

# Technical Support Agreement

IMPORTANT: THIS TECHNICAL SUPPORT AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR, IF PURCHASED OR OTHERWISE ACQUIRED BY OR FOR AN ENTITY, AN ENTITY) AND CPANEL. READ IT CAREFULLY. AMONG OTHER PROVISIONS, IT CONTAINS TERMINATION AND WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY CLICKING THE "I AGREE" BUTTON AND USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS TECHNICAL SUPPORT AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MAY NOT USE THE SERVICES.

## 1. Definitions.

1.1 "Agreement" means this Technical Support Agreement.

1.2 "Applicable Law" means applicable international, federal, state or local laws, statutes, ordinances, regulations or court orders.

1.3 "Beta Version" means any version of the Software released by cPanel for testing as determined by cPanel in its sole discretion, including, without limitation, versions of the Software designated by cPanel as "BETA" or "EDGE".

1.4 "Complimentary Support" has the meaning given in Section 2.6.2 (Eligibility for Submission of Incidents).

1.5 "cPanel" means WebPros International, LLC doing business as cPanel.

1.6 "cPanel Customer Portal" means cPanel's customer service and Incident tracking system or such successor system as cPanel may designate from time to time which is presently available at <http://tickets.cpanel.net> or such other URL as cPanel may designate from time to time.

1.7 "cPanel Direct Licensee" means an individual or entity who is not a cPanel Partner or cPanel Distributor who has obtained one or more licenses for the Software directly from cPanel.

1.8 "cPanel Distributor" means a cPanel Partner who has met the requirements to become a cPanel Distributor as determined by cPanel.

1.9 "cPanel Partner" means a cPanel partner who has entered into a valid and existing Partner NOC Agreement with cPanel.

1.10 "Effective Date" has the meaning given in the Support Pricing Agreement.

1.11 "Enterprise Support" has the meaning given in Section 2.6.2 (Eligibility for Submission

of Incidents).

1.12 “EULA” means the applicable End-User License Agreement for the Software, including, without limitation, the cPanel Enkompass EULA or the cPanel/WHM EULA.

1.13. “Extended Support” or “ELS Support” means the provision of technical support and maintenance of cPanel & WHM compatibility for operating systems that are no longer supported by their author.

1.14 “Incident” means a request by you for assistance in addressing a single technical problem relating to the Software. cPanel shall make the final determination as to what constitutes an “Incident” in its sole discretion.

1.15 “Intellectual Property Rights” means trade secret rights, rights in know-how, moral rights, copyrights, patents, trademarks (and the goodwill represented thereby), and similar rights of any type under Applicable Law, including all applications for and registrations of any of the foregoing.

1.16 “Licensed Server” or “Licensed Servers” has the meaning given in the EULA.

1.17 “Normal Business Hours” means (a) twenty-four hours a day, seven days a week in the case of technical support related Incidents; and (b) 7:00 a.m. to 7 p.m. Eastern Standard Time during business days and excluding holidays in the case of billing related Incidents. cPanel may amend the definition of “Normal Business Hours” from time to time in its sole discretion by providing notice of such change on its website.

1.18 “Priority Support” means the Services provided by cPanel to individuals or entities who have purchased Priority Support from cPanel.

1.19 “Scheduled Service Outage” means a period of time specified by cPanel during which cPanel will not provide the Services.

1.20 “Services” means the technical support services provided by cPanel in connection with this Agreement whether such services are provided via email, telephone support, the cPanel website (including, without limitation, the cPanel Customer Portal, the documentation, Frequently Asked Questions or discussion forums located on the website) or by any other means.

1.21 “Software” means the cPanel software program(s) for which you are seeking the Services, and corresponding documentation, source code, object code, Updates, user interfaces (including, without limitation, any web-based interfaces), printed materials and online or electronic documentation, excluding any third party components.

1.22 “Standard Support” has the meaning given in Section 2.6.2 (Eligibility for Submission of Incidents).

1.23 “Submissions” has the meaning given in Section 3.5 (Submissions).

1.24 “Support Fees” has the meaning given in Section 4 (Support Fees).

