



# Managed Hosting, Maintenance and Support Contract

May 1, 2024

**PREPARED FOR**

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MACPAC

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CMS Advertising Group, LLC d/b/a Materiell

# Web Hosting and Maintenance Agreement and SLA

## Between MACPAC and CMS Advertising Group, LLC d/b/a Materiell

This Hosting Agreement (the "Agreement") is entered into \_\_\_\_\_, and the effective date will be the service commencement date of July 1, 2024 (the "Effective Date") by and between CMS Advertising Group, LLC d/b/a Materiell, a Virginia Limited Liability Company, whose address is PO Box 683896, Park City, UT, 84068, ("Consultant"), and MACPAC whose address is 1800 M Street NW, Suite 650 South, Washington, DC 20036 ("Client").

1. **Hosting Services.** Client hereby retains Consultant to provide, and Consultant hereby agrees to provide, website hosting services. Consultant shall be responsible for providing only those services listed herein:

- **See Exhibit A**

2. **Client Responsibilities.**

- 2.1. **Acceptable Use Policy.** Client agrees to adhere to Consultant's Acceptable Use Policy, a copy of which is attached hereto as Exhibit B (Acceptable Use Policy), and which policy may be amended from time to time by Consultant upon notice to and approval of the Client (the "Acceptable Use Policy"), and Client shall hold Consultant harmless for any violation of the Acceptable Use Policy by it, or any of its employees or officers.

3. **Fees, Expenses, and Payment.**

- 3.1. **Website Hosting Fees.** Client agrees to pay Consultant \$27,861.80 per year, billed monthly for web hosting, maintenance and support fees throughout the term of this Agreement with scope and limits defined in Exhibit A.

- 3.2. **Taxes.** Client shall pay, reimburse, and/or hold Consultant harmless for all sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the performance of the professional services under this Agreement or by use of Client's Website.

- 3.3. **Other Fees.** Payment for all other services rendered by Consultant shall be contracted separately or billed at Consultant's then hourly rate.

- 3.4. **Form of Payment.** All payments made to Consultant under this Agreement shall be in United States currency in the form of company check, cashier's check or electronic wire transfer.

- 3.5. **Payment of Invoices.** Client will be billed monthly and shall pay all invoices within 30 days of receipt. Payments not made within such time period shall be subject to late

charges equal to (i) one and one-half percent (1.5%) per month of the overdue amount. Consultant may suspend all services on fourteen (14) days written notice until the amounts outstanding are paid in full.

3.6. **Third-Party Licenses.** In addition to any other fees set forth in this Agreement, Client shall be required to purchase any applicable third-party licenses or subscriptions for any third-party products or services that are necessary for Consultant to host Client's Website. Consultant shall obtain Client's prior written consent before incurring such costs.

#### 4. **Term and Termination.**

4.1. **Term.** This Agreement shall be effective as of July 1, 2024 and shall continue in effect for one (1) year and may be extended for up to two additional years at the same terms.

4.2. **Termination/Suspension of Hosting Services.** Consultant may suspend or terminate Hosting Services to Client or an End User at any time without notice in order to (i) prevent damages to, or degradation of Consultant's Internet or systems network integrity which may be caused by Client or an End User; (ii) comply with any law, regulation, court order, or governmental request, (iii) address a violation of the Acceptable Use Policy, or (iv) otherwise protect Consultant from potential liability. Consultant reserves the right to take any and all additional actions it may deem appropriate with respect to violations of the Acceptable Use Policy, including, but not limited to, taking action to recover from the offenders the costs and expenses of identifying offenders and excluding them from the Hosting Services, and levying cancellation charges to cover Consultant's expenses in the event of disconnection of dedicated access.

4.3. **Effect of Termination.** Client shall pay Consultant for all services rendered up to the effective date of termination for any reason, Consultant shall provide Client with an invoice for the foregoing fees within seven (7) days of the effective date of the termination. Client shall pay the invoice within 30 days of receipt.

