

## Hosting.com Agent Agreement Platinum

This Agent Agreement (Agreement), dated \_\_\_\_\_, 2010 (Effective Date), is entered into by and between Hosting.com, Inc., a corporation organized under the laws of the state of Delaware, with its principal place of business at 900 South Broadway, Suite 400, Denver, CO 80209 (Hosting.com) and \_\_\_\_\_, a corporation / sole proprietorship (select one) organized under the laws of the state of \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (Agent).

In consideration of the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hosting.com and Agent hereby agree as follows:

### 1. DEFINITIONS

- 1.1. "Commission" shall mean the amount to be paid to Agent for the acquisition of new Qualified Customers set out on Exhibit A.
- 1.2. "Qualified Customer" shall mean an entity referred by Agent who (i) has each opportunity registered on the [www.hosting.com/partner](http://www.hosting.com/partner) website and approved (ii) purchases applicable Hosting.com services as a result of Agent's marketing and promotional efforts hereunder; (iii) pays for Hosting.com services for at least 180 consecutive days; and (iv) has not been a Hosting.com or HostMySite.com customer for the previous 2 years, or is purchasing a "New Hosted System" as defined in this Agreement.
- 1.3. "Applicable Services" means services offered by Hosting.com set out here: Colocation Products & Services, Dedicated Server Products & Services, Cloud Enterprise Products & Services, and Cloud Dedicated (Private Cloud) Products & Services. .
- 1.4. "New Hosted System" is a configuration for a new customer application comprised of at least one dedicated server, one half cabinet of colocation, one Cloud Enterprise instance having a twelve month or longer contract, or one Cloud Dedicated (Private Cloud) solution of two or more servers. For avoidance of doubt, New Hosted Systems include only new solutions or additional applications significantly increasing the value of the solutions provided to previously Qualified Customers.

### 2. APPOINTMENT

- 2.1. Subject to the terms and conditions of this Agreement, on the Effective Date, Agent is appointed as an authorized, non-exclusive, limited marketing agent for the Applicable Services in the United States.
- 2.2. Agent may not represent itself as authorized to sell any services other than the Applicable Services.
- 2.3. Agent will not make any representations or warranties concerning Hosting.com, the Applicable Services, Hosting.com's technology, operating procedures and/or employees. Agent agrees to fully indemnify Hosting.com for any claims made against Hosting.com based on doing so.
- 2.4. All orders placed by Qualified Customers are subject to approval and acceptance by Hosting.com in its sole and exclusive judgment.
- 2.5. Both parties shall share sales and marketing responsibilities and bear their own costs for doing so. Agent shall not take any payments from Qualified Customers for Applicable Services. Hosting.com will deliver and directly invoice Qualified Customers for all Services provided by it. Hosting.com services will be provided pursuant to the terms of Hosting.com's agreements, and Qualified Customers will be bound by those agreements.
- 2.6. Other than activities specifically prohibited in this Agreement, Hosting.com shall have the right to engage in any type of promotion and marketing activities directed at new customers including directly contacting Qualified Customers.
- 2.7. Nothing in this Agreement will be considered as restricting Hosting.com's right to modify its standard Agreements at any time, and without any type of notice. Nothing in this Agreement will be considered as restricting Hosting.com's right to sell, lease, license, publish or otherwise distribute products or services, or any components of them, to any entity.
- 2.8. Agent acknowledges and agrees that (i) Agent will not be Hosting.com's only agent; (ii) other agents may receive more favorable terms from Hosting.com than Agent does; and (iii) other agents will compete with Agent.

### 3. USE OF MARKS

- 3.1. Agent is permitted to use the name, logo, trademarks, and other marks of Hosting.com (collectively, the "Marks") for all proper purposes in the sale of the Applicable Services to Qualified Customers and the performance of Agent's duties hereunder only so long as this Agreement is in effect. Agent's use of such Marks shall be in accordance with Hosting.com's policies, including, but not limited to trademark usage and advertising policies, and is subject to Hosting.com's approval. Agent shall not purchase, or have purchased, any domain name, including second (or lower) level domain names that include the Mark or any variation of the Mark. Agent is not authorized to use the Mark in any way in an email address, or in any way that is not visible to the naked eye, for example in meta-tags.
- 3.2. Hosting.com is permitted to use Agent's logo and name for the following expressly limited purposes: (a) to establish a hypertext link from our site to yours; and (b) displaying your logo and name on our agent page.
- 3.3. The parties shall have no claim or right in the other's name, logo, trademarks, and other identifying mark, including but not limited to trademarks, service marks, or trade names owned, used or claimed now or in the future by the other ("Identifying Marks"). Neither party shall make any claim to the other party's Identifying Marks or lodge any filings with respect to such Identifying Marks or marks confusingly similar to the Identifying Marks, whether on behalf of the party or in its own name or interest, without the prior written consent of other party.

