



Phone: 216-373-7382  
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Internet: www.zidar.com

**ZIDAR DEVELOPMENT, INC. MANAGED SERVER**  
**SERVICE LEVEL AGREEMENT**

This Service Level Agreement ("Agreement") between Zidar Development, Inc. ("ZDI") and the customer which is a signatory hereto ("Customer") is made effective as of the date indicated below the Customer signature on the initial Service Order Form ("Order Form") submitted by Customer and accepted by ZDI.

ZDI will provide for Availability for Managed Server Services (as herein defined) within ZDI's direct control where "Availability" refers to Customer's and Customer's End-Users' ability to access Customer's applications and data on the appropriate ZDI Managed Server. Services include network services to the ISP circuit termination point on the ZDI router in the Doylestown, OH data facility, all network hardware, firewalls or other security services.

**1. HOSTING SERVICES:**

(a) Managed Server Storage and Internet Link. ZDI shall store Customer's applications and data on ZDI's Managed Server. The parties expressly recognize that Internet servers and links are susceptible to crashes and down time. ZDI warrants that it shall maintain a consistent link with the Internet, but ZDI cannot and does not warrant that it shall maintain a continuous and uninterrupted link.

(b) Maintenance. ZDI may, at its own discretion, temporarily suspend all service for the purpose of repair, maintenance or improvement of any of ZDI's Managed Server systems. However, ZDI shall provide prior notice where it is reasonably practicable under the circumstances, and ZDI shall restore service as soon as is reasonably practicable. Customer shall not be entitled to any setoff, discount, refund or other credit, in case of any service outage which is beyond ZDI's control or which is reasonable in duration.

(c) Security. The parties expressly recognize that it is impossible to maintain flawless security, but ZDI shall take reasonable steps to prevent security breaches in ZDI's Managed Server interaction with Customer and security breaches in ZDI's Managed Server interaction with resources or users outside of any firewall that may be built into or associated with ZDI's Managed Server.

(d) Export Control. Customer agrees that it will comply with all export, re-export or import laws and regulations of any jurisdiction for which Customer's information is transmitted or accessed. Customer agrees that it shall obtain written authority from all appropriate governmental bodies, if Customer intends at any time to re-export any items originating from that jurisdiction to any proscribed destination. Customer shall indemnify ZDI, hold ZDI harmless and provide a defense to ZDI for any such compromise of Customer's security.

(e) Intellectual Property Ownership. This Agreement does not transfer from ZDI to Customer any ZDI Technology, and all right, title and interest in and to ZDI Technology will remain solely with ZDI. This Agreement does not transfer from Customer to ZDI any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. ZDI and Customer



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each agree that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party and/or its third party vendors.

## **2. CUSTOMER'S REMEDY:**

(a) ZDI cannot and does not warrant that it shall maintain continuous and uninterrupted availability of the Managed Server. In the event ZDI is unable to provide Customer "Availability" in any given calendar month, Customer shall receive a credit to their account equal to the "Availability" percentage of downtime as applied against that month's service fees excluding rebilled charges.

"Availability" percentage of downtime ("Y") shall be calculated as follows:

$$Y = X / N * 100$$

Where "N" is the total number of hours in any given calendar month, and "X" is the total number of hours of downtime.

Specifically excluded from "X" in this calculation and exceptions to the levels of Availability provided herein are (a) scheduled maintenance windows; (b) reasons of Force Majeure (as set forth in 6(b), below) (c) issues associated with Customer's personal computers, local area networks or Internet Service Provider connections; (d) use of unapproved or modified Hardware or Software and/or; (e) issues arising from the misuse of the ZDI or Customer's software by Customer, its employees, agents, customers or contractors.

The remedies stated in this Section are Customer's sole and exclusive remedies for service interruption.

## **3. CUSTOMER RESPONSIBILITIES:**

(a) Customer will adhere to and will require any Third Party having access to the ZDI Managed Server to adhere to ZDI's Acceptable Use Policy attached.

(b) Customer is responsible for obtaining and complying with license terms for all Customer-provided software, and represents to ZDI that the terms of such licenses shall allow use of the software on the Managed Server, as well as the implementation by ZDI of the application as proposed.

(c) Customer is solely responsible for Content, including any subsequent changes or updates made or authorized by Customer. Customer represents and warrants that Content; (i) will not infringe or violate the rights of any third party including, but not limited to, intellectual property, privacy or publicity rights of others; (ii) is not obscene, profane or offensive to a reasonable person; or (iii) will not be hateful or threatening. Violations of the foregoing by Customer may result in early termination of services by ZDI.

(d) Customer is solely responsible for the Contents of its transmissions and the transmissions of Third Parties accessing the Customer's applications through Customer. Customer agrees to comply with



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U.S. law with regard to the transmission of technical data which is exported from the United States through the ZDI Managed Server solution. Customer further agrees not to use the ZDI Managed Server (i) for illegal purposes or (ii) to interfere with or disrupt other network users, network services or network equipment. Interference or propagation of computer worms and viruses, and use of the network to make unauthorized entry to any other machine accessible via the network. Violations of the foregoing by Customer may result in early termination of services by ZDI.

