

## **WEB SITE HOSTING AGREEMENT**

THIS AGREEMENT, upon execution by both parties, is made this [Date] (the “Effective Date”) by and between Big Rig Media, LLC, a California limited liability company (“Big Rig”), and [Name of Customer], a [Type of Organization] with offices at [Address] (the “Customer”).

### **W I T N E S S E T H**

WHEREAS, Big Rig has developed and is hosting an Internet web site for Customer, named and located at [Site] (the “Site”), and is willing to continue hosting the Site for Customer; and,

WHEREAS, Customer has approved and accepted the finished Site and has compensated Big Rig for the development under a separate Web Site Development Agreement dated \_\_\_\_\_; and,

WHEREAS, Customer desires to have Big Rig continue to host the Site under the terms and conditions of this Agreement;

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, Customer and Big Rig, intending to be legally bound, hereby agree as follows:

#### **1. RETENTION OF DEVELOPER**

Customer hereby retains the services of Big Rig to host an Internet Web Site and Intranet named and located at [Site] (collectively, the “Web Site”) for Customer subject to the terms and conditions herein.

#### **2. WEB SITE HOSTING**

A. Big Rig agrees to maintain Customer’s Web Site on Big Rig’s Web Server on a month-to-month basis, subject to Customer’s payment obligations under this Agreement. **As part of this service, Big Rig agrees to make Customer’s Web Site available to Internet users approximately twenty-four hours per day, to back-up Customer’s Web Site at least once every two weeks, and to store said back-up materials in a safe and secure environment, fit for the back-up media, and not located at the same location as Big Rig’s Web Server. Also as part of this service, Big Rig agrees to use its best efforts to ensure reasonable response times for users accessing Customer’s Web Site.**

B. In the event of Customer’s termination of its use of Big Rig’s Web Server as the host for the Web Site Big Rig agrees to transfer a complete copy of Customer’s then-current Web Site, on a complimentary basis, including all code therefor, to Customer, said transfer to occur by either copying them to floppy disks, ZIP cartridges, FTP, or other media as agreed upon by Big Rig. Big Rig shall also transfer a copy of such files for a customary fee if requested prior to Customer’s termination of its use of Big Rig’s Web Server as the host for the Web Site. Files will be provided in HTML format, standard word processing Text format or, if images, as TIFFs, GIFs, or JPEGs. The foregoing transfer shall not include configuration and/or set-up of the Web Site on a third-party web server, all of which services shall be billed at Big Rig’s then-customary rates. The transfer method will be selected by Customer in its discretion no later than forty-eight (48) hours before the time the transfer is to take place. In the event such transfer results from Customer’s termination of its use of Big Rig’s Web Server as the host for the Web Site, Big Rig shall maintain one complete electronic version of the Web Site, including all Code therefor (and shall “wipe” all other versions thereof off of its computers and media, including back-up copies),

until Customer informs Big Rig in writing that the transferred files appear to be complete, at which time Big Rig shall “wipe” its final copy of the Web Site off of its computers and media.

C. During the time that Customer’s Web Site is located on Big Rig’s Web Server, Big Rig will make available on a monthly basis and free of charge an analysis of Customer Web Site traffic, including source IP address, most commonly viewed pages, and any other such data reasonably requested by Customer. Big Rig shall set aside a portion of its server, such portion only accessible by designated Customer staff or members, in which such analysis resides. The analysis may be viewed or printed out by Customer at its option.

### **3. TERM**

This Agreement shall commence on the Effective Date and shall expire on no earlier than one year thereafter, unless sooner terminated as expressly provided herein, and will automatically continue on a month-to-month basis thereafter unless either party provides thirty (30) days’ written notice of its intent to terminate or cancel. The term of any right or license or proprietary rights granted to Customer under this Agreement shall run concurrently with this agreement or be for the full term of such proprietary rights.

### **4. COMPENSATION**

As compensation for the hosting of the Web Site on the World Wide Web, as further described in Schedule A, Customer will pay to Big Rig a fee of \$\_\_\_\_\_ per month (the “Hosting Fee”) using a credit card, and Customer shall execute the attached credit card authorization form for such purpose. The Hosting Fee shall not increase for a period of one year from the date of Customer’s execution of this Agreement. The Hosting Fee shall commence on the date the final Web Site and all other administrative passwords are delivered to Big Rig for hosting purposes and the Web Site is published and fully operational on Big Rig’s Web Server. Future Hosting Fees shall be due and payable on the subsequent monthly anniversary dates thereafter during the Term.

### **5. OWNERSHIP OF WORK PRODUCT**

A. It is understood that in performing its services, Big Rig may have occasion to develop new and unique work product for use in conjunction with the Site. The parties agree that all such work is being developed by Big Rig for the sole and exclusive use of Customer, and Customer shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto. All such work performed by Big Rig and any supporting documentation therefor shall be considered as “Works Made for Hire” (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of company. For the purpose of this Agreement “work product(s)” shall mean all data, documentation, software, ideas, concepts, materials, and information, in whatever form, first produced or created by or for Big Rig, which relate solely and exclusively to the performance of work or the rendition of services under this Agreement in the development and hosting of [Site] (hereinafter “Work Product(s)”).

B. In the event that it should be determined that any of the Work Products do not qualify as a “Work Made for Hire,” Big Rig will and hereby does assign to Customer for no additional consideration, all right, title, and interest that it may possess in such Work Products including, but not limited to, all Big Rig and proprietary rights relating thereto. Upon request, Big Rig will take such steps as are reasonably necessary to enable Customer to record such assignment. Customer shall reimburse Big Rig for all reasonable out of pocket expenses incurred at the specific request of Customer in recording such assignments.

