

IFBYPHONE RESELLER PROGRAM AGREEMENT

This Agreement between you (hereinafter referred to as “You” or “Your”) and IFBYPHONE, INC., a Delaware Corporation registered to do business in Illinois (hereinafter “IFBYPHONE”, “we”, “us”, “our”), governs Your relationship with IFBYPHONE and describes the IFBYPHONE Reseller Program (the “Reseller Program”). By typing Yes next to the "I agree" in the email, You are agreeing to be bound by the following terms and conditions. If You are not willing to be bound by the terms and conditions of this Agreement, or if You are not of age or otherwise unable by law to be a party to this Agreement, You should not reply to the email.

1. The Reseller Program

1.1 Participation in the Reseller Program gives You the opportunity to earn commissions based on the amounts IFBYPHONE collects from Your Customers (as defined below) for their billable usage of IFBYPHONE services (the "Service"). You must submit a separate application form, accept IFBYPHONE’s “Terms of Service” for use of the Service via return email after receiving and reviewing the “Terms of Service”, and open an IFBYPHONE user account (“Account”). We will evaluate Your application, and notify You via email if You are admitted to the Reseller Program as an authorized reseller.

1.2 “Your Customers” shall mean users of the Service that You refer to IFBYPHONE using Your authorized IFBYPHONE identification number that (i) have accepted the Terms of Service and (ii) maintain an Account. We reserve the right, at our sole discretion, to decline or to remove Accounts of Your Customers for any reason. You hereby warrant and covenant that all of Your Customers will receive a copy of the Terms of Service and individually accept them before You register on their behalf for an Account.

2. Term

The term ("Term") of this Agreement shall commence on the date of IFBYPHONE's acceptance of Your application, and shall continue until terminated by either party in accordance with this Agreement.

3. Commissions

3.1 Subject to the terms and conditions of this Agreement, we will pay You a commission equal to fifteen percent (15%) of Net Revenues (as defined below). Net Revenues means the amounts that IFBYPHONE collects from Your Customers in a calendar quarter for their billable usage of the Service less any credits, refunds and allowances separately and actually credited to Your Customers. Refunds, credits, and allowances can be applied against future amounts collected from Your Customers.

3.2 We will pay You, or cause You to be paid, within thirty (30) days after the end of each calendar quarter, the commissions owed You in accordance with the commission structure set forth in this section. Commission checks will be for the applicable amount of commissions (less any taxes required to be withheld pursuant to applicable law). In any quarter in which Your total earned but unpaid commissions total less than fifty U.S. dollars (\$50.00), said commissions shall be retained by IFBYPHONE and paid out with subsequent commission payments when total earned but unpaid commissions are at least fifty dollars (\$50.00). Upon termination, all commissions earned by You will be paid out.

3.3 There will be no commissions or other fees or consideration payable to You other than as specifically stated herein unless explicitly provided by IFBYPHONE in writing, including by e-mail transmission. For You to earn commissions, all applications for use of the Service placed by Your Customers must include Your authorized IFBYPHONE identification number that You received upon signing up for the Service.

4. Termination; Effect on Commissions; Modification

4.1 Either party may terminate this Agreement upon notice to the other party, which termination, except as set forth below, shall become effective fourteen (14) days after receipt of such notice. IFBYPHONE reserves the right to suspend, deny or terminate Your participation in the Reseller Program or use of the Service effective immediately if IFBYPHONE, in its sole discretion, believes You or Your Customers are using, or plan to use, the Service in a manner that is unlawful, abusive, prohibited by the IFBYPHONE Terms of Service, or if Your use, or planned use of the Service, creates or could create a potential adverse impact to IFBYPHONE's ability to provide the Service to others.

4.2 Upon termination of this Agreement, You shall immediately cease selling the Service to others or submitting applications on behalf of others to open Accounts, and IFBYPHONE shall have no further obligations whatsoever to You except payment of commissions earned during the Term of this Agreement in accordance with Section 3.2.

4.3 You will not have the right to receive any commissions following the termination of this Agreement notwithstanding subsequent use by any of Your Customers of the Service.