#### **4. EXPIRATION**

Upon expiration, cancellation or termination of this Service Level Agreement, Customer shall relinquish any Internet protocol ("IP") numbers, addresses or address blocks assigned to Customer by ZDI or its network services supplier (but not the URL or top level domain connected therewith). ZDI reserves, in its sole discretion, the right to change or remove any and all such IP numbers, addresses or address blocks.

#### **5. END USERS**

Customer shall be responsible for handling all communication, technical support to and relations with end users who are the customers of Customer including but not limited to responding to inquiries and questions, unless Customer has executed the appropriate maintenance agreement with ZDI.

#### **6. DISCLAIMERS:**

a. **Liability Limitations.** ZDI SHALL NOT BE LIABLE FOR ANY LOSS OF DATA RESULTING FROM DELAYS, CORRUPTION OF DATA, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES, AND ZDI SHALL HAVE NO LIABILITY THEREFORE. EXCEPT TO THE EXTENT OF ZDI'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER ZDI NOR ITS NETWORK SERVICES SUPPLIER WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO ZDI'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF ZDI'S OR ITS NETWORK SERVICE SUPPLIER'S NEGLIGENCE.

b. **ZDI Not Liable for Delays or Defaults.** ZDI shall not be liable for delays or defaults in furnishing goods or services hereunder, if such delays or defaults on the part of ZDI are due to:

- i. Acts of God or of a public enemy;
- ii. Acts of the United States or any state or political subdivision thereof;
- iii. Fires, severe weather, floods, earthquakes, natural disasters, explosions or other catastrophes;



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iv. Embargoes, epidemics or quarantine restrictions;

v. Shortage of goods, labor strikes, slowdowns, differences with workmen or labor stoppages of any kind;

vi. Delays of supplier or delay of transportation for any reason;

vii. Causes beyond the control of ZDI in furnishing items or services including, but not limited to breakdown or failure of machinery or equipment, or delay in Customer in reporting problems or furnishing information or materials. Acceptance of delivery of goods or services shall constitute a waiver and release of ZDI by Customer for any claim for damages, setoff, discount or other liability on account of delay.

c. Third Party Transactions at Customer's Peril. The parties expressly recognize that ZDI does not operate, control or endorse any information, products or services on the Internet, and that any entities that do offer such information, products or services are not affiliated with ZDI. ZDI does not make any express or implied warranties, representations or endorsements TO CUSTOMER OR ANY THIRD PARTY whatsoever with regard to any information, products or services provided through ZDI AND OBTAINED OR CONTRACTED OVER the Internet, including, without limitation, warranties of: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT AND 7) TITLE. ZDI shall not be liable TO CUSTOMER OR ANY THIRD PARTY for any cost or damage arising either directly or indirectly from any transaction involving third parties' information, products or services. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Customer. In such jurisdictions, ZDI's liability is limited to the greatest extent permitted by law.

d. Downloading of Data or Files at Customer's Peril. The parties expressly recognize that ZDI cannot and does not guarantee or warrant that files available for downloading through ZDI's Managed Server will be free of infection, viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. Customer agrees that it shall be solely responsible for implementing sufficient procedures to satisfy Customer's particular requirements for accuracy of data input and output, and for maintaining a means external to ZDI for the reconstruction of any lost data. The parties also expressly recognize that the Internet contains unedited materials, some of which are unlawful, indecent, or offensive to Customer, and access to such materials by Customer is done at Customer's sole risk.

e. Notwithstanding anything else to the contrary contained in this Agreement, ZDI's maximum aggregate liability to Customer for any claim related to, or in connection with, this Agreement, whether in contract, tort or otherwise, shall be limited to the total amount of fees actually paid by Customer to ZDI for the prior three (3) months.

f. ZDI may provide Customer access to other third party software and/or services ("Third Party Products") through reseller relationships ZDI has established with certain commercial vendors, including



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without limitation, Microsoft Corporation ("Third Party Vendors"). Unless otherwise notified, Customer understands that product support for Third Party Products is provided by ZDI and not by the Third Party Vendor. Neither ZDI nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM ZDI OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER ZDI NOR ANY THIRD PARTY VENDOR WILL BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND ZDI WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

g. Indemnification. Each party agrees to indemnify and hold the other harmless against any losses, costs, expenses (including, but not limited to, reasonable attorneys' fees), claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party against the other or its affiliates related to or arising out of (i) any infringement or misappropriation or alleged infringement or misappropriation of any United States copyright, trade secret, patent, trademark, or other proprietary right related to any hardware or software utilized in connection with any of the Services (but excluding any infringement contributorily caused by the other party) and (ii) any violation of or failure to comply with the Rules and Regulations. Customer further agrees to indemnify ZDI and its affiliates against any Losses which arise out of, or relate to any content provided by Customer or the customers/clients of Customer, and Customer will reimburse ZDI and its affiliates for all legal expenses, including reasonable attorneys' fees, incurred by ZDI and its affiliates in connection with any such Losses.

Authorized representatives of Customer and ZDI have read the foregoing and all documents incorporated therein and, by executing the Order Form(s), agree and accept such terms effective as of the date indicated below the Customer signature on the initial Service Order Form.