

# Website Support & Maintenance Service Terms

These Website Support & Maintenance Service Terms (the "Terms") govern services provided by Block 81, an Oregon Limited Liability Company (the "Provider" or "Studio") to subscribers of website support and maintenance services. By subscribing to any support plan, you agree to be bound by these terms.

1. **Website Maintenance Services.** Block 81 shall provide website support and maintenance services as described in Exhibit A ("Website Support & Maintenance Plan" or "Plan") which includes the following:
  - a. **A la carte work on website.** Block 81 will provide work on your website up to the total number of hours allotted in the selected Plan. A la carte work includes bug fixes, feature development, functionality enhancements, graphics creation for the website. Work on the website that requires going above the allotted hours will be billed at an hourly rate based on the selected Plan. This additional work ("Overage") will be invoiced separately.
  - b. **Website software updates.** If applicable, Block 81 will review your content management system ("CMS") and installed modules, plugins, or add-ons (collectively, "Plugins") every month to ensure they are up to date. This does not include custom plugins not developed by Block 81. Custom plugins may require additional coding work and will be discussed with you for approval before action is taken.
  - c. **Website monitoring.** Block 81 will employ website uptime monitoring software to ensure your website is up and running. Should your website go down for longer than a 5-10 minutes, Block 81 will take immediate action to resolve the issue as quickly as possible. You understand there may be situations outside of Block 81's control such as network interruptions, hosting service interruptions or maintenance, or DNS issues or interruptions.
  - d. **Offsite backups.** Block 81 will run backups nightly via automated software. If your website host fails or crashes, upon your request, Block 81 will deploy the website on the same or new server within the time allotted for the chosen Plan.
  - e. **Priority scheduling.** As a Website Support & Maintenance subscriber, you will be given priority scheduling for any work within Block 81's service offerings.
  - f. **Unused time rollover.** Unused time in your Maintenance subscription will rollover to the next month only. If that time is not used in that time period, it is exhausted and does not continue to rollover or accumulate.
2. **Website Work Not Included.** Work or services not included with Maintenance:
  - a. Full website redesign or re-coding.
  - b. Website marketing or on-going search engine optimization ("SEO").
  - c. Accessibility testing.
3. **Scheduling, Timelines, Communication.**
  - a. Support requests must be sent via Block 81's project management portal ("ActiveCollab") or email. All Maintenance correspondence will be documented via ActiveCollab even if requests are made by email.

- b. Block 81 will respond to all support or maintenance requests from you within 1 business day via ActiveCollab, with a confirmation that the request was received, and an estimated timeline of action completion for each actionable item in the request.
  - c. Block 81 will adhere to quoted timeline(s) for the actionable item(s) in the support requests at all possible costs. In the event that the Block 81 has any issues in delivering on a quoted deadline, you will be notified about the reason for any change. You understand that estimated timelines for requested support tasks are only an approximate calculation of time anticipated to be incurred and that, although Block 81 will work to ensure that delivery of services is kept within the estimated timeline, it is impossible for Block 81 to know in advance the exact timeframe for services provided.
  - d. You understand that all work for support requests will be scheduled according to Block 81's workflow and request queue. Block 81 supports and maintains sites for several subscribers/clients and as such, support work requests will be addressed in order of receipt, except in the case of a website being completely down, which constitutes an emergency.
  - e. Failure by you to answer a question critical to the completion of a task within 3-5 business days may cause that task to be "bumped" and moved to the "end of the line" in Block 81's work queue. This could cause that task to roll over into the next month.
  - f. All communication will be done during regular business hours, which are Monday through Friday from 9:00 AM to 5:00 PM Pacific except in the case of website emergency.
4. **Website Emergency.** A website emergency is defined as a state where your website (a) is down or offline for an unknown reason beyond 10 minutes, (b) has e-commerce functionality that is not functioning, or (c) has member registration functionality is not functioning.
  5. **Authorization.** You hereby authorize Block 81 to access their web hosting account and website files and database as needed and may include, but is not limited to, FTP, SFTP, or SSH access.
  6. **Third Parties.** Block 81 shall not be held liable for changes made to the your website(s) by other parties not included in this Terms. Block 81 is not liable for your hosting company with regard to server downtime or software compatibility issues.
  7. **Additional Services.** Any revisions, additions, or redesign you request Block 81 to perform that is not specified in these terms shall be considered additional and may possibly require a separate agreement and payment. Block 81 shall advise you on any requested work that falls within these bounds.
  8. **Services; Fees; Overages; Billing Disputes.**
    - a. The website support and maintenance plan is a subscription based service and requires a debit, credit card, or U.S. bank account (i.e. ACH bank transfer) which will be automatically charged each month at the rate for the Plan you have chosen. Billing begins immediately upon subscription through our Stripe payment portal.
    - b. If automatic billing fails due to your credit card being declined for any reason, Block 81 will work with you to address the issue and restore automatic billing. Block 81 reserves the right to suspend its services until automatic billing is restored. Block 81 does not accept checks or other billing or payment services for Website Support & Maintenance Plans.
    - c. Overage work will be invoiced separately via Block 81's invoicing system. You may make payment on overage invoices by credit card, debit card, bank transfer (ACH), or check. Overage invoices are due fifteen (15) days from invoice date unless otherwise specified. Late payments will accrue compound interest of

