

WEB HOSTING AGREEMENT

This Agreement is entered into as of the date of its execution by **CU*Answers** (“the Company”) and _____ (“Client”). The Company and Client may be referred to individually as “Party” or collectively as the “Parties.”

Whereas, the Company hosts computer Web sites (“Web sites”), and Client would like to contract with the Company to host a Web site for Client;

Therefore, the Parties agree:

1. The Company’s Responsibilities

- a. **Hosting of Web Site.** Client retains the Company to host Client’s Web site in accordance with the Web site services identified in Exhibit A. The term “Client Web site” means the electronic hypermedia content uploaded by Client to the Company’s Web-hosting server, including hypertext, graphics, audio, video, CGI forms, and hyperlinks.
- 1) **The Company’s Responsibilities.** The Company shall perform all reasonably necessary duties and responsibilities during the term of this Agreement to host the Client Web site consistent with the Web site services set forth in Exhibit A. The Company will take every step possible to have the Client’s website available to users/members 364 days per year, 24 hours per day. The Company will also take reasonable precautions to scan all software supplied to client to verify it is free from viruses or disabling devices.
- c. **Limitations of Service.** The Company does not guarantee that Client or any third parties will be able to access the Client Web site at any particular time. The Company’s access services are provided on an “as-is, as-available” basis. Client agrees that its use of the services and the Internet is solely at Client’s risk and is subject to all applicable local, state, national, and international laws and regulations. **The Company assumes no responsibility for any commercial transactions attempted or completed involving the Service.** The Company does not own or control all the various facilities and communication lines through which access may be provided. Accordingly, the Company assumes no responsibility for the security of Client’s Web site including, but not limited to, user access. It is the Company’s policy to cooperate with law enforcement authorities and to notify such authorities if it suspects that Client is engaged in illegal activities. Client acknowledges and agrees that it is responsible for developing and maintaining procedures (apart from the services) to protect the content of the Web site, including making appropriate backup copies of the content. For purposes of network maintenance, the Company may use, copy, display, store, transmit, translate, view, and distribute the content to multiple domestic and international servers. The Company is not responsible for transmission errors, disclosure, erasure, or corruption or security of data or content.
- d. **Limit on the Company’s Financial Responsibility.** The Company shall not be liable for the loss of data or for any losses resulting from the interruption of service. In no event shall the Company be responsible for any consequential damages that result from the loss of data or the interruption of service.
- 1) **Non-Disclosure.** Company agrees that it will not disclose any confidential information to any third party and will not use the client’s confidential information for any purpose other than for the performance of the rights and obligations hereunder during the term of this agreement and for a period of three years thereafter, without the prior written consent of the client, which may be withheld for any reason or for no reason at all. The Company further agrees that confidential information shall remain the sole property of the Client and that it will take all reasonable precautions to prevent any unauthorized disclosure of confidential information by its employees. No license shall be granted by the company to or by the client to company with respect to confidential information disclosed hereunder unless otherwise expressly provided herein.

2. Fees

- a. **Compensation for Hosting and Maintenance.** Client agrees to pay to the Company the amounts specified in Exhibit A for the Web site services. Fees are due as specified in Exhibit A.
- b. **Late Payment.** If any payment to be made under this Agreement is not paid by its due date or Client’s overall account with the Company becomes past due, the Company shall be entitled, upon five (5) days’ prior notice, to stop its performance under this Agreement and to exercise any and all of its remedies against the defaulting Party. **This includes any amount due for Web site hosting and/or other services including but not limited to development work on Client’s Web site.**

- c. **Changes in Fees.** The Company may change any of its fees under this Agreement by giving Client thirty (30) days' prior notice of such changes.

3. Term and Termination. This Agreement shall have an initial term of: From the date of signed contract to within 90 day(s) of the domain renewal date (the "Initial Term"). Upon reaching the end of the Initial Term, and upon reaching the end of any renewal term, this Agreement shall automatically renew for following year, unless one Party gives the other Party written notice of its intent to terminate this Agreement at the end of the current term. This notice must be given within 60 days but not less than 15 days before the current term expires.

4. Client's Responsibilities. In addition to Client's obligations otherwise specified in this Agreement, Client shall be solely responsible for

- a. The accuracy and content of any information provided by Client to the Company;
- b. Any information and programs that Client receives as a result of using the Web site services, including without limitation the entire responsibility for any losses of data, programs, breaches of security, viruses, and disabling or harmful devices that Client may download or otherwise experience as a result of Client's use of the Web site services;
- c. Drafting and adhering to any set of terms and conditions for users of Client's Web site;
- d. Drafting and adhering to any privacy statement for users of Client's Web site; and
- e. Complying with any and all local, state, and federal laws and regulations that might apply to Client's Web site and its associated activities, including, but not limited to, data collection, privacy measures, and data storage.

