

Free Web Hosting/Physical Server
AGREEMENT for 2004 - 2005
The eTribe Network
Native-Owned, Native Operated.

Date _____, 200____ **The eTribe Network (eTribe)** (we, us, our) and _____

(you, your) agree to the following:

1.0 Definitions.

- 1.1 "Client" means the person who orders the Web Hosting Package and has ownership and control rights and obligations for the Web Hosting Package.
- 1.2 "Client Data" means all supporting data files and data structures provided by the Client for its Web Hosting Package.
- 1.3 "Web Hosting Package" means the server space and software services provided to the you including but not limited to the HTTP service, FTP service, SMTP service, POP service, server extensions, third-party software, and CGI library scripts.
- 1.4 "Physical Server" means the serving computers, hardware and operating-system, and software necessary to operate and support the Web Hosting Package in accordance with this Agreement.

2.0 Scope of Services. We will provide you with the following specific services:

- 2.1 *Physical Server Hardware and Software Services.* We will provide the Physical Servers and other computer and operating-system software to operate and support the Web Hosting Package in a manner acceptable in the industry. Although we will make reasonable efforts to protect and backup data for you on a regular basis, we are not responsible for the Client Data residing on the Physical Server. You are ultimately and solely responsible for the backup of Client Data stored in your Web Hosting Package.
- 2.2 *Physical Server Set-Up and Updating.* We will configure the Physical Server, and will load the Client Data onto the server computers so as to create a fully functional Internet presence. After the Physical Server is loaded, set up with the Client Data, and is fully operational, Client will be responsible for all Web Server content management.

- 2.3 *Physical Server Connection and Access.* We will provide connection of the Physical Server to the Internet, including all telecommunications equipment and connections for the Physical Server to provide public access on a 24-hour-a-day, 7-day-a-week basis, with the exception of scheduled maintenance downtime. We will use our best efforts to provide uninterrupted Physical Server Connection and Access, except for scheduled maintenance downtime and any interruption to Physical Server Connection and Access beyond our control caused by, for example, acts of nature, third-party equipment or transmission failures, or security breaches.
- 2.4 *Maintenance Services.* We will perform maintenance services as we determine reasonably necessary to maintain the continuous operation of the Physical Server. You agree to accept periodically-scheduled maintenance downtime periods. We will provide prior notice of the maintenance downtime, except when circumstances beyond our control limit our ability to do so.
- 2.5 *Hardware, Equipment and Software.* You are responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access us. We make no representations, warranties, or assurances that your equipment will be compatible with our service.
- 3.0 *Payment Terms.* You agree to the following payment terms in consideration for the services provided:
- 3.1 *Set-Up Fee.* You will pay us a one-time, non-refundable set-up fee according to our current Physical Server Price Schedule.
- 3.2 *Service Fee.* You will pay us a monthly Service Fee for the services we provide under this Agreement according to our current Physical Server Price Schedule, which is available on our home page or upon request, starting _____, 2004. The Service Fee is billed to you at or on the 20th of each month, and due on the 1st of the following month the Service Fee is billed. If you first begin using our services after the first of the month, we will prorate your first month's Service Fee. The Service Fee is subject to adjustment, with notice, according to the current Physical Server Price Schedule.
- 3.3 *Cancellation.* In the event you cancel your service, you will be charged in full for the entire duration of your contract. During this special offer, offered by the eTribe Network, you will not be permitted to cancellation of this service for the duration of this contract.
- 3.4 *Breach.* In the event we terminate this Agreement because of a breach, you will be charged in full for the entire length of time of two (2) years or the length remaining in the contract in which the breach occurred. In the event you have elected to prepay subsequent, additional months' Service Fees, we retain the right to charge an administrative fee and deduct the administrative fee from the subsequent, future months' Service Fees before refunding them to you

- 3.5 *Tax.* These fees are exclusive of any and all Federal, Provincial, State, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the services provided under this Agreement, except that your income taxes and any sales or similar taxes on the sale of the Reseller products and services to end users shall be the sole responsibility of the Client.
- 4.0 *Representations and Warranties.* Our obligations under this Agreement are conditioned upon the following representations and warranties:
- 4.1 *Compliance with Law.* You represent and warrant that you will comply with all applicable state and federal laws in your performance of this Agreement and in the use and operation of the Physical Server, including laws governing technology, software and trade secrets.
- 4.2 *Authority to Contract.* You represent and warrant that you have full authority and right to enter into this Agreement and that there are no conflicting claims relating to the rights granted by this Agreement.
- 4.3 *Non-Infringement.* You represent and warrant that your performance of this Agreement and providing the Web Service, including the software or data files, shall not infringe the intellectual property or other proprietary rights of any third party.
- 4.4 *Our Performance.* We represent and warrant that our services shall be performed in a professional and workmanlike manner, and the computer servers will be operated in accordance with our obligations as defined by this Agreement.
- 4.5 *Disclaimer of Warranties.* EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED ABOVE, WE MAKE NO WARRANTY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, AND ALL SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF NON-INFRINGEMENT.
- 5.0 You expressly agree that use of our Physical Server is at your own risk. Neither we, our employees, affiliates, agents, third-party information providers, merchants, licensors or the like, warranty that our service will not be interrupted or error free; nor do we make any warranty as to the results that may be obtained from the use of our service or as to the accuracy, reliability or content of any information serviced or merchandise contained in or provided through our service, unless otherwise expressly stated in this Agreement.

