

## **(ASP) HOSTING WEBSITE DEVELOPMENT AGREEMENT**

This Application Service Provider (ASP) Hosting Website Development Agreement (“ASP Agreement”) is entered into by and between Host Zander, (“Company”), a Florida DBA having a business address at 4509 14<sup>th</sup> Street West, Suite 502, Bradenton Florida, 34207, and Client, (“Client”) via electronic signature through acceptance of terms and conditions and by reference to URL: <http://www.hostzander.com/agreement.pdf>.

### **RECITALS**

- A. Client desires to have Company develop and host certain web pages, (“Website”) for use by Client on a rental basis through the term of this agreement.
- B. Company and Client desire to have Company host the Website on Company’s servers, (“Servers”). Company may own or lease the Server(s) utilized for the purposes of this ASP Agreement.
- C. Company will act as an Internet Service Provider offering storage and transfer of documents and other information over the Internet on behalf of Client.
- D. Client seeks to use these Server(s) for the primary purpose of serving Company developed “Website” and fully agrees to all terms and conditions posted on the hostzander.com website.
- E. The parties acknowledge that the Internet is neither owned nor controlled by any one entity. Therefore, Company can make no guarantee that any given party shall be able to access the Server(s) made available by Company at any given time.
- F. Company represents that it shall utilize good faith efforts to ensure that the Server(s) is/are available as widely as possible and with as little service interruption as possible.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Company and Client agree as follows:

### **AGREEMENTS**

#### **1. Term of Service / Payments**

Client agrees to a twenty four (24) month contract term of service, (the “Term”). This ASP Agreement requires that Client maintain all payments in good standing during the Term. **Failure to make a payment within ten (10) days of the payment due date will cause client to forfeit any and all rights granted under paragraph 2 of this agreement exercised at Company discretion.** Client shall have no rights, title, or interest in the website, web pages, images, URL(s), domain names, servers, email or any other aspect of the website developed until ALL payments have been made and accepted by Company at Companies discretion. Client shall be obligated to pay a non-refundable retainer as down payment and twenty three (23) equal monthly installments to be automatically applied to the bank account or credit card provided by Client and on file with Company. Client is responsible for updating Company records should a bank account or credit card become invalid or is not accepted for any reason by Company at any time during payment Term.

#### **2. Domain Ownership / Website Transfer**

At the completion of Term and when all payments have been made satisfactorily as per paragraph 1 – Company shall provide Client at Clients written request an electronic version of the website, including the web pages and images in ZIP file format, and shall transfer the domain name (URL) to Client. Client agrees that if there is any charge from a 3<sup>rd</sup> party for the domain name transfer - Client will be responsible for this 3<sup>rd</sup> party fee. Client is purchasing a single website template design, and limited term hosting during the term of this agreement. Hosting beyond the term of this agreement will incur additional costs at the hosting rate determined by Company at that time. Client shall be free to transfer hosting to another provider at any time AFTER Term by providing Company with 30 days written

notice to terminate as per paragraph 11. Early Termination - Company may terminate hosting at any time with 30 days written notice allow Client to make a single payment representing the total of any remaining payments within 10 days of Company notice or Client agrees to forfeit all rights to the website as per paragraph 1. Client will be entitled as outlined under paragraph 2 to website and domain transfer only after Company accepts payment in full.

### **3. Additional Modifications and Services**

Client agrees and understands that there are additional costs for modifications, additional features such as website optimization, keyword optimization, additional web page development and other development outside the initial website produced. Client may decide to purchase these services at additional cost but is not required to do so at any time.

### **4. Failure to pay**

Failure of Client to remit payment to Company within 10 (ten) days after a payment due date is cause automatic termination of this ASP Agreement, without notice, and for removal of the Client's web files, Applications, and/or disconnection of any Client services from Company Server(s). Client agrees that Company shall have no liability to Client, in tort, contract, or otherwise, for such removal or disconnection. Any and all disconnected web files and/or Applications otherwise owned by Client shall be provided to the Client *only* upon full payment of all outstanding payments and at Companies discretion. Company shall not have any obligation to provide web files and/or Applications to Client absent the receipt, in full, of any and all payments, including Late Penalties, from Client. Company shall not be held responsible for such disconnected web files and/or Applications when held in such disconnected fashion for more than 30 (thirty) days. If Client does not make payment in full of any outstanding monies due to Company within the said thirty (30) day period, the disconnected web files and/or Applications will be deemed to be abandoned by the Client and Company shall be entitled to all rights and privileges of ownership. The value of such disconnected web files and/or Applications, and/or value received upon sale of the same by Company, shall not constitute, and shall not be applied as, payment by Client. Company shall have no obligation to provide notice and/or make demand for payment, in writing or otherwise, upon Client prior to terminating this ASP Agreement for non-payment.