five percent (5%) per month on any unpaid balances (including previously accrued late fees) from the date due until paid. Overages will be invoiced at the hourly rates per the chosen Plan (see Exhibit A)

- d. Block 81 reserves the right to withhold support and maintenance services, delivery, and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under these terms are conditioned upon receipt of payment.
- e. If you dispute any amount invoiced, you must give Block 81 written notice describing the dispute in reasonable detail prior to the date the invoice is due. You may not dispute invoices after the invoice due date. Due to nature of the Block 81's service and the time involved, payments rendered are considered fully earned and non-refundable.
- f. The monthly subscription rates listed in Exhibit A are guaranteed for the first twelve (12) months from the Effective Date of these terms. Block 81 reserves the right to adjust the monthly subscription rates annually on each anniversary of the Effective Date, with increases not to exceed five percent (5%) per year. You will receive sixty (60) days written notice of any rate adjustment. Continued use of services after the effective date of any rate increase constitutes acceptance of the new rates.

9. **Termination of Service.**

- a. **Termination by You.** You may terminate Plan on written notice to Block 81 (a) if Block 81 fails to cure a material breach of these terms within fifteen (15) days of receiving written notice of the breach from you; or (b) for any other reason by paying all fees and approved expenses incurred prior to termination.
- b. **Termination by Block 81.** Block 81 may terminate Maintenance services on written notice to you (a) if you fail to cure a material breach of these terms within fifteen (15) days of receiving written notice of the breach from Studio; or (b) for any other reason as deemed by Block 81. Upon such termination, You shall pay all and approved expenses incurred through the date of termination.

10. **Confidential Information.** Each party (the "Discloser") may disclose Confidential Information to the other party (the "Recipient") in connection with these terms. The Recipient agrees to (a) maintain the Confidential Information in confidence; (b) protect the Confidential Information with a reasonable degree of care, including employing industry standard security procedures to prevent unauthorized disclosure of Confidential Information; (c) not use the Confidential Information except in the performance of its obligations under these terms; and (d) disclose the Confidential Information only to those of its employees and agents who have a need to know the Confidential Information and who are bound by agreement or law to maintain the confidentiality of the information.

11. **Promotional Rights.** Block 81 may publicize depictions of the Deliverables, link to any online content containing the Deliverables, and describe its role in creating of the Deliverables. Block 81 may (i) publicize the fact that you are Block 81's subscriber/client; (ii) describe the nature of its work for you; and (iii) subject to any reasonable restrictions imposed by you, utilize your trade name(s) and trademark(s) in connection with its publicity.

12. **Warranties.**

- a. **Mutual Warranties.** Each party warrants that (i) it is authorized to enter into and perform these terms; (ii) entering into and performing these terms will not conflict with any other agreement to which the party is bound; and (iii) it will perform under these terms in accordance with applicable law.

