



WEBSITE HOSTING AGREEMENT

ENTERED INTO

between

Bright Idea projects 1160 CC

t/a

Five8Five Hosting

ADDRESS:

PO Box 6270

7501

Cape Town

REGISTRATION NUMBER:

([Hereinafter](#) referred to as the “**Five8Five**”)

and

[CLIENT]

([Hereinafter](#) referred to as the “**Client**”)

1. DEFINITIONS

- 1.1 "Agreement" means this Agreement entered into between Five8Five and the Client;
- 1.2 "Client" means the party as indicated on the cover hereof;
- 1.3 "Commencement Date" means the date upon which the Client is provided with a username and password by Five8Five;
- 1.4 "Data Rate" means price in Rands charged for one megabyte of traffic;
- 1.5 "Data threshold" means the amount of incoming traffic in megabytes routed in a given month before a charge for traffic is levied;
- 1.6 "Five8Five" means the party as indicated on the cover hereof that hosts the website;

2. STANDARD TERMS AND CONDITIONS

The terms and conditions set out in this document, read together with other documents that reference the Client details, financial details, method of payment, authority for debit order, specifications, contact person and accepted by Five8Five shall govern the relationship between the Client and Five8Five .

3. COMMENCEMENT DATE AND PERIOD

This Agreement shall:

- 3.1 commence on the Commencement Date;
- 3.2 continue for a period of 12 (twelve) months ("*initial period*") from the Commencement Date subject to the terms and conditions set out herein;
- 3.3 be renewable after every 12 (twelve) month period for a further 12 (twelve) month period subject to the Client's written instruction to that effect, 30 (thirty) days prior to last day of the initial period; and
- 3.4 The Client shall take all reasonable measures to ensure that the Client provides Five8Five with all necessary data and information required prior to the Commencement Date.

4. PROVISION OF THE WEB HOSTING SERVICE

- 4.1 Five8Five shall provide hosting of the Client's website to make such website accessible by users who are browsing on the internet;
- 4.2 Five8Five shall maintain servers, software and other equipment necessary to provide the web site hosting service to the Client;
- 4.3 Five8Five shall provide the Client with the number of megabytes of disc space specified for the tier of service purchased by the Client on the web site Host's. Such disc space shall be used solely for the purpose of storing the web site and data files that are actively used in connection with the web site of the Client. Subject to availability in the reasonable discretion of the web site Host, the Client may secure additional server storage space at the rate specified by Five8Five;
- 4.4 Five8Five shall provide the Client with the number of megabytes of monthly data transfer bandwidth as specified for the tier of service purchased by the Client;
- 4.5 Five8Five shall ensure that the installation and maintenance of the hardware and software required for effective information and internet security is in place;

- 4.6 Five8Five shall provide access via the Internet to users of the Client's Web site, with such access being provided approximately (24) twenty four hours per day, with significant downtime as provided for in 4.7. hereunder;
- 4.7 For the duration of this Agreement, Five8Five shall make reasonable efforts to make available a continuous, uninterrupted, expedient and error-free service to the Client, subject to the terms and conditions set out herein;
- 4.8 Notwithstanding the provisions of 4.6, Five8Five acknowledges that in the normal course of provision of service(s), temporary interruptions may occur for whatever reason. In the circumstances, Five8Five shall not be held liable for any damages (economical or otherwise) which the Client may suffer as a result of such interruption of service(s) and which are not created by the negligence of Five8Five;
- 4.9 Five8Five shall ensure that reasonable effort is made to communicate expected downtimes to the Client in advance;
- 4.10 The Client further acknowledges that the physical connection between the Client and Host will not be provided by Five8Five and Five8Five therefore takes no responsibility for the quality or reliability of such connection;
- 4.11 The Client shall be responsible for informing their current host when transferring a domain to Five8Five;
- 4.12 The Client is responsible for the renewal payments for his domain name(s);
- 4.13 The Client shall be responsible to upload their website via FTP to Five8Five's servers;
- 4.14 The Client submits that to the best of the Client's knowledge, the Client owns or has the right to use all material contained in the web site including all the text graphics, sound video, programming, scripts, and applets; and use and that the reproduction, distribution, and transmission of the web site, or any information or materials contained in it, on and from Five8Five's server computer does not:
 - 4.14.1 Infringe or misappropriate any copyright, patent trademark, trade secret or any other proprietary rights of a third party;
 - 4.14.2 Violate any criminal laws;
 - 4.14.3 Constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity, or violate any other law, or regulation.

