

# MASTER SERVICE AGREEMENT – EXCHANGE AND SHAREPOINT HOSTING

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY BEFORE USING PLEXHOSTED SERVICES. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE CLOSE YOUR BROWSER AND DO NOT PROCEED WITH ORDERING OR USING THE SERVICES.

BY CLICKING "I AGREE", ORDERING AND/OR USING PLEXHOSTED SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT, THE ATTACHED APPENDIX A: MICROSOFT SOFTWARE USE-TERMS AND CONDITIONS, THE PLEXHOSTED ACCEPTABLE USE POLICY, THE PLEXHOSTED SERVICE LEVEL AGREEMENT (THE "SERVICE LEVEL AGREEMENT" OR "SLA"), THE PLEXHOSTED PRIVACY POLICY AND THE PLEXHOSTED NO-SPAM POLICY, EACH OF WHICH MAY BE FOUND AT <http://www.plexhosted.com/company/legal.html> (COLLECTIVELY, THE "AGREEMENT").

(For present purposes, "Person" means an individual, corporation, company, cooperative, partnership, trust, unincorporated association, entity with juridical personality or governmental authority or body, and pronouns that refer to a Person shall have a similarly extended meaning. "Includes" and "including", when used in this Agreement, mean "including (or includes) without limitation")

THIS AGREEMENT is by and between PLEXHOSTED LLC, with offices at PO Box 149, Jamestown, RI 02835 ("PLEX"), and the recipient and payer of Services hereunder as identified as part of the subscription process for PLEX Services ("You" and, where appropriate, "Your", "Yours" or "Yourself").

PLEX and You agree as follows:

## 1. SCOPE; ACCESS; SECURITY

### 1.1 Provision of Services.

Subject to and in accordance with the terms of this Agreement, including any Appendices, PLEX grants You a non-exclusive, non-sub-licensable, non-transferable, non-assignable, revocable license for the term of this Agreement to access and use the Services. For present purposes, "Services" means such SharePoint, Exchange Hosting, CRM, and other remotely provided services as PLEX may offer from time to time. Services may be used by Your users for internal business purposes only. You agree to comply with the terms and conditions of this Agreement, including any Appendices, and with all applicable PLEX procedures and policies that further define use of the Services. You acknowledge and agree that the actions of any of Your users with respect to the Services will be deemed to be actions by You and that any breach by any of Your users of the terms of this Agreement, including any Appendices, will be deemed to be a breach by You.

### 1.2 Account Information and Ownership.

You agree to maintain accurate Account information by providing updates to PLEX promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant account contact or billing information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by PLEX to determine the validity of information provided by You will constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any PLEX account or any portion thereof, including Your account, PLEX will resolve such dispute in its reasonable discretion. In addition, in the event of such a dispute, PLEX may immediately suspend, alter or terminate any relevant account, including Your account, or any portion thereof. You will reimburse PLEX for any legal fees and other fees incurred with respect to any dispute regarding control or ownership of Your account or Your data or the same of another PLEX customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with PLEX, regardless of any administrative designation (e.g., Administrator, Billing Contact, Owner, etc.) and (ii) PLEX may request any documentation it reasonably requires to establish ownership and rights to Your account and any related Data; provided that any user with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

### 1.3 Account Security and Activity.

You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your account access information, and (ii) all activities that occur in connection with Your account, whether initiated by You, by others on Your behalf or by any other means. You will notify PLEX promptly of any unauthorized use of Your account, access information or any other actual or potential breach of security. You acknowledge and agree that PLEX will not be liable for any loss that You may incur as a result of any party using Your access information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by PLEX, any PLEX party, or another party due to any party using Your access information. PLEX strongly recommends that You keep Your access information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. PLEX specifically disclaims all liability for any activity in Your account, whether authorized by You or not.

## 2. LAWFUL USE OF THE SERVICES

You agree to use all Services provided to You hereunder only for Your lawful, appropriate, and permitted internal purposes hereunder. In no event may You resell the Services. In addition, You may not use the Services if You are a competitor of PLEX (as determined by PLEX in its reasonable discretion). In the event that your use of the Services violates any law, rule or regulation or this Agreement, PLEX shall have the right to immediately terminate this Agreement and pursue any and all its other remedies.

