



contact@growbusinessdesign.com
14970 Fort Campbell Blvd
Oak Grove, KY 42262
931-213-6996

Website Maintenance Agreement

This Website Maintenance Agreement (“Agreement”) is hereby entered into between you, your employees and agents (collectively “Client”) and applies to the purchase of all monthly website maintenance services (hereinafter collectively referred to as “Maintenance Services”) ordered by Client.

Term and Termination

This Agreement shall be effective as of the time frame Client signs up for Maintenance Services or upon completion and delivery of the Client website. This Agreement may be terminated by either party upon 30 day written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. This Agreement may be terminated by Grow Business Design (i) immediately if Client fails to pay any fees hereunder; or (ii) if Client fails to cooperate with Grow Business Design or hinders Grow Business Designs’ ability to perform the Maintenance Services hereunder.

Maintenance Services

Grow Business Design agrees to provide Client with Maintenance Services as described in this Agreement. Maintenance Services include:

- Updates to text, images, and other minor changes to Client’s website pages (Content Updates). The amount of time dedicated towards these tasks each month will be determined by the Maintenance Package purchased by Client.

- Any website support requests, above and beyond what is outlined in package, or website questions requiring a response by Grow Business Design will count towards the monthly content updates.
- Upgrades to Client's content management system, including plugins and themes.*
- Cloud backup of website on a monthly basis.*
- Recovery of website files from backups.*
- Web Domain hosting and renewals.*

**These are tasks that are done throughout the month. Some items, such as updates, only occur when necessary and when we know the update is a stable version and it is okay to proceed.*

Malware, Spam, or Malicious Code

- Removal of malware, spam, and malicious code from Client's website is available for an additional charge of \$199 per incident for clients who are on a maintenance plan at the time of infection.

Fees; Limitations on Refunds and Cancellation Fees

Client agrees to pay Grow Business Design any and all fee(s) as billed in accordance with this Agreement. The fee(s) must be received prior to the start of any Maintenance Services. THE Client FURTHER AGREES THAT, IN THE EVENT OF ANY TERMINATION OF THIS AGREEMENT BY Client, NO REFUNDS SHALL BE GIVEN UNDER ANY CIRCUMSTANCES WHATSOEVER. THE Client FURTHER AGREES TO

PAY UPON CANCELLATION ANY OTHER AMOUNTS DUE TO GROW BUSINESS DESIGN FOR WORK PROVIDED AT CLIENT'S REQUEST ABOVE AND BEYOND THE MONTHLY ALOTTED TIME OF MONTHLY AGREEMENT. GROW BUSINESS DESIGN IS HEREBY AUTHORIZED TO CHARGE CLIENT'S CREDIT CARD ACCOUNT OR OTHER PAYMENT MECHANISM FOR ANY AMOUNTS OWED FROM TIME TO TIME BY CLIENT TO GROW BUSINESS DESIGN.

Client Responsibilities

For the purposes of providing these services, Client agrees:

- To properly convey to Grow Business Design the information that needs to be changed or added.
- To answer any questions from Grow Business Design, in regards to task work on website, promptly.
- (If Applicable) To provide Grow Business Design access their web hosting account, providing active user name / password combinations for access to the server via FTP, assuring that 'write permissions' are in place on hosting provider.

Client Acknowledgements – Client understands, acknowledges and agrees that:

- The amount of time allotted for updates to text, images, and other minor changes, is determined by the Maintenance Package that they purchased and will be billed on a monthly basis.
- Client understands that all work for monthly maintenance tasks will be scheduled according to Grow Business Designs' workflow. We have a process and maintain

- sites for many Clients, therefore all website updates work that counts towards your monthly time allotment is done on a first come first serve basis, except in the case of a total website down issue, which would be considered an “emergency.”
- Failure by Client to answer a question critical to the completion of a task within 5 business days may cause that task to be “bumped” and moved to the “end of the line” in our work queue. Depending on the time of month, this could cause that task to roll over into the next month’s bucket of update requests.
- All monthly updates are scheduled at our convenience and in accordance with our schedule. We have a process and a workflow that we use to maintain all of our clients’ websites in a fair and orderly fashion. The only exception being in the case of Client’s website being totally offline or down for some reason, in which case their issue would be considered an ‘emergency’ and would take priority.
- Should the Client wish to have additional tasks completed in the same month, they will be billed on an hourly basis of \$100 per hour or by the project scope if agreed upon by the Client.
- Client understands that if they provide Grow Business Design with a maintenance task and the task has been completed, then they wish to make changes to the task, any additional time to make these changes will be counted on an hourly basis of \$100 per hour.

