

# Rich Tidwell Master Terms of Service Agreement

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## Definitions

"Company" refers to Rich Tidwell.

"Client" refers to the account holder / owner of a service offered by Rich Tidwell.

A Business Day is any day Monday to Friday 9am to 5pm excluding United States Federal Holidays.

"Intellectual Property" refers to copyrighted services and information provided by the "Company" to the "Client". The "Client" retains copyright for their own information that they provide.

Agreement refers to this agreement and any other agreement which include this agreement.

The Company's current hourly rate is \$50/hour.

Rich Tidwell offers the same services to all its clients and the terms and conditions of these services are outlined in this document. This document is subject to change and Clients will be notified when it is revised via E-Mail or by Phone and they'll always be able to access this information from the URL provided at the bottom of this page.

## Electronic Agreements & Digital Signatures

The Client agrees that electronic agreements made through the Company's web services, FAX or by Email have the same legal effect as a handwritten original physical document.

## Database, Design & Source Code Licensing

Rich Tidwell provides the Client limited rights to use its applications to continue doing business even if the Client moves the design, source code and database to new web developer at some point.

The design of the source code and interfaces is proprietary information and should be kept strictly confidential. The following terms and conditions also apply.

Terms & Conditions:

- The Client's license includes the domains that the Company has already charged a license for.
- If the Client changes their domain, the old domain must redirect the new domain or point somewhere else.
- The Client may not duplicate the source code or database on multiple web sites.
- The Client will not claim to own the intellectual property or remove the Company's copyright messages, links or disclaimers without permission.
- The Client will not attempt to sell or redistribute the intellectual property.
- If the Client sells their business, the new owner must agree to these limitations.
- Source code and ownership rights are not granted for Clients who haven't paid their contract or payment plan in full.
- Template Agent web sites must have made 24 payments of \$50 before these licensing rights can be assigned.

- When migrating the source code or services to another company, there may be additional fees to modify the work to be compatible and to provide documentation. This charge will be based upon an estimate the Company provides at that time.
- If the Client needs to move to a new service provider, the Company requires notice of up to 10 business days to provide a copy of the source code and database not including additional time needed for modifications to support the request.
- The Client's employees and contractors must agree to these limitations to be able to work with the web services or source code provided by the Company.
- The license provided to the Client does not include portions that are not visible to the Client or that they have not paid for. These features may be removed before the source code is provided.

## **Project Pricing**

Each project requires a custom quote to ensure the Company meets the Client's needs.

## **Hosting Fees**

It is important to the Company to be doing business legally and to comply with all license agreements. The Company purchases licenses for the software and information the Company uses and makes an effort to be compliant with all best practices and laws related to the business. The Company monitors the server and fixes issues as they come up. The Company routinely make upgrades to the software and hardware to support new features and offer better security and performance. The hosting fee helps to cover these basic expenses and helps to support the developers behind the software the Company uses.

The Company's hosting is not comparable to cheap shared hosting. Many things the Company is doing are only possible with dedicated servers costing hundreds of dollars per month. The Company's dedicated server was the latest technology as of April 2010. It is located in Texas with a company called [www.softlayer.com](http://www.softlayer.com), who is now the largest hosting company in the world. This translates to great pricing and customer service on the best technology.

Hosting includes 1 primary domain, unlimited domain aliases, 10 POP email accounts, 10 GB storage, 50 GB monthly bandwidth. If the Client's usage becomes well beyond these limits, the Company may assess an additional fee, however this fits the needs of 95% of the Company's Clients.

Hosting the web site with the Company is mandatory unless the Client pays for a dedicated server or can find a company who offers the same combination hardware and software.

First web site: \$35/month  
Additional web sites: \$20/month

## **Agent template web sites**

Agent web sites start at \$50/month. 24 payments are required before ownership rights are assigned. After 24 payments, the monthly fee will be changed to the current hosting price the Company has.

## **Additional Third Party Fees**

If the Company has purchased links, domains, or other third party services on the Client's behalf, payment is expected before the due date to ensure continuation of those services. No links, domains or other third party services are included with the Company's hosting fee. The Company is not responsible for a loss of search engine rankings due to failure to pay for these recurring fees. Whenever possible, The Company will ask the Client to pay these third parties directly. Examples: Banner ads on other web sites, Google Adwords or Domain Registrations

## **Pricing Lock**

This pricing structure will remain in effect for all Clients until at least December 31st, 2013.

