

## **Rediff Hosting Business Associate Agreement**

THIS REDIFF HOSTING BUSINESS ASSOCIATE AGREEMENT (the "Agreement") shall constitute binding terms between REDIFF.COM INDIA LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 1<sup>st</sup> Floor, Mahalaxmi Engineering Estate, L. J. Road No.1, Mahim (West), Mumbai 400 016 INDIA (the "Company") and You ("You" / the "Business Associate"). You agree that you have the legal capacity and authority to bind the corporation, which you are representing, and you and your organization shall be bound by the terms and conditions of this agreement. The above referred Company and Business Associate are collectively referred to as "Parties" and individually as "Party".

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

### **1. Definitions**

As used herein, the following terms shall have the meanings set forth below:

1.1. "Products" / "Services" shall mean the Company's services or any combination thereof to be resold by Business Associate such as Rediff Business Solutions (Domain Registrations plus Email plus Hosting), Rediff WEBPro, Rediffmail Pro, Hosting Services and such services and as may be communicated by the Company in writing to the Business Associate from time to time.

1.2. "Enduser" / "Customer" shall mean any person who purchases the Products/Services from the Business Associate for his ultimate use and who shall not have the right to sub-license it to any other party.

1.3. "Terms and Conditions of Use" shall mean the terms and conditions pursuant, to which the said Services shall be used by the Enduser and which are accessible by the Business Associate and End user on <http://hosting.rediff.com> or <http://rediffmailpro.com> or <http://www.rediff.com> (collectively referred to as "Rediff Site").

1.4. "Disclaimer Policy" shall mean the Disclaimer Policy of the Company with regards to the use of the Products/Services.

### **2. Distribution Rights**

Company hereby appoints Business Associate as its non-exclusive reseller for the Services, and Business Associate hereby accepts such appointment. The Business Associate's sole authority shall be to solicit Customers for the Services in accordance with the terms of this Agreement.

#### **2.1. Limited Right to Resell**

2.1.1. Business Associate hereby agrees and acknowledges and Company hereby grants the nontransferable, non-exclusive, non-licensable, revocable right to resell the Products to the End user during the term of this Agreement.

2.1.2. All Products purchased by the Business Associate and resold to the End user shall be subject to the Terms and Conditions of Use and Disclaimer Policy in this regard and that the Business Associate further agrees that this agreement shall be read in conjunction with the said Terms and Conditions of Use and Disclaimer Policy.

2.1.3. Business Associate and its employees shall not have the authority to make any commitments, representations or warranties whatsoever, whether express or implied on behalf of Company otherwise than is expressly permitted under these presents.

2.1.4. Except as expressly provided, all the rights in the Products / Services are owned by the Company. Business Associate agrees and acknowledges that Business Associate does not own any right including Intellectual Property Rights in the Product /Services of the Company and shall not claim any right in future.

2.2. Business Associate its employees and agents, shall provide Services as an independent "Service Provider" on a non-exclusive basis and nothing contained herein shall be deemed to create any partnership, joint venture, employment or relationship of principal and agent between the parties hereto or between the Company and Business Associates and its employees or to provide Business Associate with any right, power or authority, whether

express or implied to create any such duty or obligation. This Contract is on a principal-to-principal basis and does not create any employee employer relationship or principal and agent relationship.

2.3. Company reserves the right to solicit/engage other Agents, Representatives and /or Business Associates for the purpose of reselling its Products/Services.

### **3. Obligations of Business Associate**

3.1. Business Associate shall while registering furnish the complete and accurate details including the contact information (including without limitation, full name and postal address, email address, Telephone No. and Fax No.) and such other particulars to the Company in the online registration form and shall keep such information updated at all times.

3.2. Business Associate shall use his best efforts to promote the Services and maximize the sale of the Services. Business Associate shall also provide reasonable assistance to Company in promotional activities. Business Associate will assist the Company by taking part in all promotional events, use the marketing inputs judiciously for maximizing orders for the Company.

3.3. Business Associate must have and maintain good, fundamental understanding of the Company Products / Services and related plans.

3.4. Business Associate shall provide customer service, registration, billing services and technical support to the End user and shall furnish complete and accurate details and such other particulars of the Customer to the Company. Business Associate shall ensure that each End User indicates his/her agreement to the Terms and Condition as available on Rediff Site.

