



Terms and conditions for Small Business Exchange Hosting

The terms of use below constitute a legal agreement between you (the Customer) and ExchangeGuru.net (the Company). Your agreement to be bound by these terms is acknowledged by your use of the Company Services, Support Services and/or any software made available to you by the Company.

You agree you shall use the Company's services only for lawful purposes.

Company and You agree to the following provisions:

1. Provision of Services.

Company agrees to provide services to You in accordance with the Exchange Hosting Service Level Agreement in return for your payment for Company's services, your execution and compliance with this agreement, and your compliance with Company's Acceptable Use Policy all incorporated by reference herein.

Provision of Company's services shall commence once Company has received both Your payment for Company's services and this Master Service Agreement (Agreement) duly executed by You.

2. Agreement Term.

The Agreement Term is either the Initial Term or Renewal Term as defined herein.

2.1 Contract Hosting Plan Agreement Term.

For Contract Hosting Plans, the Initial Agreement Term (Initial Term) is the period between the Agreement Term Begin Date, which is the day of your initial payment or execution of this Agreement, whichever is later, and the Agreement Term End Date, which is the end of the calendar month twelve (12) months following your Agreement Term Begin Date. At the end of the Initial Term and any subsequent terms, this Agreement shall automatically renew for twelve (12) months beginning at the end of any prior Agreement Term (Renewal Term).

2.2. Fee Guarantee.

The fees set forth in your plan (per which the account is created) are valid for the Initial Term and each renewal term of the Agreement

3. Automatic Renewal.

This Agreement shall renew automatically at the end of the prior Agreement term unless terminated in accordance with this Agreement either by You or by the Company. We reserve the right to modify the Master Service Agreement and Service Level Agreement (or any portion thereof) at any time without notice. When a new Agreement term begins, the then current Master Service Agreement and Service Level Agreement shall apply.

4. Termination without Cause.

TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO THE COMPANY PRIOR TO OR AT ACCOUNT TERMINATION. YOUR DATA AND ACCOUNT SETTINGS ARE IRREVOCABLY DELETED AFTER ACCOUNT TERMINATION, INCLUDING BUT NOT LIMITED TO, WEB SITE CONTENT, DATABASES, AND EMAIL MESSAGES. SECURING ALL NEEDED DATA FROM YOUR ACCOUNT PRIOR TO ACCOUNT TERMINATION SHALL BE SOLELY YOUR RESPONSIBILITY.



Company may terminate service under this Agreement at any time, without penalty, if You fail to comply with Terms & Conditions. At the time of termination Company shall provide email notification to your main contact address. If Company terminates this Agreement for such violations, Company shall not be required to refund to You any fees paid in advance of service provision.

4.1 Termination by You without cause.

For contract hosting plans, you may terminate this Agreement at any time without cause by providing written or electronic mail notice of termination to ExchangeGuru not less than thirty (30) calendar days prior to the beginning of any Renewal Term. If You terminate without cause a contract hosting account effective prior to the end of the Agreement term You shall incur an Early Termination Fee as defined in Section 4.3.1.

4.2 Termination by Company without cause.

The Company may terminate this Agreement without cause by providing written or electronic mail notice of termination to your main email contact address not less than thirty (30) calendar days prior to the effective termination date.

For contract hosting plans, Company shall refund or not charge You the monthly hosting fees for the month in which Services terminate.

4.3 Refunds/Fees for Termination by You without cause.

Fees for non-recurring services and set up fees shall not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the account for no cause during the term or if You breach this Agreement.

4.3.1 Contract hosting account refunds/fees. If You terminate without cause a contract hosting account effective prior to the end of the Agreement term, Company shall not be required to refund to You any hosting fee amounts already paid.

For contract hosting plans, the Early Termination Fee is the Minimum Package Fee for the remainder of the agreement term. The Minimum Package Fee is defined as the monthly charge for your base package excluding any additional items that you have purchased along with this base package.

5. Termination for Cause.

To terminate your account for the Company's violation of the terms of this Agreement or the Service Level Agreement, You shall provide to the Company in writing, via email or via certified mail, the details of the Company's violation and allow the Company a reasonable time to cure any such violation prior to termination of your account.

THE COMPANY MAY TERMINATE SERVICES TO YOU IMMEDIATELY AND WITHOUT PRIOR

NOTICE (TERMINATION FOR CAUSE) FOR ANY OR ALL OF THE FOLLOWING REASONS:

ANY MATERIAL BREACH OF THIS AGREEMENT, WHICH INCLUDES BUT IS NOT LIMITED TO VIOLATION OF THE COMPANY'S ACCEPTABLE USE OR NO SPAM POLICIES; OR ANY NONMATERIAL BREACH OF THIS AGREEMENT WHICH REMAINS UNCURED BEYOND A REASONABLE TIME AFTER BREACH NOTIFICATION; AND FAILURE TO PROVIDE AND KEEP CURRENT ALL HOSTPILOT CONTACT AND BILLING INFORMATION.



IN THE EVENT OF TERMINATION FOR CAUSE, THE COMPANY SHALL NOT REFUND ANY PAID FEES. TERMINATION FOR CAUSE WILL NOT CANCEL OR WAIVE ANY FEES OWED TO THE COMPANY PRIOR TO ACCOUNT TERMINATION.

6. Payment Terms. You agree to be billed at the beginning of the Agreement Term for all recurring charges for the current calendar month and one-time charges, including but not limited to late fees and termination charges, for all Company's services ordered by You and for any fees You owe to the Company. For contract hosting accounts, you also agree to be billed at the beginning of each calendar month for all recurring charges for the month as well as any and one-time charges, including but not limited to late fees and termination charges, for all Company's services ordered by You and for any fees You owe to the Company. For contract hosting accounts you further agree to be billed for any additional services ordered at the time the additional services are ordered and also at the beginning of each calendar month.

