



## Dedicated servers, Co-location and Bandwidth Services Agreement

This Agreement includes and incorporates by reference the Schedule the customer chose as Service Schedule (~~%Schedule+~~) attached and any Service Agreement Addenda, setting forth the terms under which the parties agree that ExchangeGuru (~~%Supplier+~~) will provide certain services (~~%Services+~~) to \_\_\_\_\_ (~~%Customer+~~) under the following terms:

### GENERAL TERMS AND CONDITIONS

1. **Services.** Supplier agrees to supply the Services in accordance with the terms of this Agreement. Customer agrees to receive the Services from Supplier in accordance with the terms of this Agreement.
2. **Other Services.** Upon written request by Customer, Supplier may at its option and discretion, provide Customer with technical and non-technical support not specified as provided in the Service Schedule, such as equipment reboots and resets, troubleshooting and other support (collectively, ~~%Other Services+~~), in connection with Customer's use of the Customer Collocation and Bandwidth Services. Unless the parties agree otherwise, Customer will pay for such Other Services in accordance with the Technical Support Services section of this Agreement.
3. **Order.** Payment of all monies due as per Service Schedule shall constitute an Order (~~%Order+~~). Such Order shall constitute acknowledgement of and agreement to the terms set forth in this Agreement.
4. **Fulfillment.** Delivery of account particulars, including but not limited to IP addresses and passwords to be used in conjunction with the Service, and/or commencement of usage of the Service by Customer or any third party shall constitute Fulfillment of the Order (~~%Fulfillment+~~).
5. **Term.** The Term of this Agreement will commence upon Fulfillment of Order as per paragraph 4 and will continue thereafter for the Term specified in the Service Schedule, unless terminated by either party as permitted by this Agreement. This contract shall automatically renew for a period of subsequent one (1) year periods unless written notice is provided by Customer no later than 30 days prior to the expiration date, in which case the contract will expire on said expiration date. Supplier reserves the right to terminate the Agreement under the terms set forth in paragraph 7.
6. **Payment.**
  - a. Customer will pay Exchange Guru, Inc the One-Time Install Fees and Recurring Monthly Fees specified in the Schedule, as well as any charges for Other Services and usage exceeding allowed usage as per the Schedule. Customer will pay all taxes levied against or upon the services stipulated in the Schedule (as amended by the parties from time to time) or otherwise provided by ExchangeGuru under this Agreement (not including taxes based on ExchangeGuru income).
  - b. All One-Time Install Fees will be payable in advance. All Recurring Monthly Fees will be payable monthly in advance. Monthly Fees for Internet Traffic and charges for Other Services, which are not billed as Recurring Monthly Fees, will be payable immediately upon request or monthly in arrears at the discretion of Supplier.
  - c. Except for the First Payment shown in the Schedule, which must be paid by Customer to ExchangeGuru before commencement of the Term, all amounts will be payable on or before the commencement date of the billing term.
  - d. Any payment not made when due will be subject to prorated interest equivalent to a yearly interest rate of 25%. Furthermore, an administrative late fee of no less than USD \$10 and no more than \$150 will be charged at the discretion of Supplier.
  - e. Supplier reserves the right to require a security deposit, the amount of which is based upon one (1) month's estimated or current usage, which security deposit will be remitted to Customer within 10 days of the termination of the Agreement.
7. **Termination.** Either party may terminate this Agreement on 30 days written notice if the other party becomes the subject of any voluntary proceedings under any bankruptcy or insolvency laws or becomes the subject of any involuntary proceedings under any bankruptcy or insolvency laws which are not dismissed or withdrawn within 30 days after filing. ExchangeGuru may terminate this Agreement, with or without notice, if the Customer commits a material default which includes without limitation any failure to make any payment when due. Furthermore, Supplier may, at its option, terminate this Agreement with or without notice if Customer materially violates, intentionally or unintentionally, any specific provisions or the spirit of ExchangeGuru's Acceptable Use Policy, other Terms of Service and/or any other provision of this Agreement. All Cancellation requests must be made in writing, delivered via courier or facsimile, at least 30 days prior to the next billing cycle.
8. **If Customer is in Default.** If Customer is in default of any of its obligations under this Agreement, ExchangeGuru may in its sole discretion do any or all of the following: (i) without notice suspend access to services and equipment provided to



