

**COVER SHEET**

<b>Company</b>	OzHosting.com Pty Limited	<b>Reseller</b>	
<b>ACN</b>	153 588 142	<b>ABN</b>	
<b>Address</b>	Level 10, 220 George Street. Sydney NSW 2000	<b>Address</b>	
<b>Contact</b>	Doug Endersbee <b>GM Sales &amp; Marketing</b>	<b>Contact</b>	
<b>Telephone</b>	1300 467 843	<b>Telephone</b>	
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<b>Direct</b>	+61 (02) 9146 4412	<b>Mobile</b>	
<b>Email</b>	doug.endersbee@ozhosting.com	<b>Email</b>	

*The purpose of this Agreement is to provide a cooperative framework within which the Reseller can market and sell the OzHosting.com Cloud services (“Services”) and products (“Products”) described in the Schedule directly to its customers during the Term and for the Commissions/Fees set out in this Cover Sheet, from time to time in effort and in accordance with the Reseller Terms and Conditions which are attached to this Cover Sheet and the General Terms and Conditions which are found on the OzHosting.com public website at the following URL - <http://www.ozhosting.com.au/company/legal/>*

**THE TERM**

<b>Term</b>	12 Months then reverting to 30 days and requiring 30 days notice by either party to terminate.
<b>Effective Date</b>	This Reseller Agreement is effective from its date of execution.

**MINIMUM COMMITMENTS**

OzHosting.com Product	Range	Reseller Minimum Commitment*
<b>Domain Names</b>	All Domain Names	\$85.00 ex GST - Total Monthly Spend after Reseller Discount  Examples: a) 13 x Hosted Exchange Mailboxes @ \$8.00 less 10% discount and less GST = \$6.54 ex GST = \$85.08 per month spend b) 1 x Windows 2008 r@ VPS @ \$100.00 less 20% discount less GST = \$72.71 and would not be sufficient on its own for reseller status.
<b>SaaS</b>	Microsoft Exchange	
	Microsoft SharePoint	
	Google Apps	
<b>Cloud Hosting</b>	Website Hosting	
	Virtual Servers	
	Cloud Hosting	

**Note:** Minimum commitments will be reviewed quarterly and if the above levels are not achieved the Reseller discount entitlements under this Agreement may be revoked as per clause 11 in Reseller General Terms and conditions.

**THE SCHEDULE**

OzHosting.com Product	Range	Reseller Discount*
<b>Domain Names</b>	All Domain Names	10% off RRP
<b>SaaS</b>	Microsoft Exchange	20% off RRP
	Microsoft Exchange Group Plans	<i>Excluded</i>
	Microsoft SharePoint	20% off RRP
	Microsoft Exchange Email Migration	10% off RRP
	Google Business Apps Email	10% off RRP
<b>Cloud Hosting</b>	Website Hosting	20% off RRP
	Virtual Servers	20% off RRP
	Reseller Hosting	<i>Excluded</i>
<b>Other Services</b>	SSL Certificates	20% off RRP
	Email Archiving	20% off RRP
	Cloud Backup	20% off RRP
<b>Promotional Pricing</b>	Applies to All Products	Reseller Discounts for Tactical or Short-duration promotions will be determined on a case-by-case basis.

**\*Note:** See current <http://www.ozhosting.com.au> website for full details of actual Recommended Retail Prices.

This Reseller Agreement consists of this Cover Sheet, The Term, Minimum Commitments, The Schedule, the Reseller General Terms and Conditions, the General Terms and Conditions which are found on the OzHosting.com public website at the following URL: <http://www.ozhosting.com.au/company/legal/>. This Agreement shall become effective when signed by both parties and shall continue in effect for the Term set out in this Cover Sheet.

BY THEIR SIGNATURES BELOW THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND BY, THIS AGREEMENT AND WARRANT THAT THEIR RESPECTIVE SIGNATORIES ARE AUTHORISED TO SIGN ON THEIR BEHALF.

