



# Master Services Agreement

Version 2024.V1



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## Master Services Agreement

This Master Services Agreement (MSA) is part of an aggregate set of agreements which, combined by reference, create one integrated contract (the “Agreement”) between ASTOUNDZ (“we,” or “us,” including “our,” and “ASTOUNDZ”) and Client (“you,” including “your,” or “Client”). Each of ASTOUNDZ and Client may also be referred to as a Party and collectively as the Parties.

For any Quotes, Quotations, Proposals, Statements of Work, Sales Orders or Service Order (“Service Order”) agreements executed by you (individually and collectively, “Engagements”), this document and all the applicable documents listed in the tables immediately below (“Included Agreements”) are legally integrated as if fully set forth as one Agreement.

Upon each Engagement renewal, this Agreement, but not the terms of any ongoing Engagement, will be superseded by the terms and conditions set forth in the then currently published version of the Agreement available online as of the date on which your services are renewed (the “Renewal Terms”). If you do not agree to the Renewal Terms, you may decline to renew your services.

### Included Set of Agreements between Customer and ASTOUNDZ

Applicable Agreements Integrated into All Engagements	Available Online at
ASTOUNDZ Master Services Agreement	<a href="http://www.ASTOUNDZ.com/MSA">www.ASTOUNDZ.com/MSA</a>
ASTOUNDZ Service Level Agreement (“SLA”)	<a href="http://www.ASTOUNDZ.com/SLA">www.ASTOUNDZ.com/SLA</a>
ASTOUNDZ Standard Rates	<a href="http://www.ASTOUNDZ.com/Rates">www.ASTOUNDZ.com/Rates</a>
Included Agreements Integrated into Specific Engagements	
ASTOUNDZ SEO Agreement – Terms and Conditions	<a href="http://www.ASTOUNDZ.com/SEOTandC">www.ASTOUNDZ.com/SEOTandC</a>
ASTOUNDZ Website Hosting Agreement – Terms and Conditions	<a href="http://www.ASTOUNDZ.com/HostingTandC">www.ASTOUNDZ.com/HostingTandC</a>
ASTOUNDZ Website Development Agreement – Terms and Conditions	<a href="http://www.ASTOUNDZ.com/WebDevTandC">www.ASTOUNDZ.com/WebDevTandC</a>
ASTOUNDZ Website Project Plan	<a href="http://www.ASTOUNDZ.com/WebsitePlan">www.ASTOUNDZ.com/WebsitePlan</a>
Client Specific Service Orders	
ASTOUNDZ SEO Service Order	Client Specific
ASTOUNDZ Website Hosting Service Order	Client Specific
ASTOUNDZ Website Development Service Order	Client Specific
ASTOUNDZ Application Development Service Order	Client Specific



## Definitions

These terms are used in this Agreement including any Included Documents and mean as follows:

- **Agreement** or **MSA** means this Master Service Agreement, Included Agreements as applicable, any Service Order(s), and any written modifications thereto executed by the Parties.
- **ASTOUNDZ** means ASTOUNDZ, LLC.
- **Client** means the person or company who has signed a Service Order or accepted it online. Clients are designated by “Client,” “you,” or “your.”
- **Direct Cost** means all expenses incurred by ASTOUNDZ specifically in connection with performing Services, such as parking, travel, printing, supplies, and other charges incurred by ASTOUNDZ on your behalf.
- **Monthly Recurring Fees** are the recurring fees billed each month for Included Services. Monthly Recurring Fees are determined pursuant to the applicable Service Order you executed.
- **Service Order** means any Service Order (“Service Order”), Proposal, Quote, Sales Orders, and Statement of Work that describes any Included Services to be provided by ASTOUNDZ, all of which may be referred to herein as Service Order.
- **Services** means all services ASTOUNDZ provides to you as set forth in an executed Service Order or otherwise.
- **Included Services** means the specific Services (e.g. Web Hosting, Web Development or Search Engine Optimization “SEO”) defined in the Service Order you signed or accepted.
- **Additional Services** means any Services provided other than an Included Service. Additional Services may include but are not limited to any work that is or becomes necessary due to: (1) changes a third-party has made; (2) hackers or other malicious or accidental destruction of your website, including destruction by your employees or representatives; (3) your performance of website changes or your unauthorized modification or changes to the website; (4) any event beyond ASTOUNDZ’s or your control including, without limitation, fire, water damage, power failure, malfunction of affiliated equipment, natural disaster, building modifications, or other events of a magnitude or type for which precautions are not generally taken in the IT service provider industry; and (5) your failure to comply with other obligations under the Agreement, including notifying ASTOUNDZ of known system malfunctions. Any service that ASTOUNDZ deems necessary because of the occurrence of the foregoing events may be treated as an Additional Service regardless of whether it would otherwise be an Included Service.