Customer under this Agreement and any Addenda thereto, (ii) if Customer's default is non-payment of any sums due to ExchangeGuru, exercise all the rights and remedies of a secured party under applicable law including, without limitation, with the minimum notice (if any) required by law, ExchangeGuru may seize Customer equipment in satisfaction of Customer indebtedness to ExchangeGuru, and/or turn over such information as is necessary to a Collections Agency, which will be authorized to collect monies in satisfaction of any Customer indebtedness to ExchangeGuru as well as any costs (including reasonable legal fees) incurred by ExchangeGuru in exercising any remedy under this Agreement, and (iii) if ExchangeGuru terminates this Agreement in accordance with Section 7, after such termination is effective, remove all data from equipment and services provided to Customer under this Agreement.

9. **Credit Authorization.** Customer hereby authorizes ExchangeGuru and gives consent to ExchangeGuru under applicable privacy laws for ExchangeGuru to obtain credit information and bank and other financial references regarding Customer for the purposes of assessing Customer's credit worthiness. Customer agrees to promptly execute and deliver to ExchangeGuru such further documents and assurances and take such further actions as ExchangeGuru may from time to time reasonably request in order to carry out the intent and purpose of this Agreement.
10. **Limitation of Liability.** CUSTOMER ACKNOWLEDGES AND AGREES THAT EXCHANGEGURU PROVIDES NO GUARANTEES, INCLUDING BUT NOT LIMITED TO AVAILABILITY OF SERVICE, UNINTERMITTED SERVICE OR ERROR-FREE TRANSMISSION, EXCEPT AS SPECIFIED IN THE SERVICE LEVEL AGREEMENT. EXCHANGEGURU SHALL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS, OR LOSSES INCURRED BY CUSTOMER (OR ITS CLIENTS), EXCLUDING COMPENSATION FOR SPECIFIED OCCURRENCES AS SET FORTH IN THE SERVICE LEVEL AGREEMENT. FURTHERMORE, CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT EXCHANGEGURU PROVIDES CONNECTIVITY TO NODES AND NETWORKS UNDER THE CONTROL OF THIRD PARTIES. EXCHANGEGURU WILL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS, OR LOSSES INCURRED BY CUSTOMER (OR ITS CLIENTS) CAUSED BY SUCH OTHER PARTIES' EQUIPMENT, ACTS OR FAILURES TO ACT. THE LIMIT OF EXCHANGEGURU LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR BY STATUTE OR OTHERWISE TO CUSTOMER (OR ITS CLIENTS) CONCERNING PERFORMANCE OR NON-PERFORMANCE IN ANY MANNER RELATED TO THIS AGREEMENT, FOR ANY AND ALL CLAIMS WILL NOT, IN THE AGGREGATE, EXCEED THE TOTAL FEES PAID BY CUSTOMER TO EXCHANGEGURU UNDER THIS AGREEMENT IN THE IMMEDIATELY PRECEDING 30 DAYS FROM THE DATE THE CLAIM AROSE. IN NO EVENT WILL EXCHANGEGURU BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.
11. **Force Majeure.** Supplier will not be liable for any delay, interruption or failure in the performance of its obligations if caused by acts of God, war, declared or undeclared, fire, flood, storm, slide, earthquake, or other similar event beyond the control of the party affected (~~Force Majeure~~). If any Force Majeure occurs, Supplier will promptly notify the Customer. Supplier will use commercially reasonable efforts to eliminate or remedy the Force Majeure.
12. **Ownership.** All Equipment and any Services (not including equipment purchased and supplied by customer) provided under this Agreement shall be deemed to be the property of Supplier. Customer acknowledges and understands that said Equipment is provided on a rental basis and agrees that no claim of ownership or title to the Equipment shall be made by Customer.
13. **Reselling.** Upon prior written approval of ExchangeGuru which will not be unreasonably withheld or delayed, Customer in the normal course of its business may resell, in whole or in part, to its clients use (subject to all the terms of this Agreement) of the Customer Collocation and Bandwidth Services provided by ExchangeGuru to Customer under this Agreement. Such clients will be deemed to be Customer's agents to the extent they or their representatives make use of equipment or service provided by ExchangeGuru under this Agreement. Customer will act as the single point of contact with ExchangeGuru with respect to Customer's clients. Customer will remain responsible for all fees or other costs under this Agreement incurred by Customer's clients, both with or without the consent of Customer. Any act or omission of any such client that would be deemed a breach of this Agreement if committed by Customer will be deemed a breach of this Agreement by Customer. Customer agrees to defend, indemnify and hold harmless ExchangeGuru and its officers, directors and employees (collectively, the ~~Indemnities~~), from any and all liabilities, costs and expenses, including reasonable legal fees, related to or arising from (i) any act or omission of any such client that would be a breach of this Agreement if committed by Customer, and (ii) any claim by any such client arising from use of the Service provided by ExchangeGuru under this Agreement or otherwise from performance or non-performance by a party in any manner related to this Agreement.
14. **Miscellaneous.**
  - a. **Notices.** Every notice, approval, request, authorization, direction or other communication under this Agreement will be given in writing to the party at the address first set forth above for such party and will be deemed to have been delivered and given for all purposes (i) on the delivery date, if delivered personally; (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt, if sent by courier; (iii) upon completion of transmission, if sent via facsimile with a confirmation of successful transmission; or (iv) upon personal acknowledgement by the recipient, if sent by email.
  - b. **Compliance with Laws.** Customer will comply with all applicable laws, regulations, and ordinances.
  - c. **Assignment.** Customer may not assign this Agreement or any of its rights or obligations or the license hereunder, without the prior written consent of ExchangeGuru.



