

WizardsWebs Design LLC

Website Design, Hosting and Maintenance Agreement

This agreement provides both Client (the person or company requesting services) and WizardsWebs (WizardsWebs Design LLC), with a formal, binding contract with respect to website design, hosting, maintenance, and related services.

WizardsWebs is a website design, hosting, and maintenance provider. User accounts are subject to compliance with the terms and conditions set forth below. By ordering our services you are stating and acknowledging that you have read this agreement and that you understand the terms and conditions and agree to be bound by them without exception.

1. USER CONDUCT

WizardsWebs services may only be used for lawful purposes. Any use of these services which violates any local, state, federal, or international laws which may apply to WizardsWebs, your local jurisdiction, or any jurisdiction that you or your site may be subject to is strictly prohibited.

While using our services, you may not:

- a. Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law, including without limitation the U.S. export control laws and regulations, and laws protecting intellectual property including copyright, trademark, trade secret, misappropriation and anti-dilution laws;
- b. Post, publish, transmit, reproduce or distribute any information or software which contains a virus, malware, or other harmful component;
- c. Post, publish, transmit, reproduce, distribute or in any way exploit any information, software, or other material obtained through the service for commercial purposes (other than as expressly permitted by the provider of such information, software, or other material)
- d. Share your website login with anyone.
- e. Give administrative access to anyone not authorized by WizardsWebs.

2. INDEMNIFICATION

You agree to indemnify, defend, and hold harmless WizardsWebs from any and all liability, penalties, losses, damages, costs, expenses, attorneys' fees, interrupted communications, lost data, lost profits, causes of action or claims caused by or resulting indirectly from your use of the service which damages either you, WizardsWebs, or any other party or parties without limitation or exception. You also agree that WizardsWebs shall not be responsible for any damages your business may suffer. This indemnification and hold harmless agreement extend to all issues associated with your account, including but not limited to domain name selection and website content.

3. MANAGED WEBSITE SERVICES

The Client understands that website design services, website hosting, and website maintenance are three different and separate services. WizardsWebs provides managed website services only and reserves the right to only offer website design services to clients that also subscribe to website hosting services and maintenance services.

4. WORK SCOPE AND RATE

WizardsWebs will offer the client a written or verbal quote based on requirements provided by the Client. The quote will contain cost estimates and an estimated timeline. The project may be quoted on a fixed price basis or an hourly basis. The Client must approve the quote before work will begin. For any work not quoted otherwise, the standard hourly rate for services including WordPress, HTML, PHP, JavaScript, graphic design and photography is \$125.00 hour.

5. DESIGN DEPOSIT

New accounts are required to provide an advance design deposit before work begins. The deposit is non-refundable for any reason. This payment will be credited to the design invoice. Website design projects are not added to the work schedule until the both the design deposit and the website content are received.

6. WEBSITE CONTENT

Website design projects are not added to the work schedule until the both the design deposit and the website content are received. Delivery quoted does not begin until the both the design deposit and the website content are received.

Client agrees to make every effort to submit content and approvals in a timely manner. In cases where a design deposit is made but no content or incomplete content is received within six months, the design deposit shall be forfeited by the Client and the project terminated.

WizardsWebs will not be held responsible if the target launch date cannot be met due to late submission of content by Client. WizardsWebs will not be held responsible if any Client supplied content contains errors.

Website content provided by the client must be owned or licensed by the client. Website content copied from other websites may not be used. The client is responsible for any fines or fees resulting from the use of copyrighted or trademarked content.

7. WEBSITE MAINTENANCE

Website maintenance includes three (3) components which are Licensing, Technical Maintenance and Client Requested Changes.

Licensing - Maintenance includes the cost of most annual licenses including premium plugins, SSL certificate, video streaming services, image optimization, and cloud storage of backups. Licenses paid for by the client are owned by the client. Licenses paid for by WizardsWebs and provided as part of maintenance are owned by WizardsWebs.