- 5.1 Under no circumstances, including negligence, will we, our officers, agents or anyone else involved in creating, producing or distributing our service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use our service. We will further not be liable for results from mistakes, omissions, interruptions, deletions of files, errors, defects, delays and operation, or transmission or failure of performance whether or not limited to acts of nature, communication failure, theft, destruction or unauthorized access to our records, programs or services. You acknowledge that this paragraph shall apply to all content on our Physical Server.
- 5.2 Your exclusive remedy for all damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) will not (a) exceed the actual dollar amount which you paid during the 12-month period prior to the date the cause of action arose, or (b) include any incidental, consequential, extemporaneous or punitive damages of any kind, including without limitation, loss of data, file, profit, good will, time, savings or revenue.
- 6.0 *Term and Termination.* The following describes the effective date, duration and methods of termination:
- 6.1 *Effective Date.* The Effective Date of this Agreement is the last date appearing below. (excluding the months that have expired in 2003)
- 6.2 *Duration.* This Agreement will commence on the Effective Date and continue on a month-to-month basis for 24 months consecutive. (excluding the months expired in 2003)
- 6.3 *Termination for Convenience.* Subject to Section 3.3, you may terminate this Agreement at any time for your convenience by providing us with advance written notice of no less than 3 months prior to the expiration date of this contract, and may be subject to a termination fee set out by The eTribe Network.
- 6.4 *Breach or Default.* The following constitute a breach or default of this Agreement:
- a. your failure to pay the current month's Service Fee by the 1st day of the month,
 - b. your violation of Section 8.0,
 - c. your violation of 9.2, or
 - d. your violation of Sections 4.1, 4.2 or 4.3.
- 6.5 *Special Lien on Personal Property.* We retain a special lien on all of your personal property in our possession to secure any payment amount you may owe us under this Agreement.
- 7.0 *Ownership Rights.* We acknowledge that all right, title and interest in the Client Data shall be solely owned by the Client. We own or have licensed all server software. In the event that we elect, at our option, to provide custom software to

you, this software will be licensed to you for use only on our Physical Servers on a non-exclusive, royalty-free, fully paid basis according to the terms of this Agreement.

8.0 Activities Subject to Immediate Deactivation. Any Physical Server that is used for Illegal, Abusive or Unethical Activity may be immediately deactivated by us without warning to you. Illegal, Abusive or Unethical Activities include, but are not limited to, pornography, obscenity, nudity, violations of privacy, hacking, computer virus, gambling, or promotion of gambling, and any harassing or harmful materials or uses, as determined by us. You agree to indemnify and hold us harmless from any claim resulting from your publications or use of Illegal, Abusive or Unethical materials. Although we will make reasonable efforts to alert you to such activities and allow you an opportunity to cure them within a 12-hour period after discovery, we are not required to give notice before deactivating your use of our services if, in our discretion, your use is or results in Illegal, Abusive or Unethical activities. If a Physical Server is disabled, the regular monthly fees still apply.

9.0 Miscellaneous.

9.1 Public Nature of Internet. Please understand that all information submitted on the Physical Server shall be considered publicly accessible. Important and private information should be protected by you. For example, we are not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider that you may use.

9.2 Unsolicited Electronic Mail. You are expressly prohibited from sending unsolicited bulk mail messages ("junk mail" or "spam"). This includes, but is not limited to, bulk-mailing of commercial advertising, information announcements, and political tracts. Such material may only be sent to those who have specifically requested it. Malicious or threatening email is also prohibited. Although we will make reasonable efforts to alert you to such activities and allow you an opportunity to cure them within a 12-hour period after discovery, we reserve the right to immediately deactivate your use of our service if we discover such activity. Further, you agree to indemnify and hold us harmless from any claim resulting from your use or distribution of electronic mail services through the service provided through this Agreement.

9.3 Governing Law and Attorneys' Fees. This Agreement will be interpreted and applied in accordance with the laws of the Province of Ontario, without regard to the conflicts of law provisions. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees, whether or not a suit is actually filed.

9.4 Control and Ownership of IP. We maintain and control ownership of all IP numbers and addresses that may be assigned to you, and we reserve, in our sole discretion, the right to change or remove any and all IP numbers and addresses.

- 9.5 *Excessive CPU Usage.* Physical Servers, which, at our discretion, use CPU processing capacity on the Physical Server in excess of the designed processing capacity, will be subject to immediate deactivation. Upgrades to the processing capacity are available.
- 9.6 *Resale of Services and Flow-down of Obligations.* You may resell space on your own Physical Servers but you must first obligate any such resale to the same terms of this Agreement and incorporate into that resale all of our rights, including our rights regarding content and activity.
- 9.7 *Age.* You certify that you are at least 18 years of age.
- 9.8 *Transfer.* You may not transfer or assign this Agreement without the written consent of The eTribe Network.

Acknowledgment of Receipt and Execution of Agreement

The eTribe Network
Native-Owned, Native Operated.

The undersigned acknowledges that they have received, read, accepted and agreed to The eTribe Network Web Hosting/Physical Server Agreement dated _____, 200__ and incorporated by this reference.

Company:	The eTribe Network
Name:	
Title:	Title:
Signature:	Signature:
Date:	Date:

INSTRUCTIONS

After you have reviewed the Web Hosting/Physical Server Agreement, please print, sign, date, and fax the **Acknowledgment of Receipt and Execution of Agreement** to The eTribe Network @ (1-705-256.8691). Mail the original to the eTribe Network at the address indicated below:

eTribe Network
137 Park Drive
Garden River, Ontario
Canada P6A 6Z5

phone: 1.(705).256.7786
fax: 1.(705).256.8691
eMail: info@etribe.ca

