



# Big Boy *websites*

The “terms” are what you might call the fine print.

This document is important and you should really read it carefully and get someone other than your mum to read it too.

THIS IS A LEGAL AGREEMENT. BY SIGNING “I ACCEPT” YOU ARE LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY TERM IN THIS AGREEMENT, DO NOT SIGN “I ACCEPT”.

## SUMMARY

Big Boy Websites offers a different solution for businesses that need a customized website but do not wish to pay the high up-front costs charged by web designer companies and marketing agencies. You pick the Service Plan that your business needs. Then, Big Boy Websites will build a custom designed website for your business under that Service Plan, using your brand name, logo, photos, and wording/content (hereinafter referred to as the “Website”), free of charge (no deposit or setup fees). If you like the Website, Big Boy Websites will license the Website to you for a minimum 1-year term at the low monthly cost stated in your Service Plan plus any additional costs for add-ons you choose. If you do not like the Website, then you may walk away with no obligations. You can terminate this Agreement by providing 15-day written notice. If you terminate prior to the end of the Initial Term, you will be charged an Early Termination Fee.

I do understand that I have 15 days to reject the design and if I don't then Big Boy Websites think that I have agreed.

It is important for you to understand that the Website is not being sold to you. Big Boy Websites owns the Website at all times. You own the content you place on the Website, your brand name, logo, domain name, and any photos you place on the Website. When you leave, you take all your property with you, and Big Boy Websites retains the computer code and design which makes up the Website and any other intellectual property belonging to Big Boy Websites under the terms of this Agreement.

This Agreement governs the relationship between you and Big Boy Websites. By using our services or accepting a Website design under a Service Plan, you agree to be bound by the following terms and conditions:

1. PARTIES – This Agreement is by and between you, the Customer, and Big Boy Websites, 376 Wilsons Road, Christchurch, New Zealand.
2. GENERAL TERMS – Big Boy Websites products and services are intended and offered only for lawful use by individuals or organizations with the legal capacity and authority under applicable law to enter into a contract for such products or services. Big Boy Websites does not offer its products or services to minors or where prohibited by law. By registering for and/or by using Big Boy Websites services and products, you represent and warrant that you have the legal capacity and authority to enter into a binding agreement to adhere to the Big Boy Website's Terms and Conditions and that you will use Big Boy Websites products or services only in accordance with these Terms and Conditions and with all applicable laws. If an individual is registering or using Big Boy Websites products or services that are provided to any third party including any person, entity, or organization, the individual using the Big Boy Websites products or services, by virtue of such use, agrees that any information the individual provides to Big Boy Websites (including but not limited to the individual's website data and content and personal information) will be accessible to, and may be viewed, changed, or deleted by the person, entity, or organization that provided the Big Boy Websites products or services to the individual. You agree to provide accurate and complete information when you register for a Big Boy Websites product or service and you agree to keep such information accurate and complete during the entire time you use Big Boy Websites products or services. Big Boy Websites may ask you from time to time to establish a user name or password to access or use the Big Boy Websites products or services. You are solely responsible for any consequences arising in whole or in part of your failure to maintain the confidentiality of your username and/or password.
3. LAWFUL USE OF Big Boy Websites PRODUCTS AND SERVICES – You may not use Big Boy Websites products or services for any unlawful purpose. Without limiting the foregoing:
  - a. Big Boy Websites products or services may not be used to store, display, or distribute child pornography and may not be used in violation of United States export control laws or the export or import regulations of other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain licenses to export, re-export, or import as may be required.
  - b. If you are a USA Big Boy Website client, you may not use Big Boy Websites products or services if you are a citizen, national, or resident of, or are under control of, the government of Crimea Region of Ukraine, Cuba, Iran, Sudan, Libya, North Korea, Syria, Iraq, Morocco, Nigeria, Tunisia, Pakistan, Algeria, Afghanistan, Saudi Arabia, or any other country to which the United States has prohibited exports. Each time you use Big Boy Websites products or services you represent, warrant, and covenant that: (i) You are not a citizen, national, or resident of, nor under the control of, any such country to which the United States has prohibited export; (ii) You will not download or otherwise export or re-export Big Boy Websites software, directly or indirectly, to the above mentioned countries nor to citizens, nationals or residents of those countries; (iii) You are not listed on the U.S. Department of Treasury's Lists of Debarred Parties, or the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List Table of Denial Orders; (iv) You will not download or otherwise export or re-export Big Boy Websites software, directly or indirectly, to persons on the above-mentioned lists; (v) You will neither use nor allow the Big Boy Websites software to be used for any purposes prohibited by United States federal or state law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical, or biological weapons of mass destruction; (vi) Big Boy Websites software, products, and services will not be exported, directly or indirectly, in violation of these laws, nor will they be used for any purposes prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation.
  - c. If metadata checking (i.e., contact from titles) reveals that an account has content relating to phishing, malicious files or software, software piracy or any copyrighted data with the intent to distribute, you will be found to be in violation of our Terms and Conditions and Big Boy Websites reserves the right to immediately and permanently terminate this Agreement and take down your website.