## 3. TERM, TERMINATION, CANCELLATION POLICY

### 3.1 Term

The Agreement's "Term" is comprised of the Initial Term and any Renewal Term (each, as defined below).

- a. Monthly Plan Agreement Term. For monthly plans, the "Initial Term" is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, until the thirtieth (30th) day thereafter. "Renewal Terms" for monthly plans, are defined as the thirty (30) day period beginning at the end of the Initial Term and each subsequent thirty (30) day period thereafter.
- b. Prepaid Yearly Plan Agreement Term. For prepaid yearly plans, the "Initial Term" is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, through the end of the twelve (12) calendar month period thereafter. "Renewal Terms" for prepaid yearly plans are defined as the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter.
- c. Defined Term Plan Agreement Term. For defined term plans, the "Initial Term" is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, until the end of such defined term. "Renewal Terms" for defined term plans are defined as the agreed term in months beginning at the end of the Initial Term and each subsequent defined term in months thereafter.
- d. Automatic Renewal. This Agreement shall renew automatically at the end of the Initial Term and each Renewal Term unless terminated in accordance with this Agreement either by You or by PLEX.
- e. In some cases, PLEX may offer a 30 day trial for the Services. If You choose to participate in the 30 day trial, You will order the Services in the usual and customary manner, and PLEX will delay billing for 30 days for those Services You choose and are offered under the 30 day trial. During the 30 day trial, You may cancel the Services in the usual and customary manner during the 30 day trial and PLEX will terminate those Services immediately with no charge to You for those Services. If you do not cancel the Services during the 30 day trial, PLEX will charge You the fees set forth in the order form created at the outset of the 30 day trial per Section 4 below. No customer or customer organization may participate in a 30 day trial for a particular PLEX Service more than once annually.

### 3.2 Termination for convenience and cancellation policy

- a. Monthly Plan. You may terminate the Agreement for convenience at any time on fifteen (15) days advance notice by logging into the PLEX portal at - <https://plexhosted.com/billing/clientarea.php>. The termination effective date will be fifteen (15) days after receipt of the written notice. If You terminate for convenience a monthly plan prior to the end of the then current Term, PLEX shall not be required to refund You fees already paid and you will be charged the entire month in which the effective termination date occurs. For plans that are having a different billing cycle than monthly, such as a three (3) month or a six (6) month cycle, You shall be reimbursed for the unused month(s) after the termination effective date. In every case, only full months shall be reimbursed, no partial monthly fees shall be refunded.
- b. Prepaid Yearly Term.
  - 1) For all Services with a prepaid yearly term contract, you may terminate the Agreement for convenience with a fifteen (15) day advance notice before the end of the Term by logging into the PLEX portal at - <https://plexhosted.com/billing/clientarea.php>. However, if the written notice is received after this required fifteen (15) days but before the end of the Term, PLEX may charge You a fee of \$15.00 to proceed with the cancellation.
  - 2) If you terminate your account for convenience prior to the end of the Term, PLEX will not reimburse any prepaid fees and/or if your account has automatically renewed and we did not receive your written notice on time, You will be charged for all the months remained unpaid.
- c. Defined Term Plan. You may terminate the Agreement for convenience at any time on ninety (90) days advance notice by logging into the PLEX portal at - <https://plexhosted.com/billing/clientarea.php>. The termination effective date will be ninety (90) days after receipt of the written notice. If You terminate for convenience such plan prior to the end of the then current Term, PLEX shall not be required to refund You fees already paid and You will be charged the entire ensuing ninety (90) day period before which the effective termination date occurs.

### 3.3 Termination by PLEX without cause

PLEX may terminate this Agreement without cause by providing written or electronic mail notice of termination to Your administrative email contact address not less than sixty (60) calendar days prior to the effective termination date.

- a. Monthly Plan. For monthly plans, if the effective termination date occurs prior to the end of the then current Term, PLEX shall refund or not charge You the monthly fees for the month in which Services terminate.
- b. Prepaid Yearly Term. If PLEX terminates a prepaid yearly term Agreement for convenience prior to the end of the then current Term without cause, a refund equal to the prepaid hosting fees attributable to the remaining month(s) PLUS the fee for the month in which the contract is terminated LESS any unpaid fees shall be issued within thirty (30) calendar days of account termination to the credit card on record at time of termination. This refund shall be Your sole and exclusive remedy and PLEX's entire aggregate liability for PLEX's early termination of the Agreement without cause.
- c. Defined Term Plan. If PLEX terminates a defined term plan Agreement for convenience prior to the end of the then current Term, PLEX shall refund or not charge You the fees attributable to the remaining unused months of the current Term.

