

WEB HOSTING RESELLER AGREEMENT

This Web Hosting Reseller Agreement (this “**Agreement**”) is between eFireHost.com, Limited, a LLC. formed under the laws of the State of California with its principal office at eFireHost.com and the person (individual or legal person) whose signs eFireHost.com’s service order and set up form (the “**Order**”) incorporating this Agreement by reference (“**Customer**”). This Agreement governs Customer’s use of eFireHost.com’s Web hosting services.

Background

- A. eFireHost.com offers web hosting and related services on a discounted wholesale basis to resellers who may then offer those services to their end users, either alone or together with Web design, consulting services or other additional services that they may provide or procure from others.
- B. Customer is a reseller who desires to purchase Web hosting services from eFireHost.com together with any additional eFireHost.com services indicated on the Customer’s Order or described in this Agreement (the “**Services**”).

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1. Services. Subject to the terms of this Agreement, and contingent on Customer’s satisfaction of eFireHost.com’s credit approval requirements, eFireHost.com agrees to provide the Services described in the Order and in this Agreement for the fees stated in the Order. The Services include the provision of Web hosting capacity (including e-mail) and may include related services described below in this Agreement such as Customer or end user support, billing, payment processing, training, reporting, administrative tools, online marketing tools, and hourly consulting (the “**Services**”). In addition, eFireHost.com may license its own or third party software to Customer, either for Customer’s internal business use or for resale as indicated on the

Order. Customer may resell the Web hosting capacity to its end users, subject to the terms of this Agreement. Customer may not resell any other portion of the Services, or use any other portion of the Services or any software provided to Customer by eFireHost.com except for its internal business purposes, unless such use is inherent in the resale of the Web hosting capacity or is approved in advance in writing by eFireHost.com.

2. Service Level Agreement. eFireHost.com's Service Level Agreement at <http://www.efirehost.com/legal.pdf> (the "SLA") is hereby incorporated into this Agreement by this reference. THE REMEDIES (IF ANY) STATED IN THE SLA ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR eFireHost.com'S FAILURE TO PROVIDE THE SERVICES IN ACCORDANCE WITH THIS AGREEMENT.

3. Branding. Customer may not use eFireHost.com's name, trademarks, logos or other identifying marks or trade dress in connection with its resale of the Services except with eFireHost.com's prior written consent; provided, however, that Customer may not remove any copyright notice that eFireHost.com has placed on any software or other materials provided to Customer.

4. Special Terms for Specific Services.

(1) Tier 1 Support. If the parties have agreed in the Order that eFireHost.com is to provide Tier 1 (end user) support to Customer's end users, then Customer may refer its end users to eFireHost.com's designated contact for such support.

(2) Payment Processing. If the parties have agreed in the Order that eFireHost.com is to provide Payment Processing services for Customer, then Customer shall comply with eFireHost.com's reasonable account set up, billing and other criteria, including those criteria required by any third party payment processor used by eFireHost.com."

(3) Training. If the parties have agreed in the Order that eFireHost.com is to provide Billing services for Customer, then Customer in addition to any hourly or other fee specified in the Order, Customer will pay the reasonable travel and lodging expenses of any eFireHost.com personnel who performs such training on Customer's premises at Customer's request.

(4) Spam/Virus Filters. If the parties have agreed in the Order that eFireHost.com is to provide spam or malicious content filtering services for Customer, then Customer acknowledges that the technological limitations of the filtering service will result in the failure to capture some unwanted e-mail and malicious content, and will also likely result in the capture of some legitimate e-mail and content. eFireHost.com recommends that Customer employ additional security measures, such as a desktop virus scanner and firewall, on computers that are connected to the Internet.

(5) Back Up Services. Customer acknowledges that eFireHost.com does not agree to create back ups of Customer's content unless otherwise expressly stated in the Order. If the parties have agreed in the Order that eFireHost.com is to provide Back up services for Customer, Customer acknowledges that eFireHost.com backs up Customer's content on a snapshot basis at a specific moment in time, and that the back ups therefore capture only that content that is stored at that time. Back ups are retained for five weeks from the date generated. Restorations of Customer content requested as a result of Customer error are provided on a fee basis. Customer agrees to maintain and require its Customers to maintain a current copy of all content hosted by eFireHost.com notwithstanding any agreement by eFireHost.com to provide back up services.