1.25 “Support Pricing Agreement” means, as applicable, (a) the agreement entered into between you and cPanel for the provision by cPanel of the Complimentary Support, Telephone Support or Priority Support, as applicable, which sets forth (among other things) the term, any applicable support fees and the number of Incidents you may submit under this Agreement; (b) the Pricing and Term Agreement entered into between you and cPanel with respect to the Software which sets forth (among other things) the term, any applicable Support Fees and the number of Incidents you may submit under this Agreement; (c) the term, termination and technical support provisions of the cPanel Partner NOC Agreement entered into between you and cPanel; or (d) the term, termination and technical support provisions of any agreement entered into between you and a cPanel Direct License, cPanel Partner or cPanel Distributor for the provision of technical support services related to the Software. The Support Pricing Agreement is hereby incorporated by reference and made a part of this Agreement as though fully set forth herein.

1.26 “Telephone Support” means the Services provided by cPanel over the telephone to individuals or entities who have paid the Support Fees applicable to telephone support.

1.27 “Term” has the meaning given in the Support Pricing Agreement.

1.28 “Territory” means the world, except to the extent that the provision of the Services or the use or distribution of the Software in certain countries or regions would cause either party to violate Section 9.13 (Export Controls).

1.29 “Third Party Users” means authorized end users of the Software on Licensed Servers.

1.30 “Trademarks” means all domestic and international trademarks, service marks, logos, trade names, trade dress, including all goodwill represented by each of the foregoing, whether

registered or unregistered, of cPanel including, without limitation, CPANEL (USPTO Registration No. 3058679 and CTM Registration No. 004908299), the cPanel logo (USPTO Registration No. 3290579), WEBHOST MANAGER (USPTO Registration No. 3246206), WHM (USPTO Registration No. 3282420), Enkompass (USPTO Registration No. 3838702 and CPANEL SERVER SUITE (USPTO Trademark Application Serial No. 77278696). cPanel may add to the foregoing nonexclusive list of Trademarks by updating the cPanel Trademark Usage Policy which is located at <http://www.cpanel.net/trademarkup.htm> (or such other URL as may be designated by cPanel from time to time) and which may be updated by cPanel in its sole discretion from time to time.

1.31 “Ultra Priority Technical Support” has the meaning given in section 2.6.2 (Eligibility for Submission of Incidentals).

1.32 “Unscheduled Service Outage” means a period of time during which cPanel is unable to provide the Services or during which it is not commercially reasonable for cPanel to provide the Services as a result of unforeseen circumstances including, but not limited to, force majeure events such as those set forth in Section 9.1 (Force Majeure).

1.33 “Updates” means any bug fixes, patches and other modifications of the Software provided by cPanel.

1.34 “You” or “Your” means or refers to the individual or entity entering into this Agreement with cPanel, whether or not such terms are capitalized in this Agreement.

## 2. Services.

2.1 Provision of Services by cPanel. Subject to the terms and conditions of this Agreement, cPanel shall use commercially reasonable efforts to provide you with the Services during the Term provided that you have not exceeded (a) the number of Incidents set forth by the Support Pricing Agreement; or (b) a commercially reasonable number of Incidents as determined by cPanel if the Support Pricing Agreement does not specify the maximum number of Incidents. Notwithstanding the foregoing, cPanel may, in its sole discretion, elect to provide, to not provide or to provide on a limited basis the (a) Services for Complimentary Support; and (b) Services for Beta Versions of the Software. cPanel provides limited support for Beta Versions.

If we provide a tutorial, frequently asked questions, or other user generated advice (FAQ) on our site, it is provided “as is” and your use of it is at your own risk. We have no liability to you should any information on our FAQ damage you.

2.2 Normal Business Hours. cPanel shall use commercially reasonable efforts to provide the Services during Normal Business Hours, except in the event of a Scheduled Service Outage or an Unscheduled Service Outage.

2.3 Scope of Services. cPanel will provide the Services only in connection with Incidents that it determines are related to the Software or any third-party applications included with the Software. cPanel will not provide the Services for Incidents that it determines are related to third-party software not included with the Software, operating systems, hardware or networks unless cPanel determines, on a case-by-case basis and in its sole discretion, that such issues are reasonably related to the Software or any third-party applications included with the Software. cPanel will only provide support for third-party software licensed through cPanel when you also have a license for cPanel or WHM.

