



DESIGN TLC

Website Management Service Terms of Service

Introduction

Although there is also some unavoidable standardized legalese at various places in the document which our attorney required, in this document we try to write everything in plain English. To do this, we frequently use terms like “we” and “you.” “We,” “us,” “our,” and “the Company” means Design TLC, LLC a corporation registered in the State of Virginia. “You,” “your,” “Customer” or “Client” in this document is you, our Client.

Current Hourly Rate

Throughout this document, reference is made to our current hourly rate. This rate is defined as our hourly rate that is in place at the time a service is requested, not at the time this agreement is signed. We will provide you with our current hourly rate upon request.

Availability and Communication

We are available via email and phone Monday through Friday from 8:00 am to 5:00 pm Eastern time. Our normal response time is one business day, though our response time may vary. We do not work on weekends or holidays. Clients with current website management services receive priority response times.

Email to our support@designtlc.com is the primary means of communication accepted for our work together. We do not communicate via mobile phone, text message, social media, or instant/private messaging (like Facebook Messenger) to communicate since we cannot track these requests as a team.

Website Hosting

Our Website Management Service do not include website hosting. We recommend a few well-managed hosting companies, such as Kinsta and WPEngine. We cannot be responsible for the speed of your website, the performance of any of your website features, security certificates for your website, the uptime of your website, or any other hosting related matter.

FIXING ANY PROBLEMS RELATED TO WEB HOSTING, OR PROJECT DELAYS RELATED TO WEB HOSTING IS BILLABLE AT OUR CURRENTLY HOURLY RATE.

It is your responsibility to ensure that the credit card the hosting company has on file for your website hosting account is current for rebilling.

WE ARE NOT RESPONSIBLE FOR SUSPENSION OR WEBSITE DOWNTIME BECAUSE YOUR CREDIT CARD COULD NOT BE BILLED OR FOR ANY OTHER BILLING REASON.

Website Management Service

Our Website Management includes website software updates, website backups, and website security.

- Website Security
We use Wordfence to protect your website and scan your files for malware.
- Website Backups
Your website's files and database will be backed up automatically every day. This backup is stored in our cloud data vault where we typically retain the previous 30 backups for your site.
- Software Updates
Each week, at our discretion, we will apply available updates for the WordPress core software, your theme files, and your plugin files. We perform these updates for the items that appear in the "Updates" area of your WordPress dashboard. We also watch WordPress industry security news and proactively perform these updates more frequently during times of enhanced threat levels.

While it is impossible to guarantee that your site will never be hacked, all of these techniques make your website a more difficult target for hackers. In addition, it is well known that hackers tend to exploit easier targets first – sites without security measures in place. However, in the event that your site is hacked, we will restore it to pre-hack condition at no additional cost either by restoring a site backup or performing a malware cleanup at our discretion.

Premium (Paid) Themes and Plugins

- Many websites use themes and/or plugins that require the payment of a recurring license fee to maintain access to ongoing software updates. We have secured appropriate licensing for many of these.
- If we have appropriate licenses for the themes and/or plugins used by your website, the cost for recurring license fees are included in your Website Management Services, and licensing will be maintained for you as long as you are an active subscriber to our Website Management Services.

- If your website uses premium themes and/or plugins and we do not have appropriate licensing, the responsibility is yours for maintaining the appropriate licensing to ensure the availability of updates.
- We will advise you of the themes and/or plugins for which you will need to maintain licensing and assist you as needed in the process of obtaining them.

WE CANNOT BE HELD LIABLE FOR PROBLEMS SUCH AS BUT NOT LIMITED TO HACKS, INOPERABILITY OR INTERCOMPATIBILITY THAT ARISE FROM PREMIUM PLUGINS WHICH YOU CHOOSE NOT TO LICENSE AND ARE OUT OF DATE.

Plugin Compatibility

If an update to a plugin creates conflicts or causes issues with the functionality of your website, we will consult with you to determine the best course of action. Typically, we will remove the offending plugin and replace it with a similar plugin or other programming. If the time required to resolve a plugin compatibility issue exceeds 1 hour, additional time will be billable at our current hourly rate.

IT IS YOUR RESPONSIBILITY TO INFORM US IF YOUR SITE IS EXPERIENCING PROBLEMS AND NEEDS ATTENTION.

IF YOU ELECT NOT TO PURCHASE OUR WEBSITE MANAGEMENT SERVICE, THE TOTAL RESPONSIBILITY IS YOURS FOR PERFORMING BACKUPS AND KEEPING WORDPRESS (AND ITS THEMES AND PLUGINS) UPDATED.