4. SCOPE OF WORK – Big Boy Websites will provide the following services:

- a. **Service Plans** – You initiate our relationship by selecting a Service Plan from our website and signing up as a customer. Service Plans include only the services stated in that Service Plan. Any additional services which you request will be provided at an additional cost.
- b. **Initial Build** – Big Boy Websites will create, in its sole discretion, a customized website for you reasonably tailored to your preferences with the features stated in the selected Service Plan plus any Add-Ons you select. Big Boy Websites will communicate with you in order to obtain permission to access and obtain from you your domain name, content, photos, artwork, and any other material you provide which is qualified to be placed on the Website under the selected Service Plan (hereinafter collectively referred to as the “Customer IP”). After you have supplied the Customer IP to Big Boy Websites, Big Boy Websites will, in its sole discretion, initiate its work and create a prototype of the website. Big Boy Websites will conduct the work on the prototype website with reasonable diligence but in all cases will have unilateral discretion as to the amount of time taken to perform its work. After the prototype is completed, Big Boy Websites will contact you to provide you with access to view the prototype website via your chosen browser. The day on which Big Boy Websites delivers the prototype website to you is the “Delivery Date”.
- c. **Acceptance – The prototype website is provided to you free of charge.** To notify Big Boy Websites of your acceptance of the mock-up website, simply send Big Boy Websites an email at the email address provided below in Section 8, and state that you accept the prototype and the you will engage Big Boy Websites to finish the website. After the Acceptance Date, you are given one (1) calendar month before the you make the first monthly payment under the Service Plan for the Term of this Agreement. This period is know as the “Website Build Phase” where you have the opportunity to supply content to Big Boy Websites so that they can finish the website.

I understand that if I accept the initial design presented then we have one (1) calendar month to finish the website before the first payment is due

- d. You may, within FIFTEEN (15) days of the Delivery Date, request reasonable changes to the prototype website from Big Boy Websites. Big Boy Websites, in its sole discretion, may agree to make the requested changes. If Big Boy Websites agrees to your request for changes, it will initiate its efforts to make those changes for you and redeliver the modified prototype website to you on a later date. If Big Boy Websites does not agree to make the requested changes, this relationship and this Agreement will terminate immediately and you will not be obligated to make any payments to Big Boy Websites. No further modifications will be made after your initial request for modifications.

I understand that Big Boy Websites will only design one website for me and are under no obligation to continue to redesign and or adjust the design substantially.

- e. You may terminate our relationship and this Agreement at any time prior to the Acceptance Date by providing written notice to Big Boy Websites. If you terminate our relationship prior to the Acceptance Date, you will not be charged for any work provided by Big Boy Websites and will not be obligated to make monthly payments under the Service Plan.

