



Updated: September 2022

HOSTING SERVICES AGREEMENT / TERMS OF USE

This Agreement between CiesaDesign ("Ciesa"), and the purchaser as indicated below, hereafter referred to as the ("Client") is made effective for the period of time the ("Term") corresponding to the payment plan chosen by the Client.

RECITALS

A. Ciesa provides related services with respect to an electronic information system consisting of Internet access via high speed communication lines, routers, and other necessary computer equipment; and

B. Client desires the services of Ciesa and use of its system for web hosting and telecommunications services to maintain the availability of Client's Web site(s) via the Internet.

NOW, THEREFORE, Client hereby engages Ciesa to host its web content, and/or other Internet Applications, and Ciesa hereby accepts such engagement, pursuant to the terms and conditions set forth herein:

1. Definitions.

- 1.1. "Agreement" means this Hosting Services Agreement, including all Statements of Service and corresponding exhibits issued pursuant to this Agreement.
- 1.2. "Web Site" means the World Wide Web site on which Client Content will appear.
- 1.3. "Client Content" means all text, words, names, likenesses, trademarks, logos, artwork, graphics, video, audio, HTML, other

coding, domain names, image maps, links, software applications, or other content that appear on, or are provided to Ciesa for uploading to or downloading from, the Client Web Site.

2. Scope of Services. Ciesa shall host Client's Web Site, and web based applications as described in more detail on **Exhibit A** (the "Services").

3. Client's Representations, Warranties, and Responsibilities.

3.1. Client shall assume full responsibility for all Client Content as it appears on the Web Site and is solely responsible for its choice of content vendors and for negotiating terms and conditions with such vendors.

3.2. Client agrees that if, in the course of performing the Services, it is necessary for Ciesa to access Client's equipment and/or use Client's technology, Ciesa is hereby granted and shall have a nonexclusive, royalty-free license, during the term of this Agreement, to use Client's technology solely for the purposes of delivering the Services to Client.

3.3. Client represents and warrants that: (a) Client is the owner, valid licensee, or authorized user of the Client Content and each element thereof, (b) the use of the Client Content shall not infringe the copyright, trade secret, trademark or other proprietary or intellectual property right of any third party, or constitute a defamation, invasion of privacy, or violation of any right of publicity or other third party right, (c) the Client Content complies with all legislation, rules and regulations of all applicable jurisdictions including without limitation, potential liability for posting or transmitting data which is threatening, obscene, indecent, defamatory or in violation of export control laws, (d) use of the Web Site by any party, other than Ciesa, will conform to general standards of behavior for the Internet, (e) Client shall use every responsible measure to ensure that content is free from



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viruses, worms, Trojan horses, and any other malicious code, (f) Client hereby acknowledges that there is no guarantee of security on the Internet and no guarantee that the Web Site or Client Content will be secure, and (g) Client has full authority and right to enter into this Agreement and that there are no conflicting claims relating to the rights granted by this Agreement.

3.4. Under this agreement, you must comply with Ciesa's ACCEPTABLE USE POLICY as outlined below:

A) No "Hate" sites allowed, including sites expressing negative views toward any group or person based upon their religion, religious beliefs, race, color, gender, sexual orientation, sexual assignment or ethnic background. Ciesa remains the sole judge as to what constitutes a "Hate" site.

B) No "Porn" sites allowed, including sites which contain content accessible by, and inappropriate for, minor children. Ciesa remains the sole judge as to what constitutes a "Porn" site.

C) No sites are allowed which may link to or display information which may be used to build or assemble devices of destruction.

D) No SPAMMING. Advertising any website, or product contained or sold on any web site hosted on Ciesa's and or its subcontractor's servers through unsolicited e-mail is strictly forbidden. If Client sends e-mail advertisements or announcements, either directly or through a 3rd party "Opt-In" email service, and Ciesa receives a complaint that said email was received unsolicited, Client must provide proof that recipient actually did request to receive said advertisement. Failure to (a) provide said proof, or (b) if a record is provided by recipient that said email was received "AFTER" Opting-Out of an Opt-In mailing list, Client will be deemed to be in violation of this Acceptable Use Policy.



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E) No Fax Blasting. Advertising any website, or product contained or sold on any web site hosted on Ciesa's or its subcontractor's servers via Facsimile (Fax) is strictly forbidden. Sending of Facsimile (Fax) advertisements or announcements, either directly or through a 3rd party "fax blast" service, will constitute a violation of this Acceptable Use Policy.

F) Use of our communications services to communicate with, or to transmit any information, data, technology or software to or from any known terrorist organization or any known enemy of the United States of America or its allies is a violation of this Acceptable Use Policy.