### 4. COMMISSIONS.

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- 4.1. In consideration for Agent's performance of the obligations set forth in this Agreement, Hosting.com shall pay the Commission set out on and according to the Commission Schedule at Exhibit A.
- 4.2. As of the date of termination of this Agreement, Hosting.com shall have no further obligation to pay to Agent any Commissions other than those already due and payable.
- 4.3. All obligations accrued hereunder are exclusive of all taxes and similar fees now in force, or enacted in the future, imposed on the transaction and/or the delivery of services and/or any other obligation owing from one party to the other hereunder. Agent shall be responsible for taxes assessed on the Commissions.
- 4.4. Hosting.com may change the commission rates set out on Exhibit A by providing you with ten days notice. Any such change will be effective on a going forward basis to any Qualified Customers who purchase the Applicable Services subsequent to the effective date of the notice, and shall not apply retroactively.

**5. LEAD REGISTRATION.**

Hosting.com maintains a "Lead Registration System" designed to track and confirm new customer leads for agents. In order to qualify for a commission, you must first register your lead using the lead referral procedures set out on the partner page of the Hosting.com website ([www.hosting.com/partner](http://www.hosting.com/partner)). Receiving written confirmation from Hosting.com that your lead has been registered in the Lead Registration System is a precondition to qualification of your lead as a "New Customer" and to receipt of a Commission. Hosting.com reserves the right to reject any lead for no reason at all, and at any time. Hosting.com shall use reasonable efforts to ensure that leads are registered properly. However, Hosting.com shall have no liability and you shall have no claim against Hosting.com based on the failure of the Lead Registration System to operate properly

**6. TERM AND TERMINATION.**

- 6.1. The term of this Agreement shall begin on the Effective Date and continue for a period of one year, and continue thereafter from year-to-year unless one Party provides written notice to the other of its intent to terminate.
- 6.2. Either party can terminate this agreement upon 30 days written notice.
- 6.3. This Agreement may be terminated by the either party upon written notice should: (i) there be the occurrence of a material breach which has not been cured within 10 days of such notice, or which is not capable of cure; and/or (ii) Agent is acquired by a competitor of Hosting.com.
- 6.4. Upon the date of the termination of this Agreement, Agent will immediately cease marketing the Applicable Services.

**7. INDEPENDENT AGENT.** Agent is engaged in an independent business and will perform its obligations under this Agreement as an independent agent and not as the agent or employee of Hosting.com. Agent is not entitled to workers' compensation or unemployment benefits through Hosting.com, and is obligated to pay federal and state income tax on any moneys paid pursuant to this Agreement. Agent will be solely responsible for all matters relating to payment of social security, withholding, workers compensation insurance, unemployment insurance and all other federal, state and local laws, rules and regulations governing such matters. Agent and its employees shall not, by virtue of this Agreement, be eligible for benefits and benefit plans made available to employees of Hosting.com. Agent will be responsible for Agent's own acts during the performance of Agent's obligations under this Agreement. Agent's business operations shall be separate and distinct from those of Hosting.com. Agent shall have no authority to act on behalf of Hosting.com or to bind Hosting.com in any manner. During the term of this Agreement, Agent is free to provide services to other persons, organizations and firms provided those services to other persons, organizations and firms DO NOT create a conflict of interest with Agent's obligations hereunder and/or lead to interruptions of Hosting.com's business over the term of this Agreement, including, but not limited to, causing Hosting.com's customers to leave Hosting.com. If Agent is determined to be an employee of Hosting.com, Agent agrees to indemnify Hosting.com for all liabilities, losses, claims, damages, costs and expenses, if any, that are incurred by Hosting.com as a result of those actions.

**8. SOLICITATION OF EMPLOYEES.** Neither party will, during the term of this Agreement and for six months thereafter, solicit the employment of any then existing Hosting.com or Agent employee or affiliate staff, as applicable, without the other party's prior written consent, which may be withheld.