**Big Boy Websites will build you a professionally designed prototype with direction and marketing focus, the catch? You only start paying for it, IF you like it.**

Services—The Services and Products offered in the Service Plans are defined and limited as follows:

1. **Hosting** – Big Boy Websites will arrange for and manage the hosting of your Website on a third-party's servers. Big Boy Websites does not guarantee that your Website will be up and running at all times, and (as with any hosting provider) there may be service interruptions from time to time. Big Boy Websites will take all commercially reasonable steps to fix any service interruption within its control. Big Boy Websites makes no warranties or representations of any kind, whether expressed or implied, for providing this hosting service. Big Boy Websites also disclaims any warranty of merchantability or fitness for any particular purpose in connection with the hosting of your Website and will not be responsible for any damages that may be suffered by you because of a service interruption, delay, or non-delivery of hosting services, including loss of data. Connection speed represents the speed of an end-to-end connection. Big Boy Websites does not guarantee the connection speed or availability of end-to-end connections. Big Boy Websites expressly disclaims any damages to you for any non-accessibility time or other down time during the hosting system's unavailability and specifically denies any liability or responsibility for any damages arising directly or indirectly as a consequence of such unavailability.
2. **Training** – Big Boy Websites will provide up to TWO (2) hours of training, as needed by you, to teach you to access and use your Website, or to assist you with any DIY aspect of the Service Plan you selected. Any additional training needed by you exceeding the TWO (2) hours provided with each Service Plan will be treated as an Additional Service.
3. **Wireframes** – Big Boy Website's wireframe library provides you with access to website wireframes which you may use to build the Designer Website. By selecting the Designer Service Plan, Big Boy Websites is providing you with a limited, non-exclusive license to access and use its wireframes pursuant to these Terms and Conditions, all of which apply.
4. **GUI Editor** – Big Boy Websites offers a graphical user interface editing tool, which is a tool designed to allow you to create and manipulate graphics on your Website.
5. **Custom Design** – The custom design provided by Big Boy Websites is defined and explained in Section 4.b, above.
6. **Page Numbers** – Each Service Plan has a limited number of website pages included. A website page consists of a single document which may be static or dynamic, in Big Boy Website's sole discretion, and which may or may not have a static Uniform Resource Locator, in Big Boy Website's sole discretion. For additional pages, you will need to request an Add-On.
7. **SEO Titles & Descriptions** – During the initial build of the Website, Big Boy Websites will provide a one-time limited search engine optimization of the titles and descriptions on your Website. This will promote the searchability of your Website by various web browsers and search engines such as Google, Yahoo, Bing, etc. Big Boy Websites does not provide a comprehensive or continual SEO service, and does not guarantee that your Website will be ranked in any particular order by any search engine. For more thorough SEO, you will need to contact a third party SEO provider.
8. **Social Media Integration** – This feature links your various social media platforms (such as Facebook, Twitter, Instagram, etc.) to your Website, allowing your Website users to access your social media. Any social media linked to your Website by Big Boy Websites must comply with these Terms and Conditions.
9. **Galleries and Video** – Big Boy Websites will create a gallery for your photos and videos. The number of photos and videos allowed in each gallery is not unlimited and shall be a reasonable number which fairly uses the resources allocated to your Website. The number of galleries is determined by the Service Plan selected.
10. **Rebuilds** – Big Boy Websites shall revise and rebuild your Website once every three years of continuous subscription with Big Boy Websites. The rebuild shall be at Big Boy Website's discretion and shall be at no extra charge to you.
11. **Google Analytics** – If included in your Service Plan, Big Boy Websites shall provide you with access to Google Analytics reports on your Website.
12. **Mobile Site** – If included in your Service Plan, Big Boy Websites will make your Website compatible with most smartphone and tablet operating systems to be viewed as a mobile platform.
13. **Monthly Updates** – Big Boy Websites will provide monthly update services in the time allotted under your Service Plan. Updates include only changes to text or photos, at your request.
14. **Additional Services** – Big Boy Websites shall provide Additional Services, called an "Add-On" if selected by you from the Service Plans on line. Each Additional Service shall be performed at the offered price. If an Additional Service is requested which is not a general Add-On service from Big Boy Website's website, Big Boy Websites shall provide a quote for the costs of such Additional Service if Big Boy Websites agrees to perform said service.
15. **CHANGES** - Big Boy Websites has the right at any time to change, modify, add to, discontinue, or retire any Big Boy Websites product or service and any aspect or feature of the Big Boy Websites products or services including, but not limited to, the software, hours of availability, equipment needed for access or Use, the types of content that can be used, the maximum storage that will be allotted on Big Boy Websites servers on your behalf either cumulatively or for any particular service, or the availability of Big Boy Websites products or services on any particular device or communications service. Such changes or modifications will not affect the services promised to you under the current term of your Service Plan, but may affect the services and products on offer to you if you renew your term with Big Boy Websites. Big Boy Websites will provide notice of material changes to the Big Boy Websites products or services or changes to this Agreement by posting them to [www.bigboywebsites.co.nz](http://www.bigboywebsites.co.nz). Big Boy Websites shall have no obligation to provide you with notice of any such changes in any other manner. It shall be your responsibility to check our website periodically to inform yourself of any such changes. From time to time, Big Boy Websites may issue new releases, revisions, or enhancements to the Big Boy Websites products or services available to you free of charge or for a fee. New releases, revisions or enhancements may be licensed and used only to the extent that you hold a valid license to use the Big Boy Websites products or services being updated or upgraded, and you may use them only in accordance with the then-current Terms and Conditions and any additional license terms that may accompany them. Big Boy Websites may automatically update Big Boy Websites products or services that are in use on your Website without your prior consent.