- b. **Studio Warranties.** Block 81 warrants that (i) it will perform its services in a professional manner and in accordance with industry standards; (ii) it will assign personnel who are reasonably experienced and qualified to perform its services; (iii) upon delivery and for a period of thirty (30) days thereafter, the Deliverables will materially conform to the Specifications; and (iv) to its knowledge, the Deliverables will not, if used by you as contemplated by the SOW and in accordance with any Third-Party Licenses, infringe any third-party intellectual property rights.
- c. **Subscriber Warranties.** You warrant that, to its knowledge, the Subscriber Materials will not, if used by Block 81 as contemplated by the SOW, infringe any third-party intellectual property rights.
- d. **Disclaimer. Except as provided in this Section, each party's performance under these terms is provided "AS IS" and without other warranty, including without limitation any warranties arising from the course of performance, course of dealing, or usage of trade.**

**13. Indemnity & Limit on Liability.**

- a. **Indemnity.** Subject to Section 10(c), Block 81 shall indemnify and defend you and your employees, officers, directors, shareholders, members, and managers (collectively, the "Indemnitees") from any damages, expenses, fees, fines, penalties, expenses (including reasonable attorney's fees) and costs incurred by the Indemnitees in connection with any third party claim arising out of Block 81's breach of these terms, negligence, or intentional wrongdoing (a "Claim"). As a condition to Studio's indemnification obligation, the Indemnitees shall give Studio prompt written notice of any Claim or potential Claim. In any defense, (i) Studio has the sole right to defend and settle the Claim using counsel of its choosing; and (ii) the Indemnitees shall reasonably cooperate with Block 81 in the defense and settlement of the Claim.
- b. **Exclusions.** Block 81 is not liable under Section 10(a) to the extent that Claims result from: (i) the negligent or willful acts of an Indemnatee; (ii) Block 81's compliance with the instructions of subscriber (you); or (iii) a claim that a Deliverable is infringing where the alleged infringement is due to modifications made by (or on behalf of) you.
- c. **Limit on Liability. Each party's maximum liability in any action relating to the subject of these terms is limited to the total fees payable by you pursuant to the SOW that is the subject of the dispute. This limitation does not apply to damages arising from a party's gross negligence or intentional wrongdoing, the Conversion Fee, or to attorney's fees and costs payable pursuant to Section 14(a). Neither party is liable for any claim for lost profits or similar damages, even if foreseeable and regardless of the form of action.**
- d. If any third party files a claim in a competent court of law alleging that the Deliverables, Work Product, or any component thereof - other than Subscriber Materials - infringe on the intellectual property rights of a third party (the "Allegedly Infringing Materials"), then Studio shall, at its option and sole cost and expense:
  - i. procure for you the right to continue to use the Allegedly Infringing Materials to the full extent contemplated by these terms; or
  - ii. modify or replace the Allegedly Infringing Materials and all of the components with non-infringing alternatives while providing fully equivalent features and functionality.
  - iii. If Block 81 is unable to do so, then Block 81 may direct you to cease any use of the Allegedly Infringing Materials, provided that Block 81 shall refund to you all amounts paid by you with respect to the Allegedly Infringing Materials. Additionally, Block 81 will - at its sole cost and expense - secure the right for you to continue using the Allegedly Infringing Materials for a transition period of up to twelve (12)

months to allow you to replace the affected features of the Allegedly Infringing Materials without disruption.

- iv. The foregoing is in addition to, and not in lieu of, all other remedies that may be available to you under these terms or otherwise, including but not limited to your right to be indemnified for pursuant to Section 11(a).

