

**AGREEMENT TO ALLOW FOR THE PROVISION
OF TUCOWS' BLOGWARE**

This Agreement by and between:

Tucows.com Co.

("Tucows")

- and -

You, the Reseller

("Reseller" as defined below)

WHEREAS Tucows has created a Blogware product designed to facilitate the creation of website pages by end-users;

AND WHEREAS Reseller desires to provide the Blogware product to end user customers;

NOW, THEREFORE, Tucows and Reseller, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

- (a) "Blogware" and "Service" mean the web content management service provided by Tucows;
- (b) "Confidential Information" means the product information, software, API and all other related data, information protocols, reference implementation and documentation, functional and interface specifications and any other information exchanged between Tucows and Reseller pursuant to this agreement unless such information is expressly stated to be non confidential or intended for public distribution;
- (c) "Content" means the material posted on the Web Log;
- (d) "Customer" means the Blogware end user publishers;
- (e) "Effective Date" shall mean the date Reseller accepted the Agreement as recorded on Tucows' logs;
- (f) "Fee(s)" mean the monies payable for Blogware in accordance with Section 3 herein;
- (g) "Guest" means those persons to whom the Customer has granted access to visit or comment on a Web Log;
- (h) "Term" has the meaning outlined in Section 4 of this Agreement;
- (i) "Trackbacks" means a peer-to-peer communication system designed to send notification of updates between websites that have posted to a Web Log on the same topic.

- (j) "Transfer" means the amount of bandwidth used in publishing the Web Log to Guests
- (k) "Web Log" means the website created by Customer using Blogware ;

2. **SERVICES PROVIDED**

- 2.1 Tucows shall provide Reseller access to Blogware in accordance with the specifications and conditions outlined herein in order that Reseller may make Blogware available to Customers for the purpose of creating and editing websites.
- 2.2 Reseller shall be responsible for providing customer service, billing and technical support and customer interface to accept Customer orders.
- 2.3 Reseller shall ensure that each Customer agrees to be bound by the terms and conditions delineated on Schedule A or such other end user conditions as Tucows may post on its website from time to time. Any failure by Reseller to enforce the terms and conditions of this Agreement and its Schedules shall be deemed a material breach entitling Tucows to immediate termination of this Agreement.
- 2.4 Reseller shall be entitled to bind Customers to its own terms and conditions so long as they include terms and conditions no less protective to Tucows than those set forth herein. Reseller acknowledges that any Publisher and Guest Agreement is provided by Tucows for precedent purposes only; Tucows does not purport to provide Reseller with legal advice and Reseller agrees that it shall seek any independent legal advice it deems necessary in order that it may satisfy itself that it is operating Blogware in compliance with local laws and regulations.
- 2.5 Reseller agrees to notify Tucows promptly of the existence of any improper use of Blogware of which Reseller becomes aware. Tucows shall have the right, in its sole discretion, to delete any or all of a Customer's Blogware site if it believes that Customer is making improper use of Blogware. Tucows shall provide Reseller with prompt notice of any such deletion.
- 2.6 Reseller shall develop and employ all necessary technology and restrictions to ensure that its connection to Tucows or its designees and all transmissions between Reseller, Customers and Tucows or its designees that are initiated for the purpose of creating, deleting or modifying data are secure. Reseller shall authenticate every connection with Tucows or its designee using its password, which it shall disclose only to its employees with a need to know. Reseller shall notify Tucows as soon as practically possible that its password has been compromised in any way.
- 2.7 Reseller agrees that all use of Blogware shall be in accordance with the policies, practices and regulations of Tucows and all applicable laws and regulations.
- 2.8 Reseller agrees that it will not use or promote Blogware as a tool to increase search engine rankings or affiliate income. In the event that Reseller believes that a Customer is using Blogware for this purpose it shall notify the Customer of same and immediately delete the Web.