16. TERM AND TERMINATION

- a. **Initial Term** – The Agreement shall commence on the date the website goes live and shall continue until either you terminate the Agreement prior to the Acceptance of the prototype website pursuant to the terms of Section 4(c)(ii) above, or at the expiration of 365 days from the site go live date. This 365-day period is deemed the “Initial Term”.
- b. **Termination** - Upon the expiration of the Initial Term, this Agreement shall automatically renew from month-to-month until terminated by either Party. If you wish to terminate this Agreement at the end of the Initial Term or during any month-to-month term thereafter, you must provide Big Boy Websites with written notice at least FIFTEEN (15) days prior to the end of the Initial Term or the beginning of the next monthly term. Big Boy Websites may terminate this Agreement at any time with TEN (10) days written notice or immediately should you breach any of your obligations under this Agreement.
- c. **Early Termination Fee** – In the event that you terminate this Agreement prior to the expiration of the Initial Term or this Agreement is terminated by us prior to the expiration of the Initial Term due to your breach of the Terms and Conditions stated in this Agreement, you will pay an Early Termination Fee equal to amount due under your Service Plan for the remainder of the Initial Term. The Early Termination Fee is not a penalty. Big Boy Websites builds your Website at no charge to you, and expends a large amount of time and creativity completing such tasks. It recoups payment for only a portion of the time expended for the Website design and construction through the monthly charges to you during the Initial Term. Accordingly, you agree that the Early Termination Fee is liquidated damages which represent a reasonable estimation of Big Boy Website’s damages for your early termination of this Agreement. If Big Boy Websites terminates this Agreement for no cause during the Initial Term, then you will not owe any Early Termination Fees.