- Website updates exclude, but are not limited to, image editing, graphic design, graphic editing, database design, database changes, programming, and search engine optimization.

Website updates do not include website redesign, re-alignment or re-development equalling more than 50% change to web page, web graphics on the website (i.e. 4 graphics on website, and you want 3 changed, there is a charge for anything above 2, meaning 50%).

- CMS design, integration of plugins that require intensive configuration, or programming of things that require extensive time to set up, including but not limited to blogs, shopping carts, API integrations with third party services, and web forums are not considered “minor” changes and therefore are not included in the Maintenance Agreement. These require a separate design or development agreement.
- Maintenance Agreement does not include training on how to use your website, messaging service, or email. However the essentials of managing your website are included during setup.
- Maintenance Agreement does not include training on search engine optimization (SEO) or other online digital marketing.
- All communications will be done during regular business hours, which are Monday through Friday from 9:00 AM to 5:00 PM (CST).

- Grow Business Design has no control over your hosting company in regards to server downtime, incompatibilities with software, PHP compatibility issues, etc.
- Grow Business Design is not responsible for Client's email issues or troubleshooting problems on their own computer. Our role is to maintain and keep your website running at its optimal capabilities. We are not your IT team.
- Grow Business Design has no control over the policies of search engines or directories with respect to the type of sites and/or content that they accept now or in the future. Client's web site(s) may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory entity.
- Additional fees could be charged if the information provided has to be typed and exceeds the amount of time/work that is allotted in our Maintenance Package.
- If changes are made by Grow Business Design according to Client's information, and the changes are not correct, additional time to remedy the changes fall under the time allotted each month.
- Grow Business Design is not responsible for rewriting sentences, restructuring paragraphs, or checking for typing errors, misspellings, etc.
- Grow Business Design is not responsible for changes made to Client's web site(s) by other parties, including the Client themself.
- During the duration of this contract, the Client agrees that Grow Business Design will be the sole provider of maintenance services for the website, and no other

- party will have access to or rights to change the web site. If a party, including the Client, other than Grow Business Design makes changes to the web site, any errors that are created must be repaired and will be charged for at the hourly rate specified above.
- Grow Business Design is not responsible for third-party plugins that may become unusable as a result of Maintenance Services performed.
- Grow Business Design will not repair Client's website(s) that became compromised, hacked, or otherwise defaced or infected prior to ordering Maintenance Services.
- Availability of backups is not guaranteed.

Scheduling of Maintenance Tasks – Because of the nature of our business, we are juggling multiple maintenance clients, on top of several large web design projects, at any given time. Because time is at a premium, we don't take on more Clients than we can handle, however, scheduling is a priority for us. We schedule all work for the month in advance to maintain a workflow that is conducive for our business and for all of our Clients. When we take on a maintenance Client they are given a set amount of time in our schedule for maintenance tasks that can be done each month that are counted towards their monthly time allotment. Please understand that the scheduling of these tasks is totally at the discretion of Grow Business Design. The only time we "bump" one Client's tasks for another Client's place in line is in the case of an emergency. Unless a website problem interrupts your business monetarily, for instance an eCommerce site that goes down or has problems with checkouts, or it is totally down or offline, it is not

considered an emergency. We will provide the amount of time you have contracted for each month towards updates, however we do it in accordance with our schedule. This is the only way we can be fair to all of our Clients.

Additional Services – Additional services not listed herein will be provided for a fee of \$100.00 per hour. Grow Business Design is not responsible for search engine optimization (SEO), developing new content, or writing new copy for Client. Client will be charged an additional fee for writing content, based on the hourly rate of \$100.00 per hour (discounted fees do not apply toward this type of work). Clients who need SEO work done must sign up for one of our SEO Packages.

