

RESELLER AGREEMENT

(Last Updated: January 13, 2009)

This Hostway Reseller Agreement (“Agreement”) includes the attached Schedules and all other agreements, policies, and documents incorporated by reference herein. This Agreement is hereby made part of and incorporated into the Hostway online reseller registration form (“Registration Form”). The terms and conditions of this Agreement govern the respective rights and obligations of Hostway and you, the party identified on the Registration Form, (“Reseller”). The Registration Form will require designation of the type of Hostway reseller services that Reseller can choose from each of which has its own distinct services, prices, and additional terms and conditions. This Agreement will effectively bind Reseller upon Reseller’s submission of the Registration Form by clicking the “SUBMIT” button at the end of the Registration Form. Hostway and Reseller are each also referred to herein as a “Party” and collectively the “Parties.”

TERMS & CONDITIONS

1. DEFINITIONS

- 1.1 “Affiliate” of a party means any person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such first person, with “control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, and “person” broadly construed to include any natural person or any entity or association, trust, incorporated or unincorporated association, joint venture, joint stock company or other entity.
- 1.2 “Annual Registration Fee” means the Fee charged to activate a Reseller account and to maintain the account’s active status for one year. The Annual Registration Fee recurs annually until such time as this Agreement expires or is terminated according to the terms hereunder.
- 1.3 “Confidential Information” includes, but is not limited to, any and all information or data of a Party that is disclosed to the other Party, either directly or indirectly, whether in writing, orally, or by visual means, and which is designated (either in writing or orally) as confidential, proprietary, or the like. However, such designation will not be necessary to deem information as Confidential Information if the nature of the information makes it generally considered confidential commercially, which information includes, but is not limited to, information that relates to (a) trade secrets or know-how, (b) finance or accounting, (c) technology, research, or development, (d) internal processes or procedures, (e) algorithms, digital data, or designs, (f) business, operations, or planning thereof, (g) sales or marketing strategies, (h) the terms of any agreement, and the discussions, negotiations, or proposals related thereto, including this Agreement.

- 1.4 “Customer” means any third party that purchases, subscribes for, or otherwise uses the Services through Reseller.
- 1.5 “Customer Data” means all lists, databases, and information relating to Customers or prospective customers of Reseller, Sub-Reseller or Hostway.
- 1.6 “Customer Order” means an order for Services made by a Customer through Reseller.
- 1.7 “Domain” means a string of alphabetical and/or alphanumeric characters followed by a suffix indicating the applicable domain name extension, which is used as an Internet address to identify a computer on the Internet.
- 1.8 “Domain Services” means those Services as defined in Schedule 1, section 1.1.
- 1.9 “Effective Date” means the time and date of Reseller’s submission of the Registration Form by clicking the “SUBMIT” button at the end of the Registration Form.
- 1.10 “Fee” means any money amount, including applicable taxes for the provision of the Services, charged to Reseller and payable to Hostway hereunder in accordance with the pricing set out online at <http://www.hostway.com/resellers>.
- 1.11 “Intellectual Property” means all rights, title, interest and benefit of a Party hereto in and to intellectual property of every nature, whether registered or unregistered, including all copyrights, patents, trademarks, certification marks and industrial designs, applications for any of the foregoing, trade names, brand names, business names, trade secrets, proprietary manufacturing information and know-how, instruction manuals, inventions, inventor’s notes, research data, blue prints, drawings and designs, formulae, calculations, processes, prototypes, source codes, digital files, URLs, technology, the Software, marketing rights of the foregoing, Proprietary Materials, together with all rights under license agreements, sublicense agreements, strategic alliances, development agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing, that are owned by a Party hereto or used in connection with the Services.
- 1.12 “Online Help Section” means the manual that Hostway may provide online for Resellers and Customers to use in connection with the Services, which includes frequently asked questions, quick-start guides, and introductory messages.
- 1.13 “Proprietary Materials” include all text, images, illustrations, URLs, audio and multimedia files and/or text, technology, software, Web site data, source codes, digital files, customer lists, technical information, data, plans, user identifications, account numbers, encryption keys, digital certificates, account access and log-in

information, passwords, and all other similar materials or information related to the Services that are owned, used, or licensed by a Party.

