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Content Management Systems • eCommerce • Custom Development

## Website Hosting Agreement

This Agreement, by and between Landmann InterActive, a d/b/a name of Landmann Associates, Inc., a Wisconsin corporation ("LI"), and the Client, is hereby incorporated by reference into LI's development and hosting proposals.

**1. Website Hosting Services.** LI agrees to provide Client with the services for hosting a website (the "Website") on the World Wide Web portion of the Internet (the "Hosting Services"). LI's web server maintaining the website (the "Host Server") will be located within LI's facility or a hosting provider or colocation facility subcontracted by LI. LI shall provide the hosting services so that the website is accessible to third parties via the World Wide Web portion of the Internet as specified herein. LI is responsible only for providing the Hosting Services, and not for providing any services or performing any tasks not specifically described in this Agreement.

**2. Client Responsibilities.** Client shall provide to LI all materials comprising the website (the "Client Content"), which shall be in a correct format (as specified by LI in consultation with Client). The Client Content shall be properly adapted and translated by Client for posting to the host server so that the website may be accessed via the Internet. Throughout the term of this Agreement, Client is solely responsible for all updates or modifications to the Client Content.

### **3. LI Responsibilities.**

**3.1 Availability.** Within a reasonable time of its receipt of the Client Content, LI will make the website available on the World Wide Web (the "Installation Date"). Thereafter, LI will use commercially reasonable efforts, pursuant to the terms and conditions set forth in this Agreement, to make the website accessible via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and will use its best efforts to ensure reasonable response times for users accessing the website. LI shall incrementally backup the website and store the backup materials in a safe and secure environment. Upon the termination of this Agreement, after the payment of all fees called for herein, LI shall use commercially reasonable effort to assist in the transfer of the website to the computer system owned and operated by Client and/or its designated third party contractor.

**3.2 Security.** LI shall endeavor to keep the site files and data as secure as possible, but makes no warranties about the security of any site code or data. Should the website files or content, whether provided by LI or the Client, become compromised through any manner of security breach or exploit, LI shall, at its sole discretion, take down the site, repair the files and data, and bill the Client for the work at prevailing hourly rates. LI will communicate with the Client regarding the nature of the breach or exploit and the nature of the resolution.

**4. Domain Name Registration.** Client shall provide LI with a registered domain name. If Client does not have a registered domain name, LI will, upon request, use commercially reasonable efforts to register domain name(s) selected by Client provided that such domain name is available for registration and does not violate any registration services' policies, or any law or regulation. In the event of any dispute arising out of or related to Client's domain name used in connection with the website, upon Client's request, LI will attempt to register an alternative domain name chosen by Client and attempt to make the website available under such alternative name.

### **5. Ownership of Intellectual Property and Equipment; Licenses**

**5.1 Client Content.** Client shall retain all right, title, and interest, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights, in the Client Content. Client assumes sole responsibility for the accuracy of any Client Content or other materials provided to LI for either authoring or hosting. Client hereby grants LI a non-exclusive, royalty-free license for the term of this Agreement to use, copy, modify, adapt, perform and display the Client Content solely as necessary to fulfill its obligations pursuant to this Agreement. Upon termination or expiration of this Agreement for any reason whatsoever, all rights granted to LI pursuant to this Section (5.1) immediately revert to Client.

**5.2 LI Equipment.** LI retains all rights to the hosting services and any computer hardware, software,

telecommunications or other equipment, including the host server, used to provide the hosting services (collectively, the "LI Equipment"). At no time shall Client have any ownership, property, or any other rights in, nor file any lien on, any of the hosting services or the LI equipment.

**6. Confidentiality.** Neither party shall disclose to any person or entity, directly or indirectly, without the prior written approval of the other, any confidential information relating to the other party obtained by virtue of this Agreement, except on a confidential basis to its business, legal and financial advisors or as required to be disclosed under applicable law or by legal process. "Confidential Information" shall include, but not be limited to software, technical processes and formulas, source or object code, product designs, sales cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing data, and the terms of this Agreement. Confidential information does not include any information that is, (i) generally known or available to the public through no act of the receiving party, (ii) already known to the receiving party at the time of receiving the confidential information, (iii) independently developed by the receiving party; or (iv) furnished to the receiving party by a third party with the right to do so.