2.4 Web, Email and Telephone Support. cPanel shall use commercially reasonable efforts to provide the Services via its website using the cPanel Customer Portal or via email communications. cPanel will provide Telephone Support on a per-Incident basis if you pay the additional Support Fee as set forth in Section 4 (Support Fees). One Incident of Telephone Support can involve multiple telephone communications until cPanel closes the Incident pursuant to Section 2.8 (Resolution of Incidents). cPanel may on a case-by-case basis and in its sole discretion elect to provide support via telephone free of charge if it deems it necessary to do so in the event of a complicated or time-consuming Incident. cPanel shall provide the Services, and all Incidents shall be submitted, in the English language only.

2.5 Location of Services. cPanel shall use commercially reasonable efforts to provide the Services at any facility it designates for the provision of such Services. The Licensed Server for which a particular Incident is submitted may be located in anywhere in the Territory. cPanel shall not provide the Services “on site.”

2.6 Submission of Incidents.

2.6.1 cPanel Customer Portal. Except for Telephone Support Incidents which must be purchased via the cPanel website, all Incidents must be submitted via the cPanel Customer Portal or, in the case of cPanel Partners and cPanel Distributors, the Manage Interface (as defined in the Partner NOC Agreement).

2.6.2 Eligibility for Submission of Incidents. If you are a cPanel Partner or cPanel Distributor, Incidents you submit shall be deemed "Enterprise Support." If you are a cPanel Direct Licensee, Incidents you submit shall be deemed "Standard Support." If you are an individual or entity (other than a cPanel Partner, cPanel Distributor or cPanel Direct Licensee), including (a) a holder of an Educational License, Non-Profit License or Trial License; (b) a Third Party User; or (c) a user with root access to a Licensed Server, Incidents you submit shall be deemed "Complimentary Support." If you obtained your license to the Software from a cPanel Partner or cPanel Distributor, you may obtain Enterprise Support if you submit your Incident through such cPanel Partner or cPanel Distributor. You may obtain Priority Support by paying the applicable Support Fees for Priority Support. You may obtain Ultra Priority Support by meeting the qualifications established by cPanel.

2.6.3 Support Logins and Support Access Numbers. Subject to the terms and conditions of the Partner NOC Agreement, cPanel Partners and cPanel Distributors may use the Manage Interface (as defined in the Partner NOC Agreement) to provision usernames and passwords for the cPanel Customer Portal which can be used for submitting Incidents by their respective staff. Anyone with root access to a Licensed Server may submit Incidents to the cPanel Customer Portal by using the Support Access Number in the Support Center section of WebHost Manager (or such other section of WebHost Manager as cPanel may designate from time to time).

2.6.4 Submission Details. In order for cPanel to provide the Services to you, you must provide all information requested by cPanel with respect to each Incident. If you fail to provide sufficient detail regarding the Incident, cPanel shall not be obligated to provide the Services to you and the limited warranty of Section 6.2 (Limited Warranty) shall not apply to the Incident.

## 2.7 Service Levels.

2.7.1 Priority of Support. cPanel will use commercially reasonable efforts to prioritize its response to Incidents depending upon the level of support applicable to such Incidents in the following order: Telephone Support, Ultra Priority Support, Enterprise Support, Priority Support, Standard Support and Complimentary Support. Notwithstanding the foregoing sentence, cPanel may elect to prioritize its response to a given Incident depending upon the relative severity of the support issues reported in other Incidents pending in the cPanel Customer Portal regardless of the level of support applicable to such Incidents.

2.7.2 Escalation of Incidents. cPanel maintains internal escalation procedures with respect to Incidents. In the event that a cPanel representative is unable to find a resolution to the Incident (assuming a resolution is commercially feasible), cPanel will escalate the Incident in accordance with its internal escalation procedures. cPanel may change its internal escalation system from time to time within its sole discretion.

2.7.3 Support Levels. Subject to Section 2.7.1 (Priority of Support), cPanel will use commercially reasonable efforts to resolve all Incidents as soon as reasonably possible but does not make any representations or warranties as to the timeliness of the resolution of any Incident. cPanel shall resolve all Incidents subject to Section 2.8 (Resolution of Incidents).