### **5. Refund policy**

- a. As detailed above, non-renewal by Client must be in writing with 30 days notice.
- b. Setup charges and down payment retainers are not refundable under any circumstances.
- c. Payments made during the Term of service are not refundable under any circumstances.
- d. Refunds of renewal fees paid to Company shall only be made for *fully unused* calendar months of service that the Client desires to terminate and only after the Term of this agreement has been satisfied.
- e. Client shall not be entitled to *any* refund of *any* monies under *any* circumstances should this agreement be terminated due to a violation of the Company Policies and Terms of Service Agreement.

### **6. Taxes**

Company shall not be liable for any taxes or other fees to be paid in accordance with or related to purchases made from Client or Company's server. Client agrees to take full responsibility for all taxes and fees of any nature associated with such products sold.

### **7. Material and Products**

Company will exercise no control whatsoever over the content of the information passing through the network except for what is noted in paragraph "12" and/or "16" of this ASP Agreement, relating to Lawful Purpose, and with respect to the Company Policies and

Terms of Service Agreement. Company makes no warranties or representations of any kind, whether expressed or implied for the service it is providing. Company also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of data resulting from delays, non-deliveries or service interruptions by any cause including, but not limited to, potential errors and/or omissions of the Client and/or Company. Use of any information obtained by way of Company is at the Client's own risk, and Company specifically denies any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of an end-to-end connection. Company does not represent guarantees of speed or availability of end-to-end connections. Company expressly limits its damages to the Client for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. Company specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

#### **8. Trademarks & Copyrights**

Client warrants that it has the right to use any applicable trademarks or copyrighted material used in connection with this service.

#### **9. Age**

Client certifies that he or she is of full legal age to enter into this ASP Agreement.

#### **10. Policies**

Client agrees to all terms in the Company Policies and Terms Of Service Agreement. Company's network resources used by Client may not be used to impersonate another person or misrepresent authorization to act on behalf of others or Company. All messages transmitted by Client should correctly identify the sender. Users may not alter the attribution of origin in electronic mail messages or posting. Users must not attempt to undermine the security or integrity of computing systems or networks and must not attempt to gain unauthorized access.

#### **11. Termination**

- a. This ASP Agreement may be terminated by either party, without cause, by giving the other party thirty (30) days written notice as per Paragraph 2. Written notice shall be by Email, or US postal service, Certified Mail, Return Receipt Requested. Company reserves the right to verify all cancellations before terminating service. Notwithstanding the above, Company may terminate service under this Agreement at any time, without penalty, if the Client fails to comply with any of the terms of this Agreement.
- b. Termination for any violation of the Company Policies and Terms Of Service Agreement shall be immediate. Company may, at its option, cancel or suspend service *immediately* should it believe Client has violated or is about to violate the Company Terms of Service agreement or should the Client fail to remit payment to Company by the Client's invoice within the terms as stated in the above section 4 "Failure To Pay".
- c. Client may be liable for certain fees relating to termination when such termination is due to Unsolicited Commercial E-Mail or SPAM.

#### **12. Notice of cancellation**

Written notice of cancellation of the service by Company may be by Email, US postal mail, Federal Express, or UPS.

#### **13. Limited Liability**

- a. Client expressly agrees that use of the Server offered by Company is at Client's sole risk. Neither Company, its employees, affiliates, agents, merchants licensors or the like, warrant that the Server service will not be interrupted or error free, nor do they make any warranty as to the results that may be obtained from the use of the Server

- service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through Company Server service.
- b. Under no circumstances, including negligence, shall company, its offices, agents or anyone else involved in creating, producing or distributing Companies Server service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Company Server service; or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to Companies records, programs or services. Client hereby acknowledges that this paragraph shall apply to all content on Companies Server service.
  - c. Notwithstanding the above, Client's exclusive remedies for all damages, losses and causes of actions whether in contract, tort including negligence or otherwise, shall not exceed one hundred (\$100.00) dollars.