Payment and Cancellation for Website Management Services

Payment for Website Management Services is automatically billed/renewed (monthly or annually) based on the date it was started.

You may cancel website management services with a 10-day notice. WE DO NOT OFFER REFUNDS ON WEBSITE MANAGEMENT SERVICES.

IF YOU ELECT TO DISCONTINUE WEBSITE MANAGEMENT SERVICES, THE TOTAL RESPONSIBILITY IS YOURS FOR PERFORMING BACKUPS AND KEEPING ALL COMPONENTS OF YOUR WEBSITE BACKED UP, SECURED, AND UPDATED.

Late Payment and Collections Policy

All invoices pertaining to website maintenance, or any other work on your website are payable on receipt. If an invoice goes unpaid for more than 30 days after the invoice was sent, late fees will apply.

Amounts due and unpaid shall bear an interest at the rate of twelve percent (12%) per annum. Client agrees to pay all costs of collection, including reasonable attorney's fees, as additional sums owed under this Agreement.

Client further acknowledges and agrees that if a check tendered for payment is not honored by the bank for non-sufficient funds (“NSF”), it will not be re-deposited. If the bank does not clear the check, the Client will incur a fee of \$30. The Client must immediately send a certified check or money order for the amount due, including the NSF fee, to the Company to cover returned check.

You can check your state’s allowed NSF fees here: <https://www.vericheck.com/state-allowed-nsf-fees/>

Your Responsibilities in Website Security

We employ basic WordPress security techniques when building your website. However, studies have shown that one of the most common ways that hackers gain access to your website is through keylogging programs installed on the infected computers of users. You agree to protect any computer that will log into the website by:

- Installing and maintaining updated security software
- Using the most up-to-date version of your preferred web browser
- Keeping the operating system patched with recommended updates
- Keeping versions of other installed software up to date if they are installed.

You also agree to use a strong password (as shown by the WordPress password indicator) for any account you use to log in and edit your website, and that this password will only be used on your website. We recommend the use of a password manager so that you have strong unique passwords for every site you access.

Third-Party Services

From time to time, our clients might employ a third party (such as but not limited to a Search Engine Optimization professional, social media professional, or content writer) whose services involve modifications to the website. WE CANNOT BE RESPONSIBLE FOR THE WORK OF A THIRD PARTY. Should our services be necessary due to any work performed by a third party, these services are billable at our current hourly rate.

OUR WEBSITE MANAGEMENT PLANS DO NOT COVER WORK NECESSARY DUE TO ACTIONS PERFORMED BY A THIRD PARTY. SHOULD OUR SERVICES BE NECESSARY DUE TO ANY WORK PERFORMED BY A THIRD PARTY, THESE SERVICES ARE BILLABLE AT OUR CURRENT HOURLY RATE.

Email Deliverability

Occasionally, your website will send email when certain events occur such as the completion of a contact form, sale of a product, update/reset of a user’s password, etc. These emails that are automatically generated by the WordPress system are often flagged as spam (or not delivered at all) by email providers like Google/Gmail, Microsoft, Yahoo and others.

SINCE WE CANNOT CONTROL THE RECEIPT OF EMAIL, WE CANNOT BE HELD RESPONSIBLE FOR ANY EMAILS THAT WERE NOT DELIVERED TO THE CLIENT FOR ANY REASON.

IT IS THE CLIENT'S RESPONSIBILITY TO REGULARLY CHECK SPAM FOLDERS AND WEBSITE FORM AND ORDER INTERFACES FOR ANY NOTIFICATIONS THAT WERE NOT DELIVERED TO THE CLIENT'S INBOX.

Email Service

WE DO NOT PROVIDE OR SUPPORT EMAIL SERVICE TO CLIENTS. We recommend consulting with an IT Professional about implementing third party services such as Google Apps and Microsoft Office 365.

Domain Names

Registering a domain name for your website and paying the accompanying annual registration fee is your responsibility. We can assist in the process of registration and connecting your domain name to the website if you desire. You can purchase your domain name for multiple years, or renew it annually at your discretion.

It is your responsibility to ensure that the credit card the domain registrar has on file for your domain registration is current for rebilling.

WE ARE NOT RESPONSIBLE FOR SUSPENSION OR LOSS OF DOMAIN NAMES BECAUSE YOUR CARD COULD NOT BE BILLED OR FOR ANY OTHER REASON. Work needed as a result of domain expiration is billable at our current hourly rate.