6.1 Late Payment. Suspension or Interruption of Service for Non-payment. Late Payment is defined as payments received after the fifth business day of the due date (15th). In the event of late payment(s) on Your account, Company, at its sole discretion and without waiving other rights it may have, may suspend, interrupt, or disconnect the services and charge Your account the Early Termination Fee.

6.2 Excess usage charges. You understand and agree that You are responsible for monitoring and maintaining your accounts within all plan-specified limits. In the event your usage exceeds these limits for your account, You agree the Company may charge You for such excess usage, at the then-published price on the Company's web site. Usage and associated charges for excess usage shall be determined based solely by the Company's collected usage information. Unused monthly allotments shall not accrue or carry over from one month to any other month.

7. Taxes.

The Company shall not be liable for taxes and other governmental fees and assessments to be paid which are related to purchases made from You or from the Company's server. You agree that You shall be solely responsible for all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of services provided to You by the Company.

9. Materials and Products.

Any material and data You provide to the Company in connection with the Company's services shall Server Ready. Server Ready is defined as being in a condition and form, as determined solely by the Company, which requires no additional manipulation or verification on the part of the Company. Attempting to place or requesting placement of Non-Server-Ready material or data on the Company's servers shall be a breach of this Agreement.

The Company may, in its sole discretion, reject material or data that You have placed, attempted to place, or have requested be placed on the Company's servers. The Company agrees to notify You immediately of its rejection of the material or data and provide You with an opportunity to amend or modify the material or data to meet the requirements of the Company.

10. Limited Warranty; Limitation of Damages.

THE COMPANY PROVIDES SERVICES AS IS AND WITH ALL RISKS. YOU EXPRESSLY AGREE THAT USE OF THE COMPANY'S SERVICES IS AT YOUR SOLE RISK.



The Company, its agents, affiliates, vendors and the like do not represent or warrant that the Services will be uninterrupted or error free; neither do they make any warranty as to the results that may be obtained from the use of the Services or as to the accuracy, reliability, or content of any information service or merchandise contained in or provided through the Services. The Company expressly disclaims the warranties of merchantability and fitness for a particular purpose and all warranties not expressly contained in this Agreement. You and the Company agree that the terms of this Agreement shall not be altered due to custom or usage or due to the parties' course of dealing or course of performance under this Agreement.

The Company, its agents, affiliates and vendors shall not be liable for any indirect, incidental, special, punitive or consequential damages, including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like, that result from the use or inability to use the Services; from mistakes, omissions, interruptions, deletion of files or directories, errors, defects, delays in operation, or transmission; or for any failure of performance regardless of whether the Company has been advised of such damages or their possibility, or whether the above events are limited to acts of God, communication failure, theft, destruction, or unauthorized access to the Company's records, programs, or the Services, whether in contract, tort or otherwise.

You agree that the Company's total liability and your sole remedy for any non-accessibility to the Services or other downtime is limited to the penalties listed in the Exchange Hosting Service Level Agreement, however, in no event shall the Company's liability exceed the total aggregate amount paid by You to the Company under this Agreement, including all fees, attorney fees, and costs.

The Company will exercise no control over the content of the information passing through the Company's network except those controls expressly provided herein.

11. Patents, Copyrights, Trademarks, and Other Intellectual and Proprietary Rights.

Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. You agree that all right, title, and interest in any product or service provided to You is solely the property of the Company. These products and services are only for Your use in connection with Company's services provided to You as outlined in this Agreement.

You expressly warrant and represent to the Company that You have the right to use any patented, copyrighted, trademarked or proprietary material which You use, post, or otherwise transfer to or by way of the Company servers. Breach of this warranty shall be a material breach of this Agreement.

12. Hardware, Equipment, and Software.

You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access Company servers. Company makes no representations, warranties, or assurances that your equipment will be compatible with Company services.

13. Age and Capacity.

You expressly represent and warrant that You and any person to whom You grant access to your Company account have reached the age of eighteen and that You are not subject to an limitation on your ability to enter into this Agreement.

14. Indemnification.



You agree that you shall defend, indemnify, save, and hold Company harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against Company, its agents, servants, officers, and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by You, your agents, employees, or assigns.

Without limiting the foregoing, You agree to defend, indemnify, and hold harmless Company against liabilities arising out of:

- (i) any injury to person or property caused by any products sold or otherwise distributed in connection with Company services provided to you;
- (ii) any material supplied by You infringing or allegedly infringing on the property or proprietary rights of a third party;
- (iii) copyright infringement; and
- (iv) any defective product which You sold or distributed by means of Company services.

15. Miscellaneous.

Governing Law; Jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to its conflicts of laws or its principles. You agree, in the event any claim or suit is brought in connection with the Company's provision of the Services to You, to submit to the jurisdiction of the state of Delaware.

Severability. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

Waiver; No Oral Modification. No waiver by the Company of any breach by You of any of the provisions of this agreement shall be deemed a waiver of any preceding or succeeding breach of this agreement. No such waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this agreement shall be effective unless it is in writing and signed by the parties hereto, and then only to the extent set forth in such writing.

No Assignment. No benefit or duty under this Agreement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void.

Surviving Clauses. Clauses 7, 8, 10, 11, 14, and 15 of this Agreement shall survive for the lesser of a period of two years after termination of your account or the maximum length permitted by law.

Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between the You and the Company with respect to the Services. You understand and agree that the Company and You intend to include, as the sole third party beneficiaries of this Agreement, Company's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.