(6) Consulting/Additional Services. eFireHost.com may from time to time agree to perform consulting or other one off services for Customer. Any such Services shall be performed pursuant to the terms of this Agreement, including the warranty disclaimers and limitations on damages provisions below. eFireHost.com may charge Customer its then standard hourly rate for such services, or such other rate that may be agreed by the parties. Unless otherwise agreed in writing, eFireHost.com will own any intellectual property that may be created as a result of such services, subject to a perpetual, non-exclusive, world wide right and license in favor of Customer to use such intellectual property.

(7) Software/Third Party Software. If eFireHost.com provides any of its own or a third party's software for Customer's use, such Software shall be subject to the terms of any End User License Agreement or other software licenses that is provided or displayed with or in the software.

5. **Bandwidth and Storage Limitations/Records Retention.**

(a) Bandwidth. As indicated on the Order, the Web hosting service has a fixed bandwidth allocation. Customer shall pay eFireHost.com's bandwidth overage charges stated in the Plan Outline for any bandwidth used in excess of such allocation.

(b) Storage. As indicated on the Order, the Web hosting service has a fixed storage limit. eFireHost.com may not store any content (including e-mail) that, when received, exceeds the storage limit, or may delete other content already stored to create storage capacity for the content. This content would therefore be permanently lost to Customer and Customer's end user. In the alternative, eFireHost.com may, but is not required to, store the additional content and charge Customer the storage overage fees stated in the Plan Outline. It is Customer's obligation to monitor the remaining storage capacity of the Web hosting service and to obtain whatever contractual provisions it deems appropriate with its end users to protect itself from liability risks related to loss of end user content under these circumstances.

(c) Records Retention. eFireHost.com's obligation to store e-mail messages terminates at the effective date of expiration or termination of the Services. At Customer's written request made at or prior to the termination of the Service, eFireHost.com will provide a copy of Customer's data on a fee basis no later than ten (10) days following the date of the request.

6. **Term.** The initial service term of the Agreement shall begin on the date that eFireHost.com generates an e-mail message to Customer announcing the activation of the Customer's account (the "**Service Commencement Date**") and shall continue for the number of months stated in the Order (the "**Initial Term**"). Upon expiration of the Initial Term, this Agreement shall automatically renew for up to three successive renewal terms of the same length as the Initial Term (each a "**Renewal Term**") unless eFireHost.com or Customer provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the Initial Term or then-current Renewal Term, as applicable. The Initial Term and any Renewal Term may be referred to collectively in this Agreement as the "**Term.**"

7. **Payments.**

(a) **Fees.** Fees are payable in advance on the first day of each billing cycle. Customer's billing cycle shall be monthly or annually as indicated on the Order, beginning on the Service Commencement Date. eFireHost.com may require payment for the first billing cycle before beginning service. If the Order provides for credit/debit card billing, Customer authorizes eFireHost.com to bill subsequent fees to the credit/debit card on or after the first day of each successive billing cycle during the Term of this Agreement; otherwise eFireHost.com will invoice Customer via electronic mail to the Primary Customer Contact listed on the Order. Invoiced fees may be issued on or before the 1st day of each billing cycle, and the fees shall be due on the 14th day following invoice date, but in no event earlier than the first day of each billing cycle.

Payments must be made in United States dollars. Customer is responsible for providing eFireHost.com with changes to billing information (such as credit card expiration, change in billing address) At its option, eFireHost.com may accrue charges to be made to a credit/debit card until such charges exceed \$10.00. eFireHost.com may charge interest on overdue amounts at the lesser of 1.5% per month or the maximum non-usurious rate under applicable law. eFireHost.com may suspend the service without notice if payment for the service is overdue. Fees not disputed within sixty (60) days of due date are conclusively deemed accurate. Customer agrees to pay eFireHost.com's reasonable reinstatement fee following a suspension of service for non-payment, and to pay eFireHost.com's reasonable costs of collection of overdue amounts, including collection agency fees, attorney fees and court costs.

(b) **Fee Increases.** eFireHost.com may increase its fees for services effective the first day of a Renewal Term by giving notice to Customer of the new fees at least thirty (30) days prior to the beginning of the Renewal Term, and if Customer does not give a notice of non-renewal as provided in Section 2 above, the Customer shall be deemed to have accepted the new fee for that Renewal Term and any subsequent Renewal Terms (unless the fees are increased in the same manner for a subsequent Renewal Term).