17. PAYMENT

- a. **Invoices** – Big Boy Websites shall invoice you for the monthly payment of your Service Plan and any additional costs for Add-Ons, plus sales tax if applicable. The invoice shall be sent via email to the email address you designate when you sign up for Big Boy Website’s services.
  - b. **Payment for USA Big Boy Website clients** – Big Boy Websites accepts payment by credit card only. Big Boy Websites uses PayPal as its credit card processor and payment is accepted in United States Dollars only. Payment shall be made by the due date stated in your invoice. Failure to pay on the due date may result in automatic suspension of your account and/or termination of this Agreement if payment is not made within SEVEN (7) days.
  - c. **Payment for New Zealand Big Boy Website clients** - Big Boy Websites accepts payment by credit card or direct debit. Big Boy Websites uses PayPal and/or Ezidebit as its credit card or direct debit processor and payment is accepted in New Zealand Dollars only. Payment shall be made by the due date stated in your invoice. Failure to pay on the due date may result in automatic suspension of your account and/or termination of this Agreement if payment is not made within SEVEN (7) days.
  - d. **Late Payment Fee** - Should Big Boy Websites suspend your account, you may reinstate your account by paying all amounts due plus a Late Payment Fee of 10% of the current amount due.  
*I understand that if I am late with my monthly payments a 10% late penalty may be applied to my account.*
  - e. **Termination Process** – Upon termination of this Agreement for any reason, Big Boy Websites shall transfer to you any Customer IP which was placed on the Website and which comprises a format that requires it to be returned to you. Further, Big Boy Websites may, in its sole discretion, without notice, delete and/or deny you access to the Website and remove it from its servers.
18. **NOTICES** – All written notices to Big Boy Websites under this Agreement shall be sent to the address on the contract. Big Boy Websites shall send written communications to you, including notices due under this Agreement, at the email address you designate when you sign up for Big Boy Websites services, or at any email address you hereafter designate by sending written notice of such to Big Boy Websites.