3.5. Business Associate shall be solely responsible for the collection of Payments from End user.

3.6. Business Associate shall be responsible for providing all technical support to the End users. Any failure of the Business Associate to provide appropriate technical support shall be deemed to be a material breach of this agreement and in that event the Company reserves the right to terminate this agreement. Business Associate shall have the right to contact the Company from time to time for the technical assistance.

3.7. Business Associate shall at all times adhere to and comply with the Terms and Conditions of Use. Business Associate shall ensure that the End user complies with the Terms and Conditions of Use and that the Business Associate agrees that the Company is in the intended third party beneficiary of the transaction between the Business Associate and the End user. Business Associate acknowledges and agrees that the Business Associate shall be responsible for any liability resulting from a End user's non-compliance with the Terms and Conditions of this Agreement.

3.8. Business Associate shall not copy, reverse engineer, disassemble, decompile, translate or modify the Product/Services or grant any other person the right to do so.

3.9. During the term of this Agreement, Business Associate shall not represent, promote or otherwise try to sell any Services that, in Company's judgment, compete with the Services covered by this Agreement.

3.10. Business Associate shall bear the cost and expense of conducting its business. This would include but not limited to salaries for the staff of the Business Associate who are engaged in the business of selling the products of the Company, expenses related to communications, telecommunication, mailing, conveyance and business entertainment if required. The Company will not entertain any reimbursement on any expense made by the Business Associate.

3.11. Business Associate shall make efforts to promote the sale of and stimulate demand for the Services by direct solicitation. In no event shall Business Associate make any representation, guarantee or warranty concerning the Services except as expressly authorized by Company. The Company will take care of all online promotions on their website and ensure lead generations. Use of Company logo, product logo, any advertising / promotion / marketing activity conceived originally by the Business Associate should be first approved in writing by the Company before being implemented.

3.12. Business Associate shall inform and assist End Users on Company's Services, and shall perform such additional customer services by e-mail, phone and fax, whenever needed, as good salesmanship requires and as Company may reasonably request.

3.13. Business Associate shall notify the Company of any Customer's complaints regarding the Services and immediately forward to Company the information regarding those complaints.

3.14. Business Associate shall promptly notify of any claims, allegations or other notifications that he becomes aware of in respect of infringement of any of the property rights or misuse of any of the products/services of the Company.

3.15. Business Associate agrees and undertakes to comply with all applicable laws, rules and regulations (including in relation to Tax) existing and as may be amended from time to time in connection with the performance by the Business Associates of his obligations.

3.16. Business Associate shall be liable for and pay all costs and expenses incurred in connection with the performance of its obligations under this Agreement.

3.17. Business Associate agrees that the right granted to him by the Company shall be used for the purpose for which it is granted as per Clause 2 above and that the said right shall not be used by the Business Associate for any other purpose. The Company does not grant any license to the Reseller for the Services under these presents. The Business Associate is purchasing a product and reselling it in the open market.

3.18. Business Associate shall not allow, enable or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via email, facsimile or telephone; enable high volume, automated electronic processes that apply to the Services to be resold.

#### **4. Sale of Services**

##### **4.1. Prices and Terms of Sale**

4.1.1. The current market price of the services, its payment schedules, and all Rules and Regulations and other material available for sales presentation and customer's information shall be made available by the Company on Rediff Site. Business Associate should regularly check the current market price at the Rediff Site. The price is subject to change and the sole discretion of the same lies with the Company.

4.1.2. Business Associate shall be free to determine its own pricing for reselling the Product. It is recommended that the Business Associate should price the Services at the MRP as determined by the Company from time to time and indicated on Rediff Site.

4.1.3. In consideration of the Business Associate's services the Company shall provide the Products/Services to the Business Associate at a discounted price. The said Price shall be the discounted MRP of the Product/Services also referred to as Business Associate Price. The said price shall be reflected in the Business Associate's account.

4.1.4. The Business Associate shall pay the entire amount in advance in respect of the Products purchased by the Business Associate. After receipt of the said amount the Company shall allot the said product to the Business Associate who will then resell the same to his clients i.e., end users.

4.1.5. The services are prepaid services and will be activated by the Company only after receipt of 100% payment pertaining to the services purchased.

4.1.6. The Company shall terminate the account of the Business Associate immediately in case the payment is uncollectable on account of chargebacks or cheque bouncing. The Business Associate further agrees that the Business Associate shall be solely liable for making good the losses, charges incurred if any incurred by the Company due to uncollectable payments.