#### **14. Lawful Purpose**

Client may only use Company's Server service for lawful purposes. Transmission of any material in violation of any Federal, State or Local regulation is prohibited. This includes, but is not limited to, copyrighted material owned by a third party and used without permission, material legally judged to be threatening or obscene, or material protected by trade secrets.

#### **15. Indemnification**

Client agrees that it shall defend, indemnify, save and hold Company harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees asserted against Company, its agents, its customers, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assigns. Client agrees to defend, indemnify and hold harmless Company against Liabilities arising out of any of the following:

- i. Any injury to person or property caused by any products sold or otherwise distributed in connection with Companies Server service;
- ii. Any material supplied by Client infringing or allegedly infringing on the proprietary rights of a third party;
- iii. Copyright infringement; and
- iv. Any defective product that Client sold on the Server offered by Company.

#### **16. Domain Name Ownership, Disputes, and Use**

Any domain name registered by Company on behalf of Client is the property of Company, but shall become the property of said Client only after BOTH the term of this agreement has been successfully completed and the Client has paid Company any registration fees that Company has incurred on behalf of the client. Company claims no ownership over Client domain names that the Client has paid to register. At Company's sole option, Company will either arrange for any billing for names registered by Company on behalf of Client to be sent directly by the registrar or agent thereof to the Client, or Company shall pay such fees and/or costs in advance and will subsequently directly bill Client for these registration fees plus applicable expenses, and/or service charges, if any.

Client acknowledges and agrees that Company may be presented with information that Client's domain name possibly violates the trademark rights or other intellectual property rights of a trademark or other intellectual property rights owner. In case of such action, Client agrees to the following:

- i. Client agrees to hold Company harmless of any action taken by such owner regardless of the outcome of such dispute and regardless of whether Domain Name

Service hosting for Client's domain is hosted at or continued to be hosted at Company.

- ii. Client agrees that Company has the right to discontinue name service in the event of such dispute over a Client's domain name.
- iii. Client agrees that should Company discontinue name service for Client's domain upon notification of such dispute that that Company will not be liable for any loss of business, interruption of business, loss of Client's domain name, or any indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), or otherwise, even if Company has been advised of the possibility of such damages.
- iv. In no event shall Company's maximum liability exceed one hundred (\$100.00) dollars.

Client agrees that a Company contact person shall be named as the "technical or zone contact" for any domains hosted at Company. Client agrees that Company may create and use network resources with the Client's domain name for administrative, testing, and network infrastructure enhancement purposes.

## 17. General

- a. This ASP Agreement may not be assigned by either party without the prior written consent of the other party. However, subject to the approval of Company, which approval may not be unreasonably withheld, Client may assign this Agreement to any purchaser or transferee of all or substantially all of Client's assets or stock, upon prior written notice to Company.
- b. Company may freely assign its right to receive any and/or all payments required to be made by Client pursuant to this ASP Agreement. If Company elects to assign its right to receive payments hereunder, Company must provide written notice to Client not less than ten (10) days prior to the date the first payment would be due to the assignee.
- c. This ASP Agreement constitutes the entire and only agreement between the parties relating to the subject matter contained herein, and all prior negotiations, representations, agreements and understandings, whether reduced to writing or not, are superseded hereby, unless specifically adopted and/or incorporated herein. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.
- d. Any notice required by this Agreement shall be given as required by the terms of this ASP Agreement and shall be addressed as follows:

in the case of Company to:

Host Zander  
4509 14<sup>th</sup> St. West Suite 502 - Bradenton, FL 34207  
ATTN: Sean Pitcher  
spitcher@hostzander.com

in the case of Client to:

Mailing Address, Phone, and Email submitted by client and on file

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

- e. This ASP Agreement shall be governed by and interpreted under the laws of the State of Florida, without giving effect to principles of conflicts of law. The Parties consent to the exclusive jurisdiction of the twelfth (12<sup>th</sup>) Judicial Circuit Court in and for Sarasota, Sarasota County, Florida, (the "Court"), as to any dispute or default arising out of

and/or relating in any manner to the terms or provisions of this Agreement and agree that such Court shall have personal jurisdiction over each and all of the Parties hereto.

**WHEREFORE**, the parties do, by their acceptance and acknowledgement of the existence of this document, hereby acknowledge that this document shall create a contract and that, having been provided sufficient opportunity to review the foregoing, independently and with the assistance of independent counsel chosen by each respective party, each party does intend to be fully bound by the terms herein.