	OzHosting.com Pty Limited	Reseller
<b>Signed By:</b>		
<b>Name (Print):</b>	Doug Endersbee	
<b>Title (Print):</b>	Director: Sales & Marketing	
<b>Date:</b>	...../..... /2013	...../..... /2013

**RESELLER GENERAL TERMS AND CONDITIONS**

- 1. Appointment of Reseller**
  - 1.1** OzHosting.com hereby appoints the Reseller as a non-exclusive Reseller for the resale of the Services and Products in the Territory, and Reseller agrees to act in that capacity, subject to the terms and conditions of this Agreement.
  - 1.2** the Reseller shall be entitled to describe itself as a OzHosting.com Reseller for the Services, but shall not hold itself out as OzHosting.com agent for sales of the Services or as being entitled to bind OzHosting.com in any way.
  - 1.3** the Reseller agrees and acknowledges that in selling Services and Products to Customers, it shall be bound by OzHosting.com Hosting' standard agreements for the supply of those Services and Products, including the General Terms and Conditions, Service Level Agreements, Acceptable Usage Policy and Policies, as published from time to time on the Website, and that it will procure that its Customers are also bound by those agreements.
  - 1.4** Nothing in this Agreement shall entitle the Reseller to:
    - (a)** any priority of supply in relation to the Services as against OzHosting.com other resellers or end-users; or
    - (b)** any right or remedy against OzHosting.com if the Services are sold in the Territory by any other person, firm or company.
- 2. Resale of Services**
  - 2.1** the Reseller may resell Services and Products on the condition that it is solely responsible for the following:
    - (a)** Ensuring that it has all necessary consents and authorizations to resupply Services and Products to Customers, including consents and authorizations from Customers, Suppliers and other carriage service providers, and any applicable regulatory authority;
    - (b)** Dealing with Customers concerning fault reports, complaints or enquiries relating to the Services and Products;
    - (c)** Responding to all Customer fault reports, complaints and enquiries relating to services provided by Reseller using the Services and Products; and
    - (d)** Billing and collecting from Customers for all services provided under this Agreement.
  - 2.2** the Reseller may appoint agents or distributors (together "Distributors") to promote the sale of the Services or to resupply the Services without the consent of OzHosting.com, provided that the Reseller must:
    - (a)** enter into a contract with each Distributor which contains obligations equivalent to, and which enable Reseller to perform its obligations under, this Agreement;
    - (b)** ensure that each Distributor complies with Reseller's obligations under this Agreement; and
    - (c)** enforce compliance by the Distributor with the obligations under this Agreement.
  - 2.3** the Reseller acknowledges and agrees that it will indemnify and keep indemnified OzHosting.com against losses or damages of any kind suffered or caused, whether directly or indirectly or intentionally or unintentionally, as a result of or in connection with any claim (whether based in contract, tort (including negligence), statute or otherwise) against OzHosting.com as a result of breach by the Reseller of this clause 2, or any act or omission by a Distributor.
- 2.4** the Reseller acknowledges and agrees that it is solely responsible for paying all charges for Services supplied to all Customers, whether Customers of Reseller or of Distributors, or whether incurred through any act or omission of Distributors.
- 3. Supply of the Service**
  - 3.1** OzHosting.com shall use all reasonable endeavors to supply the Services to the Reseller in accordance with the Reseller's orders.
  - 3.2** OzHosting.com shall not be under any obligation to continue the provision of all or any part of the Service, and shall be entitled to make such alterations additions or modifications to any of the specifications or any of the elements comprising the Services as it may think fit.
  - 3.3** Each order by the Reseller for the Services shall constitute a separate contract, and any default by OzHosting.com in relation to any one order shall not entitle the Reseller to treat this Agreement as terminated.
  - 3.4** the Reseller shall, in respect of each order for the Services to be supplied under this Agreement, be responsible for:
    - (a)** ensuring the accuracy of the order; and
    - (b)** providing OzHosting.com with any information which it reasonably requests in order to enable OzHosting.com to fulfill the order and to comply with all labeling, marketing and other applicable legal requirements in the Territory.
  - 3.5** Upon receipt and confirmation of each order OzHosting.com shall, as soon as is practicable, inform the Reseller of OzHosting.com estimated delivery date for the order.
  - 3.6** OzHosting.com shall use all reasonable endeavors to meet the delivery date, but time of delivery shall not be of the essence and accordingly OzHosting.com liability to the Reseller shall be no greater than that defined by the OzHosting.com Service Level Agreement if, notwithstanding those endeavors, there is any delay in delivery.
- 4. the Reseller Pricing and Payments for the Services**
  - 4.1** The Service to be supplied by OzHosting.com pursuant to this Agreement shall be sold on an ex works basis and shall be invoiced to the Reseller directly.
  - 4.2** the Reseller will receive the Discount by way of a wholesale pricing arrangement under which OzHosting.com will invoice the Reseller who will onward invoice the Customer.
  - 4.3** Unless otherwise agreed and specified on the Customer Service Order Form and Order Confirmation the prices for the Services shall be:
    - (a)** Based on OzHosting.com prevailing prices at the time of order and fixed for the Minimum Contract Term, and thereafter until agreed otherwise, except for metered data.
    - (b)** Metered data will be charged on an aggregate basis for all of the Reseller's Customers and will fluctuate based on both aggregate usage and current OzHosting.com the Reseller Prices.
  - 4.4** OzHosting.com will supply to the Reseller up to date copies of the current pricing through the OzHosting.com Website at URL: [www.ozhosting.com.au](http://www.ozhosting.com.au)
  - 4.5** OzHosting.com will give the Reseller as much notice as is reasonably practicable of any alteration in that price or