5. CHARGES

- 5.1 The Client's liability for monthly service charges shall commence on the Commencement Date;
- 5.2 The Client will be invoiced on the 25th of each month, which invoice shall be payable before the end of that calendar month by means of electronic funds transfer into an account as designated by Five8Five;
- 5.3 If the invoice is not settled by the end of the calendar month Five8Five reserves the right to suspend service until the amount is settled or payment arrangements have been made.
- 5.4 Any amounts owing as a result of the Data Threshold being exceeded will be paid monthly in arrears;
- 5.5 The amount owing as a result of the Data Threshold being exceeded will be calculated by taking the difference between the Data Threshold and the actual amount of incoming traffic received by the Client through the internet service in a given month and multiplying it by the Data Rate;

- 5.6 Should the Client change from one product to another or add any services to any existing services, Five8Five shall be entitled to charge the Client and the Client shall be obliged to pay a reasonable administration fee;
- 5.7 Interest of 15% will be charged on any overdue account; and
- 5.8 The defaulting party shall, on demand pay to the other party all costs and expenses incurred by the other party in enforcing the terms of this Agreement, including without limitation legal costs on an attorney and own Client basis.

6. LIMITATION OF LIABILITY

- 6.1 Notwithstanding anything to the contrary herein contained or implied, Five8Five shall not be liable for any loss, damage or injury that the Client or any third party may suffer, which did not arise out of gross negligence or wilful misconduct on the part of Five8Five;
- 6.2 Five8Five shall be not liable for damages arising from data stored at the request of the Client as long as Five8Five
 - 6.2.1 does not have actual knowledge that the data or activity relating to the data is infringing the rights of a third party; or
 - 6.2.2 is not aware of facts or circumstances from which the infringing activity or the infringing nature of the data is apparent; and
 - 6.2.3 upon receipt of a take-down notification referred to in section 77 of the ECT Act, acts expeditiously to remove or to disable access to the data.
- 6.3 All Client data will be backed up, but Five8Five will not be held liable should a restore not be successful or restored data not completely up to date
- 6.4 Five8Five will not be liable for any damages resulting from the loss or suspension of the Clients domain name due to non payment of renewal fees;
- 6.5 When providing services in terms of this Agreement, there is no general obligation on Five8Five to actively seek facts or circumstances that indicate unlawful activity.
- 6.6 Five8Five shall not be liable for damages incurred by any person if Five8Five refers or links users of the Client's website to a web page containing infringing data messages or infringing activity by using information location tools or hyperlinks where Five8Five:
 - 6.6.1 does not have actual knowledge that the data message or an activity relating to the data message is infringing the rights of that person;
 - 6.6.2 is not aware of facts or circumstances from which the infringing activity or the infringing nature of the data message is apparent;
 - 6.6.3 does not receive a financial benefit directly attributable to the infringing activity; and
 - 6.6.4 removes, or disables access to, the reference or link to the data message or activity within a reasonable time after being informed that the data message or the activity relating to such data message, infringes the rights of a person.

7. CLIENT USE LIMITATIONS

- 7.1 The Client hereby agrees –
 - 7.1.1 that it is aware and will stay aware of and shall reasonably comply with all statutory or other regulatory provisions and rules applicable to the provision and use of the services from time to time;

- 7.1.2 that it will provide Five8Five with necessary and pertinent policies, manuals and terms and conditions of use;
- 7.1.3 that it shall make use of the services in a responsible, prudent, lawful and honest manner;
- 7.1.4 that it shall comply with any directions, instructions and limitations issued or notified by Five8Five from time to time in connection with the services;
- 7.2 The Client further agrees that all reasonable efforts will be taken to ensure that it shall not use any service in a manner which -
 - 7.2.1 constitutes a violation of any law, regulation or tariff that may be in force in South Africa or elsewhere. In particular the Client undertakes to familiarise itself and ensure that it is kept continuously appraised of all such laws, regulations and tariffs in force from time to time which may have any bearing on the services rendered and products provided by Five8Five and/or the Client's access to or use thereof;
 - 7.2.2 is defamatory, fraudulent or deceptive;
 - 7.2.3 amount to unsolicited bulk e-mail (SPAM);
 - 7.2.4 is intended to threaten, harass, or intimidate;
 - 7.2.5 tends to damage the name or reputation of Five8Five;
 - 7.2.6 interferes with the use and enjoyment of Internet related services of Clients of Five8Five;
- 7.3 The Client further agrees -
 - 7.3.1 that unless otherwise agreed by Host in writing, it shall not resell or make available to third parties, in any manner whatsoever and whether directly or indirectly, the services provided to it by Five8Five;
 - 7.3.2 that it shall take whatever steps may be necessary to ensure the safekeeping and confidentiality of all identification codes and passwords furnished by Five8Five for use by the Client and shall specifically not disclose same to any third party without Five8Five's prior written consent;
 - 7.3.3 to comply with the rules and regulations applicable to any network that is accessed through Five8Five;
 - 7.3.4 that where it is outside the Republic of South Africa and wishes to connect to the internet, such connection may be subject to the terms and conditions of a Global Service Provider ("GSP"). The Client has been informed of and acknowledges that the GSP is not affiliated to Five8Five;
 - 7.3.5 It should however be noted that these limitations are subject to the provisions provided for in the Electronic Communications and Transactions Act 25 of 2002.