- 1.14 “Registrant” means the person (individual or corporate entity) that is recorded in the Whois as the owner of the particular Domain.
- 1.15 “Registrar” means an ICANN-accredited Domain registrar.
- 1.16 “Registration Agreement” means the written terms and conditions of the Registrar designated by Hostway as the service provider of Domain Services (as amended by the designated Registrar from time to time).
- 1.17 “Registry” means an entity accredited by ICANN to supervise specific generic top-level Domains (“gTLDs”) and to operate the domain name system for such gTLDs and/or, in cases of country code top-level Domains (ccTLDs), to act as an administrator of ccTLDs for a particular country and operate the domain name system for such country's specific Domain extension(s).
- 1.18 “Renewal Date” means the annual anniversary of the Effective Date.
- 1.19 “Services” mean the products and services listed in the attached Schedules that are provided by Hostway to Reseller for resale to Customers.
- 1.20 “Service Fees” mean the Fees charged to Reseller for the Services according to the Fee schedule provided online at <http://www.hostway.com/resellers>.
- 1.21 “Software” means the Hostway Reseller platform used to facilitate the resale of the Services, including, but not limited to, such systems for control panel, order form, billing, provisioning, and other backend management.
- 1.22 “Sub-Reseller” means any reseller of Reseller that is authorized by Hostway to resell the Services hereunder.
- 1.23 “Support Services” means the services related to technical support, sales support, customer service, and billing support as provided by Hostway to Reseller hereunder.
- 1.24 “Term” means the period commencing from the Effective Date until the date that this Agreement is terminated in accordance with the terms hereunder.
- 1.25 “TOU” means Hostway’s Terms of Use for the provision of Web hosting Services as posted at http://www.hostway.com/legal/terms_of_use.html as amended from time to time.

- 1.26 “Training Materials” mean instructional documentation or literature used for training and educating Reseller about the Services so that they may be able to assist Customers.
- 1.27 “URL” means Uniform Resource Locator, which is the protocol for specifying addresses on the Internet.
- 1.28 “Web hosting Services” means the Services described in Schedule 2, section 1.1 and further provided for online at <http://www.hostway.com/resellers>.
- 1.29 “Whois” means the directory service or database over the Internet used for searching information related to a particular Domain that is required by ICANN to be compiled upon registration of a Domain.

2. TERM

This Agreement will commence from the Effective Date and remain in effect until either Party terminates this Agreement in accordance herewith.

3. RESALE OF SERVICES

- 3.1 License to Resell. Hostway hereby grants to Reseller a limited, non-exclusive, non-transferable, revocable, worldwide license to market, resell, and distribute the Services listed in the attached Schedules strictly in accordance with the terms hereunder.
- 3.2 Retail Pricing. Hostway may, but is not obligated to, provide Reseller with suggested retail prices for the resale of the Services. Reseller is under no obligation to use these prices.
- 3.3 Right of Refusal. Hostway reserves the right, at its sole reasonable discretion, to refuse any Customer Order or referral of a Customer from Reseller.
- 3.4 No Technology License Grant. Both Parties acknowledge that this is not a technology license agreement and, except as provided herein in this Agreement, it does not give Reseller any right to use any proprietary software or hardware technology used by Hostway to provide the Services. Reseller will not, and will not permit any of its Customers or other third party to copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the software used by Reseller in connection with the Services in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the software used by Reseller in connection with the Services or any trade secret information or process contained in the software used by Reseller in connection with the Services or remove any product identification, copyright or other notices

- 3.5 Sub-Resellers. Subject to Hostway's prior written consent, Reseller may make the Services available to Sub-Resellers for further resale of the Services to third parties. However, Reseller will be solely responsible, and Hostway will not be responsible whatsoever, for any and all liabilities associated with any Sub-Reseller. Reseller will take all commercially reasonable measures to ensure that Hostway is fully protected from all Sub-Resellers, namely by binding Sub-Resellers to terms and conditions substantially and materially similar to the terms and conditions of this Agreement.
- 3.6 Restrictions. Reseller will not, and will not permit any of its Customers or other third party to copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to any of the Services (including, but not limited to, the Software) to ascertain, derive, and/or appropriate for any reason or purpose the source code or source listings for the Services or any trade secret information or process contained in the Software or remove any product identification, copyright or other notices.
- 3.7 Amendment of Services. Hostway may, from time to time and at its sole discretion, add to, modify, or remove any particular service or product, or any aspect thereof, from the list of Services. Certain Services may permit customization or modification requests from Reseller, however, Hostway reserves the right to deny such requests or restrict any customization or modifications for certain Services.
- 3.8 License to Other Parties. Reseller agrees that Hostway may grant to other parties the rights to market, sell, and distribute the Services. Reseller understands that the grant of such rights to third parties may compete with Reseller's own marketing, sale, and distribution of the Services.
- 3.9 Publication. For the Term of this Agreement, Hostway may identify Reseller, individually or together with any and/or all other Hostway resellers, as a reseller of Hostway in any form that Hostway elects at its sole discretion.
- 3.10 TOU & Registration Agreement. Any resale or use of the Services will be subject at all times to the TOU and the Registration Agreement, as applicable. The effective version of the TOU will be the latest version posted at http://www.hostway.com/legal/terms_of_use.html (or other such URL as designated by Hostway), and the effective version of the Registration Agreement will be the latest version posted at <http://www.domainpeople.com/legal/registration-agreement.pdf> (or other such URL as designated by Hostway) by the Registrar designated by Hostway as the service provider for Domain Services. Reseller will obligate or ensure all of its Customers, and make it a precondition of providing Services to Customers, to agree to the TOU and the Registration Agreement (as applicable). Reseller will ensure that Customers are obligated to agree to the complete, current, and accurate versions of the TOU and the Registration Agreement. Reseller is permitted to obligate Customers to agree to additional terms and conditions, provided that such additional terms and conditions do not conflict with the TOU, the Registration Agreement, this Agreement, or any policy implemented by ICANN, any Registry, or the applicable Registrar.