Technical Maintenance – Includes builder and plugin weekly updates, scheduled backups to cloud storage, site restoration if needed, full exports after editing, broken link monitoring, 404 monitoring, redirection management, checking server settings, setup of user.ini, config.php, and .htaccess files, security scanning and actions, website design improvements, mailbox oversight, G Suite & Office 365 integration, monitoring disk space and bandwidth allocations, technical support, and emergency response.

Client Requested Changes – Most anything the client wants done including adding or editing pages, posts, projects, pictures, services, testimonials, events, categories, videos, products, prices, message bars, styling changes and colors, holiday hours, mailboxes, forwarders, autoresponders, on-page SEO work, etc.

Monthly Maintenance includes an allocation of up to two hours of developer time per month per website for technical maintenance and client requested work combined. Work requested which exceeds the allocated hours will be charged at the standard hourly rate.

8. PHOTOGRAPHY / VIDEO SERVICES

WizardsWebs can provide content services including digital photography and video. Rates depend on application and will be quoted on request. Unless otherwise quoted, stock photos, video, bulk optimization, domain registration, domain transfers and other outsourced services will be prepaid and added to invoice as quoted by WizardsWebs.

9. SEARCH ENGINE OPTIMIZATION SERVICES (SEO)

Unless otherwise agreed or quoted, WizardsWebs will provide on-page SEO as part of the design scope for pages containing adequate business content. This work is done in accordance with industry best practices and experience. However, WizardsWebs makes no warranties or representations of any kind regarding search engine results or position.

10. CAMPAIGN MANAGEMENT

Monitoring and management of paid search engine campaigns such as Google Adwords may be available as a service for an extra fee and will be quoted on request. Such services are not included as part of website maintenance.

11. THIRD PARTY CONTRACTORS

WizardsWebs does not typically outsource any services but reserves the right to outsource services or otherwise contract third party consultants and/or subcontractors if needed.

12. COPYRIGHTS AND TRADEMARKS

Client represents to WizardsWebs and unconditionally guarantees that any elements of text, media, photos, or other artwork furnished to WizardsWebs for inclusion in the website are either owned by Client, or that Client has license or permission from the rightful owner to use each of these elements. Client will hold harmless, protect, and defend WizardsWebs and its subcontractors from any claim or suit arising from the use of such elements furnished by Client.

WizardsWebs will endeavor to utilize only original or properly licensed content. Content whose source cannot be documented or is otherwise determined to be unlicensed will be removed.

13. DOMAIN NAMES

At Client's request, WizardsWebs will make reasonable efforts to transfer ownership and/or registration information of any domain names which were registered on behalf of Client. Any cost incurred to transfer registrars will be billed to the client.

14. COPYRIGHT TO WEB PAGES

Unless otherwise agreed in writing, website design and elements created by WizardsWebs are owned by WizardsWebs and copyright is not transferred to Client. ***Upon final payment for design services, the Client is assigned non-exclusive, transferrable, single-use rights to the finished assembled website.*** Rights to licenses, photos, graphics, source code, themes, plugins, media, work-up files, and computer programs remain the property of their respective owners. Copyright to Client supplied text and images are retained by Client and will not be reused by WizardsWebs unless permission is granted in writing by Client. WizardsWebs retains the right to display graphics and other Web design elements as examples of their work in their respective portfolios. WizardsWebs reserves the right to include a credit line and hyperlink back to its business website on all web pages designed.

Client understands that by placing information on WizardsWebs servers that such information becomes available to all Internet users and that WizardsWebs has no way of limiting or restricting access to such information or protecting such information from copyright infringement. You assume total responsibility and risk for your use of WizardsWebs servers and the Internet. It is solely your responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services and other information, and the quality and merchantability of all merchandise provided through WizardsWebs or on the Internet generally.

15. TRANSMITTAL OF MATERIALS

You agree not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, postings, or other Internet media. Unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming" is strictly prohibited and may cause your services to be terminated immediately and without warning. You will be held fully responsible for any damages to you, WizardsWebs, or any other party or parties resulting from any such conduct.