8. INTELLECTUAL PROPERTY

- 8.1 The Client is the owner of all rights in and to the website;
- 8.2 Where new domains are registered on behalf of the Client, they will be registered in the name of the Client and remain the property of the Client;
- 8.3 The intellectual property rights including (without limitation) copyrights and the trade and service marks on the Clients website during the term of this Agreement, shall remain the

property of the Client and nothing contained in this Agreement shall be construed to confer on Five8Five any rights or licenses in such intellectual property rights;

- 8.4 Five8Five shall not modify or use any software, computer code, data, documents, presentations, solutions, design, web site content or any application associated with the website to create a derivative work without the Client's prior written consent.

9. TERMINATION

- 9.1 If either party fails to perform its obligations under this Agreement and such failure continues for a period of 30 (thirty) days after receipt of written notice, the other party, will have the right to terminate this Agreement;
- 9.2 The Client can terminate this Agreement with 1 (one) months written notice faxed to 0866551085;
- 9.3 Upon termination of this Agreement Five8Five shall disconnect the Client from the networks of Host and all its network providers;
- 9.4 After disconnection of the Client upon termination of this Agreement, the Client shall on demand pay all charges outstanding at the time of disconnection, including any reasonable fee, which may be charged by Five8Five;
- 9.5 The parties shall each be liable to the other for all legal costs, including Attorney and Client costs, collection commission in accordance with the stipulated tariff and tracing charges incurred by the other due to a breach of the party's obligations in terms of this Agreement.

10. FORCE MAJEURE

- 10.1 Either party shall not be liable to the other for any breach of this Agreement or failure on its part to perform any obligation as a result of any circumstances outside the defaulting party's reasonable control, including without limitation, of technical problems relating to the networks, Telkom or any acts of God.

11. ARBITRATION

- 11.1 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute which arises in regard to:
- 11.1.1 the interpretation of; or
- 11.1.2 the carrying into effect of; or
- 11.1.3 any of the parties' rights and obligations arising from; or
- 11.1.4 the termination or purported termination of or arising from the termination of; or
- 11.1.5 the rectification or proposed rectification of
- 11.1.6 this Agreement, or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration on notice given by either party to the other in terms of this clause.
- 11.2 Such arbitration shall be held in Cape Town in English in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA").

12. NOTICES AND DOMICILIA

Each of the parties chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth on the cover hereof.

13. GENERAL

- 13.1 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this Agreement or their duly authorised representatives.
- 13.2 This document contains the entire Agreement between the parties and any undertakings, representations, warranties, promises or the like not recorded, shall bind no party herein.
- 13.3 No indulgence, leniency or extension of time which any party ("the Grantor") may grant or show to any other party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.
- 13.4 This Agreement shall be governed by South African law under the jurisdiction of South African courts.
- 13.5 No data message (as defined in the Act), including an e-mail, SMS and recorded voice message, sent by the Client to Host shall amend or change this Agreement in any manner or the rights and duties of the Parties, unless such a data message is reduced to paper and signed by the Parties;
- 13.6 Data messages (as defined above) sent by the Client to Host are deemed to be received by Host only if Host responds thereto, and for the purposes of this clause an auto-response shall not be deemed a response by Host; and Legal notices and/or disclaimers linked or accessible from or attached to data messages sent by Host shall be deemed part of this Agreement and shall override and replace or such notices and disclaimers linked or accessible from data messages sent by the Client.