term of twelve (12) months shall begin on the date of application. Subscriber must pay for the twelve months of Services in one initial instalment, such payment being non-refundable, at Company's sole discretion. Thereafter, renewal terms TWELVE MONTHS in DURATION shall be automatic unless one of the parties cancels within 30 calendar days of the end of the then-current term.

Invoicing will be done exclusively online. The Subscriber exclusively agrees that he will not receive any postal invoices. However, if Subscriber should demand postal invoicing Company will charge to Subscriber 3,00EUR (excl. VAT 18%) per postal invoice. All set-up and Initial Term fees are non-refundable, in whole or in part, even if Subscriber's Service account shall be suspended, cancelled, or transferred. Any termination or cancellation by JACMS or Subscriber shall not relieve Subscriber of the obligation to pay all fees occurred prior to such termination or cancellation.

Subscriber's set-up fee and first payment are due at the time the on-line application is filled out and submitted to Company. Billing term begins only after server has been activated and set up. Credit card payments will be automatically billed every 30/31 days. If a credit card payment is declined, Subscriber is responsible for submitting a payment manually. If payments are not received within 2 weeks of the invoice issue date, Company reserves a right to take all necessary steps to collect (including withholding all data and content). All late payments will be subject to fine of 8% for every month overdue which can be collected at any future time, if notice of late payment is not provided ahead of time. Notice MUST BE provided through the Trouble Ticket system. The Subscriber guarantees that the data he has given to Company is complete and true. He is obliged to inform the provider immediately of any changes of all data. This especially applies to:

- Subscriber's name and postal address
- In case of companies the legal representative
- Name, postal address, e-mail address, telephone and fax number of the administrative contact person responsible for the server

## CANCELLATION

All notices of cancellations must be submitted through a Trouble Ticket system. The ticket number will be of irrefutable proof of cancellation. Subscriber is required to provide a 30 day notice of cancellation. In some cases Company may request confirmation by fax.

## SUPPORT

Data Centre performs server monitoring 24 hours a day. Technical support is available to Subscriber through Trouble Ticket system 24 hours a day, 7 days a week, and by the phone on weekdays from 9:00am – 5:00pm (GMT +2). During the case of Emergency there is a 24 hour Emergency phone line available.

If Subscriber's usage of the support is proven to be due to faulty services provided from the Company this service will be reimbursed by the Company without any additional compensation. Should the fault not lay with the Company the Subscriber is obliged to pay the additional labour. Payments of 49,00EUR (excl. VAT 18%) per started 30 minutes will become due. For labour outside office hours 69,00EUR (excl. VAT 18%) per started 30 minutes will become due.

The Company has to immediately resolve interruptions within reason of its technical and operational possibilities. The Subscriber is obliged to immediately inform the Company of known interruptions through a Trouble Ticket system or a 24 hour Emergency phone line.

If functioning of the server is influenced due to non contractual contents or due to the usage beyond this Agreement the Subscriber is not entitled to claim his rights for these kinds of interruptions. In case of Force Majeure Company is not liable for service duties. This especially applies to legal strikes, also at third party's companies and official actions as long as these are not a fault of the Company.

## CHANGES IN TERMS OF AGREEMENT

Company reserves the right to make changes to the terms and conditions of this Agreement at any time, to include pricing of the Services, but with changes in fees being effective only at the end of any period for which Subscriber has prepaid. Utilization of the Service(s) by Subscriber following the effective date of such change(s) shall constitute acceptance by Subscriber of such change(s). Subscriber is solely responsible for staying informed with respect to changes in this Agreement.

## GOVERNING LAW

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This Agreement shall be governed by the laws of the city of Tallinn, Estonia. Each party agrees that jurisdiction and venue for any and all claims, disputes, or other matters arising out of the Services provided herein and under this Agreement will only lie in Tallinn, Estonia. If any action at law or in equity is brought in Tallinn, Estonia, to enforce or interpret the provisions of this Agreement and Services provided herein, the prevailing party in such action shall be entitled to all reasonable costs to include attorney fees.

## SEVERABILITY

In the event that any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

## INTERPRETATION

The format, words, and phrases used herein shall have the meanings generally understood thereby in the Computer/Software/Internet Industries. This Agreement shall be construed according to its plain meaning. In the event any ambiguity shall be found herein, interpretation shall be based on the intent of the parties, rather than a construction automatically against the interests of the drafting party.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, and in consideration of the covenants and agreements contained herein, do hereby execute this instrument, with each party warranting its ability to enter into this Agreement for the person or entity herein named as a party hereto. By filling out the online order form AND by signing this agreement, Subscriber agrees to all the terms and conditions of this Agreement.