4. PAYMENT & BILLING

4.1 Payment Obligation. Payment of Fees is due in accordance with the Fee provisions below by the end of the day on which the Fee is charged. If payment is not received when due, or in the event of a chargeback by a credit card company (or similar action by another payment provider approved by Hostway) in connection with Reseller's payment, Reseller has a further nineteen (19) days to make payment during which time the Services will remain available to Reseller and Customers but Reseller cannot submit any additional Customer Orders or sign up new Customers. On the twentieth day following the due date if payment has not been received, Reseller understands, acknowledges, and agrees that Reseller's account will be automatically suspended for thirty-nine (39) days. On the fortieth day following suspension if Reseller has still not met its payment obligations, Hostway reserves the right to terminate the Agreement immediately upon provision of written notice. Reseller will protect, defend, hold harmless, and indemnify Hostway (including, but not limited to, Hostway's Affiliates, directors, officers, managers, employees, agents, and contractors) from and against any and all liabilities, losses, costs, judgments, damages, claims, or actions (including, but not limited to, any and all reasonable legal fees and expenses) arising out of, related to, or resulting from any violation of the payment obligations as described herein and hereunder.

4.2 Payment Methods. Hostway accepts the following types of payment:

- Check or Money Order
- Credit Card (VISA, MasterCard, American Express, Discover)
- Bank Wire Transfer

Reseller chooses payment method upon activation of Reseller's account. If Reseller wishes to change payment method, Reseller must provide Hostway with ten (10) calendar days' prior written notice.

4.3 Credit Card Payment. If Reseller provides Hostway with Reseller's credit card information, Reseller authorizes Hostway to automatically charge said credit card for charges that apply to Reseller's account as such charges become due and payable. Recurring charges will be posted to said credit card until such time that Reseller's account is terminated in accordance with the Agreement. Reseller is responsible for directly updating, or notifying Hostway, of any changes to said credit card (including, but not limited to card number, expiration date, billing address, or card status).

4.4 Reserve Balance. Hostway reserves the right to require Reseller to maintain a reserve amount on Reseller's account ("Reserve Balance"). Where Hostway requires a Reserve Balance, it is solely Reseller's responsibility to maintain the Reserve Balance and Hostway is under no obligation to issue any reminders or notices regarding the status or balance of the Reserve Balance.

4.5 Statements. Hostway does not mail paper invoices or statements. Account billing statements will be sent to Reseller via email.

- 4.6 Fees. The Fee schedule for Reseller registration and all Services is as set forth online on Hostway's website at <http://www.hostway.com/resellers> and will be subject to modifications from time to time at Hostway's sole discretion. If Hostway makes any change to the Fees posted online, Reseller understands that any changes to the registration Fee are applicable only to new reseller registrations and that any changes to Fees for Services are applicable only to subsequent orders for such Services. No changes to the online Fee schedule will apply to Reseller's existing Fees unless agreed to by both Hostway and Reseller in writing.
- 4.6.1 Annual Registration Fee. Reseller will pay the Annual Registration Fee at the rate posted online as of the Effective Date. The first Annual Registration Fee is due upon activation of Reseller's account. Each subsequent payment will be due on the Renewal Date until such time as the Agreement expires or is terminated in accordance with the provisions of the Agreement. The Annual Registration Fee charged to Reseller will remain the same rate as of the Effective Date unless agreed to in writing by both Parties.
- 4.6.2 Service Fees. Reseller will pay the applicable Fee for each Service ordered at the rate set out in the Fee schedule posted online as of the time of ordering such Service. Reseller will make payment to Hostway of the Service Fees charged in a particular day at the end of that day. For Service Fees in a particular day that do not reach the minimum threshold set by Hostway ("Collections Threshold"), such amount shall be rolled over to the following day, and so forth, until the Collections Threshold is reached and Reseller shall pay the accumulated Services Fees to Hostway at the end of that day. Notwithstanding the foregoing, all amounts owing on Reseller's account on the last day of each month will be due immediately at the end of that day regardless of whether or not Reseller has currently attained the Collections Threshold. Reseller can only accumulate Service Fees on Reseller's account to the maximum limit set by Hostway ("Authorization Limit"). Upon reaching the Authorization Limit, the amount owing on Reseller's account will be due at the end of that day and Reseller will be unable to submit any further Customer Orders or sign up any new Customers until payment is received.
- 4.7 Additional Fees. Reseller may be subject to the following additional fees according to method of payment and Reseller's account:
- 4.7.1 Returned (NSF) Checks. Hostway charges a \$25.00 fee for returned (NSF) checks. Resellers that issue an NSF check will be required to submit future payments with a certified check or money order.
- 4.7.2 Credit Card Chargebacks. A \$25.00 chargeback fee will be assessed for each credit card chargeback received by Hostway.

