

Blue Squirrel Reseller Agreement

This Reseller Agreement is entered as of this ___ day of _____, 200__ ("Effective Date") by and between Blue Squirrel, a _____ corporation ("Blue Squirrel") and _____, a _____ corporation, having its principal place of business at _____ ("Reseller").

NOW THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. GRANT OF RIGHTS

1.1 License. Subject to the terms and conditions of this Agreement, Blue Squirrel hereby grants to Reseller a non-transferable, non-exclusive license to distribute Blue Squirrel's proprietary computer programs described on Exhibit A in object code format (the "Software") and any documentation supporting the Software provided from time to time by Blue Squirrel (the "Documentation") solely to third parties to whom Reseller licenses the Software for internal use and not for resale ("End Users") within the following territory (the "Territory"): _____. Any sublicense by Reseller hereunder shall be a personal use license for use on a single personal computer. Reseller shall have no right to reproduce the Software or Documentation, or any part thereof. All copies of the Software distributed by Reseller shall be distributed pursuant to Blue Squirrel's current End User License, as amended by Blue Squirrel from time to time (the "End User License"), a copy of which Blue Squirrel will provide Reseller. Reseller shall not distribute any Software to any End User unless the End User has accepted the terms of Blue Squirrel's current End User License under penalty of perjury and in writing or by a customary click-wrap mechanism. The acceptance by the End User shall include the provision required by Sections 2.9 and 2.11.

1.2 Ownership. As between Blue Squirrel and Reseller, Blue Squirrel owns and retains all right, title, and interest in and to all Software and Documentation; all trademarks, service marks or tradenames associated with the Software or Documentation (the "Trademarks"); all copyrights, patents, trade secret rights, and other intellectual property rights therein (collectively, together with the Software, Documentation, and Trademarks, the "Property"). Except as expressly granted herein, Blue Squirrel does not grant to Reseller any right or license, either express or implied, in the Software, Documentation or Property. Reseller shall not reverse engineer, disassemble, decompile, or otherwise attempt to derive source code from the Software.

2. RESELLER'S OBLIGATIONS

2.1 Reseller's Marketing. Reseller shall not make any representations or warranties other than those contained in the Documentation and shall not make any representations or warranties on Blue Squirrel's behalf.

2.2 Trademarks; Property. During the term of this Agreement, Reseller shall have the right to use and reproduce the Trademarks in connection with Reseller's marketing, advertising, promotion and distribution of the Software. Reseller's use of the Trademarks shall not create any right, title or

interest therein. Reseller shall use the Trademarks only in a manner which complies in all material respects with Blue Squirrel's reasonable policies in effect from time to time, a copy of which shall be delivered to Reseller, and all such use shall be for Blue Squirrel's benefit. Reseller shall not remove, obscure or alter Blue Squirrel's copyright notice or the Trademarks from the Software or Documentation. If Reseller, in the course of distributing the Software, acquires any goodwill or reputation in any of the Trademarks, all such goodwill or reputation shall automatically be transferred to and shall vest in Blue Squirrel when and as, on an on-going basis, such acquisition of goodwill or reputation occurs, as well as at the expiration or termination of this Agreement, without any separate payment or other consideration of any kind to Reseller, and Reseller agrees to take all such actions necessary to effect such vesting. Reseller shall not contest the validity of any of the Property or Blue Squirrel's exclusive ownership of them. Reseller shall not adopt, use, or register, whether as a corporate name, trademark, service mark or other indication of origin, any of the Trademarks, or any word or mark confusingly similar to the Trademarks in any jurisdiction.

2.3 Support for Software. Blue Squirrel shall provide support to the Reseller upon request based upon its then-customary support policies.

2.4 Compliance with Applicable Laws. Reseller shall comply with all laws and regulations applicable to Reseller's marketing and distribution of the Software hereunder. Without limiting the generality of the foregoing, Reseller shall, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, licenses, permits and authorizations in the Territory required for Reseller to perform its obligations under this Agreement and, if applicable, shall provide Blue Squirrel with English language translations thereof.

