

HostLabs

Master Service Agreement

This Master Service Agreement is between

Futurelabs, Inc.
DBA: HostLabs
1850 5th Ave.
San Diego, CA 92101

("Company")

and

("You").

BY USING COMPANY'S SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, [APPENDIX A. MICROSOFT SOFTWARE USE-TERMS AND CONDITIONS](#) (below), [ACCEPTABLE USE POLICY](#), AND COMPANY'S [NO-SPAM POLICY](#).

Company and You agree to the following clauses:

1. Provision of Services.

Company agrees to provide services to You in accordance with the **Shared 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 [Appendix A Microsoft Software Use-Terms and Conditions](#) (below), Company's [Acceptable Use Policy](#) and [No-Spam 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. You warrant and represent that You shall use Company's services only for lawful purposes.

2. Agreement Term.

The initial term of this Agreement shall be from the date of your initial payment and execution of this Agreement through the remainder of the calendar month in which this Agreement was executed.

The term of this Agreement, after the initial agreement term, shall be one calendar month.

3. Automatic Renewal.

This Agreement shall renew automatically at the end of the prior Agreement term unless terminated either by You or by the Company.

4. Termination without Cause.

You may terminate this Agreement at any time, for any reason, by following the termination procedure located within the Account section of the HostUI Control Panel prior to the automatic renewal of this Agreement.

COMPANY SHALL NOT REFUND AMOUNTS ALREADY BILLED FOR THE MONTH IN WHICH YOU TERMINATE THE AGREEMENT.

ALL CUSTOMER DATA AND ACCOUNT SETTINGS INCLUDING, BUT NOT LIMITED TO, CONTENT IN PUBLIC AND PRIVATE INFORMATION STORES ARE IRREVOCABLY DELETED UPON ACCOUNT TERMINATION.

Company may terminate this agreement at any time, for any reason, by:

- providing written or electronic mail notice of termination to your HostUI e-mail contact address no less than fifteen days prior to the service termination; and
- refunding or not charging your credit card account for the monthly services charge for the month in which company services terminate.

5. Termination for Cause.

YOU AGREE TO MAINTAIN AND KEEP CURRENT ALL CONTACT INFORMATION FOR YOUR ACCOUNT(S) WHICH IS ARE STORED WITHIN COMPANY SERVERS. FAILURE TO MAINTAIN OR KEEP CURRENT ALL CONTACT INFORMATION SHALL BE A VALID GROUND FOR COMPANY TERMINATION OF SERVICES FOR CAUSE.

IF COMPANY TERMINATES YOUR ACCOUNT FOR A VIOLATION OF THIS AGREEMENT, COMPANY'S ACCEPTABLE USE POLICY, OR COMPANY'S NO SPAM POLICY, COMPANY SHALL NOT BE REQUIRED TO REFUND TO YOU ANY AMOUNTS BILLED TO YOU FOR THE MONTH IN WHICH COMPANY SERVICES TERMINATE.

6. Payment Terms.

You agree to be billed monthly via your credit card for all recurring and one-time charges, including but not limited to late and termination charges, for any Company services ordered by You and any fees You owe to Company.

7. Taxes.

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

8. "Beta" Hosting Products.

THIS SECTION APPLIES ONLY TO CUSTOMERS WITH ACCOUNTS CREATED ON EXPERIMENTAL "BETA" PLANS AND PLATFORMS.

"BETA" HOSTING SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS.

All provisions of this Agreement shall apply to experimental "beta" plan and platform accounts, except paragraphs 1, 2, 3, and 6. The **Shared Exchange Hosting Service Level Agreement** guarantees do not apply to "beta" plan or platform accounts during periods in which You receive the Company's "beta" hosting services for free or at a discount.

In exchange for Company providing experimental "beta" hosting services You agree, during periods You receive free or discounted "beta" hosting services from Company, to comply with this Agreement as it applies to "beta" hosting accounts, Company's Acceptable Use Policy, and Company's No Spam policy.

Uptime guarantees provided elsewhere in this Agreement or in Service Level Agreement do not apply to "beta" plan and platform accounts. Company does not make any guarantee of the integrity of data stored on "beta" hosting servers. YOU ARE STRONGLY DISCOURAGED FROM USING ACCOUNTS ON "BETA" PLANS OR PLATFORMS FOR HOSTING ANY PRODUCTION APPLICATIONS OR FOR STORING SENSITIVE DATA.