- 4.7.3 Bank Wire Payments. Hostway does not charge fees for accepting payment via bank wire, however, international wire transfers may be assessed a \$20.00USD processing fee by an intermediary bank in New York. In addition, the issuing bank may also charge a fee for sending the wire. Please add such fees to the amount sent to Hostway or the amount credited to Reseller's account will be less than the intended payment.
- 4.7.4 Reactivation. Resellers that wish to reactivate a closed account will be assessed a \$19.95 reactivation fee. A \$99.95 fee will be assessed if Hostway restores any data files to the reactivated account.
- 4.7.5 Reseller Plan Changes. There is no upgrade fee for upgrading to a higher priced plan, however, Reseller may be charged any difference between the setup fee applicable to the new and former plans.
- 4.8 Taxes. Reseller will pay all sales, value-added, and other applicable taxes unless Reseller provides Hostway with satisfactory proof of exemption.
- 4.9 Account Renewals. In order to insure uninterrupted service, Reseller's account will automatically renew on the Renewal Date and Reseller will automatically be charged the Annual Registration Fee. If Reseller wishes to cancel Reseller's account before renewal, Reseller may notify Hostway at reseller-support@hostway.com of Reseller's intention not to renew at least thirty (30) calendar days prior to the Renewal Date and this Agreement will then expire upon the Renewal Date.
- 4.10 Refund Policy. Hostway will not provide refunds of any Fees for any cancellation of Customer accounts or termination of the Agreement prior to the end of a billing cycle.
- 4.11 Customer Billing. Reseller will provide or ensure provision of billing support to each of the Customers procured by Reseller, including, but not limited to, the Customers procured by Sub-Resellers. Hostway's only obligation is to provide billing support to Reseller through telephone and electronic mail.
- 4.12 Records. Hostway may maintain records of all Services provided hereunder. If there is any inconsistency or conflict between Hostway's records and that of Reseller or any other party (including, but not limited to, Customers or Sub-Resellers), then Hostway's records will be deemed the accurate and effective records.
- 4.13 Non-Payment. Without limiting any other term of this Agreement, non-payment of money amounts due pursuant to this Agreement (including, but not limited to, Fees) will constitute material breach of this Agreement. All past due and unpaid balances are subject to collection. In the event of collection, Reseller will be liable for costs of collection including attorney's fees, court costs, and collection agency fees.

4.14 Currency. Unless otherwise expressly stated herein, all money amounts referred to in this Agreement are in lawful money of the United States of America.

5. OTHER OBLIGATIONS OF RESELLER

5.1 Good Faith. Reseller will use good faith and commercially reasonable business practices to market, resell, and distribute the Services.

5.2 Exclusive Purpose. Reseller will use the Services only for the marketing, resale, and distribution of the Services in accordance with this Agreement and for no other purpose. Non-compliance with this section will constitute a material breach of this Agreement.

5.3 Contact Information. Reseller will provide Hostway with complete and accurate contact information of Reseller, as required by Hostway, and Reseller will ensure that such information is updated and kept current at all times.

5.4 Conflicting Agreements. If there is any conflict between this Agreement and any other agreement Reseller may be party to, then Reseller will adhere to all the provisions of this Agreement despite such adherence constituting breach of such other agreement.

5.5 Illegal Activity & Abuse. Reseller will not use, nor allow any Customers to use, the Services in a manner that is, or potentially is, illegal, a legal risk to Hostway, generally objectionable in the Internet community, or degrading to the quality, goodwill, reputation, or provision of the Services. Without limiting any other term of this Agreement, breach of this section will constitute a material breach of this Agreement.

5.6 Customer Service & Technical Support. Reseller must provide or ensure provision of customer service and technical support to each of the Customers procured by Reseller, including, but not limited to, the Customers procured by Sub-Resellers. Reseller may escalate Customers' technical support issues to Hostway only if Reseller is unable to resolve the matter and the matter is directly related to Hostway's provision of the Services. Hostway's only obligation is to provide Support Services to Reseller through telephone and electronic mail. Hostway may at its sole discretion, but is in no way obligated to, provide Support Services directly to Customer. If Hostway receives communications from Customers or from third parties regarding any Services procured through Reseller, Hostway may forward such communications to Reseller without taking any other action. However, Hostway reserves the right to respond to such communications directly and to take any action Hostway deems necessary. If Hostway determines that Reseller is providing inadequate support to Customers or Sub-Resellers (including, but not limited to, situations resulting in excessive numbers of support calls directly from Customers or Sub-Resellers to Hostway), then Hostway may, at its sole discretion, terminate this Agreement for cause.