## **7. Billing and Payment**

**7.1 Billing and Payment Terms.** Client will be billed on a periodic basis for the hosting services, and payment of such fees will be due within thirty (30) days of the date of each invoice, unless otherwise stated.

**7.2 Late Payment.** Client's failure to pay any fees when due shall be considered a material breach of this Agreement, and LI may do any or all of the following: (i) assess late charges of the greater of one and one-half (1.5%) per month or the maximum allowable under applicable law, (ii) suspend performance of the services, and terminate the Agreement without penalty; or (iii) require future payments hereunder to be made in advance of Services being rendered by LI. Any suspension or termination of services will not relieve client from paying past due fees plus late charges and in event of collection enforcement, client shall be liable for any costs associated with such collection, including, but not limited to, legal costs, attorneys' fees, court costs, and collection agency fees.

**7.3 Taxes.** Client shall pay or reimburse LI for all sales, use, transfer, privilege, excise, and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the performance by LI under this Agreement; excluding, however, income taxes on profits which may be levied against LI.

## **8. Warranties.**

**8.1 Client.** Client represents and warrants that: (a) Client has the power and authority to enter into and fully perform its obligations under this Agreement and to grant the rights granted in this Agreement; (b) The content, material, messages and data transmitted or made available through the services (including Client Content) do not and shall not contain any material that is inaccurate or that violates any applicable law, rule or regulation (including, without limitation, export laws) or that infringes upon any common law or statutory right of any person or entity, including, without limitation, any proprietary, contract, moral, privacy or publicity right, copyright, patent, trademark, trade secret, or any other third party right, and that Client owns the Client Content or otherwise has the right to place the Client Content on the website; (c) The content, material, messages and data transmitted or made available through the services (including Client Content) do not and shall not contain any material that, in LI's good faith judgment, is obscene, threatening, malicious, defamatory, libelous, slanderous, pornographic or which otherwise could expose LI to civil or criminal liability; (d) Client has obtained any authorization(s) necessary for hypertext links from the website to other third party Web sites; and (e) Client will not use the services to send unsolicited commercial e-mail, or engage in any other offensive or harassing conduct, or conduct that unreasonably interferes with LI's ability to manage its network facilities or provide similar services to other customers. In addition to any other remedy set forth in this Agreement, LI reserves the right to immediately remove from the website any material which violates any of the above warranties and/or to immediately suspend or disable any services necessary to remedy any violation or potential violation of the above warranties.

**8.2 Landmann InterActive.** LI represents and warrants that (a) LI has the legal right and authority to provide the Hosting Services; (b) the LI equipment does not infringe upon any copyright, patent, trademark, trade secret, or any other intellectual property right of any third party.

**8.3 No Other Warranty.** OTHER THAN THE EXPRESS WARRANTIES CONTAINED IN SECTION 7.2, ANY EQUIPMENT PROVIDED (INCLUDING, WITHOUT LIMITATION, THE LI EQUIPMENT) AND ALL SERVICES PERFORMED PURSUANT TO THIS AGREEMENT ARE PROVIDED AND PERFORMED ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE SERVICES IS AT ITS OWN RISK. LI DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

LI SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

**9. Limitation of Liability; Damages.** LI'S SOLE LIABILITY TO CLIENT FOR ANY LOSS, LIABILITY OR DAMAGE, INCLUDING ATTORNEY'S FEES, FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY EXHIBIT OR THE SERVICES, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO CLIENT'S ACTUAL DIRECT OUT-OF-POCKET EXPENSES WHICH ARE REASONABLY INCURRED BY CLIENT AND SHALL NOT EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID TO LI BY CLIENT UNDER THIS AGREEMENT DURING THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. IN NO EVENT SHALL LI BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR LOST PROFITS, LOST DATA, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM.

**10. Indemnification.** Each party (the "Indemnifying Party") agrees to indemnify, defend and forever hold harmless the other, and any of its parent and affiliated companies, and the present and former officers, members, shareholders, directors, employees, representatives, attorneys, insurers and agents of any of these, and their successors, heirs and assigns (each, an "Indemnified Party") from and against any and all losses liabilities, claims, costs, damages and expenses (including reasonable attorneys' fees, disbursements and administrative or court costs) that (i) arise directly or indirectly out of any breach or alleged breach of its representations and warranties under this Agreement, or (ii) are the result of its willful misconduct. The indemnified party shall promptly provide the indemnifying party with written notice of any claim which it believes falls within the scope of this paragraph and shall cooperate with indemnifying party in the investigation and defense of the same. The indemnified party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party shall control such defense and all negotiations relative to the settlement of any such claim and that any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which shall not be unreasonably withheld.