5. Ownership of Code and User Information

- a. **Ownership of Work Product.** It is understood that in performing its services, the Company may have occasion to develop new and unique work product for use in conjunction with the website. The parties agree that all such work is being developed by the Company for the sole and exclusive use of Client, and Client shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copy rights and proprietary rights relating thereto. All such work performed by the Company and any supporting documentation therefore 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 the 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 developer, which relates solely and exclusively to the performance of work or the rendition of services under this agreement in the development and hosting of the Client's website. (hereinafter "work product(s)") do not qualify as a "work made for hire," Company will and hereby does assign to client for no additional consideration, all right, title, and interest that it may possess in such work products including, but not limited to, all developer and proprietary rights relating thereto. Upon request, Company will take such steps as are reasonably necessary to enable client to record such assignment. Client shall reimburse the Company for all reasonable out of pocket expenses incurred at the specific request of client in recording such assignments.
- b. It is understood that the Company 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"). And so far, such preexisting works were not first produced or created by or for developer solely and exclusively to the performance of work or the rendition of services under this Agreement, or are necessary or useful for, or are used in connection with, *ClientDomainName.com*, any and all right, title, and interest in such preexisting works shall remain the sole and exclusive property of the Company. The Company hereby grants to client a non-exclusive license to use such preexisting works when used solely and exclusively in combination with the work product on the website. Client shall have no other rights, whatsoever, with respect to its use of the preexisting works.

Client's Software and Grant of Nonexclusive License to the Company. Any software owned by Client and provided to the Company by Client shall be delivered to Client upon termination of this Agreement and the Company's receipt of all compensation due the Company under this Agreement.

c. **User Information.**

- i. Client shall have the right to use, consistent with the Client Responsibilities in this Agreement, all user data collected by the Company from the Client Web site, and this information shall be considered proprietary to the Client.
- ii. Company agrees that it is prohibited from disclosing or using non-public personal information about Client's members other than to carry out the purposes for which the Client disclosed the members' non-public personal information, including use under the exceptions listed in 12 CFR §716.14 or 12 CFR §716.15 (as amended or superseded) in the ordinary course of business to carry out those purposes.

6. Warranties and Limitations on Damages

- a. Client assumes the risk of and shall indemnify the Company, its directors, officers, employees and agents and shall hold it and them harmless from and against any actions, suits, damages, judgments, costs, charges, expenses, attorney fees, and consequences of any liabilities of any nature, incurred, made or suffered by any third party in connection with the furnishing of items to the Company by Client to be placed on the website under this Agreement, including but not limited to suits for trademark, copyright, or patent infringement or any other claim for violation of another party's rights under the laws or treaties of any state or country.
- b. **Limitations on Liability.** Client agrees that the Web site services are provided "AS IS" and on an "AS AVAILABLE" basis.

CU*ANSWERS SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF CU*ANSWERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CU*ANSWERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. THE TOTAL LIABILITY OF CU*ANSWERS TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO CU*ANSWERS BY CLIENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY CU*ANSWERS HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

The Company makes no warranty regarding any transactions executed through the Client web site, and Client understands and agrees that such transactions are conducted entirely at Client's own risk the foregoing disclaimer shall apply unless otherwise prohibited by law.

- c. **Force Majeure.** The Company will not be liable for delays, damages, or failures in performance due to events of force majeure (causes beyond our reasonable control), including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, an inability to obtain necessary equipment or services, the severing of off-site communication lines by a third party, or other events of force majeure.

7. Miscellaneous

- a. **Amendment.** This Agreement may be modified only by written Agreement signed by all the Parties that expressly sets forth their intent to modify this Agreement.
- b. **Applicable Law.** This Agreement shall be construed and enforced according to the laws of the state of Michigan without reference to its conflicts of law provisions.
- c. **Assignment.** Except as otherwise provided within this Agreement, no Party may transfer or assign this Agreement or any rights under it without the prior written consent of the other Party.

