

This Website Maintenance Agreement (“Agreement”) is hereby entered into between you, your employees and agents (collectively “Client”) and applies with the purchase of all Annual Website Maintenance Services (hereinafter collectively referred to as “Maintenance Services”) acquired and paid for by Client.

## **Term and Termination**

This Agreement shall be effective as of the time frame Client signs up for Maintenance Services. 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.

Client will need to provide full access to their hosting cPanel or control panel in order to do our job properly. This means you will have to share login credentials for your hosting account.

This Agreement may be terminated by Benson Consulting Services LLC (i) immediately if Client fails to pay any fees hereunder; or (ii) if Client fails to cooperate with Benson Consulting Services LLC or hinders Benson Consulting Services LLC ability to perform the Maintenance Services hereunder, including cutting off access to, or changing passwords without out knowledge to, services we use in our maintenance tasks.

## Maintenance Services

Benson Consulting Services LLC agrees to provide Client with Maintenance Services as described in this Agreement and based on the package they choose to purchase.

Maintenance Services include:

- Regular updates to Client's WordPress backend software, including WordPress, plugins, and themes.
- Cloud backup of website on a daily, weekly, or monthly basis, depending on Maintenance Package purchased.\*
- Recovery of website files from backups, as needed.\*
- Uptime monitoring (if included in package purchased).\*
- Regular security scans (if included in package purchased).\*
- Updates to text, images, and other **minor** changes to Client's website pages, for packages that include a time allotment in them (does not apply to all packages).
- Any website support requests, above and beyond what is outlined in package above, or WordPress support questions requiring a response by Benson Consulting Services LLC, will count towards the monthly allotted time, if available. If Client's package has no monthly allotted time included, Client agrees to pay the standard hourly rate for support services provided by Benson Consulting Services LLC.
- This task time is for minor updates — text changes, image changes, and small troubleshooting tasks. It

does not include things like building out landing or lead pages, creating new areas to the site, malware removal, website consulting, completely new page builds, etc.

## **Malware, Spam, or Malicious Code**

- Removal of malware, spam, and malicious code from Client's website is not covered under a Maintenance Plan. Removal of infections is available for an additional charge for clients who are on a Maintenance Plan at the time of infection. We will need to provide you with a price estimate, which you must agree to pay for removal to commence. **We do everything we can to help you avoid possible infections from such things, however, they can still happen unfortunately.**
- Removal of malware, spam, and malicious code that is already existing on a website when a Client signs up for a Maintenance Plan will be charged an additional rate. Please contact us for an estimate for this service. Once you have agreed on price, we will:
  - Clean the infection.
  - Our Security Analyst will investigate how the Attackers gained entry.
  - Remove any malicious code and malware links in your posts, pages, comments and source code.
  - Provide an in-depth report of the infection removal and investigation.

- Work with multiple search engine, anti-malware, and anti-spam blacklists like Google and Symantec to remove your site.
- Provide a detailed checklist to protect the site from future attacks.

## **Fees; Limitations on Refunds and Cancellation Fees**

Client agrees to pay Benson Consulting Services LLC 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 Benson Consulting Services LLC FOR WORK PROVIDED AT CLIENT'S REQUEST ABOVE AND BEYOND THE MONTHLY ALLOTTED TIME OF MONTHLY AGREEMENT. Benson Consulting Services LLC 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 Benson Consulting Services LLC.

## **Client Responsibilities**

For the purposes of providing these services, Client agrees:

- To properly convey to Benson Consulting Services LLC the information that needs to be changed or added.
- To answer any questions from Benson Consulting Services LLC, in regards to task work on website, promptly.
- To provide Benson Consulting Services LLC with access to its website for creating new pages, and making changes for the purpose of providing Maintenance Services.
- To provide Benson Consulting Services LLC 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.

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**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 Benson Consulting Services LLC.
- Client understands that all work for maintenance tasks will be scheduled according to Benson Consulting Services LLC workflow. We have a process and maintain sites for many Clients, therefore all website updates work 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.
- Client’s on packages that do not include any time allotted for changes will be billed at our standard hourly rate at the time the service is requested.
- 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 at our standard hourly rate at the time services are requested.
- Website updates exclude, but are not limited to, image editing, graphic design, graphic editing, database design, database changes, programming, malware or spam removal, website blacklist cleanup, or search engine optimization. Website updates do

not include website redesign, landing/lead page creation, completely new page builds, re-alignment or re-development equalling more than 50% change to a single web page, or creating completely new web graphics for the website.

- 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, membership areas, 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, WordPress, or email.
- 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 (EST).
- Benson Consulting Services LLC has no control over your hosting company in regards to server downtime, incompatibilities with software, PHP compatibility issues, etc.
- Benson Consulting Services LLC 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.

- Benson Consulting Services LLC 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.
- If changes are made by Benson Consulting Services LLC according to Client's information, and the changes are not correct, additional time to remedy the changes fall under the time allotted each month.
- Benson Consulting Services LLC is not responsible for rewriting sentences, restructuring paragraphs, or checking for typing errors, misspellings, etc.
- Benson Consulting Services LLC is not responsible for changes made to Client's web site(s) by other parties, including the Client themselves.
- During the duration of this contract, the Client agrees that Benson Consulting Services LLC 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 Benson Consulting Services LLC 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.



- Benson Consulting Services LLC is not responsible for third-party plugins that may become unusable as a result of Maintenance Services performed.
- Benson Consulting Services LLC will not repair Client's website(s) that became compromised, hacked, or otherwise defaced or infected prior to ordering Maintenance Services.
- Recovery or repair of Client's website is not guaranteed.
- 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 effectively 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 Benson Consulting Services LLC. 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 our standard hourly rate at the time services are requested. Benson Consulting Services LLC 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 at the time service is requested (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 Benson Consulting Services LLC (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 Benson Consulting Services LLC as a result of any claim, judgment, or adjudication against Benson Consulting Services LLC 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 Benson Consulting Services LLC (the “Client Content”), or (b) a claim that Benson Consulting Services LLC’s use of the Client Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, Benson Consulting Services LLC 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** – Benson Consulting Services LLC DOES NOT WARRANT THAT THE MAINTENANCE SERVICES WILL MEET THE Client’S EXPECTATIONS OR REQUIREMENTS. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE IS WITH Client. EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, Benson Consulting Services LLC 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 Benson Consulting Services LLC 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. Benson Consulting Services LLC 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 Benson Consulting Services LLC:

- Client represents to Benson Consulting Services LLC and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Benson Consulting Services LLC 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 Benson Consulting Services LLC and its subcontractors from any claim or suit arising from the use of such elements furnished by Client.
- Client guarantees to Benson Consulting Services LLC and unconditionally guarantees that Client's website has not been compromised, hacked, or otherwise defaced or infected prior to ordering Maintenance Services.
- Client guarantees any elements of text, graphics, photos, designs, trademarks, or other artwork provided to Benson Consulting Services LLC for inclusion on the website above are owned by Client, or that Client has received permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and defend Benson Consulting

Services LLC and its subcontractors from any liability or suit arising from the use of such elements.

- 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 Benson Consulting Services LLC 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, Benson Consulting Services LLC 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** – Benson Consulting Services LLC, 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 Benson Consulting Services LLC, whether by regulation or contract. In no way is Benson Consulting Services LLC 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 Iowa. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Iowa 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 Benson Consulting Services LLC. Benson Consulting Services



LLC 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 Benson Consulting Services LLC 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 Scott County, Iowa 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 Iowa 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 Iowa 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.

**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.