the price of any component parts of the Services, and the price as so altered shall apply to any orders for the Services received that are completed after the applicable date of the alteration.

- 4.6** Whilst OzHosting.com publishes recommended retail prices as a guideline, the Reseller shall remain free to determine its own pricing for its Customers.
- 4.7** All prices for the Services are **exclusive** of any applicable Goods and Services Tax such that the Reseller shall pay to OzHosting.com, in addition to the price for the Services, the Goods and Services Tax.
- 4.8** Standard OzHosting.com credit terms are 14 days from date of invoice. Late payment may result in additional fees becoming due, removal of credit facilities and/or suspension of services as detailed in the OzHosting.com Service Agreement – Terms and Conditions.

## 5. Relationship of OzHosting.com and the Reseller

- 5.1** the Reseller hereby warrants and acknowledges that it has qualifications, expertise and experience appropriate to perform the terms of this Agreement.
- 5.2** the Reseller undertakes and warrants that it will carry out the terms of this Agreement either itself or through employees at all times and from time to time in a thorough and professional manner and to the best of its or their abilities.
- 5.3** the Reseller agrees and undertakes to take out policies of insurance covering sickness and accident in respect of the employees of the Reseller and to cover Workers' Compensation in respect thereof and covering Workers' Compensation in respect of any alternate contractor nominated by the Reseller with the consent of OzHosting.com. the Reseller agrees and undertakes to pay all premiums in respect thereof and to produce, when called upon by OzHosting.com so to do, evidence of the currency of such insurance policies.
- 5.4** the Reseller acknowledges that it shall be solely responsible for payment of its own income tax and consents to OzHosting.com furnishing to the Commissioner of Taxation Reseller's name address and all details of payments made to the Reseller by OzHosting.com.
- 5.5** the Reseller warrants in favour of OzHosting.com that it does not provide services exclusively for OzHosting.com.
- 5.6** the Reseller covenants that at no time shall it expressly or impliedly bind, attempt to bind or purport to bind OzHosting.com in any way nor shall the Reseller represent to any party that it is an employee or servant of OzHosting.com.
- 5.7** the Reseller hereby warrants and acknowledges that in the performance of his duties and obligations contained in this Agreement it is in no way, nor is it intended that it be, an employee of OzHosting.com but it is, and is intended to be, at all times an independent contractor.
- 5.8** the Reseller acknowledges on its own behalf and on behalf of its employees and consultants that it has no claim upon OzHosting.com in respect of annual leave, public holidays, sick leave, long service leave, other entitlements or otherwise in respect of any claims under any relevant Workers' Compensation legislation or other legislation or regulations affecting or relating to the relationship between an employer and employee.

