



## Introduction

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In this document we try to write everything in plain English, and to do that we use terms like “we” and “you” a lot. “We” and “us” means Pro Website Creators (a.k.a. PWC) We are a limited liability corporation registered as a DBA under Pro App Creators, LLC in the State of California. The “You” in this document is you, our Client.

There is some unavoidable legalese at various places in the document. Sorry. Our attorney required it. If you need assistance translating, just ask.

## Proposal of Services

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The services delivered to you will include

- A website editor and site powered by our Pro Website Creators SiteBuilder Platform
- Design of your site limited to a maximum of 5 pages and 3 blog posts

This details the work to be provided to you by us, including without limitations, the deliverables and specifications thereto, and any and all compensation to be paid for such work. If additional services are requested by you, the parties may enter into other such Proposal of Services signed by the parties. Notwithstanding the forgoing, the terms of any Proposal of Services entered into between the parties, shall be in addition and supplemental to the terms of this Agreement. If there is a conflict between the Agreement and any Proposal of Services, the terms of this Agreement shall be binding.

## Time Frames

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It is our experience that the typical project takes about 1 week (not including holidays) from when we receive all of the requested materials from you.

We do have an active queue of work and we do not place your project in that queue until your initial payment has been received (see below). While we endeavor to start your project quickly, we will not begin your project until it reaches the front of our queue so that it can receive our full attention.

Because of our current workload, projects requiring a “Rush” will incur a 45% markup of the total project cost. This increase is necessary to cover the overtime necessary to complete your project in the timeframe you require.

FYI, in our experience, your projects can often stall as we wait on materials, feedback, or approvals we have requested from you. We understand why it happens – you have a business to run. But please understand that we do too.

While we are waiting on your response, we will normally begin to work on other projects to make efficient use of our time. **IF YOU TAKE A WHILE TO RESPOND, IT'S FINE WITH US, BUT IT MIGHT BE A FEW DAYS (OR POSSIBLY A FEW WEEKS) BEFORE WE CAN GET YOUR PROJECT BACK INTO THE QUEUE. PLEASE ALSO SEE BELOW CONCERNING ABANDONED PROJECTS.**

## Fees and Payments

Our payment terms include a one-time, non-refundable website design setup fee. The initial set up fee is due upon execution of this terms of service document, and Phase One will commence upon receipt of that fee and agreement to this document.

Also required is the monthly maintenance as agreed upon, and upon launch, or one month after the execution of this agreement, whichever comes first, will be a prorated month's maintenance, and then every month thereafter, on the 1<sup>st</sup> of the month, a monthly maintenance fee is due. For example

- You agree and pay the setup fee on April 12. The site launches on April 19. You will be charged 11 days of monthly maintenance, and then on May 1 will begin the normal monthly amount.

The payment methods we accept are Discover, MasterCard, Visa, and American Express.

## Current Hourly Rate

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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).

## Late Payment and Collections Policy

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We will attempt to charge your credit card each month, and the responsibility of keeping that credit card up-to-date is your responsibility. If we cannot charge the card, we will make our best attempts to contact you. But if payment is not made within 14 days, we have the right to terminate your hosting account, and getting it back online may require extra fees which we will determine, solely at our discretion.

If payment is late two months in a row, we have the right to terminate your hosting account.

We are easy to get in contact with; just call or email us and we will make our best effort to work with you to avoid any interruption in your hosting service.

## Termination

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This Agreement may be terminated immediately by either party upon written notice for any of the following:

- (a) upon ten (10) days prior written notice by either party to the other party, or

- (b) if the other party defaults in the performance of any material provision of this Agreement, which default is not cured within thirty (30) days after written notice from the non-defaulting party.

Please note: due to the proprietary nature of our website builder, your design is exclusive to our platform, and can not be transferred to another website service.

## Refunds

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**If you wish to cancel the hosting after your initial payment, your initial payment is non-refundable for any reason.**

**Maintenance fees are non-refundable.** If you want to cancel your hosting with us, let us know in writing (as stated in the Termination section), and we will cancel your recurring payment and keep your site alive until the date on which the next payment would have occurred.