### 3.4 Termination for Cause

- a. By You. To terminate Your account for PLEX's material breach of the terms or conditions of this Agreement, You shall provide to PLEX's legal department in writing, via email

(legal@plexhosted.com) or via certified mail, the details of PLEX's material breach and allow PLEX thirty (30) days to cure any such violation prior to termination of this Agreement. You may only terminate this Agreement if PLEX fails to cure the alleged material breach within such thirty (30) day delay.

- b. PLEX may terminate any or all Services immediately and without prior notice (termination for cause) for any of the following reasons: any material breach of this agreement, which includes any failure to make payment when due, violation of the PLEX's Acceptable Use or No-Spam Policies; or any non-material breach of this Agreement which remains uncured beyond a reasonable time after breach notification; and failure to provide and keep current all administrative contact and billing information. In the event of termination for cause, PLEX shall not refund any paid fees. Termination for cause will not cancel or waive any fees owed to PLEX as per this Agreement.

### 3.5 Following Termination

TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO PLEX AS PER THIS AGREEMENT. YOUR DATA AND ACCOUNT SETTINGS SHALL BE IRREVOCABLY DELETED 15 DAYS FROM THE DATE OF TERMINATION (OR AS OTHERWISE SET FORTH IN THE SLA) UNLESS YOU HAVE BY SUCH DATE PAID ALL AMOUNTS AND DAMAGES OWED TO PLEX, INCLUDING WEB SITE CONTENT, DATABASES, AND EMAIL MESSAGES. IT SHALL BE YOUR SOLE AND EXCLUSIVE RESPONSIBILITY TO SECURE ALL NECESSARY DATA FROM YOUR ACCOUNT PRIOR TO TERMINATION.

## 4. FEES, BILLING, TAXES, CHARGES

### 4.1 Fees

The fees set forth in the order form created at the outset of Your account shall be effective for the Initial Term and each Renewal Term of this Agreement, provided that PLEX shall have the right to increase these fees at any time upon thirty (30) days written notice to You. In the event that You do not agree with such fee increase, You shall have the right to terminate this Agreement upon thirty (30) days written notice, provided that such notice of termination must be received within thirty (30) days of date of notice of the fee increase.

### 4.2 Billing and Payment Arrangements

PLEX will bill You on a monthly basis for all recurring fees. One-time fees, including late payment fees, invoice processing fees, and returned check fees may occur at any time. All plan or feature changes may be billed within a seven (7) day period. No refunds or adjustment shall be issued for one-time fees. For recurring fees, no refund or adjustment for plan downgrades or elimination of plan features within the current monthly term shall be issued. INVOICES/PAYMENTS ARE IRREVOCABLY DEEMED FINAL AND ACCEPTED BY YOU THIRTY (30) DAYS FROM THE LATER OF WHEN (I) YOUR INVOICE IS ISSUED AND (II) YOU MAKE PAYMENT THEREOF (INCLUDING THROUGH YOUR CREDIT CARD AS AUTHORIZED HEREUNDER). YOU SHALL AT ALL TIMES PROVIDE AND KEEP CURRENT AND UP-TO-DATE YOUR CONTACT, CREDIT CARD, IF APPLICABLE, AND BILLING INFORMATION ON THE ADMINISTRATIVE CONTROL PANEL.

### 4.3 Payment by Credit Card

- a. For payment by credit card, PLEX shall provide an invoice to You. You may view and print the invoice for Your account using the Account Manager. At the beginning of each term, PLEX will apply the current monthly charges to Your credit card number which You entered into the Account Manager.
- b. It is Your responsibility to keep Your credit card information up-to-date at all times. Deleting Your credit card information at any time may be considered grounds for immediate termination. In the event charges to Your credit card fail, PLEX shall email a warning to Your account billing contact. If, after ten (10) days, PLEX is unable to bill Your credit card, PLEX may suspend Your access to or terminate any Services. During suspension, existing data will not be affected. After fifteen (15) days of non-payment from the date Your credit card was initially charged, PLEX shall have the right to immediately terminate this Agreement and delete all your Data as per the above.