Indemnification – Client shall indemnify and hold harmless Grow Business Design (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Grow Business Design as a result of any claim, judgment, or adjudication against Grow Business Design related to or arising from (a) any photographs, illustrations, graphics, audio clips, video clips, text, data or any other information, content, display, or material (whether written, graphic, sound, or otherwise) provided by Client to Grow Business Design (the "Client Content"), or (b) a claim that Grow Business Designs' use of the Client Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, Grow Business Design must: (i) give Client prompt written notice of a claim; and (ii) allow Client to control, and fully cooperate with Client in, the defense and all related negotiations.

Disclaimer of All Other Warranties – Grow Business Design DOES NOT WARRANT THAT THE MAINTENANCE SERVICES WILL MEET THE Clients EXPECTATIONS OR REQUIREMENTS. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE IS WITH Client. EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, GROW

BUSINESS DESIGN PROVIDES ITS SERVICES "AS IS" AND WITHOUT WARRANTY OF ANY KIND. THE PARTIES AGREE THAT (A) THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY EACH PARTY, AND (B) EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THIS AGREEMENT, PERFORMANCE OR INABILITY TO PERFORM UNDER THIS AGREEMENT, THE CONTENT, AND EACH PARTY'S COMPUTING AND DISTRIBUTION SYSTEM. IF ANY PROVISION OF THIS AGREEMENT SHALL BE UNLAWFUL, VOID, OR FOR ANY REASON UNENFORCEABLE, THEN THAT PROVISION SHALL BE DEEMED SEVERABLE FROM THIS AGREEMENT AND SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY REMAINING PROVISIONS.

Limited Liability – IN NO EVENT SHALL GROW BUSINESS DESIGN BE LIABLE TO Client FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, LOST PROFITS, WHETHER OR NOT FORESEEABLE OR ALLEGED TO BE BASED ON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY, ARISING UNDER THIS AGREEMENT, LOSS OF DATA, OR ANY PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THERE SHALL BE NO REFUNDS. GROW BUSINESS DESIGN MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES.

Client Representations – Client makes the following representations and warranties for the benefit of Grow Business Design:

- Client represents to Grow Business Design and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Grow Business Design are owned by Client, or that Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Grow Business Design and its subcontractors from any claim or suit arising from the use of such elements furnished by Client.
- (If Applicable) Client guarantees to Grow Business Design and unconditionally guarantees that Client's website has not been compromised, hacked, or otherwise defaced or infected prior to ordering Maintenance Services.
- From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce.
- Client agrees that the client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Grow Business Design and its subcontractors from any claim, suit, penalty, tax, or tariff arising from Client's exercise of Internet electronic commerce.

Confidentiality – The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall

not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's proprietary or confidential information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, Grow Business Design and Client acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the effective date.

Force Majeure – Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

Relationship of Parties – Grow Business Design, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. Client does not undertake by this Agreement, or otherwise, to perform any obligation of Grow Business Design, whether by regulation or contract. In no way is Grow Business

Design to be construed as the agent or to be acting as the agent of Client in any respect, any other provisions of this Agreement notwithstanding.

Notice and Payment – Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party, mailed by certified, registered or Express mail, return receipt requested or by Federal Express. Either party may change its address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

Jurisdiction/Disputes – This Agreement shall be governed in accordance with the laws of the State of Tennessee. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Tennessee including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

Agreement Binding on Successors – The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

Assignability – Client may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of Grow Business Design. Grow Business Design reserves the right to assign subcontractors as needed to this project to ensure on-time completion.

Waiver – No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

Severability – If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

No Inference Against Author – No provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

Disputes – Client and Grow Business Design agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation. Should the parties fail to resolve any such disagreement within ten (10) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in Montgomery County, Tennessee and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by one arbitrator, who shall be (a) selected in the sole discretion of the American Arbitration Association administrator and (b) a licensed attorney with at least ten (10) years experience in the practice of law and at least five (5) years experience in the negotiation of technology contracts or litigation of technology disputes. The arbitrator shall have the power to enter any award that could be entered by a judge of the state courts of Tennessee sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of Tennessee or any other applicable law. The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.

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Read and Understood – By purchasing a Maintenance Package, Client acknowledges that they have read and understand this Agreement and agree to be bound by its terms and conditions.

Web Maintenance Discount Options:

Pre-pay 6 months: 10% Discount

Pre-pay 1 year: 20% Discount

Authorized Client Signature

for Grow Business Design, LLC (GBD)

Typed Name of Client

Typed name of GBD Representative

Official Business/Organization Name



www.growbusinessdesign.com