2.8 Resolution of Incidents. In the event that cPanel resolves your Incident or makes a determination that no resolution is commercially feasible, cPanel will provide you notice through the cPanel Customer Portal and close the Incident on such system. Alternatively, cPanel may determine whether a support issue raised in an Incident constitutes a bug in the Software (Software Bug) or a request for a new feature (Feature Request). If cPanel determines that a support issue raised in an Incident constitutes a Software Bug or a Feature Request, cPanel will close the Incident and determine whether such Software Bug or Feature Request should be forwarded to cPanel's development team for further consideration and possible correction or inclusion into the Software. Any information, feedback, ideas or suggestions you provide to cPanel with respect to a Software Bug or Feature Request shall be deemed a Submission. cPanel shall in its sole discretion determine: (a) whether an Incident has been

resolved; (b) whether a resolution is commercially feasible; (c) whether a support issue raised in an Incident constitutes a Software Bug or Feature Request; and (d) whether or not and when to close an Incident. cPanel will not provide the Services for closed Incidents.

## 2.9 Provision of Services to Third Party Users.

2.9.1 Third Party User Incidents. If you are a cPanel Direct Licensee, cPanel Partner or cPanel Distributor, you may submit Incidents on behalf of Third Party Users and cPanel will provide the Services with respect to such Incidents; provided that (a) you must enter into an agreement with each Third Party User concerning cPanel's provision of the Services with respect to such user's Incidents (Third Party Support Agreement); (b) as part of such Third Party Support Agreement, each Third Party User must agree to the Flow-Through Provisions set forth in Section 2.9.2 as a condition of cPanel's provision of the Services with respect to the Third Party User's Incident; and (c) the Third Party Support Agreement shall not offer or provide services greater in scope and duration than the Services provided by the Partner NOC Agreement or the Pricing and Term Agreement, as applicable. Third Party users do not qualify for Ultra Priority Support regardless of the Partners qualifications for it.

### 2.9.2 Flow-Through Provisions. Any Third Party Support Agreement must contain:

- The Third Party User's acknowledgement and agreement that cPanel owns all right, title and interest in and to the cPanel IP Rights substantially similar to Section 3.1 (Ownership);
- a notice substantially similar to the disclaimer set forth in Section 6.3 (Disclaimer) that cPanel disclaims all warranties and representations with respect to the Services;
- a limitation of liability substantially similar to that set forth in Section 7 (Limitation of Liability) for the benefit of cPanel;



- The Third Party User's acknowledgement and agreement that cPanel's obligation to provide the Services shall automatically expire without notice upon the expiration or termination of this Agreement or the cPanel EULA for any reason whatsoever;
- The Third Party User's acknowledgement and agreement that cPanel may in its sole discretion terminate or suspend provision of the Services to you or any Third Party User in the event of (i) any breach of this Agreement or the cPanel EULA by you, or (ii) any breach by the Third Party User or any provision concerning cPanel or the Services in any Third Party Support Agreement;
- The Third Party User's acknowledgement and agreement that cPanel is a third party beneficiary of the Third Party Support Agreement between you and the Third Party User with the full right to enforce the provisions of the Third Party Support Agreement as they pertain to cPanel and the Services;
- The Third Party User's acknowledgement and agreement that concerning your disclosure to cPanel and cPanel's collection of the Support Data, including, without limitation, any Support Data that may personally identify the Third Party User; and
- The Third Party User's waiver of any and all claims (whether under law, equity or any other theory of liability) against cPanel and its affiliates that may arise from a Third Party User's inability to use the Services in the event (i) of the expiration or termination of this Agreement or the EULA for any reason whatsoever; or (ii) that cPanel suspends provision of the Services as set forth in this Section 2.9.

Your right to submit Incidents on behalf of Third Party Users and receive the Services with respect to such Incidents is conditioned upon your compliance with the terms of this Section 2.9. Upon request from cPanel, you shall provide cPanel with copies of any Third Party Support Agreements. cPanel shall also have the right (but not the obligation) to notify any Third Party Users that cPanel will or has terminated or suspended the provision of the Services due to the termination or expiration of this Agreement or a breach of this Agreement. In the event that cPanel notifies Third Party Users pursuant to the preceding sentence, cPanel reserves the right to offer products and services, including, without limitation, the Software and Services, to any Third Party Users affected by such termination or expiration (or to refer such third parties to other cPanel licensees or affiliates). Except as set forth in this Section 2.9, you may not submit Incidents to cPanel on behalf of any third party.