- c. In the event You issue a chargeback or reversal of charges without first following the procedures in Section 3, You will be responsible for a \$50.00 billing service fee.

#### 4.4 Excessive use

You shall monitor and maintain Your accounts within all plan-specified limits and in a manner that does not disrupt the activities of other PLEX customers. In the event Your usage exceeds the limits for Your account or may disrupt the activities of other PLEX customers, You agree PLEX may, in its reasonable discretion, (i) charge You for such excess usage via Your credit card, or by invoice, (ii) upgrade You to a plan or increase the limits on Your account to address this excess usage, and/or (iii) suspend or terminate Your account for cause. Usage and associated charges for excess usage shall be determined based solely upon PLEX's collected usage information. Unused monthly allotments shall not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You shall be responsible for the new costs and fees.

#### 4.5 Taxes

You shall be liable for taxes, governmental fees and assessments to be paid related to fees and charges arising under this Agreement or in connection with the Services. You shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services.

### 5. MODIFICATION OF TERMS

PLEX may update, amend, modify or supplement the terms and conditions of this Agreement from time to time by updating this Agreement on its web site. You are responsible for regularly reviewing the most current version of this Agreement at any time at <http://www.plexhosted.com/legal/>. If You continue to use the Services following any such amendment, modification or supplement, such use will be deemed acceptance of such update, amendment, modification or supplement by You. If at any time you do not agree with any amendment, modification or supplement to the terms and conditions of this Agreement, you may terminate this Agreement for convenience as per Section 3.2.

### 6. BETA PRODUCTS AND SERVICES

#### 6.1 Provided "As Is"

This section applies only to customers with accounts created on experimental "Beta" plans and platforms. The Service Level Agreement does not apply to such "Beta" plans or platforms, and PLEX has no liability whatsoever in relation to any such "Beta" plans or platforms or any related databases, web site content and email messages, whether direct or indirect or otherwise. Any use of "Beta" platforms or plans is at Your risk and peril, and you are strongly discouraged to use such accounts in production or in relation to sensitive data.

#### 6.2 Upgrades

PLEX may upgrade software on "Beta" programs when and as PLEX deems necessary in its reasonable discretion. Without limitation, PLEX does not represent or warrant that new versions of the software installed on "Beta" programs will be compatible with the currently installed version or that loss of functionality or interruption of service will not occur as a result of such upgrades.

#### 6.3 Termination

PLEX has the right to terminate any "Beta" program or plan at any time without cause or notice. PLEX may convert the "Beta" servers to a PLEX Services plan selected at PLEX's reasonable discretion. To discontinue the account and avoid incurring increased charges under selected PLEX Service plan, You must terminate the account in accordance with the termination provisions in Section 3 of this Agreement.

### 7. MATERIAL, DATA, SOFTWARE, OR PRODUCTS

#### 7.1 Server Ready

Any material, data, software or products You provide to PLEX in connection with PLEX Services shall be server ready, meaning that they shall be in a condition and form, as determined reasonably by PLEX, which

requires no additional manipulation or verification on the part of PLEX. Attempting to place or requesting placement of non-server-ready material, data, software or products on PLEX's servers shall be a material breach of this Agreement.

### 7.2 Rejection

PLEX may, in its reasonable discretion, reject material, data, software or products that You have placed, attempted to place, or have requested be placed on PLEX's servers. PLEX shall notify You of its rejection and provide You with an opportunity to amend or modify such material, data, software or products to meet the requirements of PLEX.

### 7.3 Malicious Code

Any material, data, software or products placed on PLEX's servers by or through You shall be free of any and all malicious code, including disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the servers.

## 8. LIMITED WARRANTY, LIMITATION OF DAMAGES.

8.1 PLEX PROVIDES SERVICES ON AN "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS ALL OF WHICH ARE DISCLAIMED, WAIVED AND EXCLUDED. YOU EXPRESSLY AGREE THAT ANY AND ALL USE OF SERVICES IS AT YOUR RISK AND PERIL. ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR LEGAL, WHETHER ARISING BY LAW, CONTRACT, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE, INCLUDING ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF TITLE, OWNERSHIP (INCLUDING BUT NOT LIMITED TO THE WARRANTY THAT THE RELEVANT PROPERTY IS FREE OF ANY OTHER RIGHTS OR CHARGES), NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY AND WORKMANSHIP, ARE HEREBY DISCLAIMED, WAIVED AND EXCLUDED.