3. FEES

- 3.1 Reseller shall pay to Tucows the non-refundable amounts set forth on Schedule B. Tucows reserves the right to change the Fees upon notice to Reseller.
- 3.2 Prior to using or selling Blogware, Reseller shall forward a sum agreed by the parties to Tucows on account. As Blogware is provisioned and maintained by Reseller, Tucows shall provide Reseller with regular statements and shall withdraw amounts owing from Reseller's account. Tucows shall maintain a record of Reseller's account balance which shall be accessible by Reseller. If Reseller's account balance is fully depleted at any time, Reseller may not be permitted to provision any further Blogware until such time as Reseller's account balance is restored.
- 3.3 Payment may be submitted by Reseller to Tucows in the following manners:
- (a) Via wire transfer to:
Beneficiary Bank: [HSBC Bank Canada](#)
[70 York Street](#)
[Toronto](#)
SWIFT: [HKBCCATT](#)
Beneficiary Name: [Tucows.com Co.](#)
Beneficiary A/C No: [002-348624-070](#)

Reseller agrees that all wire transfer charges will be the responsibility of the remitter.

- (b) Via cheque made payable to Tucows.com Co. and delivered to:
Tucows.com Co.
96 Mowat Avenue
Toronto, Ontario M6K 3M1
CANADA
- (c) Via credit card by submitting a signed copy of the form made available for such purpose on Tucows website:
(<http://resellers.tucows.com/ccpayment.pdf>).

4. TERM OF AGREEMENT

- 4.1 The term of this Agreement shall be one year from the Effective Date and will automatically renew for successive one (1) year renewal terms (each a "Renewal Term" and cumulatively the "Term". The Term shall continue until the earlier of the following: (i) the Agreement is terminated as provided herein, (ii) Reseller informs Tucows in writing that it does not intend to renew for a renewal Term, (iii) Tucows elects to cease the provision of Blogware. In the event of a uniform termination of Blogware, Tucows shall continue to service Reseller's existing Customers for a period of ninety (90) days.
- 4.2 Termination For Cause. If either party (or, in the case of Reseller, an agent of Reseller) materially breaches any term of this Agreement and such breach is not cured within ten

(10) calendar days after written notice thereof is given by the other party, then the non-breaching party may, by giving written notice thereof to the other party, terminate this Agreement as of the date specified in such notice of termination.

4.3 In addition to the foregoing rights of termination, if Tucows, in its reasonable discretion, determines that Reseller has breached any provision of this Agreement, is in violation of any Tucows policy or regulation as amended from time to time, or is engaging in conduct that breaches or may put Tucows in breach of any governing authority, public policy or third party agreement, or is engaging in conduct that puts pressure on Tucows' systems, Tucows shall have the right to suspend Reseller's access to Blogware pending the cure of such breach to the reasonable satisfaction of Tucows. Failure of Reseller to remedy its practices to the satisfaction of Tucows within a reasonable period shall entitle Tucows to immediate termination of this Agreement.

4.4 Early Termination. Either party may terminate this Agreement at any time by giving the other party thirty (30) days written notice of termination.

5. **CONFIDENTIALITY**

5.1 Reseller acknowledges and agrees that:

- (a) Each party acknowledges that it may have access to Confidential Information of the other party or its affiliates (collectively, the "Disclosing Party"). Each party shall keep in strict confidence and not use or disclose the Disclosing Party's Confidential Information except for the purpose of performing or enabling its employees and affiliates to create and operate the services provided by this Agreement or as may be required by law. An affiliate is a company controlling, under the control of, or under common control with, a party.

6. **REPRESENTATIONS AND WARRANTIES**

6.1 Blogware is provided "as is" without any warranty, express or implied, of any kind. THE WARRANTIES AND CONDITIONS STATED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TUCOWS SHALL NOT BE LIABLE FOR ANY MISREPRESENTATION OR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY OR CONDITION, OR BE OTHERWISE LIABLE IN CONTRACT OR TORT, FOR: (A) DIRECT, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES; (B) LOSS OF REVENUE; (C) LOSS OF PROFITS; (D) LOSS OF BUSINESS OR GOODWILL; (E) LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR (F) PUNITIVE DAMAGES EVEN IF TUCOWS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TUCOWS NEITHER WARRANTS NOR MAKES ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF BLOGWARE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. RESELLER'S SOLE REMEDY IN THE CASE OF ANY LOSS OR DAMAGE RESULTING FROM ANY MISREPRESENTATION, BREACH OF CONTRACT, NEGLIGENCE, ERROR OR DEFECT IN THE SERVICES PROVIDED BY TUCOWS HEREUNDER SHALL BE TERMINATION OF THIS AGREEMENT.