16. ELECTRONIC COMMUNICATIONS PRIVACY ACT (ECPA) NOTICE

WizardsWebs reserves the right to monitor any and all communications through or with our facilities. You agree that WizardsWebs is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded.

17. HIPAA Disclaimer. We are not "HIPAA compliant." Users are solely responsible for any applicable compliance with federal or state laws governing the privacy and security of personal data, including medical or other sensitive data. Users acknowledge that the Services may not be appropriate for the storage or control of access to sensitive data, such as information about children or medical or health information. WizardsWebs does not control or monitor the information or data you store on, or transmit through, our Services.

We specifically disclaim any representation or warranty that the Services, as offered, comply with the federal Health Insurance Portability and Accountability Act ("HIPAA").

Clients requiring secure storage of "protected health information" under HIPAA are expressly prohibited from using this WizardsWebs services for such purposes. Storing and permitting access to "protected health information," as defined under HIPAA is a material violation of this User Agreement, and grounds for immediate account termination. We do not sign "Business Associate Agreements" and you agree that WizardsWebs is not a Business Associate or subcontractor or agent of yours pursuant to HIPAA.

18. REFUSAL OR DISCONTINUANCE OF SERVICE

WizardsWebs reserves the right to refuse or discontinue service to anyone at the sole discretion of WizardsWebs. WizardsWebs shall have no responsibility to notify any third-party providers of services, merchandise, or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification. You agree that WizardsWebs has the right to monitor the service electronically from time to time and to disclose any information as necessary to satisfy the law, or to protect itself or its subscribers. WizardsWebs reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement.

Client may discontinue service at any time by providing thirty (30) days written notice to WizardsWebs. Any services which were prepaid may be refunded on a prorated basis by check within 60 days. Any amounts due WizardsWebs at the time service is discontinued must be paid before the domain name will be released. Design services and retainers are not refundable.

Any paid plugin or license being provided as part of maintenance for the website that the client is not being billed for separately is owned by WizardsWebs. Migrating the website to a different hosting provider without removing that content is theft.

19. CHANGES TO SERVICE

The services that we provide are expected to change as technology changes and systems are upgraded. We reserve the right to change any service or feature that we offer without notice to you. This includes changes to network access, and all system hardware and software.

20. IDENTIFICATION INFORMATION

You agree that you as the person legally responsible for use of this account are at least 18 years of age. You agree to supply WizardsWebs with a current and truthful name, postal address and telephone number for our records, and you have a continued obligation to keep this information current. You also agree that you are an authorized user of any credit card that you supply to us and agree that we have an obligation to fully investigate any possible fraudulent credit card use.

21. CONFIDENTIAL INFORMATION

WizardsWebs acknowledges and agrees that the source materials and technical and marketing plans or other sensitive business information, as specified by the Client, including all materials containing such information, which are supplied by the Client to WizardsWebs or developed by WizardsWebs in the course of developing the site are to be considered confidential information. Information shall not be considered confidential if it is already publicly known through no act of WizardsWebs.

22. BACKUP OF DATA

WizardsWebs maintains periodic backups of files and data for accounts as part of website maintenance. Backups are provided as a service and are not guaranteed.

23. SECURITY

WizardsWebs employs industry best practices to maintain website security including security software, timely updates and security patches, secure login practices, periodic backups and full site exports.

The Client agrees that if they believe the security of the account has been compromised in any way, they will notify WizardsWebs immediately by telephone at 713-817-3880 or email to steve@houston-webs.com. The Client will be held responsible for any misuse or compromise to the account for which WizardsWebs is not properly notified. The Client agrees that if any security violations are believed to have occurred in association with the account, WizardsWebs has the right to suspend access to the account pending an investigation and resolution. The Client also agrees that WizardsWebs has the right to cooperate in any government or legal investigation regarding any aspect of our services, including services sold to you. Any use of our system to engage in software piracy or other violations of law will result in account suspension and be immediately reported to the appropriate authorities.