Website Accessibility and Compliance

If laws require that your website is accessible to users with disabilities, or if you desire for it to be, it is your responsibility to inform us of this requirement.

If your website or any associated data must meet compliance requirements of any kind for any entity, organization, or regulatory body (such as but not limited to HIPAA, FERPA, etc.), it is your responsibility to inform us of the specific compliance requirements involved.

WE DO NOT GUARANTEE TO MEET ANY COMPLIANCE FOR ACCESSIBILITY OR OTHER REQUIREMENTS UNLESS WE HAVE EXPLICITLY AGREED IN WRITING TO DO SO.

Disclosure to Law Enforcement

We will disclose information about our clients to law enforcement agencies without further consent or notification to the client upon lawful request from such agencies. We will cooperate fully with the legal requests of law enforcement agencies.

Indemnification

The Client agrees to indemnify and hold harmless the Company, its subsidiaries, contractors, employees and affiliates and each of their respective directors, officers, employees, shareholders and agents (each an "Indemnified Party") against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, or any and all costs thereof (collectively, "Losses") to which an Indemnified Party may become subject and which Losses arise out of, or relate to the Agreement, Client's use of the Services, breach of any confidentiality obligation or any alleged infringement of any trademark, copyright, patent or other intellectual property right and will reimburse an Indemnified Party for all legal and other expenses, including reasonable attorneys' fees incurred by such Indemnified Party, in connection with investigating, defending, or settling any Loss, whether or not in connection with pending or threatened litigation in which such Indemnified Party is a party.

Choice of Law and Forum

This Agreement, and any related Statements of Work, shall be construed in accordance with, and governed by, the laws of the State of Virginia without regards to Conflict of Law principles.

In the event of any dispute or disagreement with respect to the meaning, effect or interpretation of this Agreement or in the event of a claimed breach of this Agreement, the parties hereto agree that such dispute shall be determined through mediation. The parties will mutually select a mediator and share the cost of mediation equally. Unless otherwise mutually agreed, the location of the mediation will be in Arlington, Virginia. The parties agree to cooperate fully with the mediator in good faith in order to reach a mutually satisfactory resolution of the dispute.

If the dispute is not resolved within 60 days after it is referred to the mediator, either party has the option to litigate the dispute in a court of law located in Arlington, Virginia.

Refusal or Discontinuation of Service

We reserve the right to refuse, restrict or terminate service to any client for any reason.

Disclaimer of Warranty

We will perform our work in accordance with good industry practices and at the standard expected from a suitably qualified person with relevant experience. We cannot guarantee that our work will be error-free and so we cannot be liable to you or any third-party for damages, including lost profits, lost savings or other incidental, consequential or special damages, even if you've advised us of them.

THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT SERVER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL.

Limitation of Damages or Liability

IN NO EVENT WILL THE COLLECTIVE LIABILITY OF THE COMPANY, ITS AFFILIATES AND ITS LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, FOR HARM CAUSED BY OR RELATED TO THE CUSTOMER'S SERVICES OR INABILITY TO UTILIZE THE SERVICES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Notwithstanding anything else in this Master Services Agreement, the maximum aggregate liability of THE COMPANY any of its employees, agents, contractors or affiliates, under any theory of law should not exceed the amount of fees it has collected on the customer's account in the last six months.

Severability

No part of this Agreement will be affected if any other part of it is held unenforceable or invalid.

Headings

The headings in this Agreement are inserted for convenience only and are not a part of this Agreement.

Entire Agreement

This Agreement, and any Proposals of Service attached, constitute the entire agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes any and all prior agreements and understandings relating to the subject matter hereof. This Agreement may not be waived, assigned, extended, amended, supplemented or modified orally, but only by a written instrument signed by the party against whom enforcement of any such waiver, assignment, extension, amendment, supplement or modification is sought.

Modifications

This Agreement may not be changed or modified except in writing signed by the parties.

Construction

The parties acknowledge and agree that they have read, understood and have actively negotiated the terms of this Agreement, participated in its drafting and have been represented by legal counsel. Therefore, this Agreement shall not be deemed to be the product of either party and shall not be enforced or interpreted any more stringently or strictly against either party.

Assignability

Neither the Company nor the Client may assign this Agreement without the prior consent of the other.

Agreement

By enrolling in/purchasing a website care and support plan, you agree to the terms and conditions specified in this document.