C. It is understood that Big Rig may use its own previously developed data, documentation, software, ideas, concepts, materials, or information, in whatever form, in performing its services hereunder (collectively referred to as "Preexisting Works"). Insofar as such Preexisting Works were not first produced or created by or for Big Rig solely and exclusively to the performance of work or the rendition of services under this Agreement, but are necessary or useful for, or are used in connection with, <http://www.whizzer.com>, any and all right, title, and interest in such Preexisting Works shall remain the sole and exclusive property of Big Rig. Big Rig hereby grants to Customer a nonexclusive license to use such Preexisting Works when used solely and exclusively in combination with the Work Product on the Web Site. Customer shall have no other rights, whatsoever, with respect to its use of the Preexisting Works.

D. Notwithstanding the foregoing, to the extent any term of this Section 5 conflicts with a term of any long-form Web Site Development Agreement between Big Rig and Customer, the terms of such Web Site Development Agreement shall control and be conclusive.

## **6. REPRESENTATIONS AND WARRANTIES**

Big Rig makes the following representations and warranties for the benefit of Customer:

A. Big Rig represents and warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by Big Rig under this Agreement. Customer understands that Big Rig is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with Big Rig's obligations under this Agreement, those projects shall not constitute a violation of this provision of the Agreement.

B. Big Rig represents and warrants that (1) it is and will be the sole author of all works employed by Big Rig in preparing any and all Work Product other than Preexisting Works; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Work Products pursuant to this Agreement; (3) all Work Products other than Preexisting Works have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) all Work Products, including all Preexisting Works, do not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy, or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against Big Rig or, insofar as Big Rig is aware, against any entity from which Big Rig has obtained such rights.

C. Big Rig represents and warrants that (1) all Work Product shall be prepared in a workmanlike manner and with professional diligence and skill; (2) all Work Product will function under standard HTML conventions; (3) all Work Product will conform to the specifications and functions set forth in this Agreement; and (4) Big Rig will perform all work called for by this Agreement in compliance with applicable laws. Big Rig will repair any Deliverable that does not meet this warranty within a reasonable period of time if the defect affects the usability of Customer's Web Site, and otherwise will repair the defect within 24 hours, said repairs to be free of charge to Customer. This warranty shall extend for the life of this Agreement. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of Big Rig.

D. Big Rig possesses Internet-related technology that will enable it to competently perform services contemplated by this Agreement.

E. Big Rig will use reasonable best efforts to ensure that the Web Site is available to users 365 days per year, 24 hours per day. Notwithstanding the foregoing, Big Rig is not liable to Customer for any loss of service, access, or data for any reason, including, but not limited to, any unforeseen or preventable failure related to changes in the infrastructure or traffic capabilities, failure or breakdown of the Internet, the World Wide Web, any related telecommunications equipment or systems, or any computer hardware or software; nor shall an occurrence of the foregoing be deemed a breach of this Agreement by Big Rig. Under no condition shall Big Rig be liable for any damages caused to Customer's or any party's equipment as a result of access to the Web Site. Big Rig expressly disclaims any liability for consequential, incidental, or punitive damages based on the use of the Web Site by Customer and/or any third party.

## **9. TERMINATION**

A. Subject to the provisions of Section 3 herein above, Customer may, at its sole option, terminate this agreement upon thirty (30) days' written notice to Big Rig. Upon such termination, Big Rig shall be paid for all work performed through the date of receipt of notice of termination as specified herein.

B. Either party may terminate this Agreement on thirty (30) days' written notice to the other party in the event of a breach of any material provision of this Agreement by the other party, provided that, during the thirty-day period, the breaching party fails to cure such breach or, should the breach not be curable within said thirty-day period, the breaching party has not initiated steps to cure such breach.

## **10. FORCE MAJEURE**

Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

## **11. RELATIONSHIP OF PARTIES**

Big Rig, in rendering performance under this Agreement, shall be deemed an independent contractor, and nothing contained herein shall constitute this arrangement to be employment, a joint venture, agency, or a partnership.

## **12. NOTICE AND PAYMENT**

A. Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party or mailed by certified, registered or Express mail, return receipt requested or by Federal Express.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

## **13. JURISDICTION/DISPUTES**

This Agreement shall be governed in accordance with the laws of the State of California. Any disputes under this Agreement shall be resolved by litigation in the courts of the State of California, including the state and/or federal courts therein, and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

**14. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

**15. ASSIGNABILITY**

Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party, which shall not be unreasonably withheld.

**16. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

**17. SEVERABILITY**

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

**18. INTEGRATION**

Subject to the terms hereof, this Agreement constitutes the entire understanding of the Parties and revokes and supersedes all prior agreements between the Parties regarding the subject matter hereof, and it is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

[Customer]

[Big Rig]

By:

By:

Title:

Title:

Date:

Date:

## **SCHEDULE A**

Big Rig shall host the Internet Site *[Site]*.

For the term of this Agreement, Big Rig shall:

1. Provide space for the Site on a World Wide Web server and provide telecommunications from said server to the World Wide Web; security; tracking, analysis, reports; and software and coding to ensure the Site is fully operational.
2. Furnish up to ten (10) e-mail accounts and access.
3. Back-up data nightly, ensuring safe storage and access.
4. Review the Site once per month for evaluation of functionality and obvious alterations of content by unauthorized personnel.
5. Provide updates, edits, alterations, and additions to the Site as requested by Customer.