## 19. INTELLECTUAL PROPERTY

- a. Website Design/Architecture/Code – You acknowledge and agree that the Website design, concept, html coding, drawings, documents, graphics, and software, and all Big Boy Websites copyrights, names, trademarks, trade names, service marks, or any other identifying characteristics are proprietary intellectual property (collectively "Big Boy Websites IP") of significant value and goodwill to Big Boy Websites. You are hereby provided the limited, non-exclusive license to use, under the terms and conditions of this Agreement, the Big Boy Websites IP. You do not, and will not, acquire any other right, title, or interest in any Big Boy Websites IP, which will at all times remain the exclusive property of Big Boy Websites. You will not remove, suppress, or modify in any way any proprietary marking which is on or in the Website or the corresponding software code, which is visible during its operation, or which is on any media supplied with the Website, except where expressly allowed. Big Boy Websites acknowledges and agrees that you may re-create the Website after the termination of this Agreement. However, Big Boy Websites will not provide you, and is not obligated to provide you with any software or computer code in connection with the Website to the extent that it comprises Big Boy Websites IP. All information, data, specifications, documentation, software listings, source or object codes which Big Boy Websites may have disclosed or given to you, or which you have otherwise obtained access to in relation to the Big Boy Websites IP or your Big Boy Websites Website, or the business of Big Boy Websites is confidential and proprietary information of Big Boy Websites. You will not, during or after expiry or termination of this Agreement, disclose any such confidential information to any person without Big Boy Website's prior written consent.
  - b. Customer IP- You hereby grant Big Boy Websites a non-exclusive, royalty free, worldwide license to use your Customer IP in connection with the Website designed and presented to you by Big Boy Websites during the term of this Agreement. Further, should you initiate a Service Plan under this Agreement for an Initial Term, you hereby grant to Big Boy Websites a perpetual, non-exclusive, worldwide license to publish your Big Boy Websites Website in Big Boy Website's portfolio of Website designs for marketing purposes.
  - c. Big Boy Websites License to Customer – Big Boy Websites grants you a non-exclusive, limited license to access and use the Website and any associated Big Boy Websites IP. You may not use any Big Boy Websites IP in any way other than in connection with your use of the Website or the DIY website templates. Further you have no right to sublicense hereunder. This license shall immediately terminate upon the termination of this Agreement, and you shall no longer have any right or license to use the Big Boy Websites IP.
  - d. Assignment of Intellectual Property – Any patent, utility models, rights to inventions, copyright, and neighboring and related rights, trademarks and service marks, rights in get-up and trade dress, rights in designs, and all other intellectual property rights, in each case, whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, and which do not consist of the Customer IP, and which are derived, produced, created, and/or manufactured in part or in whole by Big Boy Websites in connection with the work performed under this Agreement are the sole intellectual property of Big Boy Websites (hereinafter the "Created IP"). You hereby assign and grant full title, right and interest in the Created IP to Big Boy Websites including (i) the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Created IP; (b) any and all goodwill attaching to the Created IP; and (c) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Created IP whether occurring before, on, or after the date of this Agreement. You will, at your own cost, perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution or delivery of) all further documents, required by law or which Big Boy Websites requests, to vest in Big Boy Websites the full benefit of the right, title, and interest assigned to Big Boy Websites under this Agreement.
  - e. Injunctive Relief – You acknowledge that the breach by you of one or more of your obligations under this Section 19 might cause Big Boy Websites to suffer irreparable harm, namely harm for which damages would be an inadequate remedy. You further acknowledge that Big Boy Websites might suffer irreparable harm due to delay if, as a condition to obtaining any injunction, restraining order, or other equitable remedy with respect to such a breach by you, Big Boy Websites were required to demonstrate that it would suffer irreparable harm. The parties therefore intend that if you breach one or more of your obligations under this Section 9, then Big Boy Websites shall be entitled to equitable relief and you agree that for purposes of determining whether to grant an equitable remedy any court will assume that your breach would cause Big Boy Websites irreparable harm.
20. PRIVACY - Big Boy Websites will collect and use any personal information you provide to Big Boy Websites, or that is collected by Big Boy Websites incidentally to the provision of products and services hereunder, in accord with the terms of our Big Boy Websites Privacy Policy, which is incorporated into and made a part of these Terms and Conditions of Use. You hereby consent to Big Boy Website's use of your personal information under the terms of the Big Boy Websites Privacy Policy, as it may be amended from time to time. To provide its services, Big Boy Websites software catalogues the number and total storage size of various file types on your Website. Big Boy Websites may also provide access to your Website data to government authorities if Big Boy Websites suspects or believes that the data contains child pornography or other prohibited data or that the data is being used for illegal purposes. You acknowledge that Big Boy Websites or Big Boy Websites affiliates may use servers and other equipment to provide the Big Boy Websites products or services that are located in the United States or in other countries where litigants, law enforcement, courts, and other agencies of the government may have the right to access data stored within their jurisdictions upon terms and conditions provided by local law, and that as a result, they may gain access to your Website data as provided by applicable local law. You further acknowledge that depending upon the Big Boy Websites product or service you use or the features of the Big Boy Websites product or service you use, accessing your Website data from any Internet enabled computer may not be possible

## 21. WARRANTIES AND GUARANTEES

- a. Limited Warranty – Big Boy Websites warrants that the Website will perform substantially as demonstrated in the prototype website documents during the term of this Agreement. If you or Big Boy Websites determine that a bug or error exists on the Website, then as Big Boy Website's sole and exclusive liability and as your sole and exclusive remedy, Big Boy Websites shall at its sole option either use commercially reasonable efforts to correct the discovered errors, replace the Website with a substantially conforming new website, or terminate this contract and release you from any further payment obligations.
- b. Disclaimer – THE LIMITED WARRANTY IN THE PRECEDING PARAGRAPH IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE TO THE EXTENT THAT SUCH WARRANTIES CAN BE EXCLUDED IN ACCORDANCE WITH APPLICABLE LAW. Big Boy Websites does not warrant that the functions contained in the Website or Big Boy Website's services or products will meet your requirements, that the operation of the Website or Big Boy Website's services and products will be uninterrupted or error free, or that defects will be corrected. Big Boy Websites does not warrant or make any representations regarding the use or the results of the use of the Big Boy Websites services and products in terms of their correctness, accuracy, reliability or otherwise. Further, Big Boy Websites does not warrant that the Website meets the requirements of any governmental or quasi-governmental protocols, statutes, and/or regulations.
- c. Maintenance Requests – Should you discover any errors or bugs on the Website, you should contact Big Boy Websites to inform us of the error or bug you have discovered. Big Boy Websites will use reasonable efforts to correct the error or bug you have discovered in accordance with the warranty above. Big Boy Websites shall perform any requested maintenance on selected days and during a limited number of hours, at its sole discretion.