6. CUSTOMERS

6.1 Customers. A Customer will remain at all times the customer of Reseller unless the Customer subscribes for or otherwise approaches Hostway, or any one of Hostway's other resellers, for Services without any solicitation from Hostway. Upon such subscription for Services, the Customer will become a customer of Hostway or one of Hostway's other resellers, as applicable. Under no circumstances will Hostway be obligated to intervene in any dispute of any nature between Reseller and a Customer.

6.2 Customer Data. Reseller understands and agrees that any and all information and data about Customers provided for the purpose of using the Services is in the public domain, and that Reseller, Hostway, Registries, or any other third party may not claim ownership of such data.

7. SUSPENSION AND TERMINATION

7.1 Suspension. Hostway may suspend Services to Reseller at any time for any reason provided for in this Agreement. Upon suspension, all Services to Reseller, including Services to Customers, will be stopped.

7.2 Termination by Either Party. Either Party may terminate this Agreement under the following circumstances:

- (a) By written instrument executed by both the Parties;
- (b) By execution of any right of termination under this Agreement, the TOU, or the Registration Agreement;
- (c) If a Party breaches this Agreement and such breach is not cured within thirty (30) calendar days of the breaching Party receiving from the non-breaching Party written notice to cure such breach;
- (d) If a Party materially breaches this Agreement and such material breach is not cured within fifteen (15) calendar days of the breaching Party receiving from the non-breaching Party written notice to cure such material breach; or

7.3 Termination by Hostway. Without limiting any other right of termination contained in this Agreement in its entirety, Hostway may immediately terminate this Agreement under any of the following circumstances:

- (a) If Reseller:
 - (i) makes a general assignment for the benefit of Reseller's creditors;
 - (ii) appoints or has appointed a receiver, trustee in bankruptcy or similar officer to take charge of all or part of Reseller's assets;
 - (iii) files or has a petition filed against Reseller in any bankruptcy;
 - (iv) is adjudicated insolvent or bankrupt; or

- (b) If Reseller uses any of the Services for, or otherwise engages in, any activity that is:
 - (i) actually or potentially illegal;
 - (ii) a legal risk to Hostway;
 - (iii) generally and materially considered objectionable in the Internet community; or
 - (iv) otherwise deemed by Hostway (at its sole commercially reasonable discretion) to be material abuse of the Services.

7.4 Effect of Termination. Upon expiration or termination of this Agreement:

- (a) Reseller will immediately cease, and will cause all Sub-Resellers, Reseller's Affiliates, employees, contractors, and agents to cease, all activities related in any way to this Agreement, including, but not limited to, marketing, selling or distributing the Services;
- (b) Each Party will cease displaying, advertising, and using the other Party's Intellectual Property;
- (c) All Registrants that have Domains registered with Hostway's domain name services provider at the time of expiration or termination will become, or otherwise be deemed, the exclusive Registrants (or otherwise customers) of that Registrar, and Reseller will not make any claim or assert any right thereto;
- (d) Any data belonging to Customers remaining on the server at the date of termination will be retained for thirty (30) days and may be restored upon the reactivation of Reseller's account; Reseller understands and warrants to ensure Customers understand that beyond this thirty (30) day timeframe Customers' data may not be retained and may be purged in the ordinary course of Hostway's business;
- (e) Within thirty (30) calendar days of termination of this Agreement, Reseller will pay to Hostway all outstanding Fees due and payable prior to the effective date of such termination; and
- (f) The terms of this Agreement that by their nature continue beyond the expiration or termination of this Agreement will continue to be effective (including, but not limited to, the terms relating to payment of Fees, termination, ownership of Customers, Intellectual Property, limitation of liability, indemnity, Confidential Information, and governing law).

8. INTELLECTUAL PROPERTY LICENSE

- 8.1 License. Subject to the limitations in this Agreement, the Parties grant to each other the non-exclusive, royalty-free, worldwide, revocable license to use each other's Intellectual Property solely in conjunction with the Services and all strictly in accordance with the provisions of this Agreement. Neither Party will, at any time during or after the expiration or termination of this Agreement, assert or claim any interest in, or do anything that may adversely affect the validity of, the Intellectual Property of the other Party (including, registering or attempting to register any trademark of the other Party or a mark confusingly similar thereto).

Each Party will at all times retain sole and exclusive right, title and ownership in and to all of its own Intellectual Property and other Proprietary Materials.

8.2 Term of License. The Intellectual Property license set forth herein will cease immediately upon the expiration or termination of this Agreement. Each Party's use of the license granted herein, and any goodwill arising therefrom, will inure to the sole benefit of the Party owning the Intellectual Property.

