



Orion Terms of Service

By Tim McCalmant



VISION • CREATION • INTEGRATION

Orion Network Solutions, Inc
tmccalmant@orionnetworksolutions.com
(702) 800-0588



This **Terms of Service Agreement** (this “**Agreement**”) is entered into by and between **Orion Network Solutions, Inc** (“**Orion**”) and **you** (“**Client**”), and is made effective as of the date of your use of any or all of Orion services or the date of electronic acceptance.

THESE TERMS OF SERVICE ARE SUBJECT TO CHANGE WITHOUT NOTICE, FROM TIME TO TIME IN OUR SOLE DISCRETION. WE WILL NOTIFY YOU OF AMENDMENTS TO THESE TERMS AND CONDITIONS BY UPDATING THIS DOCUMENT. IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE, PLEASE DO NOT REQUEST NOR USE ORION SERVICES.

1. Ownership of Website, Code, Content and Designs

- 1.1. Client is entitled to Orion developed websites, code, content and designs which have been developed on Client’s behalf. Client may request their content at any time, however, Client will be invoiced for the labor to generate and package such information or content at a rate of **\$95 per hour** unless a previous rate has been established in writing. Once Client has a zero account balance with Orion, their requested data will be made available for digital download for a period of 10 days.
- 1.2. Orion has the right to reuse and resell any and all websites, code, database structures, designs and images created on behalf of Client. This excludes proprietary information, trade secrets and sensitive customer data which must be presented in writing to Orion prior to acceptance of this agreement.
- 1.3. Orion will not disclose unless requested by law, customer information, Personally identifiable information (PII), passwords, serial numbers, API keys or unique access information of Client.
- 1.4. Any and all Orion developed products including but not limited to websites, code, designs and images on behalf of Client shall contain the proper attribution in the form of Orion’s logo and hyperlink (where applicable) to Orion’s website. This includes all websites or content hosted on Orion’s owned or leased systems and servers regardless if Orion is the original developer, however, Orion will not claim credit for work for which we did not do thus a “Hosted by Orion Network Solutions” may be appropriate. The Orion logo and hyperlink (where applicable) will conform to the look, feel and style of Client’s product.

2. Hosted Server Accessibility and 3rd Party Code

- 2.1. Orion owned or leased systems and server backends are considered a closed hosted environment for which only Orion employees and authorized personnel will have access.
- 2.2. Client employees, contractors or 3rd parties shall not have backend access to Orion systems, servers or databases as they are considered a closed hosted environment. This includes but is not limited to uploading content via FTP, SCP,

SFTP which may include Wordpress themes and plugins. Client website configuration, styling, theme modification, blog posts and administration via web accessible control panels such as a Wordpress Administration Console which does not involve the aforementioned prohibited upload mechanisms is allowed.

- 2.3. All backend website or code modifications, database modifications, development work, Wordpress theme and plugin installation must be accomplished by Orion at the rate of **\$95 per hour** unless a previous rate has been established in writing. At any time, Client may discontinue this agreement per section 4.1.

3. Hosted Website and Content Backups

- 3.1. Orion will create a snapshot of Client website, content and database excluding user generated content and files larger than 500MB upon initial launch using Subversion as a baseline of the initial launch.
- 3.2. Subsequent backups will be at 7 day increments and will store a maximum of two full website backups per website. Should Client request one of these backups be installed in place of the existing website or recovered, Client will be invoiced for the labor to accomplish the requested task as a rate of **\$95 per hour** unless a previous rate has been established in writing.

4. Termination of Hosting

- 4.1. At any time, for any reason, Client may terminate this agreement with 30 days written notice. Client will be charged the prorated amount for all labor hours used up to notice of termination. All licensing fees and Orion expenses incurred related to Client prior to notice of termination, will be passed along to Client. Orion will provide Client a digital download of their content per section 1.1. once Client account balance is paid in full.
- 4.2. At any time, for any reason, Orion may terminate this agreement without notice. Client will be charged the prorated amount for all labor hours used up to notice of termination. All licensing fees and Orion expenses incurred related to Client prior to notice of termination, will be passed along to Client. Orion will provide Client a digital download of their content per section 1.1. once Client account balance is paid in full.