- d. **Attorney Fees.** Should any Party reasonably retain counsel for the purpose of preserving, determining, enforcing, or preventing the breach of any rights under this Agreement, including, but not limited to, instituting any action or proceeding to enforce any provision, for a declaration of any alleged breach of any obligations or for any other judicial remedy; then if this matter is settled by judicial determination (including arbitration), the prevailing Party (whether at trial or on appeal) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing Party for all costs and expenses incurred thereby, including, but not limited to, all attorney fees and costs actually incurred for the services rendered to the prevailing Party. Further, the prevailing Party shall be entitled to additional awards of attorney fees for services reasonably rendered in aid of enforcing the judgment or award or in collecting any monies awarded.
- e. **Authority.** Each of the Parties represents and warrants to the other that the following are true and correct as of the date of this Agreement:
 - i. Each Party has the full right, power, and authority to enter into this Agreement and to perform all of its obligations in accordance with its provisions.
 - ii. Neither the execution nor the delivery of this Agreement by the Party, nor the performance of any of its obligations under this Agreement, will result in the breach or violation of any provision (or constitute a default) under any indenture, contract, or other agreement or instrument to which the Party is a party or under which the Party has any rights or obligations.
- f. **Captions and Headings.** The headings and captions in this Agreement are included as a matter of convenience and shall not be construed as a substantive part of this Agreement.
- g. **Computation of Time.** In computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, legal holiday. In that case, the period will begin to run on the next day that is not a Saturday, Sunday, or legal holiday, and the period shall run until the end of the next day thereafter that is not a Saturday, Sunday, or legal holiday.
- h. **Counterparts and Facsimile Signatures.** This document may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement, even though all the Parties are not signatories to the original or the same counterpart.
- i. **Entire Agreement.** This Agreement contains the entire understanding between the Parties pertaining to the subject matter of this Agreement and supersedes and replaces all prior or existing written and oral agreements, including contemporaneous agreements, between the Parties and/or their representatives pertaining to the subject matter of this Agreement.
- j. **Exhibits.** The Exhibits referred to in this Agreement shall be incorporated herein as if set forth in full at the point in this Agreement where they are referred to whether or not they are attached.
- 1) **Notices.** Notice under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, notice shall be deemed effective 72 hours after mailing as registered or certified mail, postage prepaid, directed to the other Party at the address set forth below or such other address as the Party may indicate by written notice to the other:

If to the Company: VP Product Development
 CU*Answers
 4695 44th Street S.E.
 Suite 180
 Kentwood, Michigan 49512

If to Client: _____

- l. **Parties in Interest.** Nothing in this Agreement shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.
- m. **Savings Clause.** If any provision of this Agreement or its application is held to be invalid, void, or illegal, that provision shall be severed and the remainder of this Agreement shall not be affected. Such a finding shall in no way affect, impair, or invalidate any other provision of this Agreement, which shall remain in full force and effect.
- n. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and permissible assigns.
- o. **Waiver.** The waiver by either Party of the breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach

CU*Answers

“Client”: _____

By _____

By _____

Its _____

Its _____

Date _____

Date _____

Exhibit A — Web Site Services and Fees

1) Services

- a) **Disk space** — 30 MB; any MB over the initial 30MB for entire web site, will be charged at an additional \$0.30 per MB per month.
- b) **Domain name** — The Company will assume the administrative responsibilities for unique domain name registration of the **following domain name:**

Client will receive an invoice from the registering organization for the registration and yearly maintenance fees of each domain name, and is responsible for and agrees to pay directly for such fees. Client waives any and all claims that it may have, or which may later arise, against the Company for any loss, damage, claim, or expense arising out of, or related to, the acquisition, registration, and/or use of each such domain name.

- c) **Maintenance and user support** — Support for user inquiries is available Monday through Friday from 8 a.m. to 7 p.m.; 24/7 monitoring for operational status, load balance, and traffic routing; prompt correction of any server or traffic problems.
- d) **Detailed Web-usage statistics** and access to raw log files. The Company shall maintain daily, weekly, and monthly server logs and shall make them available to the Client regularly.
- e) **PHP scripting** — local PHP development. Applications may include, but are not limited to, counters, guest books, form submission, and dynamic page generation.
- f) **Other** — Client may also request, and the Company may provide, subject to the Company's agreement and the availability of the Company personnel and equipment, additional services as described below:
 - i) **Make your site secure with SSL and a trusted third party**
 - ii) **Data Mining**

2) Fees — Fees for hosting services shall be as follows:

- a) \$25 per month for each web site (30MB - \$0.30 / MB above 30megs)
- b) \$100 per hour for creative development and/or content maintenance

Fees will be billed monthly during your normal CUBASE bill-period during the term of this Agreement.

CU*Answers

By _____
Its _____
Date _____

“The Client” - _____

By _____
Its _____
Date _____