24. NO WARRANTIES

WizardsWebs makes no warranties or representations of any kind for the services being offered. The service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, non-infringement, security, or implied warranties of merchantability or fitness for a particular purpose. No advice or information given by WizardsWebs or its agents or employees shall create a warranty. WizardsWebs provides no warranty that the service will be uninterrupted or error free or that any information, software or other material accessible on the service is free from viruses or other harmful components.

Under no circumstances shall WizardsWebs be liable for any direct, indirect, special, punitive, or consequential damages that result in any way from your use of or inability to use the service, or for third parties' use of the service to access your Web space, or to access the Internet or any part thereof, or your or any third parties' reliance on or use of information, services, or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance.

If you are dissatisfied with WizardsWebs service or any of its terms, conditions, rules, policies, guidelines, or practices, your sole and exclusive remedy is to discontinue using the service.

25. LAWS AFFECTING ELECTRONIC COMMERCE

From time-to-time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. The Client agrees that the Client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend WizardsWebs and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Client's exercise of Internet electronic commerce.

26. PAYMENT

WizardsWebs invoices for hosting and website management & maintenance services quarterly, in advance. Services are invoiced in advance because they cannot be repossessed or returned in the case of non-payment. Services are invoiced quarterly to keep administrative costs low. Other services are invoiced for and are due at the time they are provided. Payment terms, if offered, are offered at the sole discretion of WizardsWebs. You agree to make payment in full for the services ordered from WizardsWebs, by the invoice due date. You agree that all deposits are non-refundable. You agree that until and unless you notify WizardsWebs of your desire to cancel any or all services received, those services will be billed on a recurring basis.

You agree that if you are paying by credit card, prepayments will be billed and charged automatically, and that WizardsWebs may apply the amount due to the provided card at any time.

- You agree to a late payment fee of \$20 if payment is not received by the invoice due date.
- You agree that if a payment is past due all services may be suspended. This means that the website will be taken offline and email services suspended. You understand that search engines may remove your site from their search results once they detect your website is offline.
- You agree to pay all overdue amounts, late fees, and a \$35 service charge to reinstate an account that has been suspended.
- You agree that if a payment remains past due for 60 days past the invoice due date the account will be closed.
- You agree to pay any collection and attorney fees.

27. PRIOR AGREEMENTS

This agreement supersedes any written, electronic, or oral communication you may have had with WizardsWebs or any agent or representative thereof, and constitutes the complete and total agreement between the parties.

28. SEVERABILITY

If any provision of this agreement is determined to be invalid or unenforceable, all other provisions shall remain in full force and effect and said provision shall be reformed only to the extent necessary to make it enforceable.

29. DISPUTE RESOLUTION

In case of a dispute between the Parties relating to or arising out of this Agreement, the Parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the Parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted in the Harris County, Texas. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add Parties, vary the provisions of this Agreement, award punitive damages, or certify a class. The arbitrator shall be bound by applicable and governing federal law as well as the law of Texas. Each Party shall pay their own costs and fees.

Claims necessitating arbitration under this section include, but are not limited to: contract claims, tort claims, claims based on federal and state law, and claims based on local laws, ordinances, statutes or regulations. Intellectual property claims by WizardsWebs Design LLC will not be subject to arbitration and may, as an exception to this sub-part, be litigated. The Parties, in agreement with this sub-part of this Agreement, waive any rights they may have to a jury trial in regard to arbitral claims.

30. JURISDICTION

This agreement shall be governed by the laws of Harris County and the State of Texas.

31. FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, WizardsWebs shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

32. ACKNOWLEDGEMENT

By ordering our services you are stating and acknowledging that you have read this agreement and that you understand the terms and conditions and agree to be bound by them without exception.

WizardsWebs is responsible for keeping the current agreement available on its website. WizardsWebs reserves the sole right to modify this agreement at any time without notice. By continuing to subscribe to our services you are stating and acknowledging that you have read the changed terms and conditions and that you understand such terms and conditions and agree to be bound by them without exception.

Other Information

This is our account service contract. It is fairly standard legalese. Although it may sound harsh, rest assured that we have nothing but good intentions towards our customers. Like all of our policies, the contract is designed to maximize the efficiency and quality of our service for all customers.