**9. CONFIDENTIAL AND PROPRIETARY INFORMATION.**

- 9.1. Each party may have access to certain non-public information of the other party. All such information, if in writing, shall be specifically and obviously marked as "confidential" by the disclosing party at the time of disclosure, or if disclosed orally, shall be orally designated as confidential and thereafter identified as confidential by written notice to the receiving party within a reasonable time ("Confidential Information"). Hosting.com's software code, business strategies, and method of providing its services are hereby deemed Confidential Information without any obligation to designate as such. Neither party will use for its own account or the account of any third party, nor disclose to any third party (except as required by law or as reasonably necessary to the receiving party's attorneys, accountants and other advisors who are obligated to maintain the confidentiality of such information), any of the other party's Confidential Information. The disclosing party retains all right, title and interest in all Confidential Information it discloses under this Agreement and all improvements and modifications made thereto. No license or other rights with respect to the Confidential Information is hereby granted or intended. Each party will use reasonable care, at least equivalent to the care used

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- for its own similar Confidential Information, to protect the confidentiality of the disclosing party's Confidential information. Each party's obligation under this section will survive for a period of two years following the expiration or termination of this Agreement.
- 9.2. Disclosure of Confidential Information hereunder is solely for the purposes set forth in this Agreement. A receiving party shall use the Confidential Information only to facilitate the performance of its obligations hereunder and the Confidential Information may be shared only with those who have a need to know within the receiving party's company and who are bound by nondisclosure obligations at least equivalent to the obligations imposed on the receiving party herein. The receiving party shall not, and shall not enable or allow any third party to, reverse-engineer, decompile, or disassemble any software disclosed by the disclosing party and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the disclosing party.
- 9.3. Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement and through no fault of the receiving party; (ii) the receiving party was legally in possession of prior to receiving it; (iii) the receiving party can demonstrate was developed by it independently and without use of or reference to the disclosing party's Confidential Information; or (iv) the receiving party receives from a third party without restriction on disclosure. If a party is directed to disclose Confidential Information by law, court order, or a government agency, such disclosure shall not be deemed to be a breach of this section, provided the receiving party provides timely prior written notice of such requirement to the disclosing party, to the extent reasonably practicable or allowed by law, and reasonably cooperates with the disclosing party's efforts to contest or limit the scope of such required disclosure.
- 9.4. Any unauthorized copying, transfer, or use of any Confidential Information by the receiving party shall cause irreparable injury to the disclosing party that cannot be adequately compensated by monetary damages. Monetary damages may not be a sufficient remedy for any such breach. If a party engages, or is reasonably suspected of engaging, causing, or permitting any person or entity to engage in any material breach of this section, the disclosing party shall be entitled, in addition to such other remedies, damages and relief as may be available under applicable law, to seek an injunction prohibiting any such act or specifically enforcing this section.
10. **COMPLIANCE WITH LAWS.** Each party shall comply, at its own expense, with the provisions of all federal, state and local laws, regulations, ordinances, requirements and codes which are applicable to it in connection with the performance of its obligations hereunder.
11. **CONFLICTING OBLIGATIONS AND RIGHTS.** Agent agrees to inform Hosting.com in writing of any apparent conflict between Agent's work for Hosting.com and (i) any obligations Agent may have to preserve the confidentiality of another's proprietary information or materials, or (ii) any rights Agent claims to any patents, copyrights, trade secrets, or other discoveries, inventions, ideas, know-how, techniques, methods, processes or other proprietary information or materials, before performing that work. Otherwise, Hosting.com may conclude that no such conflict exists and Agent agrees thereafter to make no such claim against Hosting.com. Hosting.com shall receive such disclosures in confidence. Agent warrants that, to the best of its knowledge, the execution and delivery of this Agreement and the performance of its duties hereunder will not violate the terms of any other agreement to which it is a party or by which it is bound.
12. **LIMITATION OF LIABILITY** Neither party, nor its subsidiaries, affiliates, shareholders, directors, officers and employees will be liable to the other party or any third party for any special, exemplary, punitive, indirect, multiple, incidental or consequential damages arising out of or in connection with this Agreement whether based in contract, tort (including, without limitation, negligence) or on any other legal or equitable grounds, even if the party has been advised of the possibility of such damages. If any applicable authority does not allow the disclaimer or Limitation of Liability stated herein in no event will either party be liable to the other party in the aggregate with respect to any and all breaches, defaults, or claim of liability under this Agreement for an amount greater than the fees paid by Hosting.com to Agent during the 3 month period preceding a claim giving rise to such liability.
13. Hosting.com retains the sole and exclusive right to determine with whom Hosting.com will do business: nothing in this Agreement will be considered as restricting Hosting.com's right to refuse to do business with any entity. Should Hosting.com refuse to do business with a Qualified Customer, Agent will not receive a Commission for that Qualified Customer.
14. **INDEMNIFICATION.** Each party shall indemnify and hold the other harmless from, and at its own expense agrees to defend, or at its option to settle, any claim, suit or proceeding brought or threatened against the indemnitee, so far as it is based on the indemnitor's representations and warranties set out in this Agreement. This section will be conditioned on the indemnitee notifying the indemnitor promptly in writing of the claim and giving the indemnitor full authority, information, and assistance for the defense and settlement thereof. The indemnitee shall have the right to participate in the defense of the claim at indemnitee's expense. The indemnitor agrees not to settle a claim without indemnitee's approval if such a settlement contains an admission of liability or fault that could reasonably be attributed to the indemnitee.,
15. **ASSIGNMENT AND DELEGATION.** Hosting.com's rights under this Agreement shall be assignable, and its duties may be delegated. Agent's rights under this Agreement shall not be assignable nor shall Agent's duties be delegated without the prior written consent of Hosting.com, which may be withheld. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the parties and their successors in interest and permitted assignees, any rights or remedies resulting from this Agreement unless so cited to the contrary. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