G) No software will be placed on Ciesa's or its subcontractor's servers by Client and/or Client's agents or employees which may not reasonably be deemed safe, including, but not limited to, CGI Scripts and executable files. If Client is unsure of the safety of any software to be installed on Ciesa's or its subcontractor's server, Client is urged to submit said software to Ciesa for approval.

H) Client and/or Client's agents or employees may not use any technology, either provided by Ciesa, or installed by Client, to read, access, alter, replace or install any data, data file, program file, operating system file, database, or directory not directly within Client's designated hosting space, either purposely or by accident. Ciesa will assist Client in implementing web server technologies, where applicable and as requested.

CIESA RETAINS THE RIGHT TO ALTER THIS ACCEPTABLE USE POLICY AT ANY TIME AND ACCEPTABLE USE POLICY SHALL BE DEEMED TO BE A PART OF THIS AGREEMENT. CURRENT ACCEPTABLE USE POLICY MAY BE VIEWED AT ciesadesign.com/acceptable-use-policy



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4. Ciesa Responsibilities.

- 4.1. Ciesa shall procure all hardware, software, materials and other items necessary for implementing this Agreement. Ciesa may in its sole discretion change hardware, software, subcontractors, service providers, etc. so long as there is no material change in functionality of the Web Site. Ciesa assumes no responsibility for third parties who break encryption coding so that data being transmitted is visible to others.
- 4.2. If Client so requires, Ciesa shall provide assistance to Client in securing one or more domain names. Client shall be solely responsible for any infringement upon the trademark, service mark, name, or logo of any third party.

5. Intellectual Property.

- 5.1. This Agreement does not transfer from Ciesa to Client any Ciesa technology, and all right, title and interest in and to Ciesa technology will remain solely with Ciesa. Except for the rights expressly granted herein, this Agreement does not transfer from Client to Ciesa any Client technology, and all right, title and interest in and to Client technology will remain solely with Client. Ciesa and Client each agrees that it will not, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.
- 5.2. No press release, announcement, publication, or other use of the other party's insignia logos, trademarks, trade name or service marks (collectively, the "Marks") shall be made by either party without the other party's prior written approval. Provided, however, upon execution of this Agreement, Ciesa may list Client



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as a client of Ciesa on Ciesa's Web Site and in all other Ciesa marketing materials, including all digital and print materials.

- 6. Fees and Taxes.** In consideration of the activities contemplated in this Agreement, Client shall pay to Ciesa the fees set forth in the service plan selected and Client shall be billed for the same on a bi-monthly basis. Client shall pay each invoice for fees upon receipt of the Invoice. Fees do not include, and Client shall be solely responsible for any and all taxes of whatever nature ("Taxes"), which are levied, imposed or due by reason of sale or distribution of products, services, or information from the Web Site or any services rendered under this Agreement. Ciesa shall not be liable for, and Client shall indemnify Ciesa against liability for, all such Taxes.
- 7. IP Addresses.** Ciesa may designate for Client's use on a temporary basis Internet Protocol Address ("IP Addresses") from the IP allotment assigned to Ciesa by the InterNIC or its subcontractors. Client acknowledges that the IP addresses are the sole property of Ciesa or its subcontractors, and are temporarily designated for Client's use as part of the Service Agreement. Ciesa reserves the right to change IP address designations at any time. Ciesa shall use reasonable efforts to minimize inconvenience to Client resulting from such changes, and shall give Client reasonable notice of changes. Client agrees that it will have no right to use IP Addresses assigned to Ciesa upon termination of this Agreement, and that any change in IP Addresses Client may need to make after termination of this Agreement shall be the sole responsibility of Client.
- 8. Term.** This Agreement shall commence on the date of initial payment and account setup and shall continue in effect until it is terminated pursuant to the provisions of Section 9.
- 9. Termination.**

 - 9.1. By Ciesa for Cause: This Agreement may be terminated by Ciesa and the Client Web Site shall be removed from the World Wide



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Web at any time in the event that Client commits any material default hereunder which Client fails to remedy within fifteen days after having been notified in writing of the default. If Client fails to cure the default within the fifteen day period, Ciesa may remove Client's Web Site from the World Wide Web, re-deploy Client's equipment to other purposes, and condition the continued provision of services and restoration of Client's Web Site to the World Wide Web upon Client's payment of all outstanding charges and a reinstallation fee of \$230 per site. Provided, however, Ciesa may terminate this Agreement immediately if (a) the Client Web Site contains any content which Ciesa in its sole discretion determines could cause liability to Ciesa and Client does not remove such content immediately upon Ciesa's request, or (b) Client declares bankruptcy, becomes insolvent, ceases its normal business operations, or engages in business practice which Ciesa in its sole discretion determines to be unfair or deceptive or (c) Client violates any section of the Acceptable Use Policy stated herein.

