

## Hosting Agreement

This Agreement is made and entered into as of \_\_\_\_\_, 2010 by and between ICI Enterprises, an Arizona LLC, with principal offices located at 7047 E. Greenway Parkway, Suite 180, Scottsdale, Arizona 85254 (“Provider”), and \_\_\_\_\_ located at \_\_\_\_\_ (“Client”).

WHEREAS, Provider is in the business of providing and maintaining an Internet site relating to the creation of virtual cards promoting the goods and/or services of others and/or providing information relating to others; and

WHEREAS, Client wishes to promote client’s goods and/or services by advertising on Provider’s site; and

WHEREAS, Provider is interested in providing hosting services to Client;

NOW THEREFORE the Parties mutually agree as follows:

### 1. Services Performed

Provider will provide to Client the following Services;

Design & Use of patent pending Interactive Electronic Data Card (MobiWeb®) -

One Year Hosting (Begins upon receipt and approval of this Hosting Agreement) - \*No charge

Prices include basic MobiWeb® features. Optional features available.

Provider shall provide seven (7) days prior written notice to Client of any material change(s) to the layout or function of the website(s) that may adversely affect exposure to the Advertising Materials.

## **2. Advertising Materials**

All graphics, visuals, banners, logos and other materials (collectively the "Advertising Materials") shall be created by Client in accordance with Guidelines attached hereto and incorporated herein as Appendix B. Advertising Materials shall be provided to Provider (as provided) in an electronic format (such as .GIF or .TIFF) that is suitable for display in a hypertext markup language (HTML) document as viewed by conventional HTML browsers. A hardcopy version of the Advertising Materials is attached hereto and incorporated herein as Appendix C. Provider may modify any Advertising Materials that do

not conform to the Guidelines, and may invoice Client for any charges associated with conforming the Advertising Materials to the Guidelines at reasonable current rates.

Notwithstanding any language to the contrary, Provider shall have the ultimate authority to control the layout, formatting, content, design and “look and feel” of its web site. Provider may object to any Advertising Materials provided by Client, and may refuse to display any Advertising Materials that Provider, at its sole option, determines is objectionable, harassing, infringing, illegal, immoral, obscene, defamatory or otherwise undesirable.

Client warrants that the Advertising Materials are free from any claim of infringement of any third party patent, copyright, trademark, service-mark, proprietary right, trade secret or other intellectual property right.

### **3. Payment**

Client shall pay to Provider the non-refundable amount of (N/A) for design and development and (N/A) upon approval of the MobiWeb® for the first year of Hosting Services. After the first year of hosting Services, payment shall be invoiced by Provider on an annual basis at the rate of

(TBD). All amounts invoiced shall be due and payable thirty (30) days after the date that the invoice is sent ("the Invoice Date"), and any amounts not paid within thirty (30) days shall be subject to interest and/or late fees. In addition to the amounts set forth herein for advertising services, Provider will invoice Client for any applicable taxes that may be imposed by any taxing authority. Additionally, if Payment is not received by Provider within thirty (30) days of the Invoice Date, Provider may suspend any further Services until payment in full for all Services performed is received. In any lawsuit brought by Provider to recover fees not paid by Client in which Provider ultimately prevails, Client agrees to pay for all attorneys' fees and court costs associated with such action.

#### **4. Term**

This Agreement shall remain in full force and effect from the effective date set forth above until terminated by either party. Either party may terminate this Agreement by providing ninety (90) days written notice to the other party of its intent to terminate the Agreement. Termination shall have no effect on Client's obligation to pay fees as set forth in Section 3. Sections 3, 5, 6, 7, 8, 9, 10 and 11 shall survive any termination of this Agreement.

## **5. Ownership of Intellectual Property:**

Each party acknowledges that its use of the other party's trademarks shall not create, nor shall it represent that it has, any right, title or interest in or to such marks other than the licenses expressly granted herein.

Client shall retain ownership of all intellectual property rights associated with the Advertising Content. Client grants to Provider a non-exclusive, worldwide, paid-up license to use, copy, distribute, publicly perform, publicly display and create derivative works of the Advertising Materials in conjunction with this Agreement. Client grants to Provider a non-exclusive, worldwide, paid up license to use any trademarks, servicemarks, trade dress or the like that may be embodied within the Advertising Materials in conjunction with this Agreement.

## **6. Mutual Representations and Warranties:**

Each party represents and warrants to the other party that: (1) such party has the full corporate right, power and authority to enter into this Agreement, to grant the licenses granted hereunder and to perform the acts required hereunder; (2) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and shall not

violate any agreement to which such party is a party or by which it is bound; (3) when executed and delivered by such party, this Agreement shall constitute the legal, valid and binding obligation of such party, enforceable by such party in accordance with its terms; (4) such party acknowledges that the other party makes no representations, warranties or agreements related to the subject matter of this Agreement which are not expressly provided for in this Agreement.

