



Website Development Agreement - Terms and Conditions

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Website Development Agreement - Terms and Conditions

This Website Development Agreement ("Agreement") is an agreement between ASTOUNDZ ("Company") and the party set forth in the related Service Order form ("Client" or "you") incorporated herein by this reference (together with any subsequent service order forms submitted by Client, the "Service Order") and applies to the purchase of all services ordered by Client on the Service Order (collectively, the "Services"). The parties understand, acknowledge and agree that this is an agreement which is being entered into in conjunction with the Master Services Agreement and the "Included Agreements" as listed below.

Included Set of Agreements between Customer and ASTOUNDZ

Applicable Agreements Integrated into All Engagements	Available Online at
ASTOUNDZ Master Services Agreement	www.ASTOUNDZ.com/MSA
ASTOUNDZ Service Level Agreement ("SLA")	www.ASTOUNDZ.com/SLA
ASTOUNDZ Website Dev Agreement – Terms and Conditions	www.ASTOUNDZ.com/WebDevTandC
ASTOUNDZ Website Development Service Order	Client Specific
Standard Rates	www.ASTOUNDZ.com/Rates

Term and Termination

Term of Agreement. This Agreement shall be effective as of the date set forth on the Service Order and shall remain in force until terminated. Company cannot guarantee the Website Delivery Date but will use commercially reasonable efforts to perform the Services in an efficient and timely manner as outlined in the Website Project Plan.

Termination. This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. This Agreement may be terminated by Company (i) immediately if Client fails to pay any fees hereunder; or (ii) if Client fails to cooperate with Company or hinders Company's ability to perform the Services hereunder.

Company's and Client's Responsibilities

Scope of Work. Client hereby retains the services of Company to design the Website for Client in accordance with the Service Order.

Changes. Changes to this Agreement, the Service Order or to any of the specifications of the Website shall become effective only when a written change request is executed by the Client and Company ("Change Order"). Company agrees to notify Client promptly of any factor, occurrence, or event coming to its attention that may affect Company's ability to meet the requirements of this Agreement, or that is likely to occasion any material delay in the Services.

Client's Responsibilities. Client agrees to perform all tasks assigned to Client as set forth in this Agreement or in a Change Order, and to provide all assistance and cooperation to Company in order to complete the Website timely and efficiently. Company shall not be deemed in breach of this Agreement, the Services, a Change Order, or any milestone in the event Company's failure to meet its responsibilities and time schedules caused by Client's failure to meet (or delay in) its responsibilities and time schedules set forth



herein, a Change Order, or this Agreement. In the event of any such failure or delay by Client (i) all of Company's time frames, milestones, and/or deadlines shall be extended as necessary; and (ii) Client shall continue to make timely payments to Company as set forth in this Agreement and any Change Order(s) as if all timeframes, schedules, or deadlines had been completed by Company. Client shall be responsible for making, at its own expense, any changes or additions to Client's current systems, software, and hardware that may be required to support operation of the Website. Unless otherwise contracted with Company or reflected in a Change Order, Client shall be responsible for initially populating and then maintaining any databases on the Website as well as providing all content for the Website. With the execution of a Change Order specifically asking Company to assess the Client's systems, software and hardware from time to time, Company may agree to perform this function at normal Company rates.

Website Design

Design. The design of the Website shall be in substantial conformity with the material provided to Company by Client. Website consultation will be provided according to the number of coordination steps outlined for the project plan agreed to in the Service Order. Website text will be supplied by the Client unless writing services have been purchased. Development of the website will take place on ASTOUNDZ defined servers. This does not include adding features beyond the scope of the Service Order. Company shall not include, as determined in its sole discretion, any of the following in the Website or in Client's directory on Company's Web Server: text, graphics, sound, or animations that might be viewed as obscene or any illegal activities; links to other websites that might be viewed as obscene or related in any way to any illegal activities; impressionistic or cartoon-like graphics (unless provided by Client); invisible text, metatags (i.e., text that is present only when a "Webcrawler" or other Web indexing tool accesses the Website), or any other type of hidden text, hidden information, hidden graphics, or other hidden materials; or destructive elements or destructive programming of any type. Please note, the website is not ADA compliant. ASTOUNDZ can provide additional pricing for ADA compliance.

Coordination Steps. Client understands that submissions for Website development are limited to the number of coordination steps as provided in the Service Order. Client is encouraged to provide as much instruction and direction as possible with each submission.

Accessibility of Website During Construction. Throughout the construction of the prototype and the final Website, the Website shall be accessible to Client. Until Client has approved the final Website, none of the Web Pages for Client's Website will be accessible to end users.