# MSA - Master Services Agreement

## Effective Date and Enforceability

This Agreement is effective upon your execution of a Service Order with ASTOUNDZ (“Effective Date”). You agree that the person accepting or signing a Service Order is the authorized agent of the Client identified in such Service Order, and by such execution legally binds your company/business and your employees and agents to the Agreement.

All Service Orders are specifically incorporated herein and made a part of this Agreement. In the event there is a conflict between a specific term and/or condition of this MSA, the applicable Included Agreements, and Service Orders, then the terms and conditions of the applicable Service Order prevail followed by the Included Agreements, then this MSA. The execution or approval of a Service Order is also a representation and warranty that you have reviewed and approved this MSA. Accordingly, you are estopped from denying the terms within this MSA once you execute or approve a Service Order.

## Term

This Agreement commences on the Effective Date and will remain in effect during any current Service Order term or until terminated by either Party as set forth below.

## Confidentiality

You and ASTOUNDZ understand and agree that the terms and conditions of this Agreement and all Service Orders are confidential between you and ASTOUNDZ and neither Party will disclose the terms and conditions to any person other than such Party’s directors, officers, employees, accountants, or agents (collectively referred to herein as “Agents”) who have a need to know such information for purposes of this Agreement. ASTOUNDZ and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for their personal benefit, or divulge, disclose, or communicate in any manner any of your confidential information. ASTOUNDZ and its employees, agents, and representatives will protect such information and treat it as strictly confidential. Further, from time to time, in connection with this Agreement, either Party may disclose or make available to the other Party confidential or proprietary information concerning its business, clients, products or services (together, “Confidential Information”). Each Party agrees that (i) neither it nor its Agents will use Confidential Information belonging to the disclosing Party for any purpose other than for purpose(s) of this Agreement and (ii) it will take all reasonable precautions to ensure that neither it nor its Agents disclose the Confidential Information of the other Party to any person (other than to such Party’s Agents who have a need to know such Confidential Information for purposes of this Agreement). Each Party is liable for the breach of this Confidentiality section by it or any of its respective Agents. Upon request, the receiving Party shall return, in any form whatsoever, all copies of the Confidential Information of the disclosing Party to the disclosing Party. A Party may disclose the other Party’s confidential information if it is required to be disclosed by law, judicial order, administrative order, subpoena, interrogatory, discovery request, investigative demand or other legal requirement or legal process, provided, however that such disclosing Party will promptly notify the other Party (unless prohibited by law) of any such requirement or order and will cooperate with the other Party to contest any such requirement or order.

Confidential Information does not include any information that (i) was acquired from a source other than you or ASTOUNDZ, as applicable, or their respective Agents, provided such source is not bound by a confidentiality agreement or other type of agreement with disclosing Party or otherwise prohibited from providing such information to the receiving Party; (ii) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public through no fault of the receiving Party or any of its Agents; or (iii) was independently developed by ASTOUNDZ or its employee, agents or representatives.

The Parties obligations under this Confidentiality section will terminate three (3) years after the termination or expiration of this Agreement; however, any Confidential Information that constitutes a trade secret remains



subject to this Confidentiality section for so long as such information constitutes a trade secret. This provision will survive termination of this agreement.

The disclosing Party remains the owner of all Confidential Information and all documents of any nature that contain or are derived from Confidential Information provided by such Party, including, without limitations, all rights therein. The receiving Party has no license or rights with respect to the use of such Confidential Information other than as contemplated in this Agreement, nor is the disclosing Party restricted in providing and disclosing its Confidential Information to other sources for the same or different purposes.

If there is a breach of this Confidentiality section, the disclosing Party would be irreparably, continuously and immediately harmed and could not be made whole by monetary damages. In addition to any other remedy to which it may be entitled at law or in equity, the disclosing Party is entitled to an injunction or injunctions (without the posting of any bond, without proof of actual damages and without requirement to prove irreparable harm) to prevent breaches or threatened breaches of this Confidentiality section and to compel specific performance of this Confidentiality section, and neither the receiving Party nor its agents will oppose the granting of such relief.

## **Billing and Payment**

The rates and fees for any Services provided to you by ASTOUNDZ under this Agreement shall be as set forth in the applicable Service Order. Changes in the Service (including changes in the volume of the Services) and changes in the rights or obligations of the Parties under this Agreement may result in adjustments to the fees if in such circumstances such change requires ASTOUNDZ to perform additional work.

Any quoted setup, initial optimization and transition Services fees will be billed when you accept or sign a Service Order.

ASTOUNDZ will invoice for and you will pay ASTOUNDZ, the Monthly Recurring Fees and one-time fees for Services as described in the applicable Service Order in accordance with this MSA. For Services billed on a monthly basis, ASTOUNDZ will invoice you in advance for such Services and you will pay for all such Services in advance before Services are rendered. For Services billed on an hourly basis, ASTOUNDZ will invoice you after the Service is rendered.

