



DESIGN TLC

Website Management Service

Terms of Service 8/22/24

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 WP Engine. 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.

Not a Law Office. Client understands that Design TLC is not a law office, Design TLC's employees are not attorneys, and Design TLC does not practice law. Client should not use Design TLC as their sole source of information related to compliance with Laws and should always retain their own legal counsel.

Compliance Standards. The Parties recognize that Laws governing web accessibility are numerous and the regulatory environment is changing rapidly. The Parties further agree that the accessibility of any Site or Deliverable will be measured against WCAG (Web Content Accessibility Guidelines). Due to the rapidly changing legal landscape, Design TLC can not guarantee that websites will conform with WCAG or that equates to compliance with the Americans with Disabilities Act (ADA), Section 508, or any other applicable Laws. Notwithstanding the foregoing and absent more concrete regulatory guidance in the future, Design TLC believes that WCAG is the best accessibility standard for most organizations to adhere to and will present a report to Client on all issues addressed and outstanding. If any issues are not fixable within the scope of work or the capabilities of Design TLC, Design TLC will recommend a contractor or other solution to remediate these issues.

Agreement For Professional Services

1. Scope of Professional Services

Client contracts to receive, and Design TLC ("Company") contracts to provide Professional Services, including Website Accessibility Consulting and Remediation Services, Website Accessibility Monitoring and Maintenance Services.

2. Training

As outlined in or required by a Statement of Work, the Company will provide training to the Client as needed. Training will not include support or maintenance services for problems arising out of unauthorized modifications, alterations, or additions to hardware or software provided by the Client.

3. Compliance With Laws

- **Not a Law Office:** The Client understands that the Company is not a law office, and its employees are not attorneys. The Company does not practice law, and the Client should retain their legal counsel for compliance-related information.
- **Compliance Standards:** The accessibility of any Site or Deliverable will be measured against WCAG (Web Content Accessibility Guidelines). The Company cannot guarantee that websites will conform



with WCAG or ensure compliance with the ADA, Section 508, or other applicable laws. However, the Company believes WCAG is the best accessibility standard for most organizations and will provide a report on all addressed and outstanding issues.

4. Limitation Of Liability

- **Liability Limit:** The Company's liability in connection with the Professional Services, any software provided, or any order shall not exceed the aggregate service fees paid to the Company by the Client during the 12-month period preceding the event giving rise to such liability.
- **Exclusion of Consequential Damages:** Neither party shall be liable to the other for any incidental, consequential, indirect, or punitive damages (including lost profits), regardless of the liability theory.
- **Applicability:** These limitations apply to all causes of action, except claims based on fraud or willful misconduct.

5. Indemnification Obligations

- **Client's Obligation to Indemnify:** The Client shall defend, indemnify, and hold harmless the Company and its affiliates from any losses, damages, costs, liabilities, and expenses resulting from Client's breach of the Agreement, use of the Services, violation of any applicable law, and any claims related to intellectual property infringement arising from the use of the Client's content or website.
- **Additional Indemnification:** The Client agrees to indemnify and hold harmless the Company, its subsidiaries, employees, and affiliates against any losses, claims, damages, liabilities, and costs arising out of or relating to the Agreement, including alleged infringement of intellectual property rights and breach of confidentiality obligations.

6. Confidentiality

- **Non-Disclosure:** Each party shall safeguard and hold as confidential all Confidential Information disclosed by the other party. This information shall be used solely for purposes contemplated by the Agreement and not disclosed except as required by law.
- **Legal Disclosure:** The Company will disclose information to law enforcement agencies upon lawful request, without further consent or notification to the Client.

7. General Provisions

- **Independent Contractor Relationship:** The Company is an independent contractor. This Agreement does not create a partnership or joint venture between the Parties.
- **Assignment:** Neither party may assign this Agreement without the prior consent of the other, except to an Affiliate or successor. The Company may use subcontractors for the Services.



- **Non-Exclusivity:** This Agreement does not obligate either party to perform or acquire services exclusively from the other party.
- **Amendment or Waiver:** No amendment or waiver of this Agreement shall be valid unless in writing and signed by both parties.
- **Headings; Captions:** The headings and captions are for convenience only and shall not affect the interpretation of the Agreement.
- **Governing Law:** The Agreement shall be governed by the laws of the State of Texas, with legal proceedings in Travis County, Texas. For disputes, mediation is required before litigation. The Client and Company may litigate in Arlington, Virginia if mediation fails.
- **Severability:** If any provision is deemed invalid or unenforceable, the remainder of the Agreement remains unaffected.
- **Binding Effect:** This Agreement binds the Parties and their successors and assigns.
- **No Third-Party Beneficiaries:** There are no third-party beneficiaries of this Agreement.
- **Counterparts:** This Agreement may be executed in several counterparts, each considered an original.
- **Entire Agreement:** This Agreement and related Statements of Work constitute the entire understanding between the parties and supersede all prior agreements. Modifications must be in writing and signed by both parties.
- **Modifications:** The Company reserves the right to modify this Agreement at any time. Changes take effect immediately upon posting, with material changes notified to the Client.

8. Refusal or Discontinuation of Service

The Company reserves the right to refuse, restrict, or terminate service to any client for any reason.

9. Disclaimer of Warranty

The Company will perform its work in accordance with good industry practices but cannot guarantee error-free work. The Company disclaims all warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability, non-infringement, and fitness for a particular purpose. The Company will not be liable for any damages, including those caused by distributed denial-of-service attacks, viruses, or other harmful materials.

10. Limitation of Damages or Liability

The collective liability of the Company under any legal theory shall not exceed the fees collected from the Client in the last six months. This limitation does not affect liabilities that cannot be excluded or limited under applicable law.