## 6. Marketing of the Services

- 6.1** the Reseller shall use all reasonable endeavors to promote the sales of the Services throughout the Territory and, subject to compliance by OzHosting.com with its obligations, to satisfy market demand for it.

- 6.2** the Reseller shall be entitled, subject as provided in this Agreement, to promote and market the Services in the Territory in such manner as it may think fit.

- 6.3** In connection with the promotion and marketing of the Services, the Reseller shall:

- (a) make clear, in all dealings with end-users and prospective end-users, that it is acting as a reseller of the Services and not as agent of OzHosting.com;
- (b) comply with all legal requirements from time to time in force relating to the sale of the Services;
- (c) from time to time consult with OzHosting.com representatives for the purpose of assessing the state of the market in the Territory and permit them to inspect documents used by the Reseller in connection with the sale of the Services;
- (d) at the request of OzHosting.com provide, for inspection and comment, copies of such sales aids, including (without limiting the foregoing) catalogues, sales brochures and sales manuals, as they relate to the Services.

## 7. Support and Training

- 7.1** OzHosting.com may from time to time provide the Reseller with such samples, catalogues, brochures and up to date information concerning the Services as OzHosting.com may consider appropriate or as the Reseller may reasonably require in order to assist the Reseller with sales of the Services in the Territory.
- 7.2** OzHosting.com shall endeavor to answer as soon as practicable any technical enquiry's concerning the Services and made by the Reseller or its Customers..
- 7.3** the Reseller must provide first level Technical Support to its Customers. The OzHosting.com helpdesk will provide Technical Support to the Reseller so long as the Reseller has followed the first level Technical Support FAQ's.
- 7.4** First Level Technical Support FAQ's are published by OzHosting.com on the Website | Parallel's Control Panel and should be reviewed before the Reseller contacts the OzHosting.com helpdesk.
- 7.5** OzHosting.com grants the Reseller a non-exclusive license to use the Parallel's Control Panel system, including the OzHosting.com Website, Online usage, Notification and other features during the term of this Agreement.

## 8. Intellectual Property and Confidential Information

- 8.1** **Intellectual Property** means all present and future statutory property, whether registered or unregistered, such as trademarks and copyright, all Confidential Information (as defined in Clause 8.2), and all technology, methods, procedures, techniques, know-how, expertise, skills, ideas, concepts, manuals, research, marketing, design or strategies of any kind whatsoever, whether reduced to writing, embodied in machine readable format or otherwise.
- 8.2** **Confidential Information** means all information relating to the business, clients, policies, strategies, practices, procedures or Intellectual Property of OzHosting.com, but does not include information which:
- (a) is or becomes public knowledge through no fault of the Reseller;
- (b) has been independently acquired or developed by the Reseller; or
- (c) is required to be disclosed by law.
- 8.3** OzHosting.com hereby grants the Reseller a royalty free, non-exclusive license to use the Intellectual Property and

the Confidential Information during the Term of this Agreement in connection with the sale of Services under this Agreement.

**8.4** the Reseller agrees that during the Term and for a period of two years after termination of this Agreement, and in consideration of the grant of the License to use the Intellectual Property and Confidential Information, it will:

- (a) Not use nor permit the use of the Intellectual Property and Confidential Information except as contemplated by this Agreement;
- (b) Keep the Confidential Information secret and confidential; and
- (c) not, directly or indirectly disclose the Confidential Information to any other person or publish, use, reproduce, copy or allow the Confidential Information to be published, used, reproduced, or copied to any other person except in connection with the sale of Services to a Customer.

**8.5** the Reseller acknowledges and agrees that it will indemnify and keep indemnified OzHosting.com against losses or damages of any kind suffered or caused, whether directly or indirectly or intentionally or unintentionally, as a result of its use of the Intellectual Property or by any unauthorised disclosure, publication, reproduction, use or copying of the Confidential Information.