The fees for Services within any Service Order include only the items specified in the Service Order (the Included Services). You will be billed in quarter hour (.25) increments for any Additional Services at the then current hourly rate posted online at [www.ASTOUNDZ.com/rates](http://www.ASTOUNDZ.com/rates). ("Rates").

All prices are exclusive of all applicable country, provincial, state and local governmental surcharges and fees including, but not limited to applicable telecommunication charges; and sales, use, value added, excise, privilege, franchise, and similar taxes ("Assessments").

You are responsible for paying all Assessments that apply to the Services. These Assessments, which will be separately stated on the invoices, may change in the future and you acknowledge and agree that you will pay them at the same time as all other charges set forth on the invoices.

Unless otherwise stated in the Service Order, payment for all invoices must be received by ASTOUNDZ on the date of the invoice. Failure to pay all amounts when due and payable is a Client Default and a breach of this Agreement and ASTOUNDZ may exercise any or all of our remedies under this Agreement.

ASTOUNDZ may charge late fees of one and one-half percent (1.5%) per month on all past due amounts. ASTOUNDZ may also assess a fee for any payment transaction returned for insufficient funds or not paid when presented for payment.

You will reimburse ASTOUNDZ for all costs incurred in collecting any overdue payments and related interest, including without limitation attorneys' fees, legal costs, court costs, and collection agency fees.

If you dispute any portion of an invoice, you must notify ASTOUNDZ in writing at



[accounting@ASTOUNDZ.com](mailto:accounting@ASTOUNDZ.com) within thirty (30) days detailing the charges in dispute and the reason for such dispute. You may not dispute invoice charges after thirty (30) days from the date of an invoice.

All of your accounts with ASTOUNDZ must be current and in good standing to ensure continued delivery of ASTOUNDZ Services.

You authorize ASTOUNDZ to obtain your credit and financial information as ASTOUNDZ deems appropriate and necessary to evaluate your credit worthiness.

### **Remediation Expenses**

ASTOUNDZ is not obligated to provide services necessitated by vandalism, theft, misuse, neglect, acts of third parties, fire, water, casualty, acts of God, mob violence, labor disputes, malfunction of affiliated equipment, electrical failure, accidents, unauthorized material modification of your website. Any service performed as a result of these events is deemed an Additional Service and is not subject to the Service Level Agreement and is out of scope of this Agreement.

### **Telephone Call Recordings**

ASTOUNDZ may record your telephone calls for quality, training, and forensic purposes. By entering into Service Order agreements with ASTOUNDZ, you consent to such recordings and agree that it is your responsibility to notify all members of your staff that such recordings could be occurring.

### **Expectations of ASTOUNDZ**

- ASTOUNDZ shall perform its work as contracted in the signed Service Order.
- ASTOUNDZ Services shall be performed in accordance with the Guarantee and Service Level Agreement.

### **ASTOUNDZ Default**

- You have the right to terminate this Agreement upon an ASTOUNDZ Default subject to thirty (30) days' prior written notice to ASTOUNDZ.
- You may, either additionally or in the alternative, elect to terminate one or more of the Services for which an ASTOUNDZ Default has occurred.
- An "ASTOUNDZ Default" is deemed to have occurred upon the occurrence of a material breach by ASTOUNDZ of the Guarantee and Service Level Agreement if such failure has not been remedied within thirty (30) days after you have delivered written notice to ASTOUNDZ which sets forth with specificity the problems complained of and the specific remedial measures required to solve the identified problems; provided that if such failure is not capable of being cured within such thirty (30) day period with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time in ASTOUNDZ's sole discretion (not to exceed ninety (90) days). ASTOUNDZ then agrees to exercise reasonable diligence to cure such failure and provide you reasonable notification of the status of the remedy.

### **Expectations of Client**

- You must perform the Client Responsibilities related to any contracted Service set out in the Service Order.
- You must pay all invoices for Services on time as set forth in this Agreement.
- You warrant that that you have purchased any necessary third party licenses for ASTOUNDZ's use in providing Services as required by EULAs (End User License Agreements) and if such licenses do not exist, you are solely responsible for timely acquiring any currently needed licenses and any





licenses for additional services that are added. You further warrant that you have not violated any licensing agreements or laws.

- You agree to indemnify ASTOUNDZ for any installation, configuration or use of third-party photos, software, etc. that is not appropriately licensed and for defense of ASTOUNDZ or remediation necessitated by your action or non-action. You understand and acknowledge that you are solely responsible and liable for all licensing of photos and software you purchase or use.