8.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, YOU AGREE THAT PLEX'S (AND THAT OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) TOTAL MAXIMUM AGGREGATE CUMULATIVE LIABILITY, FOR ALL PAST, PRESENT OR FUTURE CLAIMS, DEMANDS, FINES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, REQUESTS, LAWSUITS, JUDGMENTS, DAMAGES, LIABILITIES COSTS, EXPENSES, PREJUDICES OR LOSSES, INCLUDING REASONABLE ATTORNEYS FEES ("CLAIMS") ARISING AS A RESULT OF OR IN RELATION TO THIS AGREEMENT, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED, IN THE AGGREGATE FOR ALL CLAIMS BY ANY AND ALL PERSONS, 100% OF ALL FEES ACTUALLY PAID TO PLEX BY YOU UNDER THIS AGREEMENT FOR THE ONE MONTH PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

8.3 PLEX AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES FOR LOST PROFITS, GAINS OR OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, REGARDLESS OF WHETHER PLEX HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.

8.4 You agree that Your recourses and remedies and PLEX's (and its SUBSIDIARIES', AFFILIATES', OFFICERS', EMPLOYEES', AGENTS', PARTNERS', MANDATARIES', VENDORS' AND LICENSORS') liability hereunder may be further limited by the Service Level Agreement.

8.5 You are fully responsible for the content of the information and data passing through PLEX's network or using the Services and for all activities that You conduct with the assistance of the Services.

## 9. PATENTS, COPYRIGHTS, TRADEMARKS, AND OTHER INTELLECTUAL AND PROPRIETARY RIGHTS

9.1 Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any product or service provided to You is solely the property of PLEX and its vendors and licensors. These products and services are only for Your use in connection with the Services.

9.2 You hereby represent and warrant to PLEX 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 PLEX servers.

## 10. HARDWARE, EQUIPMENT, AND SOFTWARE

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

## 11. INDEMNIFICATION

You shall indemnify, defend and hold harmless PLEX (and its subsidiaries, affiliates, officers, employees, agents, partners, mandataries, vendors and licensors) of any and all Claims (including third party Claims) arising as a result of or in relation to any breach of this Agreement or fault by You, or in relation to any activities conducted by You through the Services, or otherwise in relation to Your products or services.

## 12. MISCELLANEOUS

### 12.1 Governing Law, Jurisdiction, Forum, Attorneys' Fees

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, USA without regard to its conflicts of laws or its principles. The courts of the State of Georgia or the federal courts of the USA situated therein, as applicable, shall have sole and exclusive jurisdiction over any action, claim, demand, proceeding or lawsuit whatsoever arising under or in relation to this Agreement or its subject matter. The parties irrevocably agree, consent and submit themselves to the subject matter and personal jurisdiction of the courts of the State of Georgia and of the federal courts of the USA situated therein for such purposes. This choice of jurisdiction does not prevent either Party from seeking injunctive relief with respect to a violation, infringement or misappropriation of intellectual property rights or confidentiality obligations in any jurisdiction.

### 12.2 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.

### 12.3 Waiver

No waiver by PLEX 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 PLEX, and then only to the extent set forth in such writing. We may modify or amend this Agreement, including the Service Level Agreement and the rates and fees, from time to time. Unless otherwise provided in this Agreement, all such modifications or amendments shall be effective immediately upon posting on the Website. You may request a copy of the revised Agreement by emailing us at [legal@plexhosted.com](mailto:legal@plexhosted.com). YOUR CONTINUED USE OF YOUR ACCOUNT AND/OR THE SERVICES AFTER THE NOTICE PERIOD WILL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE BY YOU OF ANY SUCH MODIFICATIONS OR AMENDMENTS.

### 12.4 Assignment

Neither party may assign or transfer this Agreement or any rights or obligations hereunder, in whole or in part, except with the prior written consent of the other party, which shall not be unreasonably withheld;

provided that PLEX may assign or transfer this Agreement, or any rights or obligations hereunder, in whole or in part: (i) to an affiliate of PLEX, (ii) in connection with a merger, amalgamation or sale of all or a substantial part of the business of PLEX, or (iii) for financing, securitization or other similar purposes, which assignments and/or transfers shall operate novation and discharge PLEX hereunder. A change of control of You shall be deemed to be an assignment and transfer hereunder and shall be governed by the requirements of this provision.