2.5 Security Issues. Reseller shall take all action necessary to ensure that (a) the Software and Documentation on Reseller's servers or computer systems is appropriately secured so that the Software and Documentation can only be viewed, copied, or utilized by licensed End Users; and (b) that the object code of the Software can only be accessed by employees authorized by Blue Squirrel and cannot be copied or downloaded by any of Reseller's licensees or by any other third party. In addition, Reseller shall make its offices and equipment available in person, upon reasonable notice, and to the extent feasible, remotely, to Blue Squirrel to inspect and test Reseller's physical and technical set-up to ensure that Reseller is complying with its obligations under this Section. Reseller agrees to indemnify and hold Blue Squirrel harmless in accordance with the provisions of Section 4.4 to the extent that Reseller breaches its obligations under this Section 2.5.

2.6 Protection of Proprietary Rights. Reseller shall cooperate without charge (provided that Blue Squirrel will reimburse out of pocket expenses as agreed in advance in writing), in Blue Squirrel's efforts to protect Blue Squirrel's rights in the Property. Reseller shall promptly notify Blue Squirrel of any infringements of Blue Squirrel's Property Rights that come to Reseller's attention. Blue Squirrel shall have the exclusive right to institute infringement or other appropriate legal action against alleged infringers of its Property Rights. Blue Squirrel shall incur all expenses in connection therewith and shall retain all monetary recoveries received therefrom.

2.7 No Excess Representations or Warranties. Reseller covenants that it shall not make any representations or warranties with respect to the Software or Documentation in excess of those provided by Blue Squirrel herein. Reseller agrees to indemnify and hold Blue Squirrel harmless in

accordance with the provisions of Section 4.4 to the extent that Reseller breaches its covenant under this Section 2.7.

2.8 Fulfillment of Reseller's Obligations. Reseller covenants that it will fulfill all of its contractual and legal obligations to its customers. Reseller covenants that it will (a) provide its customers with first quality sales and technical support with respect to any Software sold by Reseller, (b) promptly, courteously and appropriately respond to its customers questions, concerns and complaints, and (c) generally deal with its customers in a professional manner that shall add to the good reputation of Reseller and Blue Squirrel. To the extent that Reseller fails to fulfill its contractual and legal obligations to its customers, Reseller agrees that Blue Squirrel may elect to fulfill those obligations, or any portion of them, and Reseller shall reimburse Blue Squirrel any costs and expenses so incurred by Blue Squirrel. Reseller agrees to indemnify and hold Blue Squirrel harmless in accordance with the provisions of Section 4.4 to the extent that it breaches any of its covenants under this Section 2.8.

2.9 Safeguards Against Sales Outside the Territory. Reseller shall use commercially reasonable efforts to ensure that it does not make sales outside the Territory. Without limiting the foregoing, Reseller shall require its end user customers to affirm in writing or over the Internet by click-wrap, under penalty of perjury, that they are residents within the Territory. If, now or in the future, Reseller can through commercially reasonable efforts and at minimal cost determine the location of a prospective customer's computer, then Reseller shall from that time forward utilize such technology and shall not sell the Software to anyone with a location so indicated to be outside the Territory.

2.10 Export Administration. Reseller agrees to comply with all relevant export laws and regulations of the United States ("Export Laws") to assure that neither the Software, if any, nor any direct product thereof, is: (a) exported, directly or indirectly, in violation of Export Laws or (b) is intended to be used for any purposes prohibited by the Export Laws, including without limitation, nuclear, chemical or biological weapons proliferation.

2.11 U.S. Government - Restricted Rights. Reseller covenants to require its customers to accept a click-wrap agreement that, among other things, provides that the Software and accompanying documentation are deemed to be "commercial computer Software" and "commercial computer Software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government shall be governed solely by the terms of the Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

3. PRICE AND PAYMENT; SHIPMENT AND DELIVERY

3.1 Suggested End User Prices. Reseller is free to determine its own end user prices for the Software. Although Blue Squirrel may publish suggested end user prices for the Software from time to time, these are suggestions only.