- 9.2. By Client for Cause: This Agreement may be terminated by Client in the event that Ciesa commits any material default hereunder which Ciesa fails to remedy within fifteen days after having been notified in writing of the default.
- 9.3. By Either Party for Convenience: Either party may terminate this Agreement by providing thirty (30) days notice to the other party. Client is responsible for arranging for a new hosting environment and designation of new name servers.
- 9.4. Upon termination of this Agreement, Client shall retain ownership of Client Content and Client's Domain Names. Ciesa shall retain control of all hardware, software, materials, and other items provided by Ciesa pursuant to this Agreement. Sections 3 (Client Warranties), 5 (Intellectual Property), 6 (Fees and Taxes), 10 (Exclusion of Warranties), 11 and 12 (Indemnity and Limitation of



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Liability), and 13 (Confidentiality) of this Agreement shall survive the termination of this Agreement irrespective of the reason for termination, subject to Client's obligation to pay Ciesa all compensation earned for services rendered under this Agreement through the effective date of such termination.

10. Exclusion of Warranties. APART FROM THE SPECIFIC WARRANTIES SET OUT HEREIN OR IN A STATEMENT OF SERVICE ATTACHED HERETO, ALL SERVICES AND PRODUCTS PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. NEITHER CIESA NOR ANY OF ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, SUBCONTRACTORS OR LICENSORS WARRANTS THAT THE SERVICES OR PRODUCTS PROVIDED PURSUANT TO THIS AGREEMENT WILL BE UNINTERRUPTED OR ERROR FREE, NOR DO THEY WARRANT THAT CERTAIN RESULTS MAY BE OBTAINED BY CLIENT IN CONNECTION WITH ITS USE OF THE CLIENT WEB SITE. CIESA AND ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, SUBCONTRACTORS AND LICENSORS MAKE NO WARRANTY, GUARANTEE OR REPRESENTATION EITHER EXPRESS OR IMPLIED REGARDING THE MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE OF THE CLIENT WEB SITE OR ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT. CIESA DOES NOT MAKE ANY WARRANTY OR GUARANTEE FOR ANY PRODUCTS OR SERVICES PROVIDED BY VENDORS SUGGESTED BY CIESA.

11. Indemnity. Notwithstanding anything to the contrary in this Agreement, Client shall indemnify and hold Ciesa, its affiliates, directors, officers, employees, agents, subcontractors and licensors harmless from and against all claims, action, expenses, losses, and liabilities arising from or relating to the following: (a) any claim inconsistent with Client's representations and warranties contained herein, (b) any claim based upon alleged errors, omissions, or misstatements in any Client Content, (c) any claim based upon a domain name registered or used by Ciesa at Client's direction or request, (d) any claim arising out of or relating to the Web Site, Client Content, a commercial transaction conducted via



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the Web Site, or otherwise under this Agreement (including, but not limited to, any claim resulting from any content posted to the Web Site by Client or Client's employees, agents or any other third party), and (e) any injury to person or property, arising out of caused by a product, service, or information, whether or not defective, that is sold or distributed from the Web Site.

12. Limitation of Liability.

- 12.1. Ciesa shall not be liable for any delay or failure to carry out the services provided hereunder if such delay or failure is due to any cause beyond the control of Ciesa, including without limitation, restrictions of law, regulations, orders or other government directives, labor disputes, acts of God, acts of third party vendors or suppliers, or mechanical or electronic breakdowns.
- 12.2. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR (1) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, OR (2) ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFITS, GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE HOSTING SERVICES, WHETHER IN AN ACTION BASED ON ANY LEGAL THEORY, CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 12.3. Ciesa urges Client not to store information of a sensitive nature, including, but not limited to, a) credit card numbers b) social security numbers or c) banking/financial information, either in a database, text file, email box, or anywhere on the Ciesa's or its subcontracted service Ciesa servers for longer than is necessary



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to safely retrieve, then delete such information. Client agrees to defend, indemnify and hold harmless the Ciesa, against any and all claims, suits, judgements, liabilities, losses and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation resulting from any action which may arise from such sensitive information being accessed by any third party.