4.4. **Return of Client's Site.** Upon termination of this Agreement and payment in full to Consultant of all outstanding fees and/or charges, Consultant shall deliver all files comprising Client's Site to Client within three (3) business days of the date of termination. Consultant shall deliver files upon Client request at any time, within reason, via SFTP or other automated network-based delivery service.

5. **Service Level Agreement (SLA).** The term of this SLA shall begin on the effective date of this agreement and continue until the expiration or termination of the agreement and any renewals.

5.1. **Service Availability:** Subject to the terms of this SLA, Consultant guarantees a 99.95% monthly average of Service Availability of hosting plan referenced in Exhibit A. In a given month, “Service Availability” is calculated as follows: a percentage calculated by dividing the total time during which the hosting plan referenced in Exhibit A is available for Client to use by the total time in a given month, less the time of the Exclusions listed in Section 5.2(e) below.

$$\text{Service Availability} = \frac{\text{Total time hosting plan referenced in Exhibit A is available}}{\text{Total time in a given month less the time of the Exclusions}} \times 100\%$$

5.2. **Penalty for Non-Compliance.**

- a. **Service Credit.** If Service Availability falls below the guaranteed level for the hosting plan referenced in Exhibit A, as Client’s sole remedy for such failure, Consultant will credit to Client a portion of the monthly hosting fees charged for the month (annual fees will be prorated) during which such failure occurred according to the following schedule:
  - Availability 99.90% - 99.95%\*: 3% of monthly hosting fee credited
  - Availability 99.85% - 99.89%: 6% of monthly hosting fee credited
  - Availability 99.80% - 99.84%: 9% of monthly hosting fee credited
  - Availability 99.75% - 99.79%: 12% of monthly hosting fee credited
  - Availability 99.70% - 99.74%: 15% of monthly hosting fee credited
  - Availability below 99.70%: 50% of monthly hosting fee credited
- b. **Request for Credit.** To receive the credit, Client must request the credit within the first 14 days of the month following the month for which the credit is requested. Client must provide all dates and times of the hosting plan's service unavailability along with Client’s contact information. Consultant will compare information provided by Client to Consultant’s service availability monitoring data. A credit will be issued if the Service Availability warranting the credit is confirmed. The parties agree to work together in good faith to resolve any dispute arising from this SLA.
- c. **Maximum Total Penalty.** The total service credit to Client for hosting plan referenced in Exhibit A shall not exceed 50% of the monthly fees charged for that hosting plan during the month for which the credit is issued (annual fees will be prorated). These service credits are Client’s sole remedy, are based on our monitoring, may not exceed the total amount of recurring fees Client has paid us for the month in which we failed to meet the Service Availability indicated above, and are forfeited if not claimed following the procedure outlined in (b) above. Only Service Credits will be issued. No credits will be paid in cash.
- d. **Limitations.** Service Credits will not be issued if the Client’s account is past due, suspended, or pending suspension. Service Credits are exclusive of any

applicable taxes charged to Client. False claims requests are a material violation of the agreement and may result in termination of the agreement.

e. **Exclusions.** Subscriber shall not receive any service credits in connection with any failure or deficiency of the hosting plan referenced in Exhibit A's Service Availability to the extent caused by:

1. an event outside the reasonable control of Consultant or a force majeure event;
2. emergency maintenance updates, including but not limited to maintenance required to protect the integrity, availability, or security of any online systems;
3. any causes attributable to Client or its contractors or vendors,
4. software or hardware not provided or controlled by Consultant;
5. outages elsewhere on the internet, including but not limited to interruptions at any Client's or third-party data center or ISP;
6. outages lasting less than 3 minutes,
7. denial of service attacks, malware or similar causes,
8. scheduled maintenance where Client received a minimum of 24 hours advance notice, provided these will not exceed 4 hours in any 2 week period, or (ix) any failure or deficiency that affects less than the full hosting plan referenced in Exhibit A's feature set.