## Client Default

- ASTOUNDZ has the right to terminate this Agreement upon a Client Default subject to thirty (30) days' prior written notice to you.
- ASTOUNDZ may, either additionally or in the alternative, elect to terminate one or more of the Services for which a Client Default has occurred.
- A "Client Default" is deemed to have occurred upon the occurrence of any of the following:
  - Your failure to make, when due, any payment required under this Agreement;
  - Your failure to fulfill Client Responsibilities for each contracted Service;
  - Your failure to perform the expectations specified under this Client Default section.
  - Further, ASTOUNDZ may terminate this Agreement immediately in the event of the following Client Defaults:
    - You become bankrupt or become insolvent; or
    - You merge with or into, or reorganize, amalgamate, consolidate, or enter into any other transaction in which substantially all of your assets are transferred to another person or entity that fails upon request to assume in writing all of your obligations under this Agreement.
    - If you are in Client Default, in addition and without prejudice to ASTOUNDZ's right to terminate as set forth above, ASTOUNDZ has the right, **without giving you notice**, to suspend the performance of all or part of the Services under this Agreement for so long as such Default is continuing. You accept full responsibility for any loss, cost, and expense you may incur due to such suspension and acknowledge that the Limitations of Liability provisions set forth herein specifically apply to this situation.

## Termination

ASTOUNDZ will give you sixty (60) days' notice of intent to terminate any Service Order if it wishes to terminate Services at the end of any current Term.

You will give ASTOUNDZ thirty (30) days' notice of intent to terminate any Service Order if you wish to terminate Services at the end of any current Term.

If you cancel any Services ordered under this Agreement before the expiration of the Term specified on the applicable Service Order for any reason other than provided for in the Guarantee and Service Level Agreement, or if ASTOUNDZ terminates this Agreement due to your default, you are liable for all past due fees and all of the following early termination charges which are due and payable at time of termination: (i) the balance attributable to payments for any software purchased for your account, (ii) any third-party cancellation charges ASTOUNDZ incurs for services purchased on your behalf, (iii) 100% of the then current Minimum Monthly Recurring Fee multiplied by the number of months remaining in the current Term of the relevant Service Order.

Upon termination of this Agreement due to Client Default or for any other reason, ASTOUNDZ will provide



and you will pay for Offboarding Services. ASTOUNDZ has no responsibility or liability for assisting you in transferring any services or providing any separation services or website information until you pay all past due amounts due and owing under this Agreement and pay the agreed upon amount for Offboarding Services. If you or another provider change elements of your Website during the Offboarding Period, you assume responsibility for all administration, associated support, and any interruption of services related to the changes. ASTOUNDZ assumes no liability to support changes initiated outside of ASTOUNDZ.

## **Hosting**

You agree that ASTOUNDZ may change the location of ASTOUNDZ's Data Center or hosting facilities in ASTOUNDZ's sole discretion.

## **Proprietary Information**

You agree that the working information, processes, reports, and associated raw source data that ASTOUNDZ compiles and uses to develop your website and to provide the Services under any Service Order ("Proprietary Information") belong solely to ASTOUNDZ. Proprietary Information includes but is not limited to the logins, configurations data, licensing, and support history contained in ASTOUNDZ's systems, database, and reports contained in hosting and monitoring tools; server and network logs; and recordings of calls and support sessions.

## **Third-Party Products and Warranties**

HARDWARE & SOFTWARE. YOU ACKNOWLEDGE THAT ASTOUNDZ DOES NOT MANUFACTURE HARDWARE OR SOFTWARE, OR PROVIDE POWER OR INTERNET SERVICES. ALL HARDWARE AND SOFTWARE IS PROVIDED ON AN "AS-IS" BASIS EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. "Third-Party Products" means any third-party hardware, hosting services, or software. Some manufacturers' warranties or service contract terms and conditions for Third-Party Products may become void if ASTOUNDZ or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). ASTOUNDZ DOES NOT TAKE RESPONSIBILITY FOR THIRD-PARTY WARRANTIES OR FOR ANY EFFECT THAT ASTOUNDZ SERVICES MAY HAVE ON THOSE WARRANTIES. Except as agreed to in writing between you and ASTOUNDZ, Third-Party Products are exclusively subject to terms and conditions between the Third-Party and you. ASTOUNDZ has no liability for Third-Party Products and you must look exclusively to the Third-Party for any damages or liability with respect to the provision of such Third-Party Software, Hosting, or Products. Except as otherwise specifically agreed to in a Service Order, you authorize ASTOUNDZ (or otherwise obtain the rights for ASTOUNDZ) to copy, install and modify, when necessary and as required by the Service Order, all Third-Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. You warrant to ASTOUNDZ that you have obtained any licenses, consents, regulatory certifications or approvals required to give ASTOUNDZ and our subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third-Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