4.1.7. The Company shall not be bound under any circumstances to refund the amount paid by the Business Associate under these presents.

##### **4.2. Chargebacks**

The Business Associate agrees that any transfer/ payment instructions accepted by the Business Associate from the End user which result in the payments being uncollectable by reason of any dispute raised by a Customer / Customer's bank, shall be the financial

responsibility of the Business Associate and the Company shall in no way be liable for the chargebacks. Rediff shall not entertain any claims of the end users in respect of chargebacks. The Business Associate will have to take up all issues with the End user.

## **5. Obligations of the Company**

5.1. The Company shall on the appointment of Business Associate create the account for the Business Associate and allot the user name and password for his account.

5.2. Company shall, assist Business Associate of the Services in the way deemed reasonable by Company in the solution of any problems relating to the Services.

5.3. Once the Business Associate has been allotted user Id and password on registration with the Company, the Company will allow the Business Associate to access the Control Panel and to manage the services of its end users.

5.4. The Company shall process the Transactions that have been properly procured by Business Associate. Notwithstanding the foregoing, the Company reserves the right to reject any order or to delete any processed order in accordance with this Agreement or the Terms and Conditions of Use. Business Associate agrees that the Company, may in its sole discretion, may modify and/or terminate its services at any time.

5.5. The Company shall not be liable to refund the amount paid by the Business Associate in the event the Business Associate is not able to resell whole or any part of the Products/Services purchased by the Business Associate.

## **6. Service Usage**

6.1. The services provided under this arrangement may be utilized by the Business Associate and the End user only for lawful purposes and the usage of services in connection with or adjunct to any matter or thing, which violates any foreign, municipal, state, country regulation is prohibited. Business Associate hereby expressly agrees, understands, acknowledges and undertakes that the Company shall not be liable for any cost, claims, damages arising out of the including but not limited to abuse, spamming, misuse of the Services resold by the Business Associate to the End user. In the event the Services are being used in the manner inconsistent with what is specified hereinabove, Business Associate agrees to indemnify and hold harmless the Company, its directors, officers, employees, representatives, agents from and against any claims, actions, causes of action, administrative or government action, losses or damages (including reasonable attorney fees) arising from the usage by the Business Associate or End User of the service.

6.2. At any time if the Company believes that the services are being utilized by the Business Associate or the End user in contravention of the terms and provisions of this Agreement, Terms and conditions of use, the Company shall have the right either at its sole discretion or upon the receipt of a request from the legal / statutory authorities or a court order to discontinue/terminate the said service(s) to Business Associate or the End user as the case may be, without liability to refund the amount for unearned prepaid service and furnish the registration, contact details of the End user and/or Business Associate on the request received from the Legal/ Statutory Authorities or under a Court order. Further the Business Associate shall be under the obligation to furnish the registration, contact and such other details of the End user within 24 hours of the request by the Company.

## **7. Independent Contractor**

Business Associate is an independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as partners, joint ventures, co-owners or otherwise, or (iii) allow Business Associate to create or assume any obligation on behalf of Company for any purpose whatsoever. Business Associate is not an employee of Company and is not entitled to any employee benefits. Business Associate shall be responsible for paying all income taxes and other taxes charged to Business Associate on amounts earned hereunder. All financial and other obligations associated with Business Associate's business are the sole responsibility of Business Associate.

## **8. Trademarks and Tradenames**

8.1. During the term of this Agreement, Business Associate shall have the right to indicate to the public that it is an authorized Business Associate of Company's Services. Nothing herein shall grant Business Associate any right, title, or interest in Company's Trademarks. At no time during or after the term of this Agreement shall Business Associate challenge or assist others to challenge Company's Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of Company.

8.2. The Business Associate further agrees not to use the trademarks and tradenames belonging to the Company in a manner otherwise than authorized by the terms of this agreement. Business Associate further agrees to obtain a prior written approval of the Company before using any trademark or tradenames owned by the Company.

8.3. Upon termination of this Agreement, the Business Associate shall forthwith cease to use all trademarks / logos belonging to the Company, whether in relation to the Services or otherwise as were permitted to be used for the purpose of this Agreement.

## **9. Term and Termination**

9.1. This Agreement shall commence on the date on which this Agreement is executed. This term of this Agreement shall be for the duration for which the Services are purchased by Business Associate or has exhausted his funds deposited with the Company and chooses not to renew his account, whichever is earlier.