3.2 Per Copy Fees. Reseller shall pay to Blue Squirrel for each unit of the Software distributed hereunder per copy fees (the "Per Copy Fees") equal to _____ (___%) of the suggested end user

prices for the Software as set forth on Exhibit A hereto as adjusted by Blue Squirrel from time to time in its sole discretion (the "Suggested Prices"). In the event that Blue Squirrel changes the Suggested Prices, Per Copy Fees based on such changed Suggested Prices shall apply to any order for the Software received by Blue Squirrel after the effective date of the increase. Blue Squirrel shall provide Reseller with at least forty-five (45) days written notice of any increase in the Per Copy Fees.

3.3 Payment. All payments to Blue Squirrel shall be made within thirty (30) days after the receipt by Reseller of the Blue Squirrel's invoice. Reseller shall pay Blue Squirrel a late charge on outstanding amounts due equal to one and one-half percent (1.50%) per month or the maximum amount allowed by law, whichever is less. All payments shall be made in United States Dollars, free of any withholding tax and of any currency control or other restrictions to Blue Squirrel at the address within the United States indicated by Blue Squirrel to Reseller. Blue Squirrel shall have the right, at reasonable times and on reasonable notice, to inspect and audit the books and records of Reseller to verify the accuracy of any statements. In the event that such an inspection discloses any error of any amount, the parties shall by appropriate payment promptly adjust for the error. If Reseller fails to make payments when due, Blue Squirrel shall be entitled to, in its sole discretion, to take any one or more of the following: (a) place Reseller on credit hold, in which case, Blue Squirrel may cease to fulfill Reseller's orders to any new End Users; (b) rescind Reseller's right to sell or distribute any additional Software or Documentation hereunder; and (c) to require that Reseller direct all future payments, for licenses sold in the past or in the future, from the End Users directly to Blue Squirrel or a lock box or an account designated by Blue Squirrel for such purpose, to be applied by Blue Squirrel to the payment default (and interest thereon) until such defaults have been satisfied. All amounts received by Blue Squirrel hereunder shall be nonrefundable except for any payments received or held under Blue Squirrel's control pursuant to clause "c" of the last sentence after Reseller's payment default has been satisfied.

3.4 Taxes, Tariffs, Fees. Blue Squirrel's Suggested Prices and Per Copy Fees do not include any national, state or local sales, use, value added or other taxes, customs duties, or similar tariffs and fees which may be required to be paid or collected upon the delivery of the Software or upon collection of the prices for the Software or the Per Copy Fees. Should any tax or levy be made, Reseller agrees to pay such tax or levy and indemnify Blue Squirrel against any claim for such amount. Reseller represents and warrants to Blue Squirrel that all Software acquired hereunder is for redistribution in the ordinary course of Reseller's business, and Reseller agrees to provide Blue Squirrel with appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any such taxes or fees.

3.5 Shipment and Delivery. Blue Squirrel shall electronically deliver software to Reseller. Reseller shall inspect all Software delivered to it, upon receipt and shall, within 10 days of receipt, give written notice to Blue Squirrel of any claim of damage or missing portions. Should Reseller fail to give such notice, or fail to obtain an extension of such 10 day period from Blue Squirrel, the packages shall be deemed to be accepted by Reseller. Blue Squirrel will reasonably accommodate Reseller's request to replace its master copy of software which becomes corrupted or damaged. Reseller shall contractually require its End Users to report any claim of damage or shortages for Software shipped to them within thirty (30) days of the End Users receipt of such package (or the time required by applicable law, if longer). Blue Squirrel shall use commercially reasonable efforts to meet delivery dates requested by Reseller, but in no event shall Blue Squirrel be liable for its failure to meet such

dates. In the event that Blue Squirrel shall be unable to meet Reseller's requested ship dates, Blue Squirrel shall advise Reseller of the change in or actual delivery schedule.