13. Confidentiality. During the course of performance of this Agreement, each party may disclose to the other certain information (“Confidential Information”). Each party shall hold the other party's Confidential Information in confidence and shall use its best efforts to protect it. Each party shall not disclose the other party's Confidential Information to any third party, and shall use it for the sole purpose of performing under this Agreement. At the conclusion of this Agreement, each party shall either return the other's Confidential Information in its possession (including all copies) or shall, at the disclosing party's direction, destroy the other party's Confidential Information (including all copies) and certify its destruction to the disclosing party. The term “Confidential Information” shall not include any information which: (a) is in the public domain at the time of disclosure or enters the public domain following disclosure through no fault of the receiving party, (b) the receiving party can demonstrate was already in its possession prior to disclosure hereunder or is subsequently disclosed to the receiving party with no obligation of confidentiality by a third party having the right to disclose it or (c) is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

14. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and deemed given and effective upon delivery if sent by personal delivery or by facsimile transmission or confirmed email or five (5) days after posting if sent by certified United States mail, return receipt requested, with postage pre-paid and addressed as follows:

CiesaDesign
200 E. Cesar E Chavez.



200 East Cesar E. Chavez Ave, Lansing, MI 48906
517.853.8877 TEL | 517.743.4014 FAX

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Attn. President

- 15. Relationship Between Parties.** Nothing in this Agreement shall be construed as establishing a partnership, joint venture, or employer-employee relationship between the parties. Ciesa may subcontract to third parties for implementation of services provided to Client pursuant to this Agreement.
- 16. Assignment.** This Agreement shall be binding on, inure to the benefit of, and be enforceable by Ciesa and its respective heirs, successors and valid assigns. Client shall not assign or transfer the rights or obligations associated with this Agreement, in whole or in part, without Ciesa's express written consent, which shall not be unreasonably withheld.
- 17. Governing Law; Entire Agreement/Severability.** This Agreement will be governed by the laws of the State of Michigan. This Agreement, including all attached Statement(s) of Service, supersedes and cancels all prior negotiations, communications, understandings and Agreements between Ciesa and Client. No oral Agreements, before or after execution of this Agreement, shall be binding until they are in writing and signed by an authorized officer of both Ciesa and Client. In the event that any provision of this Agreement is held void or unenforceable, the entire balance of this Agreement shall remain in full force and effect.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE SIGNING. I HAVE READ AND AGREE TO BE BOUND BY THE TERMS OF THIS HOSTING SERVICES AGREEMENT AND ACCEPTABLE USE POLICY IN RELATION TO HOSTING THE _____ WEBSITE, AND THAT THIS AGREEMENT STAYS IN EFFECT THROUGH ANY DOMAIN NAME CHANGES AND/OR ALIASES THAT POINT TO THE WEBSITE REFERRED TO UNDER THIS AGREEMENT.

Signed: _____
Your Name, On behalf of Your Company



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Date: _____

EXHIBIT A

Hosting Services Ciesa shall provide the following web hosting services:

- A. **Content Control.** Client will have sole control over the Client Content. Ciesa shall not supplement, modify or alter any work product which has been accepted by Client or any Content (other than modifications strictly necessary to upload the Content to the Website) except with Client's prior written consent, such consent shall not be unreasonably withheld. Ciesa shall upload all Content including monthly CMS, module and plugin updates for Drupal and WordPress, to the Website within 24 hours of delivery to Ciesa, when applicable.
- B. **Site Backup.** Included in the hosting fee, Ciesa shall maintain a complete and current copy of the Website on a server located at a remote location on a daily basis (retained for a total of 31 consecutive calendar days prior to the current day), and monthly (retained for a total of 6 consecutive months prior to the current month) basis.
- C. **Analytics.** Ciesa will implement Google Analytics in connection with the Website and may share the same with Client upon request. Client will be able access Website analytics directly at Client's sole discretion.
- D. **Standards.** Ciesa's hosting standards shall conform to the following:
 - (i) Availability of Web Site. Ciesa shall provide Client reasonable Website uptime monitoring. The Website shall be publicly available to users in accordance with commercially reasonable best practices.
 - (ii) Response Time. Ciesa shall provide Client reasonable page performance monitoring. The mean response time for server response



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to all accesses to the Website shall not exceed more than 30 seconds during any one hour period.

(iii) Bandwidth. Ciesa shall provide Client unrestricted inbound and outbound data transfers.

(iv) Security. Ciesa and/or its subcontractors shall use their commercially reasonable efforts prevent unauthorized access to the Website, other restricted areas of the Website and any databases or other sensitive material generated from or used in conjunction with the Website and Ciesa and/or its subcontractors will implement monthly server security patches in connection with the same; and Ciesa shall notify Client of any known security breaches or holes.

(v) Phone and Email Support. Ciesa shall provide Client phone and email support during Ciesa's regular EST business hours with the number being 1-517-853-8877.



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