



LiveWhale Software License Terms

These **License Terms** (the “**Terms**”) govern your use of products on the LiveWhale software platform, including LiveWhale Calendar, LiveWhale CMS, and LiveWhale Storyteller (the “**Software**”) provided by White Whale Web Services, Inc. (“**White Whale**” or “**we**” and “**us**”) and are incorporated into and made part of every subscription, order, and agreement between you and White Whale relating to the Software (each an “**Order**”).

- 1. Subscriptions.** The subscription term shall be as set forth in the applicable Order, and unless otherwise agreed in the applicable Order: (a) you agree to pay the fees set forth in the Order in advance and that such fees are nonrefundable; and (b) you may cancel a subscription but fees will not be prorated or returned.
- 2. License.** Subject to your compliance with these Terms and the applicable Order (including payment obligations), we grant you a limited, nonexclusive, non-sublicensable, non-transferable license to use the Software for its intended purpose. You agree not to disassemble or reverse engineer the Software or to use the Software in any manner detrimental to White Whale or for any unlawful purpose.
- 3. Your Content.** We understand and agree that content, data and materials provided by you and your users (“**Your Content**”) belong to you or your users, and that we are to utilize Your Content only in connection with our provision of the Software or for analytical purposes (*i.e.*, to improve our Software, services and products), and you grant White Whale the right to do so.
- 4. Confidential Information.** Each party may disclose to the other certain sensitive information that is not publicly available and that is either identified as confidential or should be understood by the recipient to be confidential under the circumstances (collectively, “**Confidential Information**”). Each party will maintain in confidence and not use the other party’s Confidential Information, except as is necessary to perform its obligations under this Agreement. You understand that the Software is not intended for use with any sensitive information, and you agree that you will not upload to, or store on, the Software any personal health, credit or other sensitive information.
- 5. Limited Warranties.** White Whale warrants that: (i) the Software will materially conform to any specifications agreed upon in the applicable Order; and (ii) to White Whale’s knowledge, your use of Software as intended will not infringe upon any third party’s intellectual property rights.
- 6. Disclaimer. Other than as expressly set forth in Section 5: (a) the Software is provided “AS IS”; and (b) White Whale disclaim all warranties, express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability and error-free operation.**
- 7. Limitations. To the maximum extent permitted by law: (a) White Whale’s liability in any action relating to the Software shall be limited to the fees paid by you for use of the Software in the 12 months**

preceding the filing of the action; and (b) White Whale shall not be liable for any incidental, consequential, special or indirect damages.

8. Access. You agree to provide, in a reasonably timely fashion, necessary access, credentials and information as reasonably requested by White Whale to enable it to provide the Software.

9. FERPA and HIPAA. These are laws that protect the privacy of personally identifiable information. Because the Software allows content managers to collect information from website visitors, it is technically possible for content managers to request information that is considered confidential under FERPA or HIPAA regulations.

White Whale maintains reasonable administrative, physical and technical standards to ensure that no unauthorized persons are able to access information gathered via the Software. We do not utilize information submitted via the Software for any purpose. **You are solely responsible for ensuring that your information collection practices are compliant with all applicable federal, state, and local regulations.**

10. Governing Law; Disputes. Unless otherwise agreed in the Order: (a) these Terms, our Service Level Agreement, our Hosting Terms and each Order (collectively referred to herein as the "Agreement") shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law provisions; and (b) any action arising out of relating to the Software shall be brought and heard in the concomitant state or federal court for the County of Alameda, California. The parties irrevocably consent to the exclusive jurisdiction of such courts, and waive all arguments and defenses concerning venue and the convenience of the forum. The substantially prevailing party in any action arising out of or relating to this Agreement shall be entitled to its reasonable attorney's fees, expert's fees and costs.

11. Miscellaneous. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes all prior agreements, understandings, warranties and representations concerning such subject matter. Should any provision herein be found unenforceable by a court of competent jurisdiction, it shall be revised to the extent necessary to render it enforceable, or, if incapable of such revision, shall be severed from this Agreement, and the remainder of this Agreement shall be enforced. This Agreement is the product of negotiation between sophisticated parties, and shall not be construed in favor of or against either party.