- d. **Survival.** The provisions set forth in Sections 6, 7 10, 12 and 13 of this Agreement will survive termination or expiration of this Agreement.
- e. **Reservation of Rights.** ExchangeGuru reserves all rights not specifically granted herein to the extent permitted by law.
- f. **Entire Agreement.** This Agreement supersedes all previous Agreements and Service Agreement Addenda between the parties. This Agreement, the Service Schedule and any subsequent Service Agreement Addenda constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, EXCHANGEGURU MAKES NO REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.
- g. **Modifications.** This Agreement may not be altered, amended or modified, except in writing signed by both parties.
- h. **Waiver.** Unreasonable failure or delay in enforcing any right or exercising any remedy by either party will be deemed a waiver of any right or remedy by such party.
- i. **Severability and Reformation.** If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion will be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation. Said modification shall have no effect on any other provision of this Agreement.
- j. **Remedies not Exclusive.** The remedies available to the parties under this Agreement are cumulative and not exclusive to each other, and any such remedy will not be deemed or construed to affect any right, which either of the parties is entitled to seek at law, in equity or by statute.
- k. **Relationship.** The relationship of ExchangeGuru to Customer will be that of an independent contractor, and neither ExchangeGuru nor any employee of ExchangeGuru shall be deemed to be an agent or employee of Customer.
- l. **Choice of Law and Attornment.** This Agreement will be governed and interpreted by the laws of the jurisdiction where the offices of Supplier are located, without regard to its conflicts of law provisions. The parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the jurisdiction where the Supplier's offices are located, and all courts competent to hear appeals therefrom.
- m. **Further Assurances.** Each of the parties will promptly execute and deliver to the other such further documents and assurances and take such further actions as the other may from time to time request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies intended to be created in favor of the other.
- n. **Liens and Encumbrances.** Customer (and its clients) will not have the power, authority or right to create and will not permit any lien or encumbrance, including without limitation, tax liens, mechanics liens, builders liens or other license or encumbrances with respect to work performed, in connection with the Equipment or use of the Service provided by Supplier.