9. REPRESENTATION & WARRANTY

The Parties represent and warrant to each other as follows:

- 9.1 Each Party has the full power and authority to execute, deliver, and perform under this Agreement;
- 9.2 This Agreement is valid, binding, and enforceable against each Party in accordance with the terms herein and no provision requiring each Party's performance is in conflict with such Party's obligations under any other agreement;
- 9.3 Each Party is duly organized, authorized and in good standing under the laws of the jurisdiction of its organization and is duly authorized to do business in all other jurisdictions in which such Party's business makes such authorization necessary or required; and
- 9.4 Each Party has the full and exclusive right to grant or otherwise permit the other Party to access and use its products, services, Intellectual Property, and Confidential Information.
- 9.5 With respect to the performance of its obligations hereunder, each Party will comply with all applicable laws, rules and regulations.

10. LIMITATION OF LIABILITY

Under no circumstances will either Party be liable to the other Party or to any third party for any consequential, indirect, special, incidental, reliance, exemplary, or punitive damages arising out of or relating to this Agreement or the Services, whether foreseeable or not, and whether based on breach of any express or implied warranty, breach of contract, misrepresentation, negligence, or strict liability (including damages for loss of data, goodwill, reputation, business, money, or opportunity), even if such Party has been advised of the possibility of such damages. Except for the Parties' indemnification obligations set out herein, neither Party's aggregate liability to the other Party will exceed the aggregate amount of the Fees paid hereunder

11. DISCLAIMER & FORCE MAJEURE

Except as otherwise expressly agreed to herein, Hostway makes no warranty of any kind, either express or implied, regarding the quality, accuracy, reliability, or validity of the applications, software, data, or information related to Hostway's network, systems, or the Services. Hostway provides the Services "as is" and specifically disclaims all warranties of merchantability and fitness for a particular purpose. Reseller understands, acknowledges, and agrees that it will use the Services, and all aspects thereto, at Reseller's sole risk. Hostway will not be liable for delays in its performance of this Agreement caused by circumstances beyond its reasonable control ("Force Majeure"), including acts of God, wars, riots, national disasters, natural disasters, or governmental restrictions. Hostway will make all reasonable efforts to reduce to a minimum and mitigate the effect of any Force Majeure

12. INDEMNIFICATION

Reseller will indemnify, defend, and hold harmless Hostway including Hostway's Affiliates, directors, officers, managers, employees, contractors, agents, licensors, and any third party vendors and service providers from and against any claim, action, loss, liability, damage, penalty, cost or expense (including reasonable legal fees for attorneys, witnesses, and defense) that Hostway may suffer or incur as a result of:

- (a) Any Customers' use of the Services;
- (b) Reseller's use of the Services;
- (c) Any failure by Reseller to comply with the terms of this Agreement;
- (d) Any representation or warranty made by Reseller, its employee, contractor, agent or Sub-Reseller being false or misleading;
- (e) Any gross negligence or willful misconduct of Reseller, its employee, contractor, agent or Sub-Reseller;
- (f) Any Chargeback related to any of the Services;
- (g) Any alleged or actual violations by Reseller of any law, regulation or rule; or
- (h) Any other act or omission of Reseller, its employee, contractor, agent or Sub-Reseller.

13. CONFIDENTIALITY

Each Party (the "Recipient") will protect the confidentiality of any Confidential Information disclosed by the other Party (the "Discloser") and will not use such Confidential Information except in strict accordance with this Agreement. Confidential Information as defined herein does not include information that:

- (a) is generally available to the public through no fault of the Recipient and without breach of this Agreement;

- (b) was already in the possession of the Recipient prior to disclosure by the Discloser and without any confidentiality obligation attached thereto, as evidenced by the Recipient's records existing prior to the time of disclosure;
- (c) was disclosed to the Recipient by a third party without a breach of such third party's confidentiality obligations thereto;
- (d) was independently developed by the Recipient without a breach of this Agreement or reliance on any Confidential Information;
- (e) is disclosed by the Recipient after obtaining the Discloser's prior written approval; or
- (f) is required to be disclosed by law, provided that the Recipient promptly notifies the Discloser of the legal obligation and provides the Discloser with a reasonable opportunity to seek a protective court order, or the equivalent.

14. NOTICES

- 14.1 Method. Any notice or other communication between the Parties required or permitted under this Agreement will be in writing and will be delivered by hand, sent by first class mail (postage prepaid), sent by commercial courier, or transmitted by electronic mail or facsimile to a Party at the registered office, in the case of Hostway, and the contact information provided in the Registration Form, in the case of Reseller, or to such other contact information as the applicable Party may notify to the other Party.
- 14.2 Effectiveness. Any notice or other communication sent will: (a) if delivered by hand, be deemed to have been received on the date of delivery; (b) if sent by first class mail, be deemed to have been received on the third business day following the date of mailing; and (c) if sent by electronic mail or facsimile, be deemed to have been received on the date the sender transmitted the notice or other communication.