7. **INDEMNIFICATION**

7.1 Reseller, at its own expense, will indemnify, defend and hold harmless Tucows and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against Tucows based on or arising from any claim or alleged claim (i) relating to any product or service of Reseller; (ii) relating to any agreement with any Customer of Reseller; or (iii) relating to Reseller's business, including, but not limited to, Reseller's advertising, systems and other processes, fees charged, billing practices and Customer service; provided, however, that in any such case: (a) Tucows provides Reseller with prompt notice of any such claim, and (b) upon Reseller's written request, Tucows will provide to Reseller all available information and assistance reasonably necessary for Reseller to defend such claim, provided that Reseller reimburses Tucows for its reasonable costs. Reseller will not enter into any settlement or compromise of any such indemnifiable claim without Tucows' prior written consent, which consent shall not be unreasonably withheld. Reseller will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Tucows in connection with or arising from any such indemnifiable claim, suit, action or proceeding. If Tucows is threatened with suit by a third party, it may seek written reiteration of Reseller's indemnification obligations; any failure by Reseller to provide said written assurance may result in suspension or termination of its account.

8. **MISCELLANEOUS**

- 8.1 All references in this Agreement to dollars are expressed in US currency.
- 8.2 No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing.
- 8.3 This Agreement shall ensure to the benefit of and be binding upon Tucows and Reseller as well as all respective successors and permitted assigns.
- 8.4 Privacy. Information collected about both you and your Customers is subject to the terms of Tucows' privacy policy, the terms of which are hereby incorporated by reference. Tucows' privacy policy can be found at: <http://www.tucows.com/privacy.html>.
- 8.5 Intellectual Property. Tucows claims copyright in and to all interface elements presented on the Web Logs as well as for the default templates and styles available to Reseller and its Customers for use on their individual Blogware. Subject to the provisions of this Agreement, each party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property.

9. **FORCE MAJEURE**

9.1 Neither party shall be responsible for any failure to perform any obligation or provide service hereunder because of any Act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, equipment or facilities shortages or other similar force beyond such party's reasonable control.

10. **NO PARTNERSHIP**

10.1 This Agreement does not provide and should not be construed to provide third parties, including end-user customers of Reseller, with any claim, remedy, cause of action or privilege. Nothing in this Agreement shall be construed as creating a partnership, agency relationship or a joint venture between the parties.

11. **GOVERNING LAW**

11.1 This Agreement shall be governed by and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the provincial courts located in Toronto, Ontario, Canada.

12. **AMENDMENT**

12.1 During the period of this Agreement, Reseller agrees that Tucows may: (1) revise the terms and conditions of this Agreement; and (2) change the services provided under this Agreement by posting notice of same on its website. If Reseller does not agree with any revision to the Agreement, and if those revisions are materially adverse to Reseller, Reseller may terminate this Agreement by providing Tucows with notice by e-mail or regular mail. Reseller agrees that, by continuing to use and/or sell Blogware following any revision to this Agreement or change in service(s), Reseller shall abide by any such revisions or changes.

13. **NOTICES**

13.1 Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by telecopier during business hours, or by electronic mail) to the address, telecopier number, or e-mail address set forth on the signature page of this Agreement.

13.2 Any telecopier or electronic mail communication shall be deemed to have been validly and effectively given on the date of such communication, if such date is a business day and such delivery was made prior to 16:00 (Eastern Standard Time) and otherwise on the next business day. Any communication sent via regular mail shall be deemed to have been validly and effectively given five (5) business days after the date of mailing.

14. **SURVIVAL**

14.1 In the event of termination of this Agreement for any reason, Sections 5, 6, 7, 8 and 11 shall survive.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the later date set forth below.

TUCOWS.COM CO.