## **Assumption of Risk / Compliance**

ASTOUNDZ has no liability to you and you assume all risk for any loss or damage arising in whole or in part from or relating to: (a) use of any third-party hardware, software, information or materials not approved or recommended by ASTOUNDZ; (b) viruses, hackers or other malicious or accidental destruction of systems or data, including destruction by you or your employees or representatives, although ASTOUNDZ will make every commercially reasonable effort to proactively minimize exposure to such risks; (c) any event beyond ASTOUNDZ's or your control including, without limitation, power failure, natural disaster, building modifications, or other events of a magnitude or type for which precautions are not generally taken in the



web service provider industry; and (d) your failure to perform one or more of your obligations set forth in this Agreement or any Service Order. You have full and exclusive responsibility for understanding and ensuring compliance with any regulatory, legal, or contractual obligations related to data created, generated, or held by you (including all such data held or backed up on your behalf by ASTOUNDZ).

You acknowledge that the disclaimers in this MSA apply to any alleged damages or claims related to data loss, data corruption, or breaches of your website arising out of or occurring simultaneously with the provision of any Services by ASTOUNDZ. Accordingly, you represent and warrant to ASTOUNDZ that you have obtained all the necessary insurance policies that can fully reimburse you for any such data loss occurrences and that you will not suffer any unreimbursed financial damages related to the loss or damage of your data.

In some cases, ASTOUNDZ may be migrating some of your data. ASTOUNDZ is unable to obtain insurance to cover loss of data during transit of your equipment containing such data. Therefore, if ASTOUNDZ moves or has equipment moved on your behalf, you represent and warrant to ASTOUNDZ that you have obtained all the necessary insurance policies that can fully reimburse you for any data loss occurrences and that you will not suffer any unreimbursed financial damages related to the loss of or damage to your data.

### **Your Data and Network Security**

You accept ultimate responsibility and liability for the protection and preservation of your data. ASTOUNDZ is an advisor only. You acknowledge and understand that ASTOUNDZ is neither a bailee nor a fiduciary of your data.

**ASTOUNDZ IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR ELECTRONIC DATA RESULTING FROM, ARISING OUT OF, OR RELATED IN ANY WAY TO HOW YOU BACKED UP THE ELECTRONIC DATA.**

You acknowledge that “backing-up” data is not the same as “archiving data.” Data archiving is the process of moving data that is no longer actively used to a separate data storage device for long-term retention. Data archives consist of older data that is still important and necessary for future reference, as well as data that must be retained for regulatory compliance. Data archives are indexed and have search capabilities so that files and parts of files can be easily located and retrieved. Data archives are often confused with data backups, which are copies of data. Data backups are used to restore data in case it is corrupted or destroyed. In contrast, data archives protect older information that is not needed for everyday operations but may occasionally need to be accessed. You assume complete responsibility and control for archiving your data. ASTOUNDZ can provide data back-up upon request, but until there is a signed Service Order making this the responsibility of ASTOUNDZ, you assume complete responsibility and control for backing-up your data. ASTOUNDZ’s hosting providers routinely backup data, but do not hold any archives.

If ASTOUNDZ provides data backup or management of your website, ASTOUNDZ will make commercially reasonable efforts to complete each backup occurring within any area owned or controlled by ASTOUNDZ. Backed up data is like a snapshot of files at a specific point in time and that snapshot is retained for a period of at least fourteen (14) days unless otherwise specified. A restoration from a backup will replace only the files contained in the then current retention period. For backups performed outside of ASTOUNDZ Hosting Centers, you agree to complete all recommended and necessary steps to ensure successful data backup. Certain exceptions, including but not limited to backup exceeding time window, files open, backup client not accessible, backup system failure, or inability to restore from backup, may from time-to-time cause interruption to any backup service. Accordingly, ASTOUNDZ does not warrant the validity or availability of the data that is being backed up.



## **DISCLAIMERS, WAIVERS, AND LIMITATIONS OF LIABILITY**

### **DISCLAIMER**

ASTOUNDZ DOES NOT WARRANT OR REPRESENT THAT THE SERVICES PROVIDED WILL FUNCTION WITHOUT ERROR OR INTERRUPTION. YOU ACKNOWLEDGE THAT THERE ARE INHERENT RISKS IN OPERATING A WEBSITE CONNECTED TO THE INTERNET THAT COULD RESULT IN LOSS OF YOUR PRIVACY, CONFIDENTIAL INFORMATION, AND PROPERTY. YOU FURTHER ACKNOWLEDGE THE RISK THAT ANY MONITORING SOFTWARE INSTALLED BY ASTOUNDZ MAY NOT DETECT SYSTEM FAILURES UNTIL AFTER THEY OCCUR. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ASTOUNDZ DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY STATED IN THIS AGREEMENT INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. YOU ARE SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SERVICES CHOSEN.