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16. **NOTICES.** All notices or other instruments or communications provided for under this Agreement will be in writing, signed by the party giving the same, and will be deemed properly given and received (i) on the next business day after deposit for overnight delivery by an overnight courier service or (ii) three business days after mailing, by registered or certified mail, return receipt requested. All such notices or other instruments will be furnished with delivery or postage charges prepaid addressed to the party at the address set forth above, and, for notices to Hosting.com, sent to the attention of the General Counsel, or such other address as such party may designate by notice to the other party.
17. **INTEGRATION / MODIFICATION.** This Agreement expresses the complete and final understanding of the parties with respect to the subject matter hereof, and supersedes all prior communications between the parties, whether written or oral with respect to the subject matter hereof. No modification of this Agreement will be binding upon the parties hereto, unless evidenced by a writing duly signed by authorized representatives of the respective parties hereto.
18. **GOVERNING LAW.** This Agreement will be interpreted and enforced according to the laws of the State of Colorado. Hosting.com and Agent hereby consent and submit to the exclusive personal jurisdiction of the State and federal courts of the State of Colorado located in Denver, Colorado. The parties agree that venue and jurisdiction are proper before this court and agree not to challenge notice from that court.
19. **ATTORNEYS FEES.** In the event that action is brought to enforce, interpret, or construe the terms of this Agreement or the acts of the Parties in relation thereto, the prevailing party in such action shall, in addition to any other relief awarded, be entitled to reasonable attorneys fees in such action or in a separate action brought for that purpose.
20. **WAIVER.** The waiver of any breach of any one or more of the provisions of this Agreement shall not be, or be construed to be, a waiver of any subsequent or other breach of this Agreement; nor shall any failure on the part of the nonbreaching party to require the exact full and complete compliance with any of the provisions of this Agreement be construed as in any manner changing the terms hereof.
21. If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
23. The following paragraphs shall survive the expiration or termination of this Agreement and/or any Exhibit: 4, 5(c), 7(d), (e), (f), 8(b), (c), (f) and 22.

Agreed upon and effective as of \_\_\_\_\_ ("Effective Date").

Hosting.com

\_\_\_\_\_  
By:

Name:

Title:

\_\_\_\_\_  
By:

Name:

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**Exhibit A  
Platinum Partner  
Commission Schedule**

Upon receiving recurring payments from a Qualified Customers for Web Hosting Services, Hosting.com shall pay Agent as follows:

<b>Method of Payment</b>	<b>Amount</b>
Monthly Payments	<p>Based on the Platinum Agreement depicted below, Hosting.com com will pay a percentage of the total referred Monthly Recurring Revenue (MRR) for qualified customers contracting for new hosted systems comprised of Dedicated Servers, Cloud Dedicated (Private Cloud) Server Solutions, Cloud Enterprise, , and Collocation Services. Minimum contract length required for Platinum Tier qualification is 12 Months. Payments will be made monthly for 12 months.</p> <p>Monthly contract totals up to \$10,000 in Monthly Recurring Revenue = 10% in monthly Partner Commissions.</p>

Monthly Commissions will be paid no later than the last day of the calendar month following the calendar month in which the Qualified Customer makes their monthly recurring payment to Hosting.com. Should the aggregate amount due Agent in any particular calendar month be less than \$100, Hosting.com may carry that amount over from month-to-month until the aggregate amount due Agent is greater than \$100.