## SERVICE TERMS AND CONDITIONS

1. **Equipment Services.** ExchangeGuru will provide to Customer such Equipment and remote access to such equipment as specified in the Schedule (as amended by the parties from time to time). ExchangeGuru will provide such under the terms of this Agreement, including the Service Level Agreement contained herein.
2. **Bandwidth Services.** ExchangeGuru will provide to Customer the Internet Connectivity, IP Addresses and Internet Traffic services (collectively "Bandwidth Services"), as specified in the Service Schedule (as amended by the parties from time to time). ExchangeGuru will provide Bandwidth Services in accordance with this Agreement, including the Service Level Agreement contained herein. Customer will comply (and will cause its clients to comply as if those clients were the Customer) with the Acceptable Uses Policy (as amended by ExchangeGuru from time to time) contained herein. ExchangeGuru shall have the right, but not the obligation, without prior notice, to monitor online conduct and communications in order to verify compliance with this Agreement and applicable law. The security for transmissions made using the Bandwidth Services is the responsibility of Customer. Customer's sole remedy for any interruption of



Bandwidth Services will be to receive refunds in accordance with the Service Level Agreement. Customer agrees to defend, indemnify and hold harmless ExchangeGuru and its officers, directors and employees (collectively, the Indemnities), from any and all liabilities, costs and expenses, including reasonable legal fees, related to or arising from any action or claim by a third party against the Indemnities asserting an intellectual property right violation or any other third party claims which concern Customer's (or its clients') use of the Bandwidth Services (including without limitation transmission of any message, information, software or other materials, or service interruptions).

3. IP Addresses. Any IP Addresses allocated to Customer by ExchangeGuru must be maintained by Customer in an efficient manner as deemed by ARIN and utilized at 80% within 15 days of assignment by ExchangeGuru to Customer. Failure to comply may result in the revocation of IP Addresses by ExchangeGuru on three days notice to Customer.
4. Traffic Billing.
  - a. For purposes of billing traffic is measured as of the last day of each month.
  - b. Traffic is measured using MRTG.
  - c. Traffic data is captured on the ExchangeGuru switch associated with the customer connection.
  - d. Charges will be based on average of ingress or egress or 95<sup>th</sup> percentile at the option of Supplier.

### **ACCEPTABLE USES POLICY (AUP)**

Customer agrees to use Bandwidth and Equipment Services only for lawful purposes, in compliance with all applicable law. Specific activities that are prohibited include, but are not limited to:

- Threatening harm to persons or property and any otherwise harassing behavior.
- Violating U.S. export control laws for software or technical information.
- Misrepresenting or fraudulently representing products/services using Customer's account.
- Transmission, distribution or storage of any material in violation of any applicable law or regulation.
- Transmission, distribution or storage of any material protected by copyright, trademark, trade secret or other intellectual property right without proper authorization, and material that is obscene, defamatory, an invasion of privacy or constitutes an illegal threat, or is otherwise illegal.
- Facilitating, aiding, or encouraging any of the above activities, whether using ExchangeGuru's network or service by itself or via a third party's network or service.
- Interference with a third party's use of ExchangeGuru's network or service, or ability to connect to the Internet or provide services to Internet users.

#### Email

Sending unsolicited email messages, including but not limited to, commercial advertising and informational announcements, is explicitly prohibited. Customer will not use another site's mail server to relay mail without the express permission of the site. It is strictly forbidden to send out unsolicited email from any other network that advertises, promotes or in any way points or directs to a location or node inside ExchangeGuru's network.

#### System and Network Security

Customer is prohibited from utilizing ExchangeGuru services to compromise the security or tamper with system resources or accounts on computers at the Premises or at any third party site.

Specific activities that are prohibited include, but are not limited to:

- Use or distribution of tools designed for compromising or subverting security measures.
- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Deliberate attempts to overload a system and broadcast attacks.
- Forging of any protocol's packet header or any part of the header information, including but not limited to in an email or a newsgroup posting.
- Intentionally transmitting files containing a computer virus or corrupted data.
- Abusing ExchangeGuru network in such a manner that negatively impacts network performance.

#### Violation

ExchangeGuru, in its sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violation of this AUP could also subject Customer to criminal or civil liability. ExchangeGuru may block access at the router or



switch level to Customer's Equipment involved. If ExchangeGuru believes, in its sole discretion, that a violation of this AUP has occurred, such action may also include, but is not limited to, temporary or permanent blocking of access to Customer's Equipment, and the suspension or termination of Customer's services under this Agreement. ExchangeGuru may involve and will also fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

ExchangeGuru reserves the right to modify this AUP at any time without notice.

**Customer is responsible for all use of the Equipment and Bandwidth Services by itself, its employees, agents, contractors, invitees and clients, whether such use is with or without the consent of Customer.**