**8.6** the Reseller agrees that it will do all things within its power to protect the Intellectual Property and Confidential Information, including:

- (a) notifying OzHosting.com immediately it becomes aware of any infringement or threatened infringement; and
- (b) executing all documents and taking all actions reasonably necessary to assist OzHosting.com in any proceedings or action taken by it to protect the Intellectual Property or Confidential Information

**8.7** the Reseller shall ensure that each reference to and use of the Trade Marks by the Reseller is in a manner from time to time approved by OzHosting.com and accompanied by an acknowledgement, in a form approved by OzHosting.com, that the same is a trademark (or registered trade mark) of OzHosting.com.

**8.8** the Reseller shall not:

- (a) make any modifications to the Services or their packaging;
- (b) alter, remove or tamper with any Trade Marks, numbers, or other means of identification used on or in relation to the Services;
- (c) use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of OzHosting.com in them.

## **9. CONFIDENTIAL INFORMATION - RESELLER'S CUSTOMERS**

**9.1** In addition to the obligations of confidentiality set out in clause 8, OzHosting.com will not use or disclose information relating to Reseller's Customers, except to the extent that:

- (a) it is necessary for OzHosting.com to decide to start, stop or limit supply to the Reseller of:
  - (i) commercial credit;
  - (ii) Services; or
  - (iii) Products, or

- (b) It is necessary to do so to supply the services to the Reseller, or for the Reseller to supply Services to Customers.

**9.2** The restrictions set out in clause 9.1 do not have effect after cancellation of Services or termination of this agreement, and the Reseller is unable to provide Customers with services that are substitutable for the Services immediately after cancellation or termination.

## **10. WARRANTIES AND LIABILITIES**

**10.1** Subject as otherwise provided for in this Agreement, OzHosting.com warrants to the Reseller that:

- (a) the Services will be of merchantable quality and will comply with any specification for them;
- (b) it is not aware of any rights of any third party in the Territory which would or might render the sale of the Services, or the use of any of the Trade Marks on or in relation to the Services, unlawful.

**10.2** OzHosting.com aggregate liability to the Reseller (either directly or as a third party defendant in any action or proceeding) for any claim arising out of or relating to this Agreement or the provision of any Services under this Agreement shall be limited to the amount of fees paid by the Reseller to OzHosting.com under this Agreement within one year preceding the date the Reseller contends claim arose. In no event shall OzHosting.com be liable for any loss of data, loss of profits, cost of cover, or any other special, incidental, consequential, indirect or punitive damages, however caused and regardless of theory or liability, notwithstanding OzHosting.com has been made aware or advised of the possibility of such damages.

## **11. TERM AND TERMINATION**

**11.1** This Agreement may be terminated

- (a) by either party on 30 days written notice at any time in the event of a breach of this Agreement; or
- (b) automatically by OzHosting.com at the expiration of 12 months after the Services are first ordered by the Reseller if no other Customers are referred to OzHosting.com by the Reseller within such period of 12 months; or
- (c) by either party at any time on 90 days written notice.

## **12. CONSEQUENCES OF TERMINATION**

**12.1** On termination of this Agreement the Reseller will:

- (a) Immediately pay all outstanding invoices;
- (b) Return all Intellectual Property and Confidential Information to OzHosting.com;
- (c) Do all things and execute all such documents as may be required by OzHosting.com to give effect to section 12.1(b); and
- (d) Immediately cease carrying on the business of offering Services for sale under this Agreement.

**12.2** On termination of this Agreement OzHosting.com will continue to supply Services that remain within the Minimum Contract Term, but it will immediately terminate the supply of all other Services.

**13. NOTICES**

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by facsimile or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile or by electronic mail to the correct facsimile number (with correct answerback) or correct electronic mail address of the addressee.

**14. ASSIGNMENT**

- 14.1** the Reseller may not assign or otherwise transfer this Agreement, in whole or in part, either voluntarily or by operation of law, without the written consent of OzHosting.com obtained beforehand, and any attempt to do so shall constitute a breach of this Agreement.
- 14.2** OzHosting.com may assign this Agreement at any time without the consent of the Reseller.