### **WARRANTIES**

ALL WARRANTIES RELATED TO THE SERVICES ARE AS SPECIFICALLY SET FORTH IN THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE APPLICABLE SERVICE LEVEL AGREEMENT (SLA). EXCEPT AS PROVIDED HEREIN AND IN THE APPLICABLE SLA, NO OTHER WARRANTY IS EXPRESS OR IMPLIED. THEREFORE, THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES, ANY WARRANTY WITH RESPECT TO THE SUITABILITY OR PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES, OR ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION, ADVICE, OR INFORMATION, WHETHER ORAL OR WRITTEN, YOU OBTAINED FROM ASTOUNDZ.

### **LIMITATION OF DAMAGES**

YOUR SOLE REMEDY FOR ANY ASTOUNDZ BREACH OF A SERVICE ORDER OR THE AGREEMENT IS AS SET FORTH IN THE APPLICABLE SLA AND AS MAY BE ELSEWHERE EXPRESSLY DESCRIBED IN THIS AGREEMENT. ASTOUNDZ IS NOT LIABLE FOR ANY OTHER ALLEGED BREACH OF CONTRACT DAMAGES THAT ASTOUNDZ COULD NOT HAVE REASONABLY FORESEEN ON THE EFFECTIVE DATE. FURTHERMORE, ASTOUNDZ IS NOT LIABLE TO YOU FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, EXPECTANCY, RELIANCE, OR RESTITUTIONARY DAMAGES NOR IS ASTOUNDZ LIABLE TO YOU FOR LOST BUSINESS, LOST PROFITS DUE TO ANY ALLEGED CONTRACT BREACH, OR ANY OTHER SPECIAL DAMAGES SUCH AS COST OF REMEDIATION OR REPAIR, REPLACEMENT OF LOST DATA, LOST DATA DAMAGES, BUSINESS INTERRUPTION DAMAGES, SUBSTITUTE VENDORS, ATTORNEYS' FEES, OR ANY OTHER OUT OF POCKET COSTS AND EXPENSES CLAIMED TO ARISE OUT OF AN ALLEGED ASTOUNDZ CONTRACT BREACH. ALL LIMITATIONS OF LIABILITY STATED IN THE MSA ARE APPLICABLE HEREIN. NO CLAIM MAY BE ASSERTED BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY EVENT, ACT, OR OMISSION THAT OCCURRED MORE THAN ONE YEAR PRIOR TO SUCH CLAIM BEING ASSERTED.

### **AGGREGATE LIABILITY**

NOTWITHSTANDING THE FOREGOING, ASTOUNDZ'S AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF, OR IN CONNECTION WITH ANY SERVICE PROVIDED UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS YOU PAID FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR SIX (6) MONTH PERIOD. YOU ACKNOWLEDGE THAT THESE LIMITATIONS APPLY EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH



DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE, THAT THEY REFLECT THE ALLOCATION OF RISK SET FORTH IN THE AGREEMENT, AND THAT ASTOUNDZ WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY OR THE FEE FOR THE SERVICES PROVIDED BEING SUBSTANTIALLY HIGHER.

### **Interruption of Service: Credit**

Any interruption of service that is not excused due to Force Majeure, is governed by the applicable Service Level Agreement.

### **Force Majeure**

All of ASTOUNDZ's obligations hereunder, whether express or implied, will be suspended and excused if compliance with any obligation is prevented or hindered by court order or is in conflict with Federal, State, or municipal laws, rules, regulations, or Executive Orders asserted as official by or under public authority claiming jurisdiction; because of the occurrence of an act of God, tornado, flood, hurricane, earthquake, or solar flare; by fire, loss of electrical power on an unreasonable scale that impacts a substantial and material portion of ASTOUNDZ's computer network; by other cause beyond ASTOUNDZ's reasonable control, including failure or fluctuations in electrical power, heat, light, air conditioning, interruptions in telecommunications or internet or acts of utility providers; by civil disturbance, labor disputes, terrorism, war, armed conflict; by delays you caused; by acts or omissions of third parties you hired; by cable cuts not caused by ASTOUNDZ; or by supplier failure and similar events beyond the reasonable control of ASTOUNDZ (all "Force Majeure"). Delivery and performance dates will be extended in ASTOUNDZ's sole discretion as reasonably necessary to adequately restore services interrupted by Force Majeure. Such nonperformance shall not be a default or a ground to terminate this Agreement.