3.6 Security Interest. Reseller hereby grants Blue Squirrel a purchase money security interest in all Software licensed to Reseller, all physical media on which the Software is located, and all rights licensed to Reseller pursuant to this Agreement in the amount of the Total Purchase Price. Reseller also grants Blue Squirrel a security interest in Reseller's address list of End Users to secure Reseller's payment, indemnification, and other obligations hereunder. To secure its rights hereunder, Blue Squirrel shall have the right to file one or more UCC financing statements and to make such other filings as Blue Squirrel shall deem appropriate. Reseller shall cooperate with Blue Squirrel with respect to all such filings. Upon Blue Squirrel's demand, Reseller agrees to execute promptly any financing statement, security agreement, chattel mortgage, applications for registration and/or similar documents, and to take any other action deemed necessary for registration or otherwise deemed necessary or desirable by Blue Squirrel in order to perfect Blue Squirrel's security interest hereunder. In the event of Reseller's default hereunder, Blue Squirrel may foreclose its security interests and exercise such other rights as provided under the UCC.

4. WARRANTY AND LIABILITY

4.1 Product Warranty. With respect to Software delivered by Blue Squirrel to Reseller on CD-Rom, Blue Squirrel warrants that for a period of thirty (30) days following delivery to Reseller, the media on which the Software is furnished to Reseller will be free from defects in materials and workmanship during normal use. Blue Squirrel warrants that its Software will substantially conform to the user documentation. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS". BLUE SQUIRREL HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.2 Product Indemnity. Blue Squirrel will indemnify, defend and hold Reseller and its subsidiaries (each, an "Indemnified Party"), harmless from and against any and all claims, losses, costs, liabilities and expenses (including reasonable attorneys' fees), arising as a result of or in connection with any claim that the Software or Documentation infringes any intellectual property right of a third party provided: (i) the Indemnified Party promptly gives written notice of any claim to Blue Squirrel; (ii) the Indemnified Party provides any assistance which Blue Squirrel may reasonably request for the defense of the claim (with reasonable out of pocket expenses paid by Blue Squirrel); and (iii) Blue Squirrel has the right to control of the defense or settlement of the claim, provided, however, that the Indemnified Party shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense. Additionally, if an injunction or order issues restricting the use or distribution of any of the Software or Documentation, or if Blue Squirrel determines that the Software or Documentation are likely to become the subject of a claim of infringement or violation of any proprietary right of any third party, Blue Squirrel shall in its discretion and, at its option (a) procure the right to continue using, reproducing, and distributing the Software and Documentation; (b) replace or modify the Software and Documentation so that they become noninfringing, provided such modification or replacement does not materially alter or affect

the specifications for or the use or operation of the Software; require return of the Software to Blue Squirrel and refund any licensing fees relating to the future use of the Software.

4.3 LIMITATION OF LIABILITY. EXCEPT FOR BLUE SQUIRREL'S OBLIGATIONS UNDER SECTION 4.2, IN NO EVENT SHALL BLUE SQUIRREL'S OR ITS LICENSORS' LIABILITY TO RESELLER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY BLUE SQUIRREL HEREUNDER DURING THE PREVIOUS SIX (6) MONTHS. IN NO EVENT SHALL ANY PARTY OR BLUE SQUIRREL'S LICENSORS BE LIABLE TO ANOTHER PARTY OR ANY THIRD PARTY FOR LOSS OF DATA, COSTS OF PROCUREMENTS OF SUBSTITUTE GOODS OR SERVICES OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

4.4 Indemnification. Reseller shall indemnify and hold Blue Squirrel harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorney's fees) which Blue Squirrel incurs as a result of any claim based on any breach of any representation or warranty, covenant or agreement by Reseller under this Agreement or any breach of this Agreement by Reseller; provided: (i) that Blue Squirrel promptly gives written notice of any claim to Reseller; (ii) at Reseller's expense, Blue Squirrel provides reasonable assistance which Reseller may reasonably request for the defense of the claim; and (iii) Reseller has the right to control the defense or settlement of the claim, provided, however, that Blue Squirrel shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense.

5. TERM AND TERMINATION

5.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue until terminated.

5.2 Termination of Agreement. Blue Squirrel may terminate this Agreement for convenience by giving at least thirty (30) days written notice of termination to Reseller. This Agreement may be terminated by either party in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days of the other party's receipt of written notice of such breach. If a material breach is cured within a thirty (30) day cure period this Agreement shall remain in effect as if no material breach had occurred. This Agreement shall terminate automatically without notice and without further action by the other party in the event that the other party becomes insolvent, which means it becomes unable to pay its debts in the ordinary course of business as they come due, or makes an assignment of this Agreement for the benefit of creditors.