- 14. **Non-Solicitation.** The parties shall not, while services are being performed by Block 81 and for one year after the last day on which services were provided, solicit, induce, or recruit, directly or indirectly, for itself or for any other party, the other party's employees. The parties agree that damages resulting from a breach of this Section 11 would be difficult to quantify, but that a reasonable estimate of such damages is 50% of the total compensation paid to the subject employee in the twelve months preceding the breach (the "Conversion Fee"). As liquidated damages for breach of this provision, the breaching party shall pay the Conversion Fee to the other party.
- 15. **Governing Law; Jurisdiction; Venue.** Oregon law governs these terms, exclusive of its conflict of laws principles. The state and federal courts of Multnomah County, Oregon are the exclusive venue for resolving any disputes under these terms. The parties consent to the personal jurisdiction of such courts, and waive defenses concerning venue and convenience of forum.
- 16. **Notice.** Any written notice may be provided by postal mail, courier delivery, or electronic mail. Studio will not accept written notice by facsimile, text message, or any other means. The effective date of notice will be the date that the U.S. Post Office, private courier, or recipient confirms the date on which the notice was received.
- 17. **Definitions.** The following terms have the meanings given:
  - a. "Studio Tools" means Block 81's intellectual property (including its designs, methods, software, and trade secrets) that either preexist these terms or are developed by Studio other than in providing services for you under these terms. Studio Tools includes any improvements that are not uniquely applicable to the Deliverables.
  - b. "Subscriber Materials" means all documents, information, designs, data, specifications, graphics, logos, trademarks, written content, and other materials provided by or on behalf of you to be used by Block 81 in connection with the preparation of or incorporated into the Deliverables.
  - c. "Confidential Information" means information that, either, is identified as confidential upon disclosure, or that the Recipient should understand to be confidential under the circumstances; provided, Confidential Information does not include information that: (i) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any act or omission by the Recipient; (ii) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided, such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any contractual obligation; (iii) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Discloser pursuant to these terms; or (iv) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Discloser's Confidential Information.
  - d. "Deliverables" means the final versions of the materials produced and delivered by Studio pursuant to these terms. Deliverables may include the website, Subscriber Materials, Studio Tools, Third-Party Materials, and Work Product.

- e. "Early Termination Fee" means an amount equal to 25% of the fees that would otherwise have been charged for the canceled portion of the project.
- f. "Specifications" are functional or technical specifications for work described in an SOW or that have been otherwise agreed to in writing by you and Studio.
- g. "Third-Party Materials" means materials belonging to third parties that are incorporated into the Deliverables, including without limitation open source software, fonts, and stock images.
- h. "Work Product" means the materials first created by Studio for you in the course of performing the services pursuant to these terms.

18. **Miscellaneous.**

- a. **GDPR (General Data Protection Regulation).** Your engagement of Studio will not cause Block 81 to be treated as a "data processor" or "data controller" under GDPR. No personally identifiable customer or user data relating to EU citizens will be provided by you to Block 81.
- b. **Taxes.** Block 81 shall pay all taxes on its income and employment taxes for its personnel. You shall pay any sales, use and value added taxes.
- c. **Insurance.** While providing services, Block 81 shall maintain in effect policies of professional liability (errors and omissions) insurance with limits of at least \$1,000,000 per occurrence. Upon written request, Block 81 will provide you with proof of the insurance coverage required by this section.
- d. **Relationship of the Parties.** Block 81 is an independent contractor and not your partner. The parties are not engaged in a joint venture. Block 81 employees are not to be considered your employees for any purpose. Block 81 is solely responsible for the means and manner of performing the services.
- e. **Attorney's Fees.** The prevailing party in any dispute regarding the subject of these terms is entitled to recover its reasonable attorney's fees, expert's fees, and costs.
- f. **These Terms.** These terms are the entire agreement of the parties with respect to its subject. All prior and contemporaneous agreements for support or maintenance services are superseded. These terms may only be amended by a writing signed by both parties. If any clause of these terms is determined to be unenforceable, the remainder of these terms will not be affected. These terms were negotiated by sophisticated parties and will not be construed in favor of or against either party.
- g. **Headings.** The descriptive headings of the sections and subsections of these terms are for convenience only, and do not affect these terms's construction or interpretation.

19. **Effectiveness.** These terms become effective when you subscribe to a support plan and make your first payment. The date of your initial subscription payment will be deemed the effective date.

## EXHIBIT A

### Website Support & Maintenance Plan

Website Support & Maintenance Plan chosen by Client includes the following:

	Essential Maintenance	Basic Support	Pro Support	Premium Support
Monthly CMS updates	✓	✓	✓	✓
Included hours for support requests	—	2	4	10
Guaranteed response time (for acknowledgment of support request)	—	2 business days	1 business day	1 business day
Post-crash site restoration response time	Within 8 hours	Within 6 hours	Within 4 hours	Within 2 hours
Off-site nightly backups	✓	✓	✓	✓
Continuous uptime monitoring	✓	✓	✓	✓
Priority scheduling for new projects	✓	✓	✓	✓
Quarterly performance checks	—	—	✓	✓
Annual accessibility checks	—	—	—	✓
<b>Price per month</b>	<b>\$129</b>	<b>\$259</b>	<b>\$699</b>	<b>\$1,300</b>