Completion Date. Company and the Client shall work together to complete the Website in a commercially reasonable manner. Client must supply Company complete text and graphics content for all web pages contracted for in accordance with the Service Order unless otherwise noted.

Copyright to Website. Client acknowledges, understands and agrees that Company may use its own and/or may purchase third-party licenses for products or services that are necessary for Company to design and develop the Website. Such products may include, but are not limited to server-side applications, clip art, "back-end" applications, plug-ins, music, stock images, or any other copyrighted work ("Outside Content") which Company deems necessary to purchase on behalf of Client to design and develop the Website. Client further acknowledges and understands that any Outside Content used to design and develop the Website is owned by Company and/or such third-parties and cannot be transferred to Client and is hereby specifically not transferred to Client and shall remain the property of Company and/or such third-parties. Outside Content which is owned and/or purchased by Company may be used in the design and/or development of other Websites separate from Client. Client and Company agree that upon payment in full of the fees associated with the design and development of the Website, Client shall own a worldwide right, title, and interest in and to the Website (including, its source code and documentation) (the "Custom Programming"). Client and Company agree that Company shall retain a worldwide, royalty-free, non-



exclusive, transferable, and perpetual right and license to the Custom Programming including, but not limited to, the right to modify, amend, create derivative works, rent, sell, assign, lease, sublicense, or otherwise alter or transfer the Custom Programming. Client and Company also agree that the design and development of the Website may include source code, documentation, and/or application programs that were previously written or developed by Company and modified to meet Client's specific requirements (the "Code Content"). Company shall own all worldwide right, title, and interest in and to the Code Content, but shall provide Client (upon payment in full of the fees associated with the design and development of the Website) a worldwide, royalty-free, non-exclusive, transferable and perpetual right and license to use the Code Content. Company and its subcontractors retain the right to display graphics and other web design elements of the Website as examples of their work in their respective portfolios.

Maintenance

This Agreement does not provide Website maintenance unless a Website maintenance plan is purchased. If the Client or an agent other than Company attempts updating Client's pages, time to repair web pages will be assessed at an hourly rate. Changes requested by the Client beyond those limits will be billed at the hourly rates set forth in the Service Order or found at ASTOUNDZ.com/Rates. This rate shall also govern additional work authorized beyond the maximums specified in the Service Order for such services as webpage design, editing, modifying product pages and databases in an online store, and art, photo, graphics, or any other services.

Fees

Development Fee. The total price for all of the work set forth in the Agreement (excluding post-approval modifications not implemented by Client) shall be set forth in the Service Order (the "Development Fee"). This price covers all work for the Service Order. Unless otherwise stated in the Service Order, the Development Fee to Company is due and payable upon placing the Service Order and Company shall have no obligation to perform any work until payment is received and such funds are cleared from the relevant financial institution. Company's services are "AS-IS, WHERE-IS, WITH ALL FAULTS" and refunds may not be provided for Company's services hereunder.

Project abandonment. If after repeated attempts to begin, continue, or finalize the delivery of services, Client fails to participate, or becomes otherwise unresponsive to Company requests for a period of three (3) months, the project may be considered abandoned, and Company may reduce any refund the Client may otherwise be entitled to hereunder to zero, and Client will have forfeited all rights to receive any refund for services purchased online or as described in the original Service Order.

Indemnification

Company Indemnity. In performing services under this Agreement, Company agrees not to design, develop, or provide to Client any items that infringe one or more patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or other rights of any person or entity. If Company becomes aware of any such possible infringement in the course of performing any work hereunder, Company shall immediately so notify Client in writing. Company agrees to indemnify, defend, and hold Client, its officers, directors, members, employees, representatives, agents, and the like harmless for any such alleged or actual infringement and for any liability, debt, or other obligation arising out of or as a result of or relating to (a) the Agreement, (b) the performance of the Agreement, or (c) the Deliverables, other than Client's responsibilities and Client Content. This indemnification shall include attorney's fees and expenses, unless Company defends against the allegations using counsel reasonably acceptable to Client.



Company's total liability under this Agreement shall not exceed the amount of the Development Fee derived by Company under this Agreement.

Client Indemnity. Client shall indemnify and hold harmless Company (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Company as a result of any claim, judgment, or adjudication against Company related to or arising from (a) any photographs, illustrations, graphics, audio clips, video clips, text, data or any other information, content, display, or material (whether written, graphic, sound, or otherwise) provided by Client to Company (the "Client Content"), or (b) a claim that Company's use of the Client Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, Company must: (i) give Client prompt written notice of a claim; and (ii) allow Client to control, and fully cooperate with Client in, the defense and all related negotiations.