



*Breaking Ground, Building Brands*

**Big Red Design Agency Proprietary Limited**

**10 Uplands Road, Kloof, Durban, South Africa**

## **WEB HOSTING AGREEMENT**

### **Hosting of Web Site**

This Web Hosting Agreement ("**Agreement**") confirm the basis upon which Big Red Design Agency Proprietary Limited ("**Big Red**" or "**we**") will host your ("**you**", "**your**" or "**Client**") web site ("**Web Site**").

**The Web Site will be hosted in accordance with the following terms and conditions:**

#### **Appointment**

1. You hereby appoint Big Red to host your Web Site directly or through a third-party service provider, which appointment Big Red hereby accepts. Such appointment shall be on the terms and conditions set out below.

#### **Term and Fees**

2. The term of this agreement is defined in written agreement setting out the hosting arrangements agreed between Big Red and the Client ("**Hosting Terms**"). Upon the expiration of the initial term of this Agreement, the term shall renew for successive twelve (12) month terms at Big Red's then-current rates, unless the Client notifies Big Red in writing of its intent to cancel the Agreement no less than sixty (60) days prior to the end of the term.
3. Big Red will invoice the Client in advance annually, as per the usage terms agreed in the Hosting Terms. All invoices are due and payable in full within ten (10) days of date of invoice. Big Red reserves its rights to change its prices at any time on reasonable notice, which will not be less than thirty (30) days. Non-payment of any Fee by its due date for any cause may result in immediate suspension of services (which may not be limited to the particular hosting service in question). Big Red retains the right to suspend any services for non-payment, and to withhold such services until all arrears are settled in full on any and all products and services. If the Client remains in default of any fee for two consecutive months, Big Red may terminate this Agreement with immediate effect.
4. The Client will be responsible for all telecommunications and network charges relating to the operation of and access to the Web Site.
5. Big Red offers domain registration, domain renewal and domain transfer services, which will be as agreed between Big Red and the Client in the Hosting Terms.

#### **Loading of Web Site**

6. With regard to web sites not developed by Big Red, to enable Big Red to fulfill its hosting obligations, you will provide Big Red with all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverable prepared for the Client by Big Red in accordance

with the terms of this Agreement (together, "**Web Site Collateral**").

7. Big Red will upload all Content provided by the Client in accordance with clause 6, including updates, to the Web Site. Big Red will also permit the Client to transmit electronically or upload Content directly to the Big Red server. "**Content**" means all text, pictures, sound, graphics, video and other data supplied by the Client to Big Red, as such materials may be modified from time to time.

#### **Web Hosting Standards**

8. Big Red will provide web hosting services to the following standards:
  - a. At any time reasonably requested by the Client, Big Red deliver to the Client in electronic form the server logs of Web Site activity ("**Server Logs**").
  - b. Subject to factors outside the control of Big Red, the Web Site will be publicly available to users a minimum of 97% of the time during any twenty four (24) hour period, 98% of the time during any seven (7) day period, and 99% of the time during any thirty (30) day period; and there will be no period of interruption in public accessibility to the Web Site that exceeds two (2) continuous hours.
  - c. The mean response time for server response to all accesses to the Web Site shall not exceed more than ten (10) seconds during any one (1) hour period.
  - d. The bandwidth representing the Web Site's connection to the Internet will be operating at capacity no more than thirty (30) minutes in any twenty-four (24) hour period.
  - e. Big Red will implement reasonable security measures to prevent unauthorised access to restricted areas of the Web Site and any databases or other sensitive material generated from or used in conjunction with the Web Site, and Big Red will notify the Client of any known security breaches or holes.
  - f. Big Red will make a complete backup of the Web Site every day and maintain such back up on a server located at a remote location. In the event that service to the Web Site is interrupted, the remote server will be activated so that public access to the Web Site continues without unreasonable interruption.
  - g. Big Red will provide the Client with its regular maintenance downtime schedule, which is subject to change at Big Red's discretion. Big Red will make a good faith attempt to perform any scheduled downtime outside of normal South African business hours.

#### **Webmail**

9. Webmail and other web-based email services made available by Big Red are provided on an "**as is**" basis without representations, warranties or conditions of any kind, and the Client acknowledges and agrees that Big Red will have no responsibility for, or liability in respect of, any aspect of the webmail services, including without limitation for any lost or damaged data or any acts or omissions of Big Red.
10. Webmail sent to the Client or forwarded to the Client will be subject to any limitation imposed by any third party service provider that Big Red utilises for hosting and/or webmail services.

#### **Rights Required by Big Red**

11. During the period that Big Red provides web hosting services pursuant to this Agreement, the Client hereby grants to Big Red a non-exclusive, non-sublicenseable, royalty-free, worldwide license to reproduce, distribute, publicly perform, publicly display and digitally perform the Content and Web Site Collateral only on or in conjunction with the operation of the Web Site on the Internet. The Client grants Big Red no rights other than explicitly granted herein.
12. Unless otherwise specified by the Client, Big Red will be entitled to list Big Red as the Client's

project liaison as the administrative, technical and billing contact.

#### **Control over and Ownership of Content**

13. The Client will have sole control over the Web Site's Content. Big Red will not supplement, modify or alter any Web Site Collateral which has been accepted or approved by the Client or any Content (other than modifications strictly necessary to upload the Content to the Web Site) except with the Client's prior consent.
14. The Client will own all right, title and interest in and to the domain name and the Content and all intellectual property rights related thereto.

#### **Acceptable Use**

15. During the period that Big Red provides you with hosting services, you warrant that you will not distribute on the Web Site any content that: (i) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (ii) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing anti-discrimination or false advertising); (iii) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (iv) is obscene, child pornographic or indecent; or (v) contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
16. In terms of section 75 of the Electronic Communications and Transactions Act ("the ECT Act") the Internet Service Providers' Association (ISPA) can instruct Big Red or its third party service provider(s) to perform a site takedown upon receipt of notification of infringements as defined in Section 77 of the Act. Should Big Red receive a takedown notice from ISPA, Big Red will endeavour to: (i) notify the Client in good time of the takedown notice; (ii) allow the Client reasonable time to remove the disputed, illegal or infringing content; and (iii) take down any sites or services which are included in the ISPA takedown notice.

#### **Disclaimers, Limitations and Indemnities**

17. You will fully indemnify and save Big Red harmless against any third party claim, action, suit or proceeding alleging any breach of the warranties contained in clause 15, together with all costs, losses, expenses, fines and penalties arising as a result of any such breach of the warranties contained in clause 15.
18. Big Red will be entitled to the same disclaimers, limitations and indemnities as stated in the terms and conditions applicable to any third party web hosting service provider utilised by Big Red to provide the ultimate hosting services through which hosting services are provided to you in terms of this Agreement.

#### **Third Party Service Provider Terms**

19. Where Big Red utilises a third-party service provider for hosting, server and back-up purposes, the terms and conditions of such third-party service provider(s) will be deemed to be incorporated into this Agreement to the extent that they do not conflict with this Agreement or the Big Red General Terms and Conditions, and shall bind the Client as if the Client were a party to such terms and conditions. The links to such third-party service providers are shown on the Big Red web site: <http://www.bigreddesignagency.co.za>

#### **Big Red General Terms and Conditions**

20. Except where inconsistent with the provisions above, the General Terms and Conditions published on Big Red's web site, as amended from time-to-time, will be deemed incorporated into this Agreement and shall apply: <http://www.bigreddesignagency.co.za>

**Effective 1 November 2019**