**11. Force Majeure.** Neither party shall be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any fire, earthquake, flood, snowstorm, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other or similar cause beyond that party's reasonable control.

**12. Term; Termination and Renewal.** This Agreement shall be effective as of the effective date and shall remain in effect for two (2) years from the installation date (the "Initial Term"), unless earlier terminated as otherwise provided in this Agreement. This Agreement shall be automatically be renewed for additional one (1) year terms (each, a "Renewal Term") unless a party provides the other party with a written notice of termination at least sixty (60) days prior to the expiration of the initial term or the then-current renewal term. Either party may terminate this Agreement if a bankruptcy proceeding is instituted against the other party which is not dismissed within ninety (90) days, or results in an adjudication of bankruptcy, or the other party materially breaches any of its representations, warranties or obligations under this Agreement, and such breach is not cured within fourteen (14) days of receipt of notice specifying the breach. Upon any termination of this Agreement, Client shall pay all unpaid and outstanding fees through the effective date of termination of this Agreement, provided that, if Client terminates the Agreement in a manner other than that which is described in this paragraph, Client shall also pay to LI an amount equal to all unpaid charges for the remainder of the then current initial or renewal term of this Agreement. The obligations of the parties under this Agreement that by their nature would continue beyond expiration, termination or cancellation of this Agreement including, without limitation, Articles 6, 7, 8, 9, 12 and 13, shall survive any such expiration, termination or cancellation.

**13. Amendment.** LI may modify this Agreement at any time in its sole discretion. Any modification is effective immediately upon either transmission by e-mail to the Client, by postal mail, or by posting on the LI website at this URL: [http://www.landmanninteractive.com/hosting\\_agreement.pdf](http://www.landmanninteractive.com/hosting_agreement.pdf). If any modification to this Agreement is unacceptable to the Client, they may immediately terminate the Agreement. LI will invoice Client for pro-rated services as of that date.

**14. Notice.** Any notice provided pursuant to this Agreement shall be in writing and shall be deemed given (i) if by hand or overnight delivery, upon receipt thereof, (ii) if by mail, two (2) days after a properly addressed piece is deposited in the United States mails, postage prepaid, certified mail, return receipt requested, or (iii) if by facsimile transmission, upon electronic confirmation thereof, (iv) if by e-mail, to the last known e-mail address. All notices shall be addressed as provided below after the signatures of the parties, or such other address as either party may in the future, consistent with this Section, specify in writing to the other.

**15. Miscellaneous.** This Agreement, any Development or Hosting Proposal, or any Ongoing Consulting Agreement referencing this Agreement shall constitute the entire Agreement between Client and LI with respect to the subject matter hereof and there are no representations, understandings or agreements that are not fully expressed in this Agreement. In the event of a conflict between the terms of any Exhibit and this Agreement, unless expressly stated otherwise in the Exhibit, this Agreement shall control. LI may use the name of and identify Client as an LI client, in advertising, publicity, or similar materials distributed or displayed to prospective clients. LI and its personnel, in performance of this Agreement, are acting as independent contractors and not employees or agents of Client. No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by the party against which such amendment, change, waiver, or discharge is sought to be enforced. This Agreement shall be governed by the laws of the State of Wisconsin without regard to its conflict of laws provisions, and the exclusive venue for disputes arising out of or related to Agreement shall be the appropriate state or federal court located in either the City of Madison, Wisconsin or Dane County, Wisconsin. Client shall not assign, without the prior written consent of LI, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder. Signatures on a copy of this Agreement or other documents provided pursuant to this Agreement transmitted by facsimile machine shall be binding on the parties and of the same legal effect as original signatures. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. In WITNESS WHEREOF, by accepting LI's Proposal or Quotation, this document is hereby included by reference as being part of that Proposal or Quotation.

LANDMANN INTERACTIVE

By Eric C. Landmann, Pres., Landmann Assoc., Inc.

Date 2/1/14

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