(c) **Taxes.** At eFireHost.com's request Customer shall remit to eFireHost.com all sales, VAT or similar tax imposed on the provision of the services (but not in the nature of an income tax on eFireHost.com), regardless of whether eFireHost.com fails to collect the tax at the time the related services are provided.

(d) **Early Termination.** Customer acknowledges that the amount of the fee for the service is based on Customer's agreement to pay the fee for the entire Initial Term, or Renewal Term, as applicable. In the event eFireHost.com terminates the Agreement for Customer's breach of the Agreement in accordance with Section 13(b) (Termination), or Customer terminates the service other than for eFireHost.com's breach in accordance with Section 13(b) (Termination), the unpaid fees for each billing cycle remaining in the Initial Term or then-current Renewal Term, as applicable, are due on the business day following termination of the Agreement.

8. Law/AUP. Customer agrees to use the Service and require its end users to use the Service in compliance with applicable law and eFireHost.com's Acceptable Use Policy posted at <http://www.efirehost.com/AUP.pdf> (the "AUP"), which is hereby incorporated by reference in this Agreement. Customer agrees that eFireHost.com may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time to time to further detail or describe reasonable restrictions and conditions on Customer's use of the Services. Amendments to the AUP are effective on the earlier of eFireHost.com's notice to Customer that an amendment has been made, or the first day of any Renewal Term that begins subsequent to the amendment. Customer agrees to cooperate with eFireHost.com's reasonable investigation of any suspected violation of the AUP. In the event of a dispute between eFireHost.com and Customer

regarding the interpretation of the AUP, eFireHost.com's commercially reasonable interpretation of the AUP shall govern.

9. Representations and Warranties. Customer represents and warrants to eFireHost.com that the information he, she or it has provided and will provide to eFireHost.com for purposes of establishing and maintaining the service is accurate. If Customer is an individual, Customer represents and warrants to eFireHost.com that he or she is at least 18 years of age. eFireHost.com may rely on the instructions of the person listed as the Primary Customer Contact on the Order with regard to Customer's account until Customer has provided a written notice changing the Primary Customer Contract.

10. Indemnification. Customer agrees to indemnify and hold harmless eFireHost.com, eFireHost.com's affiliates, and each of their respective officers, directors, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys fees) brought by: (i) a third party under any theory of legal liability arising out of or related to the actual or alleged use of Customer's services in violation of applicable law or the AUP by Customer or any person using Customer's log on information, regardless of whether such person has been authorized to use the services by Customer, and (ii) any end user of Customer on any theory for any reason except for eFireHost.com's intentional misconduct, but including eFireHost.com's negligence.

11. Disclaimer of Warranties.

eFireHost.com DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW eFireHost.com DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS DESCRIBED IN THE SLA, ALL SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS.

12. Limitation of Damages.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF eFireHost.com AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT PAYABLE BY CUSTOMER FOR THREE MONTHS OF SERVICE.

13. Suspension/Termination.

(a) **Suspension of Service.** Customer agrees that eFireHost.com may suspend services to Customer without notice and without liability if: (i) eFireHost.com reasonably believes that the Services are being used in violation of the AUP; (ii) Customer fails to cooperate with any reasonable investigation of any suspected violation of the AUP; (iii) eFireHost.com reasonably believes that the suspension of Service is necessary to protect its network or its other customers, or (iv) as requested by a law enforcement or regulatory agency. Customer shall pay eFireHost.com's reasonable reinstatement fee if service is reinstated following a suspension of service under this subsection.

(b) **Termination for Breach.** The Agreement may be terminated by Customer prior to the expiration of the Initial Term or any Renewal Term without further notice and without liability if eFireHost.com fails in a material way to provide the service in accordance with the terms of the Agreement and does not cure the failure within ten (10) days of Customer's written notice describing the failure in reasonable detail. The Agreement may be terminated by eFireHost.com prior to the expiration of the Initial Term or any Renewal Term without further notice and without liability as follows: (i) upon ten (10) days notice if Customer is overdue on the payment of any amount due under the Agreement; (ii) Customer or Customer's end user materially violates any other provision of the Agreement, including the AUP, and fails to cure the violation within thirty (30) days of a written notice from eFireHost.com describing the violation in reasonable detail; (iii) upon one (1) days notice if Customer's Service is used in violation of a material term of the AUP more than once, or (iv) upon one (1) days notice if Customer violates Section 9 (Representations and Warranties) of this Agreement.