2.10 Support Data. In order to provide the Services to you, cPanel may collect information from you including, but not limited to: (a) IP addresses, usernames and passwords necessary to login to SSH, WebHost Manager and the Licensed Server's root directory; (b) the usernames and passwords necessary to login into any affected accounts including email accounts, cPanel accounts, MySQL accounts and other accounts; and (c) other information that you voluntarily supply or that cPanel requests in order to resolve your Incident ((a) through (c) collectively, "Support Data"). cPanel will use commercially reasonable efforts to preserve the security of the Support Data by using reasonable physical and electronic security measures (except to the extent cPanel is required or permitted to disclose, access or use such information by Applicable Law), but cPanel cannot guarantee the security of such data. To the extent that Applicable Law requires that you obtain any consents, permissions or licenses from third parties (including Third Party Users) or to give any notices or disclaimers to third parties (including Third Party Users) prior to your disclosure of Support Data to cPanel, you agree to comply with such Applicable Laws prior to your disclosure of Support Data to cPanel.

2.11 License Exchange. You agree that the terms and conditions of this Agreement and the Support Pricing Agreement shall supersede any prior agreement between you and cPanel applicable to any support services provided by cPanel to you with respect to the Software.

2.12 Automatic enrollment in Extended or ELS Support. If You install software that interacts with Software licensed to You by cPanel, and that software is no longer supported by its author

(End of Life Software), You may be automatically enrolled by cPanel in Extended or ELS Support. Extended or ELS Support allows Software to interact with End of Life Software in a way that does not create unwanted or unanticipated interactions. You will be provided notice of automatic enrollment. You may opt out of automatic enrollment, or terminate ELS Support, by installing or upgrading to supported software, or uninstalling the End of Life Software. Extended or ELS Support is subject to the terms of the Pricing and Term Agreement. Extended or ELS Support may be provided by a third party. If so, you will be subject to the terms and conditions of the agreement between you and the third party providing the Extended or ELS Support. In addition, in such a case, the support associated with this Service will be different than the support provided directly by cPanel and is not subject to this Agreement.

### 3. Intellectual Property Rights.

3.1 Ownership. cPanel owns all right, title and interest, including all Intellectual Property Rights, in and to, (a) the Software; (b) the Trademarks; (c) the Services; and (d) any and all Submissions (collectively, "cPanel IP Rights").

3.2 Trademarks; Domain Names. This Agreement does not authorize you to use the Trademarks. If you wish to use the Trademarks, you must obtain a written license to use the Trademarks from cPanel. Without limiting the foregoing, you are required to comply with the cPanel Trademark Usage Policy which is located at <http://www.cpanel.net/trademarkup.htm> (or such other URL as may be designated by cPanel from time to time) and which may be updated by cPanel in its sole discretion from time to time. Additionally, you will not (a) assert any Intellectual Property Right in the Trademarks or in any element, derivation, adaptation, variation or name thereof; (b) contest the validity of any of the Trademarks; (c) contest cPanel's ownership of any of the Trademarks; or (d) in any jurisdiction, adopt, use, register, or apply for registration of, whether as a corporate name, trademark, service mark or other indication of origin, or as a domain name or sub-domain name, any trademarks, or any word, symbol or device, or any combination confusingly similar to, or which incorporates in whole or in part, any of the Trademarks.

3.3 No Implied License or Ownership. Nothing in this Agreement or the performance thereof, or that might otherwise be implied by law, will operate to grant you any right, title or

interest, implied or otherwise, in or to the cPanel IP Rights.

3.4 No Contest. You acknowledge and agree that the cPanel IP Rights are and shall remain the sole and exclusive property of cPanel. You agree that you shall never oppose, seek to cancel, or otherwise contest cPanel's ownership of the cPanel IP Rights or act in any manner that would or might conflict with or compromise cPanel's ownership of the cPanel IP Rights, or similarly affect the value of the cPanel IP Rights. Whenever requested by cPanel, you shall execute such documents as cPanel may deem necessary or appropriate to confirm, maintain or perfect cPanel's ownership of the cPanel IP Rights. In the event cPanel is unable, after reasonable effort, to secure your signature on any document or documents needed to apply for or to confirm, maintain or perfect cPanel's ownership of the cPanel IP Rights for any other reason whatsoever, you hereby irrevocably designate and appoint cPanel as your duly authorized attorney-in-fact, to act for and on your behalf and stead to execute and sign any document or documents and to do all other lawfully permitted acts to confirm, maintain or perfect cPanel's ownership of the cPanel IP Rights with the same legal force and effect as if executed by you. In the event you become aware that any third party is, or may be, infringing the cPanel IP Rights, you agree to notify cPanel of such fact.