## **Refund Policy**

### **Refund Policy On Website Packages Paid In Total Before Commencement**

#### **Prior to Production Commencing:**

The client is eligible for a complete refund of the package price if no work or production has commenced on the website design from when we receive payment, to when we receive notice in writing, phone contact or email that you are canceling your website design and request a refund.

Company will provide a refund, in full, within 3 working weeks. Company will not be held accountable if the refund is delivered later than 3 working weeks.

#### **Once Production has Commenced:**

Once the production of your website design has commenced a partial refund may be available to you. Notification of your partial refund request must be made to us by phone, email or writing and we will confirm your request with a phone call. Your partial refund is calculated by deducting the costs, expenses and/or work undertaken (charged at our hourly rate) that has already ensued. If requested, Company will provide a breakdown of work completed and/or any expenses associated with your project to justify your partial refund.

The production undertaken on your project includes, but is not limited to; purchasing of client domain name, technology setup, contact made between you and any representative of Company, the production of concepts, mockups and wireframes for your project, the research and development associated with your website design, the sourcing of imagery, the initial GUI development of your website, the coding and construction of your website and time spent organizing partial refund.

Expenses and costs incurred that is related to your website design includes, but is not limited to; the purchase of stock imagery and the purchase of third party technology and/or services related to your project.

If work completed and/or any expenses associated with your project meets or exceeds advance payment, Company reserves the right to deny a full or partial refund.

#### **Once Production has Been Finalized.**

Finalization of a website entails the completion of all coding and design of the GUI, regardless if the website is live or not.

Once production of the website has been completed and finalized, the client is no longer eligible for a full or partial refund. Should you decide to discontinue your website, you will have complete ownership of the concepts, mockups and wireframes related to your website if your final project invoice has been paid in full. You will not be granted ownership of the concepts, mockups and wireframes related to your website if your final project invoice has not been paid in full. You will not be granted ownership of stock photography and/or other materials not owned by either party that has been supplied during the website production process.

#### **Additional Refund Terms**

Hosting charges are always non-refundable. Payments for services or projects that have already been completed according to the Company's written agreements are non-refundable.

If the Company issues a refund, it will be limited to incomplete or late projects. None of the work in progress will be delivered to the Client if the refund is processed and any associated web services may also be terminated.

## **Maintenance fees**

In an effort to separate the initial website setup phase from any ongoing maintenance requests we offer "maintenance time blocks".

If the Client needs changes on their web site, they need to request a maintenance time block quote. Any changes not made at a fixed project rate will be charged at the Company's current hourly rate listed at the top of this document. Please note any serious bugs / errors are usually fixed for free very quickly.

In order to provide continued maintenance service to our clients we offer maintenance time-blocks at a discounted rate when purchased in bulk.

With these time blocks we will keep a running balance of hours we perform maintenance to your website. This includes product additions, text changes, page updates, link updates, menu updates, photo changes, some design changes, and advertisement banner designs; additionally, most requests only take minutes when they are small changes however bulk requests can easily take 5 to 10+ hours. Time blocks do not include major programming of new custom functionality or search engine optimization services, those services require a separate quote.

## **Organization of New Projects**

Complex custom projects may follow these milestones. For projects that are based on the Company's existing systems, a large portion of this work is eliminated and this saves the Client a lot of money since the Company has already built the right solution for the Client.

### **1. Frontend Design:**

The Company will provide a design for the home page and a theme for the rest of the web site. This will be a still image that will look like a complete web page, but nothing will be clickable.

### **2. Frontend Prototype:**

A prototype will be made using the approved design in HTML. It will have all the layout and unique features of the site visible, but not functional yet. Not all links will be interactive at this milestone. Think of this as design for all the internal pages of the site with near-final HTML and CSS stylesheets fully built out.

### **3. Backend Prototype:**

There will be 3 levels of access. Prospective tenant, home owner, web site administrator. On this milestone the Company will design the interface used to manage the public portion of the web site. And also the features unique to a tenant. This may include things like saving listings, mass inquiry, send to a friend, join newsletter. The Company and Client will determine the final set of features they want during this stage before backend programming begins.