## The Design Process

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### PHASE ONE: Receiving Your Input

- At the beginning of your website design project, we will give you one or more questionnaires that will provide us with important written material to be placed on your site and will help us understand the colors you want.
- We'll give you a choice of templates from which to choose your design, based on those questionnaires, or you can just let us make the decision for you.
  - If Logo design/redesign is selected, we'll work with you on that and colors before presenting you with templates.
- You will also provide us any pictures or any further written material from which we will work.
  - A file or project repository will be setup to which you can upload all of this information, and within which you agree to work.
- Phase One concludes when you have provided all of this information and, if applicable, your logo is designed.

### PHASE TWO: Design

- This is where we start on the design for your website.
- Phase Two concludes when we contact you to review the design.

### PHASE THREE: Review

- We will forward you a URL where you can look at the design and give us your feedback.
- We will make the requested edits from the review phase within reason. These are limited to minor changes such as, changing an image, editing text, or other edits that we agree to. Major changes may incur an additional design fee, which will be discussed before we proceed.
- Phase Three concludes when we have received your feedback, understand it, and agree with it.

## PHASE FOUR: Launch

- We will publish your web site so that it is viewable on your domain name. Important Note: Due to the nature of the Internet, it can take up to 36 hours for a newly published web site to be viewable by everyone.
- We will give you access to the site so that you can make additions and edits as you wish.
- We will ask you to fill out a short survey and provide a testimonial that we can use to help us grow our business. Of course, this is optional for you to fill out, but we hope you will!

## Compatibility

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Your new web site will be designed for viewing on modern screens and tested for compatibility in the following web browsers: Microsoft Edge, Mozilla Firefox, Apple Safari and Google Chrome. **Unless specifically requested by the client, we do not code for web browsers or operating systems older than the current release or for those in beta testing at the time the project is begun. There will normally be additional charges for this work.**

## Mobile Compatibility and Responsive Design

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Your new web site will be viewable on mobile web browsers on smart phones and tablet devices, and adjust to those device sizes. This is what we call an “Adaptive” design so that it will look good on these devices. For an optimal user experience (including loading of images and appropriate device sizes), your site will be Adaptive to device sizes but will not be fully responsive to browser screen size.

If you have purchased the special mobile version of your website, you will may have a much different look on mobile devices.

## Changes After Launch

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The website design project concludes when your web site is launched. We are happy to help you with changes to your web site after this point. However, any changes or modifications that were not included in the original price and not covered under our hosting plans will incur our hourly rate for completion.

Unless stated on the signup form, our help will be limited to one small change per month, defined as less than 15 minutes of our time.

Additional hourly fees will be incurred for future support requests.

## The Use of Third Party Images and Photography

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If you provide us with images or photography for use on your web site, securing the appropriate license to use them is your responsibility. You assume the full risk of liability for the use of those images. If you are in doubt of the licensing status of an image, contact the original artist before providing it for us to use in your design project.

You agree not to include any images on your web site (like those found on Google’s image search) without securing approval from the copyright holder for the image or determining that the image is in the public domain.

Certain media companies, like Getty Images, employ software that combs the Internet for web sites using their images without a license. Many small businesses have received demand letters for thousands of dollars because they used a single copyrighted image, even innocently, on their web sites. This is a common occurrence. Search for “Getty Images letter” and find hundreds of horror stories from small businesses.

An investment in professional photography can make a significant difference in the visual impact your web site has on a visitor. We work with several photographers at varying price points should you desire this service.

If you do not have professional photography and do not desire to employ a photographer, we often utilize royalty-free images obtained from stock photo web sites or within our hosting platform itself. The cost for licensing this stock photography is not included in the website price. We will ask for your written approval before purchasing any stock photography and bill you separately after launch.

## **Terms of Use, Policies and Other Legal Pages**

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Depending on the nature of your site and your location, legal pages such as Terms of Use and policy pages such as Privacy Policy, Return Policy, etc. may be required for your site by government entities, vendors or licensing agencies. It is the sole responsibility of the client to determine whether such pages are required, and the creation of such pages is not included in the Proposal of Services for your new web site unless specifically itemized in the proposal. You should consult an attorney to determine your responsibilities in this matter.