4.4 We reserve the right, in our sole discretion, to modify the terms of this Agreement at any time, including, without limitation, modifications of the commission structure set forth in Section 3 or payment procedures, which modification shall be effective fifteen (15) days following IFBYPHONE's posting of such changes on the IFBYPHONE website. We recommend that You check the IFBYPHONE website regularly for any such changes. If You do not agree with the changed terms and conditions, Your only recourse is to terminate this Agreement. Your continued participation in the Reseller Program after You have been notified of the changes to the terms of this Agreement shall be deemed to constitute Your acceptance of such modification.

5. Licenses, Marks, Restrictions

5.1 We grant You a non-exclusive, non-transferable, royalty-free, revocable license to use our logos, domain names, trade names, trademarks, service marks, and similar identifying material as viewed on the IFBYPHONE web site (collectively, "Our Marks") for the sole purpose of promoting the IFBYPHONE offerings through your Web Site. No right, property, license, or interest in any of Our Marks is intended to be given by us to You or acquired by You under this Agreement, except as stated in the preceding sentence. You may not alter, modify, or change Our Marks in any manner. You may not use Our Marks in any manner that is disparaging or otherwise portrays us in a negative light. Upon termination of this Agreement or earlier upon our request, You agree to return to us all property and non-public information You received from us and agree to promptly cease using Our Marks. You agree not to challenge the validity of, adopt, or register or attempt to register with any domestic or foreign government, quasi-governmental authority, or domain name registrar Our Marks, or any confusingly similar or derogatory derivation thereof as a trademark, service mark, Internet domain name, trade name, or similar item. You shall not commercially exploit IFBYPHONE products except pursuant to the terms of this Agreement.

5.2 You shall not, nor allow a third party, including, without limitation, Your Customers, to, redistribute, sell, compile, reverse compile, decompile, disassemble, reverse assemble or reverse engineer the IFBYPHONE software used to provide the Service or any portion thereof.

6. Your Responsibilities

6.1 You agree to indemnify, defend, and hold us and our affiliates, members, managers, directors, officers, employees, and agents harmless from and against any and all liability, claims, losses, damages, injuries, or expenses (including reasonable attorneys' fees) arising from or relating to (a) the contents, development, operation, and maintenance of your Web Site; (b) Your breach of any term of this Agreement or the Terms of Service; (c) any misrepresentation or breach of a covenant or agreement made by You in Your application form; (d) any claim that our use of Your intellectual property infringes on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of any third party; (e) any claim arising from Your infringement of a third party's copyright, patent, trademark, trade secret or other proprietary rights or right of publicity or privacy; (f) Your violation of any law, statute, ordinance or regulation; (g) Your spreading of viruses, Trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines; and (h) You or Your Customers use of the Service, including, without limitation, injuries suffered by Your Customers, or third parties that were injured as a result of such Customers, that relate in any matter whatsoever to the Service.

6.2 You will abide by all rules, regulations, procedures and policies of IFBYPHONE, including the Terms of Service, and any policies of the networks connected to the Service. You are fully and solely responsible to be aware of, understand, and comply with all of laws, rules, and regulations applicable to the Reseller Program. You agree not to violate any applicable laws and represent and warrant that Your use of IFBYPHONE and participation in the Reseller Program will not cause IFBYPHONE to violate these or similar laws.

7. Disclaimer of Liability

OUR ONLY OBLIGATION HEREUNDER IS TO PAY YOU COMMISSIONS IN ACCORDANCE WITH THIS AGREEMENT. IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY OTHER TYPE OF OBLIGATION OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT, THE SERVICE, THE RESELLER PROGRAM, ANY USE BY YOU OR YOUR CUSTOMERS OF IFBYPHONE'S WEB SITE, OR ANY OTHER HYPERLINKED WEB SITE, AND THE TRANSACTIONS CONTEMPLATED HEREBY EVEN IF WE ARE EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER ANY OF SUCH EVENTS WAS ADVERTENT OR INADVERTENT, INTENTIONAL OR UNINTENTIONAL, JUSTIFIED OR NOT, NEGLIGENT OR GROSSLY NEGLIGENT, OR BROUGHT UNDER A CAUSE OF ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN ADDITION TO THE FOREGOING, OUR AGGREGATE LIABILITY TO YOU ARISING WITH RESPECT TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY UNDER ANY THEORY OF RECOVERY SHALL NOT EXCEED THE TOTAL COMMISSIONS PAID OR PAYABLE TO YOU UNDER THIS AGREEMENT.