### **4. Database Implementation for Backend:**

The data structure will be created and each backend form will be implemented according to the approved prototype. Validation, error handling, custom interfaces will be added during this time as well.

### **5. Implementation of Frontend:**

Public portions of the web site will become data driven and fully functional during this milestone.

Search and map integration will be implemented. Changes made on the backend will become visible on the frontend.

#### 6. Optimization and Cleanup:

Most of this milestone will be considered across the entire project, but this phase is to run through everything again and work out the usability issues, bugs and quality concerns.

It will be cross browser compatible to look and function correctly on Internet Explorer 7, 8, and 9. It will also be compatible with the latest versions of Firefox, Safari, Chrome and Opera.

If the Company uses a feature that only works on specific browsers, this functionality will degrade gracefully on other browsers.

All existing content and/or listings will be imported into the new site and any old urls will either be kept the same or redirected permanently to the new address.

#### 7. Mobile Version For Touchscreen Devices: (optional)

Adding additional mobile version of web site and compatibility for map search features is usually an add-on project, but is becoming increasingly important as more people begin visiting web sites on their mobile devices. The web site can be modified to be touchscreen friendly and have an alternate layout that is easier to read and understand when using it for both public and backend features.

## **Client Review & Payment Process**

Upon completion of each milestone, the Client will be asked to review the work and provide feedback. The project will be on hold during this time. Additional milestones will not be scheduled for a completion date until the current milestone has been achieved.

Completion of the design milestone will require the written approval of the Client by electronic signature, email or mail. Additional revisions after the client's written approval may cause delays or add additional expenses; however the Company will try to be as flexible as possible to support the creative process.

Each milestone will have a set price to cover ongoing costs of development. For simpler projects, the price will be 50% in advance and 50% on completion.

The company reserves the right to deem a website project complete after the design has been approved by the client and the website made functional using HTML and CSS.

The Company will request either a scanned signed contract by Email OR ask the Client to sign a document electronically on the Company's web site OR the company will accept the clients' initial down payment as full agreement to the project terms.

## **Estimated Launch Dates**

The Company makes the best effort to estimate when a project will be completed. Please understand that the creative process may cause this schedule to be modified. In general, the first milestone will be scheduled to be delivered 2 weeks after the advance payment and contract has been signed. The Company's goal is quality, accuracy and client satisfaction after each milestone, which may take longer than expected in some cases.

The Company will notify the Client of any delays so they can make the best decisions for their business.

## **Contractors**

The Company uses other contractors to perform various services such as copyrighting, link building, and marketing for the Client's web site. The Client agrees to let the Company and these contractors login and make changes to the web site or other external web sites as part of the marketing and positioning of the web site. The contractors may write articles and make posts on many web sites that will link to the Client's web site. These contractors will agree to respect the confidentiality of The Client's customers and database. The Company may allow the contractors to contact The Client directly sometimes to review the marketing plan and to research The Client's business so the contractor can write better articles.

## **Terminating Service / Working with other contractors**

The Client must contact the Company within 2 business days of the next billing cycle to avoid non-refundable charges if the Client intends to cancel services immediately.

The Client can use other employees or contractors to make changes at any time on their web site using the tools the Company provides. If The Client needs additional access such as FTP or database logins, this will be reviewed on a case by case basis. However, it is the Company's policy is to not share source code / database access with other developers on the Company's server for security reasons. If The Client hosts the web site somewhere else, the Company could allow shared access, but it may be hard to do this since the Company uses some less common technologies and configurations which other hosts may not support.

A copy of Design, Source code and/or database is only provided to accounts that are paid in full for the initial web site cost or the entire remaining balance of a payment plan.

If the Client wishes to work with a different company at any time, they must contact the Company before the end of the month or billing period to avoid further billing. If the Client needs help moving their web site to another provider, The Company will provide a quote for their assistance which will be based on the current hourly rate. Parts of the Client's web site may require modification to be moved to a new developer since it is not designed with this in mind.

## **Payment Options, Due dates & late payments**

The Company has an automated billing system that sends the Client invoices and notifications by email. New invoices are automatically due on receipt. If a payment is not received within 15 days of the date the Company sent the invoice, the Company reserves the right to disable the Client's web services until payment is received.