## **Intellectual Property (Who Owns What)**

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Your new web site will be built using our Pro Website Creators SiteBuilder content management system.

The web site design we create for you is licensed by us to you for one domain only (www.yourname.com). It may not be redistributed, resold, or modified for another domain in any way. If you would like to use your site or theme on additional domain(s), please let us know and we will provide a quote for additional licensing. We’re easy to work with on this and the cost is typically minimal.

Any custom graphics, images, or photography we develop belongs to you as it is displayed on your web site. If you require high-resolution versions of any images or photographs we develop (for use in print, advertising, merchandise, etc.), additional licensing may be required. And again, we’re easy to work with on this.

When we utilize images or other content that are licensed for use on your web site by a third party, that party retains ownership of the content in question according to the terms of their own license agreements. For example, if we use a stock photo on your site, you typically pay for the license to use the photo on your site but you do not own that photo. If you have questions about licensing issues like this, just ask.

During the process of creating your web site, we will create various types of code, functionality, and processes. While this work is used on your web site, we retain ownership of these as our intellectual property and reserve the right to use them on future web sites as well. We also reserve the right to use any part of any theme we develop for in future projects.

The re-use of code and visual elements helps us serve our future clients better just as your web site will benefit from things we have learned and developed in our previous projects.

## Web Site Security and Hosting

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Studies have shown that the most common way that hackers gain access to your web site is through keylogging programs installed on the infected computers of users.

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

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, and keeping versions of Flash and Java up to date if they are installed.

We monitor it for up-time and use commercially reasonable efforts to make sites that we host available 99.9% of the time during each monthly billing cycle.

## Web Site Updates and Backups

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You can save copies of your site called "backups". Backups allow you to restore to them at any point in time. While we automatically back up your site each time you publish and whenever you access developer mode, it's still important to have the habit of manually backing up your site.

In general, it's a good idea to create a backup:

- After you're satisfied with the look of your site
- After you've finished a hard-to-do task (such as importing several pictures, coding, etc).
- Before adding any custom code or doing any big changes to the site

There is a cap to how many backups you can have saved at a time. There is a limit of 10 automated backups that can be stored and 20 manual backups. Manual backups have priority over automated backups. After that cap is reached, older backups will be "bumped out" to make space, starting with automated backups first.

## Disclosure to Law Enforcement

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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 law enforcement agencies.

## Domain Names

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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. Just be sure 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.

## Marketing and Attribution Link

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We reserve the right to use your project as an example in our promotional material and case studies. At the end of your project, we may ask you for a quote describing your experience working with us. We may also ask you to be a reference should any future clients desire to speak with people we've worked with in the past. Finally, we may place a small text link (called an attribution link) in the footer of your web site that states something like "Powered by Wordflirt" and links back to our home page.

## Indemnification

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The Client agrees to indemnify and hold harmless Wordflirt, 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

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This Agreement, and any related Statements of Work, shall be construed in accordance with, and governed by, the laws of the State of California 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 by binding arbitration conducted by the American Arbitration Association pursuant to its commercial arbitration rules. The arbitration shall be conducted in Orange County, California, unless both parties agree in writing to a different location. The arbitration award is enforceable as a judgment of any court having proper jurisdiction.

## Refusal or Discontinuation of Service

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We reserve the right to refuse, restrict or terminate service to any client for any reason or for no reason at all.

## Disclaimer of Warranty

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**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

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**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 Terms of Services Agreement, the maximum aggregate liability of Pro Website Creators and 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

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

## Headings

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

## Entire Agreement

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This Agreement, and any Statements of Work attached, constitutes 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

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

## Construction

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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

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

## Agreement

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By checking the box on the payment form and making payment, you're signifying that you have

- You have read, understood, and agreed to this Terms of Services Agreement
- That the above agreement comprises our entire agreement.
- That you agree that agreement governs your working relationship with Pro Website Creators.