8. Notices

8.1 If To IFBYPHONE. All notices required to be given under this Agreement to IFBYPHONE must be given in writing and delivered either by hand, by certified mail, return receipt requested or by Federal Express or other recognized overnight delivery service, all delivery charges pre-paid and addressed to:

IFBYPHONE, INC
300 W Adams, STE 900
Chicago, IL 60606
Attn: Cindy Pogrund

8.2 If To You. All notices required to be given under this Agreement to You shall be given by e-mail transmittal to the address identified by You through Your registration for the Reseller Program, which shall be deemed sufficient notice.

8.3 A party may change the contact information for sending and receiving notices by giving notice in the manner as stated.

9. General

9.1 Governing Law; Forum. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that State, without regard to conflicts of law principles, and only where explicitly applicable, United States federal law. You hereby consent to the personal jurisdiction of the federal and state courts sitting in Cook County, Illinois.

9.2 Entire Agreement; Waiver. This Agreement, the Terms of Service, and Your application form shall constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes any and all prior written and prior or contemporaneous oral agreements and understandings pertaining hereto, including, without limitation, any prior agreements with respect to the Reseller Program. Any waiver or modification of this Agreement shall only be effective as provided in this Agreement or after an affirmation intended to have the effect of a signature by the party sought to be bound by the waiver or modification. In the event of any inconsistency between the terms of this Agreement and the description of the Reseller Program that appears on our web site, the terms of this Agreement shall govern. Our failure to exercise any of our rights or remedies hereunder or enforce any provision hereof shall not act as a waiver of any such right, remedy, or provision.

9.3 Severability. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of this Agreement shall remain in full force and effect.

9.4 Assignment; Survival. You may not assign this Agreement or delegate Your rights or obligations under this Agreement, in whole or in part, and any such attempted assignment or delegation will be void. We reserve the right to assign this Agreement or delegate our rights or obligations under this Agreement. All causes of action and any provisions of this Agreement that by their nature are intended to survive termination, shall survive termination of this Agreement, including, without limitation, Sections 5, 6, and 7.

9.5 Independent Parties. The relationship of each party to the other party shall be that of independent contractors. Nothing contained herein shall create or imply any partnership, joint venture, employer-employee or agency relationship between the parties, and neither party shall have the power to obligate or bind the other in any manner whatsoever.

9.6 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and, subject to Subsection 9.4, their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

9.7 Injunctive Relief; Remedies. You acknowledge a violation of this Agreement could cause irreparable harm to us for which monetary damages may be difficult to ascertain or may be an inadequate remedy. You, therefore, agree that we will have the right, in addition to our other rights and remedies at law or in equity, to seek preliminary injunctions unilaterally without notice and final injunctions with notice, enjoining and restraining any violation, or threatened or intended violation, of this Agreement. Except where otherwise specified, the rights and remedies granted to us under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies that we may possess at law or in equity.

BY TYPING "YES" NEXT TO THE "I ACCEPT" IN THE EMAIL AND REPLYING TO THIS EMAIL TO THE ADDRESS FROM WHICH YOU RECEIVED THE TERMS AND CONDITIONS, AND PARTICIPATING IN THE RESELLER PROGRAM, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU SHOULD TYPE "NO" NEXT TO THE "I ACCEPT" BOX AND REPLY TO THIS EMAIL TO THE ADDRESS FROM YOU RECEIVED THE TERMS AND CONDITIONS, AND DISCONTINUE YOUR PARTICIPATION IN THE RESELLER PROGRAM.