#### 12.5 Excused Performance

Except for monetary obligations, this Agreement and Your obligations hereunder shall not be affected or impaired because PLEX is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of circumstances beyond PLEX's control (including failure of a part of the power grid, failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry) and PLEX's obligations under this Agreement shall be suspended and excused by any such events or circumstances.

#### 12.6 Survival

Sections 8, 9, 11 and this Section 12 of this Agreement shall survive termination.

#### 12.7 Entire Agreement

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 You and PLEX with respect to the Services. You understand and agree that PLEX and You intend to include, as the sole third party beneficiaries of this Agreement, PLEX's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.



## APPENDIX A: MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS

This document governs the use of Microsoft software, which may include associated software, media, printed materials, and “online” or electronic documentation (individually and collectively, “Products”) provided by PLEXHOSTED LLC (hereinafter referred to as “PLEX”). PLEX does not own the Products and the use thereof is subject to certain rights and limitations of which PLEX must inform You. Your right to use the Products is subject to the terms of Your agreement with PLEX, and to Your understanding of, compliance with, and consent to the following terms and conditions, which PLEX does not have authority to vary, alter, or amend.

### 1. DEFINITIONS.

“**Client Software**” means software that is installed on a Device that allows the Device to access or utilize the Products.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.

“**End User**” means an individual or legal entity that obtains Software Services directly from PLEX, or indirectly through a Software Services Reseller.

“**Redistribution Software**” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

“**Software Services**” means services that PLEX provides to You that make available, display, run, access, or otherwise interact, directly or indirectly, with the Products. PLEX must provide these services from data center(s) through the Internet, a telephone network or a private network, on a rental, subscription or services basis, whether or not PLEX receives a fee. Software Services exclude any services involving installation of a Product directly on any End User device to permit an End User to interact with the Product.

2. **OWNERSHIP OF PRODUCTS.** The Products are licensed to PLEX from an affiliate of the Microsoft Corporation (collectively “Microsoft”). Microsoft Products are protected by copyright and other intellectual property rights. Products and other Product elements including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the Products are owned by Microsoft or its suppliers. You may not remove, modify or obscure any copyright trademark or other proprietary rights notices that are contained in or on the Products. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to You.

3. **USE OF CLIENT SOFTWARE.** You may use the Client Software installed on Your Devices only in accordance with Your agreement with PLEX and the terms under this document, and only in connection with the Software Services, provided to You by PLEX. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during the installation and/or use of the Client Software.

4. **USE OF REDISTRIBUTION SOFTWARE.** In connection with the Software Services provided to You by PLEX, You may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, INSTALL AND/OR DISTRIBUTE ANY CLIENT SOFTWARE AND/OR REDISTRIBUTION SOFTWARE. Microsoft does not permit You to use any Redistribution Software unless You expressly agree to and comply with such additional terms, as provided to You by PLEX.

5. **COPIES.** You may not make any copies of the Products; provided, however, that You may (a) make one copy of Client Software on Your Device as expressly authorized by PLEX; and (b) You may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of Your agreement with PLEX, upon notice from PLEX or upon transfer of Your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Products.

6. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILED AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of Software Services in accordance with the terms of this agreement and any agreement between You and PLEX.

8. **TERMINATION.** Without prejudice to any other rights, PLEX may terminate Your rights to use the Products if You fail to comply with these terms and conditions. In the event of termination or cancellation of Your agreement with PLEX or PLEX's agreement with Microsoft under which the Products are licensed, You must stop using and/or accessing the Products, and destroy all copies of the Products and all of their component parts within thirty (30) days of the termination of Your agreement with PLEX.

9. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** Microsoft disclaims, to the extent permitted by applicable law, all warranties and liability for damages by Microsoft or its suppliers for any damages and remedies whether direct, indirect or consequential, arising from the Software Services. Any warranties and liabilities are provided solely by PLEX and not by Microsoft, its affiliates or subsidiaries.

10. **PRODUCT SUPPORT.** Any support for the Software Services is provided to You by PLEX or a third party on PLEX's behalf and is not provided by Microsoft, its suppliers, affiliates or subsidiaries.

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