



MAINTENANCE SERVICES AGREEMENT

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 BRACEWELL WEB WORKS, a sole proprietorship registered in the State of Colorado. The “You” or “Client” in this document is you, our Client.

Occasionally in this document you will see an FYI. These are helpful tips that we offer from our long experience of working with clients and seeing web projects through to completion.

You will also see text in bold and or capitalized letters which designate it as very important.

Throughout this document, reference is made to the 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.

Website Management Service

Our Website Management services, also called “SITE CARE PLANS” include website hosting, website software updates, website backups, uptime monitoring and website security.

- **Website Security**

Our proven lockdown protocol hardens the WordPress system to make it more resistant to the actions of hackers. We employ industry leading security software that actively guards your website against hack attempts at multiple levels in the WordPress system.

- **Website Backups**

Your website’s files and database will be backed up automatically each day your website has activity (if your website does not have activity, there is no need for a backup to occur). This backup is stored in our cloud data vault where we typically retain the previous 30 backups for your site.

- **Software Updates**

Each week we 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 these techniques make your website a more difficult target for hackers to penetrate. In addition, it is well known that hackers tend to exploit easier targets first – sites without security measures in place. However, if 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.

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Restoring Backups

Should your site become compromised by a hack or if your site becomes inoperable because of user error, we will restore a backup for you. If the restorations are the result of a hack, there is no limit to the number of restorations we will perform for you under this service. If the restorations are due to user error, we will perform a maximum of 2 restorations in any 30-day period. Additional user error-related restorations will be performed at our current hourly rate with a one-hour minimum.

Premium (Paid) Plugins

If you hired us to build your site and we implemented premium plugins that require an annual paid subscription to receive updates, we will maintain the appropriate licenses for you as long as you subscribe to our website management service. **If we did not build your site and it includes premium plugins** such as these, the responsibility is yours for maintaining the appropriate licensing to insure the availability of updates.

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 hours (assuming you are on our Site Care Plus plan), additional time will be billable at our current hourly rate. If you are on our Site Care Complete Plan, we will quote you a price to remedy the situation.

WHILE WE ACTIVELY MONITOR YOUR WEBSITE AND CATCH MANY PROBLEMS BEFORE THEY ARE NOTICED, IT IS YOUR RESPONSIBILITY TO INFORM US IF YOUR SITE IS EXPERIENCING PROBLEMS AND NEEDS ATTENTION.

IF YOU ELECT TO CANCEL OUR WEBSITE MANAGEMENT SERVICE, THE TOTAL RESPONSIBILITY IS YOURS FOR PERFORMING BACKUPS AND KEEPING WORDPRESS (AND ITS THEMES AND PLUGINS) UPDATED.

Bracewell Web Works Web Site Hosting Service

Our Hosting Services do NOT include email services. We recommend our clients secure business email services with Office 365, Google or other commercial email service providers.

We use commercially reasonable efforts to make sites that our host server is available 99.9% of the time during each monthly billing cycle. If we are unable to meet this service level, you will be eligible to receive a credit to apply to future billing cycles based upon the unavailability for that month. For the purposes of this agreement, unavailability means that either your website is unresponsive, or your website returns a server error response to valid user requests for more than 60 seconds of consecutive requests, and in all cases that the unavailability is not because of local, regional, national or international outages.

Unavailability that is a result of scheduled maintenance is excluded from these conditions and will not be considered for service credit calculations. Scheduled maintenance is defined as maintenance that is announced at least 2 days in

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advance and does not exceed one hour in any month. Typically, scheduled maintenance occurs in off-peak hours (usually in the early morning).

Service credits will be calculated as a percentage of the bill for the billing cycle that the unavailability occurred. The percentage for the credit will be calculated by dividing the number of minutes of unavailability by the total number of minutes in that billing cycle. The customer must request Service credits within 7 days of the unavailability occurring.

Payment and Cancellation for Website Management Services

Payment for Website Management Services (SITE CARE PLANS) are billed in advance and purchased with a recurring payment through PayPal. If you do not wish to pay through PayPal, we will invoice for 6 months of service.

You may cancel website management services with a 30-day notice. **BRACEWELL WEB WORKS DOES NOT OFFER REFUNDS ON WEBSITE MANAGEMENT SERVICES, aka Site Care Plans.**

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.

If you desire to migrate your website to another web host. We will at your discretion (1) provide you with an administrator login for your WordPress site so a backup can be performed and migrated to the new location, (2) provide a backup to you created using an industry standard WordPress backup system at a cost of \$85, or (3) perform the website migration for you at our current hourly rate.

FOR SECURITY REASONS, WE DO NOT PROVIDE FTP OR CONTROL PANEL ACCESS TO OUR CLIENTS OR TO THIRD PARTIES FOR MIGRATION.

Hours of Business

Our business hours are Monday – Thursday from 9:00 AM – 5:30 PM and Fridays 9:00 AM – 1:00 PM Mountain Time. Offices are closed for most major holidays.

Late Payment and Collections Policy

All invoices pertaining to web hosting, security, maintenance, or any work on your web site are payable on receipt. If an invoice goes unpaid for more than 30 days after the invoice was sent, **WE RESERVE THE RIGHT TO SUSPEND YOUR WEB SITE FROM PUBLIC VIEW UNTIL ALL OUTSTANDING BILLS ARE CURRENT.**

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 \$35. 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. Postdated checks are not an acceptable form of payment.

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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 CAN ONLY CONTROL THE SENDING OF EMAIL AND NOT ITS RECEPTION, BRACEWELL WEB WORKS 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.

Domain Names

Registering a domain name for your web site and paying the fee for it annually is your responsibility. We can assist in the process of registration and connecting your name to the web site if you desire. You can purchase your domain name for multiple years or renew it annually at your discretion. Be certain that the credit card the domain registrar has on file for you is current.

WE ARE NOT RESPONSIBLE FOR SUSPENSION OR LOSS OF DOMAIN NAMES BECAUSE YOUR CARD COULD NOT BE BILLED. Any time spent reestablishing your site after domain expires is billable at our current hourly rate. And FYI, this can be complicated to deal with.

Disclosure to Law Enforcement

We may 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 Bracewell Web Works, its subsidiaries, contractors, employees and affiliates and each of your 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.

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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 Colorado 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 El Paso County, Colorado. The parties agree to cooperate fully with the mediator in good faith 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 El Paso County, Colorado.

Refusal or Discontinuation of Service

Bracewell Web Works reserves the right to refuse, restrict or terminate service to any client for any reason.

Disclaimer of Warranty

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.

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.

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 BRACEWELL WEB WORKS AND ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS OR

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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

Please initial at the bottom of each page and sign below signifying that:

- You have read, understood, and agreed to this Maintenance Services Agreement
- That this Maintenance Services Agreement and the Proposal of Services documents comprise our entire agreement.
- That you agree that the two documents listed above govern your working relationship with Bracewell Web Works.

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