3.5 Submissions. With respect to any feedback, suggestions or ideas (Submissions) that you submit to cPanel concerning the Software, Services, or any of cPanel's products or services, you agree that: (a) your Submissions will automatically become the property of cPanel, without any compensation to you; (b) cPanel may use or redistribute the Submissions for any purpose and in any way; (c) cPanel is not obligated to review any Submissions; and (d) cPanel is not obligated to keep any Submissions confidential.

4. Support Fees. As a condition of the provision of the Services by cPanel under this Agreement, you shall pay cPanel the amounts set forth in either your Support Pricing Agreement, or the Pricing and Term Agreement (Support Fees) in accordance with the payment terms contained therein. All Support Fees are subject to change at any time.

## 5. Term and Termination.

5.1 Term. This Agreement shall commence on the Effective Date and shall automatically

expire at the end of the Term.

5.2 Termination. cPanel may terminate this Agreement (a) in the event of your breach of this Agreement (or a Third Party User's breach of a provision of a Third Party Support Agreement or Third Party Support Agreement relating to the Service, Software or cPanel) upon 30 days' notice to you if such breach remains uncured after the expiration of the 30 day' notice period; (b) as set forth in Section 2.9 (Provision of Services to Third Party Users); or (c) immediately without notice in the event of your material breach of this Agreement (or a Third Party User's breach of a material provision of a Third Party Support Agreement or Third Party Support Agreement relating to the Service, Software or cPanel). You acknowledge and agree that any breach by you or any Third Party User of the following provisions of the Agreement or any related provisions of a Third Party Support Agreement or Third Party Support Agreement shall each constitute a material breach: (i) any conduct inconsistent with the cPanel IP Rights as set forth in Section 3 (Intellectual Property Rights); (ii) any purported or attempted assignment, transfer, sale or other disposition or delegation of this Agreement or your rights and obligations with respect to this Agreement in violation of Section 9.8 (Assignment); (iii) any breach of Section 4 (Payment); and (iv) any breach of your representations and warranties under Section 6.1 (Mutual Representations). Additionally, a material breach by you of any agreement or contract between you and cPanel, including, without limitation, a breach of cPanel's Trademark Usage Policy, any applicable EULA or the Partner NOC Agreement shall be deemed a material breach of this Agreement and shall give rise to cPanel's right to terminate as set forth in this Section 5.2. The foregoing list of material breaches is a nonexclusive list.

5.3 Survival. Sections 1 (Definitions), 3 (Intellectual Property Rights), 4 (Support Fees), 5 (Term and Termination), 6.3 (Disclaimer), 7 (Limitation on Liability), 8 (Indemnification) and 9 (Miscellaneous) shall survive termination or expiration of this Agreement for any reason.

## 6. Representations; Warranties; Disclaimer.

6.1 Mutual Representations. Each party hereto represents and warrants to the other party that: (a) such party has the full right, power and authority to enter into this Agreement on behalf of itself and to undertake to perform the acts required of it hereunder; (b) the execution of this Agreement by such party, and the performance by such party of its obligations and

duties to the extent set forth hereunder, do not and will not violate any agreement to which it is a party or by which it is otherwise bound; (c) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its representations, warranties, terms and conditions; and (d) such party will comply with all Applicable Laws related to the Services and the performance of its obligations under this Agreement.

6.2 Limited Warranty. cPanel will use commercially reasonable efforts to resolve any Incident for which you have purchased Telephone Support. If cPanel determines, pursuant to Section 2.8 (Resolution of Incidents), that it is unable to resolve the Incident in a commercially feasible manner, cPanel will refund any Support Fees associated solely with the telephone support.