The Company offers several convenient ways to pay.

The Client will be prompted to select one of these options when they view the invoice on the Company's web site.

- Send a check via snail mail.
- Auto-pay monthly via PayPal® subscription
- Auto-pay annually via PayPal® subscription
- One-time payment via PayPal®
- Pay remaining balance via PayPal®

The Company's automated billing system keeps the Client notified of status changes and scheduled payments so that they are never surprised. The Client can securely view all their invoices and past payments by clicking the link in any of the Company's automated billing notifications. The Client agrees to send their payment early to avoid service disruption.

## **Unsolicited Commercial Bulk E-Mail (Spam) is strictly not allowed**

Spam of any kind is not tolerated by nearly all internet service providers including the Company. The Client is not allowed to buy third party lists and email them in bulk no matter the size of the list. The Company routinely monitors the email server logs and detects unusual activity. It is better to ask the Company first if the Client is unsure about the email list or how to send an email campaign in general. If the Company has to investigate and resolve an abuse situation due to the Client sending spam, the Client may be billed at the Company's current hourly rate for the Company to resolve the incident. Spam abuse affects all the Company's customers and it can't be ignored. Sending spam or other network abuse may result in a delay, deletion or termination of the Client's web services without notice.

## **More Legal Statements**

The Client agrees to not post illegal or copyrighted materials on their web site. The Company reserves the right to terminate service or remove any information related to the violation.

The web services may not be used to sell or advertise services or products that are against the law or to host content that is inappropriate for minors under age 18.

If there are lawsuits or fines assessed due to the Client's violation of laws or agreements, the Client agrees to pay and resolve all these disputes on their own and the Company will not be held liable.

The Client will not solicit Company employees to be hired or work for the Client's company directly for the duration of their web services with us and 12 months after. A violation will result in the Client paying a one time payment of 50% fine of the employee's annual base salary to the Company.

Severability: If any part of this agreement is found to be illegal or unenforceable, the remaining parts will remain in effect.

The governing law shall be that of the State of Florida and the United States of America as applicable. If a lawsuit should arise, the exclusive venue will be Orange County Federal and State Courts.

The Client and Company are not agreeing to be partners or participate in a joint venture. The Company reserves the right to work with other companies, even a competitor of the Client.

## **Security & Reliability**

The Client agrees to not use email to send credit cards, bank information or social security numbers to anyone. Email is not secure way to transfer this information.

The Company doesn't allow other web developers to access the source code via FTP or remote desktop. If this access is needed, the web site must be moved to a new hosting company. This allows me to ensure that the performance and security of the Company's server is maintained at a very high level of quality.

The Company cannot guarantee that information stored or sent through web services is secure at all times.

The Company makes routine backups of the Client's data to reduce the risk of data loss and long periods of downtime due to mistakes or system failures. There is a risk some data that was added since the last backup in the event of a major system failure. The Client agrees that this data loss is acceptable and won't hold the Company liable for damages for data loss.

The Client agrees that it is acceptable that information they delete from the Company's web services may be permanently lost.

The Company does not guarantee that the Client's web site will be online at all times. Routine maintenance and unanticipated network downtime occur occasionally which can affect large parts of the internet or just the Client's office. If the Client notices downtime, contact the Company and the Company will help the Client

figure out the problem and when service should be restored. The Client agrees that some downtime will occur occasionally.

**All Clients of Rich Tidwell are required to accept the terms of this agreement and will be periodically notified of revisions to this agreement.**

All contracts made by Rich Tidwell with the Client are based on this Master Terms of Service Agreement and will include the following URL for the Clients to review: <http://www.richtidwell.com/Rich-Tidwell-Master-Terms-of-Service-Agreement.pdf>

Company reserves the right to make any revisions, additions, or updates to this document without notice. It is the Client's responsibility to routinely review changes to this agreement so they understand the terms and conditions of the services they are paying us for. Your payment of invoice or use of this website and our service implies the acceptance of these Terms and any ensuing revisions.

Please call me with any questions.

Sincerely,

Rich Tidwell  
President & Designer

<http://www.richtidwell.com/>  
386-506-1018

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