### **Indemnification**

Each Party will indemnify, hold harmless and defend the other Party, its directors, officers, agents, employees and/or representatives from and against any and all claims, demands, causes of action, losses, damages, expenses or liabilities, penalties, proceedings, or suits, including reasonable attorneys' fees and court costs, upon either Party by reason of personal injury or death of a Party's employee, consultant or agent as a result of an intentional or negligent act or omission on the part of the indemnifying Party in connection with the performance of any obligations arising under this Agreement except to the extent such cause of action, loss, expense or liability is caused solely by the negligence or willful misconduct of the indemnified Party. If a cause of action arises from the negligence of both Parties, the relative burden of the cause of action will be attributed between the Parties under the principles of comparative negligence.

Client shall indemnify and hold harmless ASTOUNDZ (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 ASTOUNDZ as a result of any claim, judgment, or adjudication against ASTOUNDZ 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 ASTOUNDZ (the "Client Content"), or (b) a claim that ASTOUNDZ's use of the Client Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, ASTOUNDZ 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.

### **Representations and Warranties**

You represent and warrant that all approvals and consents for purchasing products or performing the Services that you authorize have been obtained or will be obtained at your expense. You and ASTOUNDZ



represent and warrant that: (i) each is financially solvent and has the ability to perform its obligations hereunder; ii) each has the right to use any intellectual property that it provides to fulfill this Agreement and related Service Orders; (iii) each is in compliance with laws and regulations applicable to its business; and iv) each will perform all its obligations under this Agreement on time. Each Party warrants that it has full power and authority to enter into this Agreement, and all necessary legal action has been taken to authorize the individual signing this Agreement in its behalf. Further, each Party agrees that a signed facsimile or a signed electronically submitted copy of this Agreement has full force and effect.

### **Assignment; Successors**

You may not assign or transfer this Agreement or any of your rights or obligations hereunder, without the prior written consent of ASTOUNDZ. Any attempted assignment in violation of this Agreement shall be null and void and of no force or effect whatsoever. ASTOUNDZ may assign our rights and obligations under this Agreement and may engage subcontractors or agents in performing our duties and exercising our rights hereunder, without the consent of User. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **Employee Non-Solicitation**

For the duration of this Agreement and for a period of one (1) year following the last date of service from ASTOUNDZ, neither Party (and its agents, employees, or affiliates) will, directly or indirectly, recruit, or attempt to recruit, discuss employment with, or otherwise utilize the services in any capacity of any person who is or was your employee of you or an employee or independent contractor of ASTOUNDZ (each a "Party Employee") during the Term. Neither Party shall be restricted in any general solicitation for employees (including through the use of employment agencies) not specifically directed at any Party Employee, and provided further however that both Parties shall be restricted in hiring any Party Employee who responds to any such general solicitation. If either Party hires or contracts with a Party Employee in any capacity, the breaching Party agrees that it shall pay to the non-breaching Party, as liquidated damages, an amount equal to two times the total compensation earned in the previous 12 months for such Party Employee as reasonable and fair compensation for such breach. The Parties each acknowledge and agree that because an employee's services are unique and substitute employees are not readily available, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by one Party if the other Party hires its employees. It is understood and agreed by the Parties that (i) a Party shall be damaged if the other hires its employee in violation of this provision, (ii) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (iii) any sums payable as described in this provision are in the nature of liquidated damages and not a penalty, and are fair and reasonable, and (iv) these payments each represent a reasonable estimate by the Parties of the fair compensation for the losses that may reasonably be anticipated from such loss of a Party Employee, and be the sole and exclusive measure of damages with respect to any such action. Once the payment of these liquidated damages has been made, the breaching Party shall be relieved of any and all further liability or any damages of any kind resulting from its conduct in violating this covenant relating to the hiring of the other's employees.

### **Notices**

Each Party shall give any notice or other communication under this agreement in writing. Notices are effective upon receipt by the Party to which the notice is given. Notices must be given by (i) personal delivery, (ii) courier service, (iii) first-class certified mail, or (iv) email as posted on [www.ASTOUNDZ.com/Notices](http://www.ASTOUNDZ.com/Notices).

You must update all your contact information if any of it changes, including but not limited to the Primary Contact's full name and title, your billing contact information, current street address, phone number, and email address(es) by sending such updated information by email to [Legal@ASTOUNDZ.com](mailto:Legal@ASTOUNDZ.com). ASTOUNDZ is not responsible for non-delivery of any notice when it has been sent to the Primary Contact on file.



## **Severability**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

## **Governing Law**

This Agreement will be construed and enforced under the laws of the State of Texas. Any action or proceeding arising out of or related in any way to this Agreement may be brought only in state district court in Harris County, Texas. The Parties waive any and all objections to the exercise of jurisdiction over them by such courts and to venue in such courts.

## **Negotiated Terms**

The language, terms, conditions, and provisions of this Agreement are the result of negotiations between the Parties and this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement or based on a Party's undertaking of an obligation under this Agreement.