**7. LIMITED WARRANTY:** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER CLIENT NOR PROVIDER MAKES ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES OR ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Each party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein.

**8. LIABILITY:** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL,

SPECIAL OR EXEMPLARY DAMAGES ARISING FROM THE BREACH OF THIS AGREEMENT.

**9. Indemnity:** Each party shall defend, indemnify, save and hold harmless the other party and the officers, directors, agents, affiliates, distributors, franchisees and employees of the other party from and against any and all third party claims, demands, liabilities, costs or expenses, including reasonable attorneys' fees ("Losses") resulting from the indemnifying party's breach of any obligation, duty, representation or warranty of this Agreement, except where Losses result, in whole or in part, from the gross negligence or knowing and willful misconduct of the other party.

Notwithstanding the foregoing, in the event that Provider is sued for any alleged violation of any third party intellectual property right in conjunction with the Advertising Materials, Client agrees to protect, indemnify, defend and hold Provider harmless from any charges, costs, damages, royalties, attorneys fees or other expenses arising out of such action.

**10. Limitations on Scope of Relationship:** The parties, by this Agreement, do not intend to create a partnership, principal/agent, employer/employee,

master/servant or joint venture relationship, and nothing in this Agreement shall be construed as creating any such relationships between the parties. Neither party hereto has the power or authority as agent, employee or in any other capacity to present, act for, bind or otherwise create or assume any obligation on behalf of other party for any purpose whatsoever.

**11. Dispute Resolution:**

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, notwithstanding the actual state or county of residence or incorporation of Client.

In the event of any dispute between the parties arising from or concerning in any manner the subject matter of this Agreement, the parties agree to refer such dispute to the American Arbitration Association for resolution through non-binding arbitration by a single arbitrator who is familiar with Internet agreements pursuant to the American Arbitration Association's rules applicable to commercial disputes. The arbitration shall be held in the State of Arizona.

Notwithstanding the forgoing, either party may obtain equitable relief in any court of law to preserve the status quo or to prevent the

unauthorized use, duplication or disclosure of any intellectual property right.

**12. Transfer and Assignment:** Neither party may transfer or assign this Agreement without the prior written consent of the other party, except that either party may assign this Agreement to any affiliate of such party or to any affiliate of such party in the event of any merger, consolidation, reorganization, sale of all or substantially all of the assets of such person, or other similar transaction.

**13. Severability:** Nothing contained herein shall be construed to require the commission of any act contrary to law. Should there be any conflict between any provisions hereof and any present or future statute, law, the force of law, the latter shall prevail, but the provision of this Agreement affected thereby shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, and the remaining provisions of this Agreement shall remain in full force and effect.

**14. Modification:** This Agreement may be modified, amended, superceded, or canceled, and any of the terms covenants, presentations, warranties or conditions hereof may be waived, only by a written instrument executed by the party or parties to be bound

by any such modification, amendment, cancellation or waiver.

**15. Waiver:** The waiver by either of the parties, express or implied, of any right under this Agreement or any failure to perform under this Agreement by the other party, shall not constitute or be deemed to constitute a waiver of any other right or failure to perform under this Agreement by the other party, whether of a similar or dissimilar nature.

**16. Force Majeure:** Other than Client's payment obligation on amounts already due, neither party is liable for any delay, interruption or failure in the performance of its obligations if caused by acts of God, war, declared or undeclared, fire, flood, storm, slide, earthquake, power failure, inability to obtain equipment, supplies or other facilities not caused by a failure to pay, labor disputes, or other similar event beyond the control of the party affected which may prevent or delay such performance. If any such act or event occurs or is likely to occur, the party affected shall promptly notify the other, giving particulars of the event. The party so affected shall use reasonable efforts to eliminate or remedy the event and resume performance.

**17. Notices:** Any notice or communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or 3 days after mailing if mailed by first class mail, registered or certified, postage prepaid, to the address set forth below or to any other address that a party designates by providing notice. Notices as required under this Agreement which are not given in writing will be effective only if acknowledged in writing by a duly authorized individual of the party to whom it was given.

## **PROVIDER**

ICI Enterprises LLC  
7047 E. Greenway Parkway  
Suite 180  
Scottsdale, AZ 85254  
FAX (480) 515-9675  
Phone: (602) 820-1300

## **CLIENT**

Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
City, State. Zip \_\_\_\_\_

**18. Survival:** Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and be binding on the parties.

**19. Miscellaneous:** Each party acknowledges, by signature of its authorized representative hereon, that it has read this Agreement, understands it and that it constitutes the entire Agreement between the parties. This Agreement may be modified only in writing signed by an authorized representative of each party. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

The Parties have executed this Agreement by their authorized representatives:

**PROVIDER**

By: \_\_\_\_\_

By: \_\_\_\_\_

**CLIENT**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Please sign and FAX this agreement to our office at 480-515-9675.