96 Mowat Avenue

Toronto, Ontario

Canada

M6K 3M1

Phone: 1-416-535-0123

Fax: 1-416-531-2516

By:

Signature: _____

Name: _____

(Please Print)

Title: _____

Date: _____

RESELLER: _____

OpenSRS Username: _____

Address: _____

Phone: _____

Fax: _____

By:

Signature: _____

Name: _____

(Please Print)

Title: _____

Date: _____

SCHEDULE A
RESELLER OBLIGATIONS

Resellers agree to bind Customers to the following conditions:

1. CUSTOMERS SHALL NOT:

- (a) create inappropriate comments, articles or trackbacks;
- (b) interfere with or disrupt the Blogware service or servers or networks connected to Blogware or disobey any requirements, procedures, policies or regulations of networks connected to the Blogware service;
- (c) intentionally or unintentionally violate any applicable local, state, national or international law;
- (d) exceed the scope of the service that you have signed up for by; for example, accessing and using tools that you do not have a right to use, or deleting, adding to, or otherwise changing the comments of third parties who have visited your web log as a guest.
- (e) post more than 50 articles per hour, or create more than 3 trials per day as a user of the system. Excessive posting or account creation will be detected as abusive use of the system and will be considered a violation of these terms of service.
- (i) upload, post, transmit or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable or harms minors in any way;
- (f) upload, post or otherwise transmit any content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- (ii) upload, post or otherwise transmit any content that infringes any patent, trademark, trade secret, copyright, rights of privacy or publicity, or other proprietary rights of any party;
- (g) upload, post or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (iii) Impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (iv) promote or provide instructional information about illegal activities, harass any group or individual, or promote any act of cruelty to animals;
- (h) offer for sale or sell any item, good or service that (a) violates any applicable federal, state, or local law or regulation, (b) you do not have full power and

authority under all relevant laws and regulations to offer and sell, including all necessary licenses and authorizations

- (i) create content for which the primary purpose is manipulation of search engine rankings or results. Content submitted to the Service must be intended to be consumed by people and not to deceive, manipulate, or mislead search engines or search engine results.

Blogware Reseller Agreement

v.3.0

SCHEDULE B
WHOLESALE PRICING

1. Trial packages, \$0.50/weblog/mos.
100MB of storage
1GB of transfer/Throughput
2. Introductory packages, \$2.50/weblog/mos.
100MB of storage
1GB of transfer
3. Mini packages, \$1.00/weblog/mos.
10MB storage
100MB of transfer
4. Basic packages, \$3.00/weblog/mos.
1GB of storage
2GB of transfer
5. Plus packages, \$5.00/weblog/mos.
2GB of storage
5GB of transfer
6. Premium packages, \$8.00/weblog/mos.
2GB of storage
10GB of transfer
7. Ultra packages, \$15.00/weblog/mos.
3GB of storage
20GB of transfer
8. Extreme packages, \$22.00/weblog/mos.
5GB of storage
40GB of transfer
9. Custom package components,
Storage: \$0.10 per 100MB per month.
Transfer: \$1.00 per 1GB per month.

Notes:

The minimum monthly custom package wholesale price is \$3.00. These amounts will be prorated for the first and last months of services, save and except for trial packages. It is possible to create custom

packages that cost less than \$3.00, but we will be billing a minimum per package price of \$3.00 (or roughly \$0.10 per day on a pro-rated basis).

Storage units will be pro-rated based on the number of days during the month that the units were "consumed". (i.e. if you buy an additional 100mb on the 20th of April, we will bill you for 10 days of consumption).

Transfer upgrades can be purchased as "temporary" or "permanent" upgrades. Permanent upgrades are considered to be permanent additions to a customer's subscription and temporary upgrades are only applicable for each month.

Temporary Upgrades expire at the end of the month and the customer reverts back to the sum of the transfer that they have subscribed to.) This allows customers who have exceeded their allotment to purchase temporary upgrades specific to that month in the event that they exceed their quota but do not believe that they need to permanently upgrade their quote. Please note that transfer upgrades are not pro-rated; the full month fee on a temporary upgrade will apply.

Permanent Upgrades are considered to be permanent additions to a Customers' subscription. Permanent transfer upgrades are prorated for the balance of the month as they include storage and transfer.

Resellers will be notified when customers are approaching and exceeding their allocations. Web logs that have exceeded their storage quota will continue to resolve/work but no new entries or files can be uploaded until the overage is rectified (by deleting files or upgrading the quota) by the owner of the account. Web logs exceeding their transfer quota will not be accessible and no pages will be served aside from, *"This website is not currently accessible"* until the new month starts or an upgrade is purchased by the customer.