- d. Technology Limitations – Big Boy Websites will make reasonable efforts to keep the Big Boy Websites services and products and your Website operational. However, certain technical difficulties or maintenance may, from time to time, result in temporary interruptions. Big Boy Websites reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, functions and features of the Big Boy Websites services and products with or without notice.
22. LIMITATIONS OF LIABILITY – With respect to any errors, bugs, defects, or deficiencies with the Website or Big Boy Websites products or services, the liability of Big Boy Websites will be limited to performance of its responsibilities under Section 11. Big Boy Websites SHALL NOT BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS, LOST REVENUE, LOST DATA, OR LOST DATA USE AND Big Boy WEBSITE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER CLAIM, WHETHER SUCH CLAIM IS BROUGHT IN LAW, EQUITY, CONTRACT, OR TORT (INCLUDING NEGLIGENCE AND/OR STRICT LIABILITY), OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY YOU FOR THE LAST SIX MONTHS OF INVOICES TO YOU.
23. INDEMNITY – YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BIG BOY WEBSITES AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, AND EXPENSES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, ARISING DIRECTLY OR INDIRECTLY OUT OF THE CUSTOMER IP, YOUR USE OF THE WEBSITE, OR YOUR USE OF ANY OF BIG BOY WEBSITE'S PRODUCTS OR SERVICES.
24. MISCELLANEOUS
- a. Entire Agreement - This Agreement constitutes the entire understanding and agreement of the Parties. No agreements, understandings, restrictions, representations, or warranties exist between or among the Parties other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this Agreement will be binding unless signed by the authorized representatives of both Parties.
- b. Governing Law - This Agreement, the rights and obligations of the Parties hereunder, and any and all disputes or claims arising out of or related to this Agreement are governed by and interpreted in accordance with the laws of new Zealand, without regard to principles of conflicts of law.
- c. Attorney's Fees - In the event of any suit or action between the parties arising directly or indirectly out of this Agreement, the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the court or courts in which the matter is tried, heard, or decided.
- d. US Customers only: Arbitration – Should any controversy or claim (other than a claim by Big Boy Websites for payment of any invoice under this Agreement) arise out of this Agreement, it shall be settled by arbitration with a single arbitrator administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Arbitration shall take place in the City of Houston, Texas.
- e. US Customers only: Forum Selection – The parties agree that the district courts of the State of Wyoming shall have exclusive jurisdiction over any court action between the parties.
- f. Assignment - Neither this Agreement nor the rights or obligations conveyed hereunder are assignable without the express written consent of Big Boy Websites.
- g. Severance - If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement shall survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.
- h. Force Majeure - Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement (except payment of any fees due hereunder) if such delay or failure results from events, circumstances, or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Big Boy Websites or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, solar radiation, extreme weather conditions or defaults of suppliers or sub-contractors.
- i. Waiver - If either Party fails, at any time during the term of this Agreement, to insist on strict performance of any obligations hereunder, or if a party fails to exercise any of its rights or remedies to which it is entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the other party from compliance with such obligations.
- j. Authority- You represent and warrant that the person who is signing the agreement to assent to the terms of this Agreement is a directly authorized representative of yours and has authority to enter into this Agreement on your behalf.
25. BY SIGNING THE AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.