## **Survival**

The Parties' respective representations, warranties, and covenants, together with obligations of payment, non-solicitation, indemnification, confidentiality and limitations on liability in this Agreement will survive the expiration, termination, or rescission of this Agreement and continue in full force and effect.

## **Headings**

The headings of sections of this Agreement are for convenience of reference only and will not affect the meaning or interpretation of this Agreement in any way.

## **Entire Agreement**

The Agreement together with all integrated documents as defined herein constitutes the entire agreement between the Parties with respect to such subject matter. The Parties acknowledge and represent that they have not relied on any written or oral previous or concurrent proposal, representation, assertion, guarantee, warranty, collateral contract or other assurance, made by or on behalf of any other Party or any other person or entity, except for those specifically set out in this Agreement.

## **Changes to the Agreement or the Services**

ASTOUNDZ may modify, add, or delete portions of this Agreement at any time. If we have made significant changes to this Agreement, we will post a notice on the ASTOUNDZ website for at least thirty (30) days after the changes are posted and will indicate at the bottom of this Agreement the date of the last revision. Any revisions to this Agreement will become effective when posted unless otherwise provided. You agree to any modification to this Agreement by continuing to use the Services after the effective date of any such modification. ASTOUNDZ reserves the right to modify, change, or discontinue any aspect of the Services at any time.

## **Independent Contractor**

ASTOUNDZ is an independent contractor and nothing contained in this Agreement places ASTOUNDZ and you in the relationship of principal and agent, partners or joint venturers. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.



## Miscellaneous Provisions

Neither Party will use the name, logo, trademark, trade name, nor other marks of the other Party without such Party's prior written consent, except that ASTOUNDZ may use your name or website as a reference in our brochures, advertisements, and other promotional material unless you specifically object.

## Waiver

No failure or delay by you or ASTOUNDZ to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. No express waiver of, or assent to, any breach of or default in any term or condition of this Agreement by any party hereto shall constitute a waiver of, or an assent to, any succeeding breach of or default in the same or any other term or condition hereof.

## DISPUTE RESOLUTION, MANDATORY ARBITRATION

**Any business dispute, legal controversy, or legal claim arising out of or relating in any way to the agreement or the business relationship between you and ASTOUNDZ (including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of the Agreement), shall be exclusively resolved by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules upon a Party's submission of the dispute to arbitration.**

Prior to initiating arbitration, the complaining Party shall notify the other Party in writing via email ("Notice"). Within thirty (30) days of such Notice being emailed, management level representatives of both Parties shall telephone conference at an agreed date and time to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such Notice is emailed, the complaining Party then may seek any and all legal remedies exclusively through arbitration. The demand for and service of arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after two years from when the aggrieved Party knew or should have known of the controversy, claim, dispute or breach.

This agreement to arbitrate shall be specifically enforceable in accordance with the Federal Arbitration Act. A Party may apply to any state or federal court with jurisdiction for interim or conservatory relief, including without limitation a proceeding to compel arbitration.

The AAA arbitration shall be conducted by one arbitrator. If the Parties are not able to agree upon the selection of an arbitrator, the arbitrator shall be selected by the American Arbitration Association. The arbitration shall be conducted in Houston, Texas. The laws of the State of Texas shall be applied in any arbitration proceedings, without regard to principles of conflict of laws.

It is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within one hundred and twenty (120) days from the date the arbitrator is appointed. The arbitrator may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award.

Except as may be required by law, neither Party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. Discovery may be conducted at the option of any Party in accordance with the Texas Rules of Civil Procedure.

The cost of the arbitration proceeding (filing fees and administrative fees) and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), shall be borne by the Party bringing the same, but may be reimbursed to the winning Party as part of the arbitrator's award. Each Party shall pay its own proportionate share of arbitrator fees and expenses of the arbitrator designated. It is specifically understood and agreed that any Party may enforce any award rendered pursuant to this arbitration provision by bringing suit in any court of competent jurisdiction. The Parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief to any Party. This Section shall survive the termination or cancellation of this arbitration agreement. The arbitrator shall be entitled to award any of the foregoing arbitration and administrative fees and expenses to the winning Party as damages in his/her discretion.





Alternatively, in the interest of cost savings and expediency, in lieu of the AAA, the Parties may mutually agree in writing to arbitrate this matter online through Arbitration Resolution Services, Inc. rather than face to face through the AAA. If so, then the Parties expressly agree to abide by the rules of ARS as found in its web site at <http://www.arbresolutions.com>. All other provisions of this arbitration agreement as set forth above (costs, fees, awards, discovery, confidentiality, etc.) shall still be applicable to the ARS arbitration.

### **Attorneys' Fees**

If any litigation is necessary, the prevailing Party is entitled to recover any costs or expenses incurred, including without limitation, costs of court and attorneys' fees.