5. Prohibited Behavior and Content

- 5.1. Spam emails, excessive "fake" or spam signups or messages.
- 5.2. Offensive, crude or discriminatory content.
- 5.3. Intentionally misleading or security compromised websites, code or content. This includes but is not limited to hacked website or software, malware embedded in posts, content or databases and phishing schemes.
- 5.4. Should Orion detect any of the above mentioned behaviors, threats or at the sole discretion of Orion, a notice of action to correct the offending issue will be sent to



Client. If Client fail to correct the issue to Orion's satisfaction, Orion will address the issues and Client will be invoiced for the labor at a rate of **\$95 per hour** unless a previous rate has been established in writing and may be cause for termination per section 4.2.

6. Uptime and Data Loss

- 6.1. Orion will put forth every effort to protect Client data as if it were our own and is not responsible or liable for loss of data nor loss of revenue due to data corruption, hardware failure, hacking, SQL injection, malicious code, accidental deletion or outages caused by Orion, other Clients or rogue 3rd parties.
- 6.2. Orion will do it's due diligence and be proactive to minimize system downtime and failures, however, should a system, server or component fail, Orion will not be held liable for loss of data nor loss of revenue per section 6.1.

7. Default of Payment

- 7.1.1. Should Client's account become greater than 60 days past due, Orion has the right to turn off, disable or discontinue Client's hosted website, content or software until Client's account balance is paid in full including late fees. Client waves Orion's liability for any data loss or loss of revenue per section 6.1. should Orion take action to turn off, disable or discontinue Client's hosted website, content or software.

8. Conflict Resolution and Arbitration

- 8.1. In the event of a dispute arising out of or in relation to the terms of this Agreement, representatives of Client and Orion shall meet and endeavor to settle the dispute in an amicable manner through mutual consultation. If such persons are unable to resolve the dispute in a satisfactory manner within ten (10) business days, either party may seek binding arbitration.
- 8.2. Upon receipt of written notice by either party calling for arbitration with respect to any dispute arising out of or in relation to the terms of this Agreement, the matter shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association in Las Vegas, NV, by a single arbitrator appointed by the American Arbitration Association. Insofar as possible, such arbitrator shall be, at the time of his or her selection, a partner or manager of a national or regional accounting firm (including the information processing, management support, and merger and acquisitions operations or affiliates thereof) not regularly employed by Client or Orion. Such arbitrator shall be required to have substantial experience in the field of computer software, technology and licensing.
- 8.3. A decision of the arbitrator shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party.

- 8.4. The prevailing party in any arbitration shall be awarded reasonable attorneys' fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrator for good cause determines otherwise.

9. Technical Support

- 9.1. Orion will provide technical support and support personnel for both hardware and software needs at a rate of **\$95 per hour** unless a previous rate has been established in writing.
- 9.2. Support issues must be reported via the appropriate methods as listed below:
 - 9.2.1. Email to support@orionnetworksolutions.com.
 - 9.2.2. Call (702) 800-0588.

10. Nondisclosure

- 10.1. During pre-contract and possible future contractual performance, it may become necessary for Client and Orion to provide each other with proprietary information. To safeguard all such proprietary information, both parties will enter into this Consultant and Proprietary Disclosure Agreement. The terms and conditions of this agreement are as follows:
 - 10.1.1. Proprietary information shall mean all information disclosed by either party which relates to past, present and future research, development, business activities, ventures, agreements, including but not limited to application techniques, inventions, discoveries, improvements, processes, methods, trade secrets, customer lists, sales techniques, software, firmware, computer codes, or other proprietary matters, materials, or information possessed, owned or used by either party that may be communicated to, acquired by, or learned of in the course of, or as a result of, consulting services hereunder.
 - 10.1.2. Each party covenants and agrees that he/she will not, during the term of this agreement and for five years thereafter, divulge to any other person, firm association, corporation, business entity; or use for his/her benefit, profit or other use, any information which may be considered to be proprietary without the prior written consent of the other party.
 - 10.1.3. Each party agrees to hold all proprietary information in trust and confidence for the period specified and during such period, agrees not to publish, disseminate, or disclose such information to any source not approved in advance by the other party. Each party does not grant any express, implied, or other license or right to the other party to use such proprietary information, other than as directed by the other party. Each party further agrees that such information shall be segregated at all times from the proprietary or business sensitive material of others so as to



prevent any commingling with proprietary information. Each party agrees to maintain adequate procedures to prevent loss or compromise of any proprietary material and shall notify the other party immediately of such loss.