(c) **Termination for Business Failure.** Either party may terminate this agreement upon ten (10) days advance notice if the other party admits insolvency, makes an assignment for the benefit of its creditors, files for bankruptcy or similar protection, is unable to pay debts as they become due, has a trustee or receiver appointed over all or a substantial portion of its assets, or enters into an agreement for the extension or readjustment of all or substantially all of its obligations.

14. Requests for Customer Information. Customer agrees that eFireHost.com may, without notice to Customer, (i) report to the appropriate authorities any conduct by Customer or any of Customer's customers or end users that eFireHost.com believes violates applicable law, and (ii) provide any information that it has about Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.

15. Back Up Copy. Customer agrees to maintain and require its end users to maintain a current copy of all content provided to or hosted by eFireHost.com notwithstanding any agreement by eFireHost.com to provide back up services.

16. Changes to eFireHost.com's Network. Upgrades and other changes in eFireHost.com's network, including, but not limited to changes in its software, hardware, and service providers, may affect the display or operation of Customer's hosted content and/or applications. eFireHost.com reserves the right to change its network in its commercially reasonable discretion, and eFireHost.com shall not be liable for any resulting harm to Customer.

17. Notices. Notices to eFireHost.com under the Agreement shall be given via electronic mail to the e-mail address posted for customer support on <http://www.efirehost.com/support.php>. Notices to Customer shall be given via electronic mail to the individual listed as the Primary Customer Contact on the Order. Notices are deemed received on the day transmitted, or if that day is not a business day, on the first business day following the day delivered. Customer may change his, her or its notice address by a notice given in accordance with this Section.

18. Force Majeure. eFireHost.com shall not be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond eFireHost.com's control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

19. Governing Law/Disputes. The Agreement shall be governed by the laws of the State of California, exclusive of its choice of law principles, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN LOS ANGELES COUNTY, CALIFORNIA, AND EACH PARTY AGREES NOT TO DISPUTE SUCH PERSONAL JURISDICTION AND WAIVES ALL OBJECTIONS THERETO.

20. Miscellaneous. Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trademarks, service marks, trade secrets, inventions, copyrights, and other intellectual property. The parties intend for their relationship to be that of independent contractors and not a partnership, joint venture, or employer/employee. Neither party will represent itself to be agent of the other. Each party acknowledges that it has no power or authority to bind the other on any agreement and that it will not represent to any person that it has such power or authority. This Agreement may be amended only by a formal written agreement signed by both parties. The terms on Customer's purchase order or other business forms are not binding on eFireHost.com unless they are expressly incorporated into a formal written agreement signed by both parties. A party's failure or delay in enforcing any provision of the Agreement will not be deemed a waiver of that party's rights with respect to that provision or any other provision of the Agreement. A party's waiver of any of its right under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not. The captions in the Agreement are not part of the Agreement, but are for the convenience of the parties. The following provisions will survive expiration or termination of the Agreement: Fees, indemnity obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination of the Agreement. There are no third party beneficiaries to the Agreement. Neither insurers nor the end users of Customer are third party beneficiaries to the Agreement. Customer may not transfer the Agreement without eFireHost.com's prior written consent. eFireHost.com's approval for assignment is contingent on the assignee meeting eFireHost.com's credit approval criteria. eFireHost.com may assign the Agreement in whole or in part.

This Agreement together with the Order, SLA, AUP, and any license agreement for software provided by eFireHost.com constitutes the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replace any prior understanding or communication, written or oral.

OPTIONAL PROVISIONS

[If Wholesaler inserts any of these provisions, insert them as new Sections following Section 18 and number sequentially. If document is otherwise renumbered, cross references to Section numbers will also have to be modified.]

Use. Customer may use the Services only for [business] [personal, family or household] purposes.

Confidential Information. Except as provided in Section 12 (Requests for Customer Information) each party agrees to keep the other party's "Confidential Information" confidential and to use such information only for the purposes of providing the Services or using the Services pursuant to the terms of this Agreement. "Confidential Information" includes any of eFireHost.com's unpublished prices for Services, a party's product development or strategic business plans, any information that is marked or designated as confidential by the disclosing party, and any other information that is commonly understood to be confidential by reasonable persons in the industry, but does not include such information to the extent it becomes publicly available other than through breach of this provision or other wrongful act of the recipient. Notwithstanding the elimination of indirect damages by Section 12 (Limitation of Damages) of this Agreement, a party harmed by the other party's breach of this Section shall be entitled to recover such damages.