6. **Disclaimer of Warranties.** Except as set forth in this agreement, the hosting services and all other professional services are provided on an "as is" and "as available" basis, and consultant expressly disclaims all other warranties, express and implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
7. **Limitation of Liability.** In no event shall either party be liable to the other, any end user, or any third party, for any incidental or consequential damages (including, without limitation, indirect, special, punitive, or exemplary damages for loss of business, profits, goodwill, business reputation, data, or business information) arising out of or connected in any way with this agreement, authority's website, the hosting services, or for any claim by any end user or third party, even if such party has been advised of the possibility of such damages. The total liability for all damages, losses, and causes of action (whether in contract, tort (including negligence), or otherwise) to the other shall not exceed the amounts paid by authority to consultant during the six (6) month period prior to the event causing the liability. This limitation of liability shall apply even if the express warranties set forth above fail of their essential purpose.

8. **Third-Party Disclaimer.** Consultant makes no warranty of any kind, whether express or implied, with regard to any third-party products or services, third party content or any software, equipment, or hardware obtained from third parties (collectively, the "third party items"). Consultant expressly disclaims all warranties, express and implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and title in on-infringement with regard to the third-party items. Authority should consult the respective vendors/manufacturers of the third-party items for warranty and performance information.
9. **Independent Contractor Status.** Client and Consultant agree that Consultant shall perform its duties under this Agreement as an independent contractor. Personnel employed or retained by Consultant who perform duties related to this Agreement shall remain under the supervision, management, and control of Consultant. In order to assist it in carrying out its duties and responsibilities pursuant to this Agreement, Consultant may subcontract with or otherwise engage the services of one or more third parties.
10. **Disputes, Choice of Law; Venue; Limitation of Actions.** Client and Consultant 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, the parties agree and consent to venue in the State of Utah and agree that suit shall be brought and pursued exclusively in the state or federal courts located in State of Utah and in accordance with the laws of the State of Utah and to the jurisdiction of the aforementioned courts.
11. **Severability.** In the event that a court finds any provision of this Agreement invalid and/or unenforceable, the parties agree that the remaining provisions shall remain valid and in force. The parties further agree that the court shall reform the invalid and/or unenforceable clauses so as to render them valid and enforceable and, to the extent possible, in conformance with the intent of the parties.
12. **Waiver.** Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.
13. **Entire Agreement.** This Agreement and all attached exhibits represent the entire understanding and agreement between the parties with respect to the subject matter hereof, and merge all

prior discussions between them and supersede and replace any and every other Agreement or understanding which may have existed between the parties to the extent that any such agreement or understanding relates to the services herein. Client hereby acknowledges that it has not reasonably relied on any other representation or statement that is not contained in this Agreement or made by a person or entity other than Consultant. To the extent, if any, that the terms and conditions of Client's orders, other correspondence or the Exhibit A attached hereto are inconsistent with this Agreement, this Agreement shall control.

14. **Amendment.** This Agreement may be amended only by a written agreement signed by both parties.

# Signatures

The parties have executed this Agreement by their duly authorized representatives.

CMS Advertising Group, LLC d/b/a Materiell

MACPAC

**Signed By:**

Susan C. Daniero  
Founder and President

**Signed By:**

Kate Massey  
Executive Director

*Susan C. Daniero*

Date: 06/04/24

Date:

# Exhibit A

Hosting, Maintenance and Support Fees	Price	QTY	Subtotal
<p>WordPress Managed Enterprise Hosting and Maintenance</p> <ul style="list-style-type: none"> <li>• Dedicated, high performance, Enterprise WordPress optimized hosting environment on the Google Cloud™</li> <li>• Advanced WordPress-specific caching.</li> <li>• Advanced Site Search.</li> <li>• Daily Managed updates (WP Software, Framework, and Plugins)</li> <li>• Scalable on-demand.</li> <li>• Automated security patching.</li> <li>• Development, staging, and production environments.</li> <li>• Seamless Deployment between environments (allowing both host managed and self-managed code) including integration with Git.</li> <li>• Daily offsite file system and database backups.</li> <li>• Cloudflare™ Security and CDN.</li> <li>• One-Click restore points.</li> <li>• Security scanning and monitoring.</li> <li>• Daily Image optimization.</li> <li>• 24/7 Uptime/downtime monitoring and response.</li> <li>• <b>Up to 100.000 unique page views per month.</b></li> <li>• <b>Up to 20GB of SSD Storage.</b></li> <li>• <b>Uptime SLA of 99.95%.</b></li> </ul> <p><i>Labor Categories: WebOps Engineer, DevOps Engineer</i></p>	\$1,500.00	12	\$18,000.00
<p>WordPress VIP Support Retainer</p> <ul style="list-style-type: none"> <li>• Eight (8) hours per month of design and development retainer with one month rollover of unused hours.</li> <li>• Retainer may be used for WordPress design and development; vetting and installation of new plugins; testing of new functionality; on-demand training</li> <li>• VIP Support Portal and ticketing system</li> <li>• Tier 1 level Support team based in the continental United States.</li> <li>• Quick response times and resolutions (varies based on the ticket and client feedback).</li> <li>• Dedicated Account Manager</li> </ul> <p><i>Labor Categories: Project Manager II, Web Designer II, Web Developer II.</i></p>	\$151.72	65	\$9,861.80

**Annual Total                    \$27,861.80**

*NOTE: Materiell will bill this contract on a monthly basis.*

Subscription Fees (Billed Yearly)	Price	QTY	Subtotal
Gravity Forms <ul style="list-style-type: none"> <li>• Gravity Forms annual pro subscription with updates.</li> <li>• Add on with Constant Contact</li> </ul>	\$99.00	1	\$99.00
Advanced Site Search <ul style="list-style-type: none"> <li>• Annual advanced site search subscription and maintenance</li> </ul>	\$275.00	1	\$275.00
Advanced Custom Fields Pro <ul style="list-style-type: none"> <li>• Annual ACF Pro subscription with updates</li> </ul>	\$149.00	1	\$149.00

**Subscription Fees Total    \$523.00**

*NOTE: Subscription fees will be billed on an annual basis.*

# Exhibit B

## Acceptable Use Policy

As a provider of internet access, website hosting, and other Internet-related services, Consultant offers its customers (also known as subscribers), and their customers and users, the means to acquire and disseminate a wealth of public, private, commercial, and non-commercial information. Consultant respects that the Internet provides a forum for free and open discussion and dissemination of information, however, when there are competing interests at issue; Consultant reserves the right to take certain preventative or corrective actions. In order to protect these competing interests, Consultant has developed an Acceptable Use Policy ("AUP"), which supplements and explains certain terms of each customer's respective service agreement and is intended as a guide to the customer's rights and obligations when utilizing Consultant's services. This AUP will be revised from time to time. A customer's use of Consultant's services after changes to the AUP are disseminated via email will constitute the customer's acceptance of any new or additional terms of the AUP that result from those changes.

One important aspect of the Internet is that no one party owns or controls it. This fact accounts for much of the Internet's openness and value, but it also places a high premium on the judgment and responsibility of those who use the Internet, both in the information they acquire and in the information they disseminate to others. When subscribers obtain information through the Internet, they must keep in mind that Consultant cannot monitor, verify, warrant, or vouch for the accuracy and quality of the information that subscribers may acquire. For this reason, the subscriber must exercise his or her best judgment in relying on information obtained from the Internet, and also should be aware that some material posted to the Internet is sexually explicit or otherwise offensive. Because Consultant cannot monitor or censor the Internet, and will not attempt to do so, Consultant cannot accept any responsibility for injury to its clients that results from inaccurate, unsuitable, offensive, or illegal Internet communications.