9.2. Either party to this agreement shall have the right to terminate this agreement with or without cause with a thirty (30) days prior written notice to the other party. However, in the event the Business Associate terminates this agreement, the Company shall not refund the amount already paid by the Business Associate for the unearned prepaid service period.

9.3. All of Company's trademarks, trade names, data, photographs, literature, and sales aids, customer related database of every kind shall remain the property of Company. Within five (5) days after the termination of this Agreement, Business Associate shall return all such items to Company. Business Associate shall not make or retain any copies of any confidential items or information that may have been entrusted to it. Effective upon the termination of this Agreement, Business Associate shall cease to use all trademarks, marks and trade name of Company.

9.4. The Company shall immediately terminate the Services to the Business Associate in the event the Business Associate misuses or abuses the services, breach of any terms and conditions of this Agreement, has provided forged cheques, furnished the credit cards details which are stolen by him for purchasing the products of the Company.

9.5. The Company reserves the right to modify the Terms and Conditions of Use of the Services from time to time without any prior notification. Business Associate and the End user are advised to check and review the said Terms and Conditions. At any point of time during the term of this Agreement if the Business Associate is not agreeable to the modified Terms and Conditions the Business Associate should discontinue using the Services. The Business Associate continued use of the Services would constitute binding acceptance of the modification.

## **10. Indemnification by Business Associate**

Business Associate shall indemnify and hold Company, its directors, officers, employees, representatives and agents free and harmless from any and all claims, losses, damages or lawsuits (including reasonable attorneys' fees) arising out of negligence or malfeasance acts of Business Associate, its employees, End Users or misrepresentation or breach of any obligations under this agreement, infringement of any third party rights including intellectual property rights, any third party claims arising out of any action or inaction on the part of the Business Associate or its employees, End Users. This clause shall survive the termination or sooner determination of the agreement.

## **11. Disclaimer**

EXCEPT AS SET FORTH HEREIN, THE LIMITED WARRANTIES AS SPECIFIED IN THE TERMS AND CONDITIONS OF USE, THE COMPANY HEREBY EXPRESSLY DISCLAIMS ANY WARRANTIES WHETHER EXPRESS OR IMPLIED ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, CONITUNITY, PERFORMANCE, PRODUCTS, SERVICES CONTAINED/DISPLAYED WITHIN THE REDIFF SITES/SERVICES FOR ANY PURPOSE. ALL SUCH INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. REDIFF HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THIS SERVICE, SOFTWARE, PRODUCTS AND SERVICES, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, TITLE AND NON-INFRINGEMENT.

## **12. Limitation on Liability**

In the event of termination by either party in accordance with any of the provisions of this Agreement, the Company shall not be liable to the Business Associate, for any compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures or commitments in connection with the business of Business Associate.

## **13. Confidentiality**

Business Associate acknowledges that by reason of its relationship to Company hereunder it will have access to certain information and materials concerning Company's business plans, customers, technology, and products/services that is confidential and of substantial value to Company, which value would be impaired if such information were disclosed to third parties. Business Associate agrees that it shall not use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it by the Company. Company shall advise Business Associate whether or not it considers any particular information or materials to be confidential. Business Associate shall not publish any description of the Products/Services beyond the description published by Company and without the prior written consent of the Company. In the event of termination of this Agreement, there shall be no use or disclosure by Business Associate of any confidential information of Company. This clause shall survive the termination or sooner determination of the agreement.

## **14. Entire Agreement**

This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes any prior discussions or agreements between them.

## **15. Non-Assignability**

Business Associate shall not assign or transfer its rights or obligations under or interest in this Agreement without prior written consent of the Company. Any attempt by the Business Associate to assign any of its rights without prior written consent of the Company shall be null and void.

## **16. Severability**

If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.

## **17. Governing Law and Jurisdiction**

This Agreement will be governed by and construed in accordance with the laws of Union of India. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts in Mumbai (India).

THE BUSINESS ASSOCIATE HEREBY EXPRESSLY AGREES AND ACKNOWLEDGES THAT THE BUSINESS ASSOCIATE HAS READ AND UNDERSTOOD THE TERMS AND CONDITIONS CONTAINED HEREINABOVE AND UNDERTAKES TO ABIDE BY AND COMPLY WITH THESE TERMS AND CONDITIONS DURING THE TERM OF THIS AGREEMENT.