6.3 Disclaimer. EXCEPT AS SET FORTH IN THE LIMITED WARRANTY OF SECTION 6.2, THE SERVICES ARE PROVIDED "AS IS" AND CPANEL HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, OR THE ACCURACY, TIMELINESS, COMPLETENESS, OR ADEQUACY OF THE SERVICES AND ANY DATA ACCESSED THEREFROM, INCLUDING THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CPANEL DOES NOT WARRANT THAT THE SERVICES ARE OR SHALL BE ERROR-FREE OR WILL BE PROVIDED WITHOUT INTERRUPTION. IF THE SERVICES ARE DEFECTIVE, YOU ASSUME THE SOLE RESPONSIBILITY FOR THE ENTIRE COST OF ALL REPAIR OR INJURY OF ANY KIND, EVEN IF CPANEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH A DEFECT OR DAMAGES.

6.3.1 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CPANEL, ITS AFFILIATES, LICENSEES, DEALERS, SUB-LICENSORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED IN SECTION 6.2.

6.3.2 SOME JURISDICTIONS DO NOT ALLOW RESTRICTIONS ON IMPLIED WARRANTIES SO SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU.

## 7. Limitation of Liability.

7.1 Lost Profits; Consequential Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CPANEL WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, BUSINESS INTERRUPTION, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING, WITHOUT LIMITATION, UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF CPANEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 Total Cumulative Liability; Exclusive Remedy. EXCEPT FOR AMOUNTS OWED BY YOU TO CPANEL UNDER SECTION 4, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CPANEL'S AGGREGATE LIABILITY FOR DIRECT DAMAGES, UNDER THIS AGREEMENT (CUMULATIVELY) SHALL BE LIMITED TO THE TOTAL FEES COLLECTED BY CPANEL FOR AN INDIVIDUAL PIECE OF SOFTWARE THAT IS THE SUBJECT OF AN INCIDENT UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT FOR ANY BREACH OF THE LIMITED WARRANTY IN SECTION 6.2, YOUR SOLE AND EXCLUSIVE REMEDY AND CPANEL'S ENTIRE LIABILITY SHALL BE FOR CPANEL TO REFUND THE SUPPORT FEES AS SET FORTH IN THAT SECTION. THE REMEDIES IN THE FOREGOING SENTENCE ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES.

8. Indemnification. You shall indemnify, defend and hold harmless cPanel and its directors, officers, staff, employees and agents and their respective successors, heirs and assigns and cPanel affiliates (and their directors, officers, staff, employees and agents and their respective successors, heirs and assigns) (collectively, the "cPanel Parties") from and against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the cPanel Parties or any one of them in connection with any claims, suits, actions, demands or judgments (Claims) related directly or indirectly to or arising out of (a) a breach of your representations, warranties or obligations under this Agreement; (b) in the event that you submit Incidents on behalf of Third Party Users pursuant to Section 2.9 (Provision of Services to Third Party Users), (i) a breach of a Third Party User's representations,

warranties or obligations under any provisions in a Third Party Support Agreement relating to cPanel, the Software or the Services; and (ii) any Claims based upon or arising from any allegation that a Third Party User was harmed due to any termination or suspension of the Services to such user by cPanel pursuant to the terms and conditions of this Agreement; provided, however, that in any such case cPanel or its affiliates, as applicable, (x) provide you with prompt notice of any such claim; (y) permit you to assume and control the defense of such action upon your written notice to cPanel of your intention to indemnify; and (z) upon your written request, and at no expense to cPanel or its affiliates, provide to you all available information and assistance reasonably necessary for you to defend such claim. You will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to the cPanel Parties, without cPanel's prior written consent, which will not unreasonably be withheld. You will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by cPanel or its affiliates in connection with or arising from any such claim.

## 9. Miscellaneous.

9.1 Force Majeure. No party will be liable for any failure or delay in performance of any of its obligations hereunder if such delay is due to acts of God, fires, flood, storm, explosions, earthquakes, general Internet outages, acts of war or terrorism, riots, insurrection or intervention of any government or authority; provided, however, that any such delay or failure will be remedied by such party as soon as reasonably possible. Upon the occurrence of a force majeure event, the party unable to perform will, if and as soon as possible, provide written notice to the other party indicating that a force majeure event occurred and detailing how such force majeure event impacts the performance of its obligations.