15. COMPLETE AGREEMENT

This Agreement includes the attached Schedules and all other agreements, policies, and documents incorporated into this Agreement by specific reference herein. This Agreement constitutes the complete agreement between the Parties relating to the subject matter hereof and supersedes all prior and other understandings, representations, warranties, and agreements relating hereto – whether verbal, written, or otherwise. If there is any conflict between the main body of this Agreement and any Schedule then the order of prevalence will be as follows: (1) This Agreement; then (2) The most recent Schedule.

16. NO THIRD PARTY BENEFICIARIES

This Agreement is for the sole benefit of the Parties, and does not create any rights on the part of any third party (including, but not limited to, any Sub-Reseller or Customer), and Reseller will not commit any act or omission that would give rise to any such third party rights.

17. AMENDMENTS & WAIVER

The operative and effective version of this Agreement shall be the latest version available at <http://www.hostway.com/legal/reseller-agreement.pdf>. Hostway may, at its sole discretion, make modifications to this Agreement and any Schedules attached hereto, from time to time and as reasonably necessary. Such modifications will take effect immediately upon posting of the updated Agreement on Hostway's website or otherwise made available online. It is Reseller's responsibility to frequently visit Hostway's Web site for updates to this Agreement. Reseller acknowledges and agrees that Reseller's sole remedy is to terminate this Agreement in accordance herewith if Reseller does not agree to any of the modifications Hostway may make to this Agreement. Reseller may amend this Agreement only by a written instrument executed by both the Parties. No waiver by a Party of a breach of any provision hereof will take effect or be binding upon that Party unless expressly waived in writing, and such waiver will extend and apply only to the particular breach so waived and will not limit or affect the rights of the waiving Party in respect of any future breach or in respect of any breach of any other provision hereof.

18. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement will be construed as creating a relationship of employer and employee, principal and agent, partnership or joint venture between the Parties. Each Party will be deemed an independent contractor at all times and will have no right or authority to assume or create any obligation on behalf of the other Party except as may be expressly provided herein.

19. ASSIGNMENT

Reseller will not assign or otherwise transfer its respective rights or obligations under this Agreement without the prior written consent of Hostway, which will not be unreasonably withheld. Any assignment or transfer in violation of this hereof will have no effect. This Agreement will be binding and have effect upon the Parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

20. GOVERNING LAW & SEVERABILITY

This Agreement will be governed and construed in accordance with the laws of the State of Illinois without giving effect to any rule of conflicts of law. This Agreement will not be governed by or construed in accordance with the United Nations Convention on Contracts for the International Sale of Goods. If any portion of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability will not affect the validity of the remainder of this Agreement.

21. CONSTRUCTION & INTERPRETATION

21.1 References. All references in this Agreement to particular sections, titles, and Schedules will be references to the sections, titles, and Schedules of this Agreement only unless specific reference is made otherwise. The words “herein”, “hereof”, “hereto”, and “hereunder” and words of similar meaning will refer to this Agreement in its entirety and not to any particular provision of this Agreement. Wherever in this Agreement that the masculine, feminine or neutral gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires.

21.2 Without Limitation. When used for listing purposes, the term “including” or “includes” shall be deemed to mean “including, but not limited to” or “includes, but is not limited to,” as applicable. Wherever in this Agreement that the masculine, feminine or neutral gender is used, it shall be construed as including all genders, and wherever the singular is used, it shall be deemed to include the plural and vice versa, where the context so requires.

21.3 Translations. This Agreement has been executed in the English language. If there is any discrepancy or conflict between the English version and a version in any other language, then the English version will control in all respects.

21.4 Contra Proferentum. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement

22. EXECUTION

The individual executing this Agreement, by clicking the “SUBMIT” button, on behalf of Reseller represents and warrants that s/he is authorized to execute this Agreement on behalf of Reseller and, to the best knowledge of such individual, all representations made in this Agreement by Reseller are true and correct.

SCHEDULE 1 – DOMAIN SERVICES

This Schedule 1 is in addition to, and incorporated as part of, the Hostway Reseller Agreement (the “Agreement”). All terms in Schedule 1 beginning with capital letters, and/or all undefined terms, shall take on the same definition as in the Agreement. Only subject to the provisions of Schedule 1, all the terms and conditions of the Agreement shall remain in full force and effect between the Parties. In the event of any conflict between Schedule 1 and the Agreement, this Schedule 1 shall supersede and control in all respects. The terms hereunder apply only to the provision of Domain Services.

1. Domain Services

1.1 Domain Services. The Domain Services include, but are not limited to, the following:

- (a) Registering Domains to Registrants procured by Reseller;
- (b) Providing access to and use of Whois capabilities;
- (c) Providing technical and administrative support services to Reseller to enable registrations, renewals, modifications, and registrar transfer services for Domains;
- (d) Processing modifications, ownership transfers, registrar transfers, renewals, and cancellations of Domains;
- (e) Providing use of Hostway’s domain name system servers for registration Domains;
- (f) Providing Resellers use of the Software;
- (g) Use of Hostway’s Software technology; and
- (h) Such other services and products that Hostway may provide to Reseller depending on the selections Reseller makes in the Registration Form.