5.3 Effect of Termination. Upon the expiration or termination of this Agreement:

(a) Reseller shall, within thirty (30) days, pay to Blue Squirrel all amounts due hereunder, return to Blue Squirrel all products and demonstration copies received from Blue Squirrel, erase any and all of

the foregoing from all computer memories and storage devices within Reseller's possession or control and, if requested, provide Blue Squirrel with a signed written statement that Reseller has complied with the foregoing obligations. All rights and licenses granted by Blue Squirrel hereunder shall terminate, provided such termination shall not result in the termination of end user licenses for copies of the Software which already have been purchased by end users in accordance with the provisions of this Agreement.

(b) The following shall survive termination of this Agreement: Section 1.2, the last two sentences of Section 2.2, Sections 2.3 through and including 2.9, Section 3.6, Section 4, this Section 5 and Section 6.

5.4 Limitation of Liability Upon Termination. In the event of termination in accordance with Section 5.1, Blue Squirrel shall not be liable to Reseller because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Reseller.

6. GENERAL PROVISIONS

6.1 Confidentiality. By virtue of this Agreement, each party may have access to information that is confidential to the other ("Confidential Information"). Confidential Information shall include, but not be limited to, software, documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, the terms and pricing under the Agreement, and any information clearly identified in writing at the time of disclosure as confidential.

A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) is independently developed by the other party without use of or reference to the first party's Confidential Information. In the event, Confidential Information is required to be disclosed by law or other governmental authority, a party hereunder shall not be prohibited from disclosing such information by this Section provided that the responding party shall first have given prompt notice to the other party hereto and shall have made a reasonable effort to obtain a protective order restricting or limiting the disclosure of the Confidential Information to the extent possible.

6.2 This Agreement Controls; Merger; Amendment; Waiver. This Agreement shall control Reseller's distribution of the Software and Documentation. All different or additional terms or conditions in any Reseller purchase order or similar document shall be null and void. This Agreement, including any Exhibits hereto, constitutes the final, complete, and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing signed by both parties. The failure or delay by either party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of any such right, power or remedy.

6.3 Notices. All notices shall be given in writing and shall be considered effective when (a) personally delivered, (b) upon confirmed receipt if sent by electronic mail or facsimile; or (c) two (2) days after posting if sent by overnight registered private carrier (e.g. DHL, Federal Express, etc.).

6.4 Assignment. Reseller may not assign any of its rights or delegate any of its obligations hereunder, whether by operation of law or otherwise, without Blue Squirrel's prior written consent. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

6.6 Force Majeure. Blue Squirrel will not incur any liability to Reseller or any other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of, the parties. Such events, occurrences, or causes include, without limitation, acts of God telecommunications outages, Internet outages, power outages, strikes, lockouts, riots, acts of war, floods, earthquakes, fires, and explosions.

6.5 General. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. Reseller is an independent contractor, and nothing herein shall be construed to create an employer-employee, partnership, joint venture, or agency relationship between the parties. Reseller shall have no authority, right or power to create any obligation or responsibility on behalf of Blue Squirrel. This Agreement shall be governed by and construed under the laws of the State of Utah, excluding conflict of laws provisions and excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods. The parties consent to the personal and exclusive jurisdiction of and venue in the state and federal courts of Utah, U.S.A. for any disputes arising out of this Agreement. This Agreement may be executed simultaneously in two or more counterparts, each one of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the following duly authorized representatives have signed this Agreement on behalf of the entities indicated below, as of the date first above written.

"RESELLER"

"BLUE SQUIRREL"
BLUE SQUIRREL

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

EXHIBIT A

Description of Software

(Needs to be filled in____, be Specific)

WebSeeker
WebWhacker
ClickBook

40% Reseller discount: Purchasing in quantities less than 20, AND requiring hard copy (CD and Manual) to be shipped.