When clients disseminate information through the Internet, they also must keep in mind that Consultant does not review, edit, censor, or take responsibility for any information its clients may create. When users place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information they create is carried over Consultant's network and may reach a large number of people, including both clients and non-clients of Consultant, clients' postings to the Internet may affect other clients and may harm Consultant's goodwill, business reputation, and operations. For these reasons, clients violate Consultant policy and the service agreement when they, affiliates, or subsidiaries engage in the following prohibited activities:

- Spamming -- Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). Also, maintaining an open SMTP relay is prohibited. When a complaint is received, Consultant will compile all of the evidence and determine whether the email recipients were from an "opt-it" email list.
- Intellectual Property Violations -- Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, engaging in activity that violates privacy, publicity, or other personal rights of others. Consultant is required by law to remove or block access to client content upon receipt of a proper notice of copyright infringement. It is also Consultant's policy to terminate the privileges of clients who commit repeat violations of copyright laws.
- Obscene Speech or Materials -- Using Consultant's network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. Consultant is required by law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through Consultant's network.
- Forging of Headers -- Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message.
- Illegal or Unauthorized Access to Other Computers or Networks -- Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).
- Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities -- Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, pingging, flooding, mail-bombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.
- Facilitating a Violation of this AUP -- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to spam, initiation of pingging, flooding, mail-bombing, denial of service attacks, and piracy of software.
- Export Control Violations -- Exporting encryption software over the Internet or otherwise, to points outside the United States.
- Usenet Groups -- Consultant reserves the right not to accept postings from newsgroups where we have actual knowledge that the content of the newsgroup violates the AUP.
- Other Illegal Activities -- Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes,

fraudulently charging credit cards, and pirating software.

- Other Activities -- Engaging in activities, whether lawful or unlawful, that Consultant determines to be harmful to its clients, operations, reputation, goodwill, or customer relations.

It is up to the client to avoid the activities described above. Consultant will not, as an ordinary practice, monitor the communications of its clients to ensure that they comply with Consultant policy or applicable law. When Consultant becomes aware of harmful activities, however, it may take any action to stop the harmful activity, including but not limited to, removing information, shutting down a website, implementing screening software designed to block offending transmissions, denying access to the Internet, or take any other action it deems appropriate.

Consultant also is aware that many of its clients are, themselves, providers of Internet services, and that information reaching Consultant's facilities from those clients may have originated from a customer of the client or from another third-party. Consultant does not require its clients who offer Internet services to monitor or censor transmissions or web sites created by clients of its subscribers. Consultant has the right to directly take action against a client of a subscriber. Also, Consultant may take action against the Consultant client because of activities of a customer of the client, even though the action may affect other customers of the client. Similarly, Consultant anticipates that clients who offer Internet services will cooperate with Consultant in any corrective or preventive action that Consultant deems necessary. Failure to cooperate with such corrective or preventive measures is a violation of Consultant policy.

Consultant also is concerned with the privacy of online communications and web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, Consultant urges its clients to assume that all of their online communications are insecure. Consultant cannot take any responsibility for the security of information transmitted over Consultant's facilities or 3rd party providers.

Consultant will not intentionally monitor private electronic mail messages sent or received by its clients unless required to do so by law, governmental authority, or when public safety is at stake. Consultant may, however, monitor its service electronically to determine that its facilities are operating satisfactorily. Also, Consultant may disclose information, including but not limited to, information concerning a client, a transmission made using our network, or a website, in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request. Consultant assumes no obligation to inform the client that client information has been provided and in some cases may be prohibited by law from giving such notice. Finally, Consultant may disclose client information or information transmitted over its network where

necessary to protect Consultant and others from harm, or where such disclosure is necessary to the proper operation of the system.

We hope this AUP is helpful in clarifying the obligations of Internet users, including Consultant and its clients, as responsible members of the Internet. Any complaints about a client's violation of this AUP should be sent to [team@materiell.com](mailto:team@materiell.com).