**15. GST**

- 15.1** Any Commission or other amount payable under this agreement is exclusive of any liability of a party to pay GST on a Taxable Supply made by a party.
- 15.2** If GST is imposed on any Supply made under or in accordance with this agreement, the recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply subject to the recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- 15.3** Payment of the additional amount will be made at the same time as payment for the Taxable Supply is required to be made in accordance with this agreement.

**16. Definitions**

**"Customer"** means the end user of Services to whom the Reseller resells Services;

**"Discount"** means the reduction offered from the recommended retail price by OzHosting.com to the Reseller.

**"Distributor"** means any third party appointed by the Reseller as an agent or reseller.

**"End user"** means each person provided with the Services under an agreement between a Customer and the Reseller;

**"Excluded Services/Products"** means:

- (a)** The services provided by OzHosting.com in installing and setting up any of the Products with a Customer;
- (b)** Any hardware provided to a Customer; or
- (c)** Miscellaneous Charges;

**"GST"** means good and services tax under GST Law;

**"GST Law"** means a New Tax System Goods and Services Act 1999 and all other relevant legislation relating to the introduction and administration of GST;

**"Minimum Contract Term"** means the initial minimum period for each order which unless specified otherwise shall be 12 months.

**"Miscellaneous Charges"** means the services provided by OzHosting.com as detailed on the OzHosting.com Pricelist.

**"Monthly Plan Fee"** is the monthly per month fee excluding setup charges, installation fees, hardware and any miscellaneous charges.

**"Plan"** means each agreement with OzHosting.com to provide Services to an End User including but not limited to Broadband Wireless, Private Networking, Shared, Co-location and Dedicated Hosting, ISDN/PSTN and Alternate Access, Security and Backup, VoIP, Outbound and Inbound voice services, as appropriate for the level of each Service (Standard, Advantage, Premium or Enterprise);

**"Products"** means the voice and data communication products and services offered by OzHosting.com from time to time including but not limited to Broadband Wireless, Private Networking, Shared, Co-location and Dedicated Hosting, ISDN/PSTN and Alternate Access, Security and Backup, VoIP, Outbound and Inbound voice services, and includes the different levels offered for each Service (Standard, Advantage, Premium and Enterprise);

**"Services"** means the services provided by OzHosting.com that allow the use, access to or connection with any of the Products but do not include the Excluded Services/Products;

**"Territory"** means the geographical area in which the Reseller conducts its business and, unless otherwise stipulated, the Territory will be the whole of Australia.

**"Trade Marks"** means the registered name of OzHosting.com and any other trade marks as used by OzHosting.com in relation to the Services at any time during this Agreement.

**"Website"** means the website at the URL: [www.ozhosting.com](http://www.ozhosting.com)

**17. INTERPRETATION**

The following rules of interpretation apply unless the context requires otherwise:

- (a)** headings are for convenience only and do not affect interpretation;
- (b)** the singular includes the plural and conversely;
- (c)** a gender includes any gender;
- (d)** if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (e)** a reference to *person* includes:
  - (i)** a body corporate, an unincorporated or other entity and conversely; and
  - (ii)** a reference to that person's executors, administrators, successors, permitted assigns and substitutes including but not limited to a person to whom this agreement is novated;
- (f)** a reference to *clause* or *schedule* is to a clause or schedule to this Agreement;
- (g)** a reference to an agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced;

- (h)** a reference to a thing including but not limited to a right, includes a reference to a part of that thing;
- (i)** a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;
- (j)** a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing;
- (k)** a provision of this Agreement must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it;
- (l)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (m)** an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (n)** a reference to *month* is a reference to a calendar month;
- (o)** a reference to *year* is a reference to a calendar year;
- (p)** a reference to *writing* includes any mode of representing and reproducing words in tangible and permanently visible form and includes facsimile transmission;
- (q)** a reference to a day including a Business Day is a reference to the period which starts at midnight and ends 24 hours later;
- (r)** if a period of time is specified and that period begins;

  - (i) at the time of an act or event; or
  - (ii) on a specified date,

then the calculation of the period begins on the day following the day of the act, the event or the specified date.