9.2 Independent Contractors. It is the intention of the parties that cPanel and you are, and will be deemed to be, independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship between cPanel and you.

9.3 Choice of Law; Venue; Jurisdiction. This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas without regard to the conflicts of laws



principles thereof. Any dispute or claim arising out of or in connection with the Agreement shall be finally settled and exclusively by the state or federal courts located in Harris County, Texas. For purposes of this Agreement, you and cPanel hereby irrevocably consent to exclusive personal jurisdiction and venue in the federal and state courts in Harris County, Texas.

9.4 Entire Agreement. This Agreement, together with all Exhibits hereto, represents the entire agreement between the parties with respect to the subject matter hereof and thereof and will supersede all prior agreements and communications of the parties, oral or written.

9.5 Basis of Bargain. Section 6.2 (Limited Warranty), Section 7 (Limitations of Liability) and Section 8 (Indemnification) are fundamental elements of the basis of the agreement between cPanel and you and shall inure to the benefit of cPanel. cPanel would not be able to provide the Software on an economic basis without such limitations.

9.6 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not effect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.7 Amendment or Modification. This Agreement may not be amended, modified or supplemented by the parties in any manner, except by an instrument in writing signed by cPanel and you.

9.8 Assignment. This Agreement may not be assigned, transferred, delegated, sold or otherwise disposed of, including, without limitation, by operation of law, other than as expressly set forth in this Section 9.8. This Agreement may be assigned, transferred, delegated, sold or otherwise disposed of in its entirety by cPanel in its sole discretion. In addition, cPanel may delegate its performance under this Agreement in whole or in part to one or more affiliates, provided that cPanel will remain liable and responsible for any performance or obligation so delegated. A party's permitted successors or assignees must agree as a condition precedent to any assignment, transfer or delegation to fully perform all applicable terms and conditions of this Agreement. No party may assign this Agreement to any entity that lacks

sufficient assets and resources to continue to perform, to contractually required standards, all assigned obligations for the remainder of the Term. This Agreement will be binding upon and will inure to the benefit of a party's permitted successors and assigns. Any purported assignment, transfer, delegation, sale or other disposition in contravention of this Section 9.8, including, without limitation, by operation of law, is null and void.

9.9 Waiver. Any of the provisions of this Agreement may be waived by the party entitled to the benefit thereof. No party will be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event will not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

9.10 Remedies Cumulative. Except as expressly set forth herein, no remedy conferred upon the parties by this Agreement is intended to be exclusive of any other remedy, and each and every such remedy will be cumulative and will be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

9.11 No Third Party Beneficiaries. This Agreement is made for the benefit of the parties only, and this Agreement is not for the benefit of, and was not created for the benefit of, any third parties including, without limitation, any Third Party Users.

9.12 Notices. All notices or questions relating to this Agreement shall be directed to: WebPros International, LLC , 2550 North Loop W., Suite 4006, Houston, TX 77092, Attention: Legal Dept. Any notice required to be given under this Agreement shall be deemed given by cPanel when sent to you by email, telephone, fax or mail to the contact information supplied by you to cPanel in the Support Pricing Agreement or the Partner NOC Agreement. You may update such information from time to time upon written notice to cPanel at the address in this Section 9.12. Any failure by you to provide cPanel with updated contact information will not invalidate the effectiveness of any notice sent by cPanel to the contact information previously supplied by you.

9.13 Export Controls. The parties agree to comply fully with all Applicable Laws of the

United States, or of any foreign government to or from where a party is shipping, to in connection with the import, export or re-export, directly or indirectly, of the Software in connection with this Agreement. You specifically agree that you shall not, directly or indirectly, supply or permit any other party to supply the Software to an individual or organization in a country or region against which the U.S. government imposes an embargo (presently, Crimea, Cuba, Iran, North Korea and Syria) or an individual or organization on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons or other individual who or organization that is the subject of a U.S. legal measure that provides for sanctions blocking of property or that otherwise generally forbids U.S. citizens to transact with the individual or organization.

9.14 Time-Limited Claims. Regardless of any Applicable Law to the contrary, you agree that any claim or cause of action arising out of or related to the Software or this Agreement, must be filed within one year after such claim or cause of action arose or be forever barred.