Reseller understands and agrees that certain Domain Services may be provided by a third party designated by Hostway, from time to time at its sole discretion, including Registrars.

1.2 Whois Information. For all Domain related Services, Reseller will ensure that the Whois and other information of Customers are at all times complete and accurate, and that such information is updated and kept current at all times.

1.3 Administrative Contact Change. If Reseller intends on changing the Registrant name, Admin Contact, or domain name server information (“DNS Information”) for any Domain procured by Reseller and registered by Hostway, then Reseller must obtain a written consent signed by the Registrant or Admin Contact prior to making any such change. Reseller will be solely liable at all times, and Hostway will not be liable whatsoever, for any change to the Registrant name, Admin Contact, or DNS Information made by or through Reseller. If there is any conflict as to the authenticity of any such change, then Hostway will have the right to make a determination, at its sole discretion, as to the correct Registrant, Admin Contact, or DNS

Information, and Reseller agrees to cooperate with and be bound by such determination. If Hostway determines that the change was not authorized, then Hostway will have the right to change the Registrant name, Admin Contact, or DNS Information back to the previous one. Without limiting any other term of the Agreement, breach of this section will constitute a material breach of the Agreement.

- 1.4 Right to Transfer. Hostway also reserves the right to transfer any Domain away from Reseller with the consent of the Registrant or administrative contact of the Domain (“Admin Contact”).
- 1.5 Renewal of Domains. Unless otherwise agreed by the Parties in writing, Hostway may contact the Registrant directly to procure Registrant’s Domain renewal through Hostway.
- 1.6 Add Grace Period Deletions. If Reseller registers Domains through direct server to server XML communications (“XML”), then Reseller acknowledges that it will have the ability to delete domains through the XML within a 4-calendar-day period following the Domain registration (“Add Grace Period”) for the following top-level domain extensions: .com, .net, .org, .info, .biz, .mobi, and .name. Reseller will ensure that Domains deleted during the Add Grace Period are fully refunded, less the applicable Service Fee for deletions during the Add Grace Period. Reseller acknowledges and understands that Domain related Services related to deletions under the Add Grace Period will not be available for transactions processed through the Services relating to either Hostway’s email template system or through Hostway’s online HTML registration tools.

SCHEDULE 2 – WEB HOSTING SERVICES

This Schedule 2 is in addition to, and incorporated as part of, the Hostway Reseller Agreement (the “Agreement”). All terms in Schedule 2 beginning with capital letters, and/or all undefined terms, shall take on the same definition as in the Agreement. Only subject to the provisions of Schedule 2, all the terms and conditions of the Agreement shall remain in full force and effect between the Parties. In the event of any conflict between Schedule 2 and the Agreement, this Schedule 2 shall supersede and control in all respects. The terms hereunder apply only to the provision of Web hosting Services.

1. Web hosting Services

- 1.1 Web hosting Services. Hostway shall provide Web hosting and related Services as described on Hostway’s website at: <http://www.hostway.com/resellers>. The Web hosting Services provided are subject to change at Hostway’s sole discretion and it is Reseller’s responsibility to visit the aforementioned website from time to time to review the most current Services offered.
- 1.2 Network Uptime. Hostway will ensure that its network uptime will be available on average 99.9% of the time in a given calendar month, excluding periods of scheduled and emergency maintenance. Network “uptime” means functioning of all Hostway network infrastructure including routers, switches and cabling, but does not include the services or software running on such servers. Network “downtime” means when Hostway directly causes or knowingly allows a Customer to be unable to transmit and receive data to and from Hostway’s network. Network downtime is measured from the time that Hostway’s records and processes a report in its systems regarding the matter (referred to as “opening a trouble ticket”).
- 1.3 Maintenance. Maintenance windows will be exempt from any uptime or downtime measurements provided for in this Agreement or any of the attached Schedules.
 - 1.3.1 Scheduled Maintenance. Scheduled maintenance windows will be no more than seven (7) hours in duration starting from 10pm to 5am Central Standard Time. Hostway may, but is not obligated to, provide Reseller with twenty-four (24) hours notice of any scheduled maintenance.
 - 1.3.2 Emergency Maintenance. Emergency maintenance windows will be no more than seven (7) hours in duration starting from 10pm to 5am Central Standard Time. Hostway may if practicable, but is not obligated to, provide Reseller with notice of such emergency maintenance. The Company will decide at its sole reasonable discretion what constitutes an “emergency” maintenance.
- 1.4 Email. In a given calendar month, Hostway will ensure an average of 99.9% availability of POP, SMTP, or IMAP email services to Reseller and Customers to access their emails using client email applications approved by Hostway (e.g., Outlook and Web-based email applications).