The Company shall upgrade software on "beta" exchange hosting servers when, and as, Company deems necessary in its sole discretion. Company does not warrant or represent that new versions of the software installed on "beta" servers 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.

The Company reserves a right to terminate any "beta" Exchange Hosting Program at any time by giving You fifteen days written or electronic mail notice.

If a "beta" program is terminated, all free and discounted accounts on the "beta" servers will be converted at the end of the fifteen-day notice period to fee-for-service accounts to a Company's Exchange Hosting Plan selected at Company's discretion. To discontinue the account and avoid incurring increased charges under the Company's Exchange Hosting Plan, the account must be terminated by the customer following the termination provisions in Paragraph 4 of this Agreement.

9. Materials and Products.

Any material and data you provide to company or place on its servers in connection with Company's services shall be in a condition that is in a form requiring no additional manipulation on the part of the Company. Company shall make no effort to validate this material or data for content, correctness, or usability. Material or data that is not in this condition shall be a breach of this Agreement.

Company may, in its sole discretion, reject material or data that You have placed or are attempting to place on Company's servers, or that You request Company put on Company's servers. 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 Company. Your failure to amend or modify the data or material as directed by Company within a reasonable time shall be a breach of this agreement.

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

10. Limited Warranty; Limitation of Damages.

YOU EXPRESSLY AGREE THAT USE OF COMPANY'S SERVICES IS AT YOUR SOLE RISK.

The Company, its agents, affiliates, licensors or the like, do not represent or warrant, expressly or impliedly, that Company's services will not be interrupted or error free; neither do they make any warranty as to the results that may be obtained from the use of Company's services or as to the accuracy, reliability, or content of any information service or merchandise contained in or provided through the Company's services, unless otherwise expressly stated in this Agreement.

To the fullest extent permitted by law, Company, its officers, agents, or anyone else involved in providing Company's services shall not be liable for any indirect, incidental, special, or consequential damages that result from the use or inability to use Company's services; or for any damages that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction, or unauthorized access to Company's records, programs, or services. You agree that the liability limit of Company shall in no event be greater than the aggregate dollar amount which You paid during the terms of this agreement, including any reasonable attorneys' fees and court costs.

The Company makes no warranties or representations of any kind for the service it is providing, express or implied, beyond those contained in this Agreement. The Company also disclaims any warranty of merchantability or fitness for a particular purpose. Company shall not be responsible for any damages that may be suffered by the You, including loss of data resulting from delays, non-deliveries, or service interruptions by any cause or due to your errors or omissions. Use of any information obtained by way of Company is to be used at Your own risk, and Company specifically denies any responsibility for the accuracy or quality of information obtained through its services. Company expressly limits its damages for any non-accessibility time or other downtime to the penalties listed in Company's **Shared Exchange Hosting Service Level Agreement**.

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 to Company that You have the right to use any patented, copyrighted, or trademarked material which You use, post, or otherwise transfer to Company servers.

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.

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.

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.

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 California without regard to its conflicts of laws principles. You agree, in the event any suit is brought in connection with Company's provision of services to you, to submit to the jurisdiction of the state of California, and agree to the courts of San Diego County, California as the appropriate forum.

Severability. In case 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 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 waiver by 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 and then only to the extent expressly set forth in such writing.

Entire agreement. This Agreement, including Appendix A Microsoft Software Use-Terms and Conditions, Company Acceptable Use Policy, Company No Spam Policy, and Company **Shared Exchange Hosting Service Level Agreement**, shall constitute the entire agreement between You and Company.

APPENDIX A. MICROSOFT SOFTWARE USE – TERMS AND CONDITIONS

This document concerns your use of Microsoft software, which includes computer software provided to you by HostLabs as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually or collectively “SOFTWARE PRODUCTS”). HostLabs does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which HostLabs needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with HostLabs, and to your understanding of, compliance with and consent to the following terms and conditions, which HostLabs does not have authority to vary, alter or amend.

I. DEFINITIONS.

For purposes of this Appendix, the following definitions shall apply: “Client Software” means software that allows a Device to access or utilize the services or functionality provided by the Server Software. “Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone”, or other electronic device. “Server Software” means software that provides services or functionality on a computer acting as a server. “Redistribution Software” means software described in Paragraph IV (“Use of Redistribution Software”) below.

II. OWNERSHIP OF SOFTWARE PRODUCTS.

SOFTWARE PRODUCTS are licensed to HostLabs from an affiliate of Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE 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 SOFTWARE PRODUCTS does not transfer any ownership of SOFTWARE PRODUCTS or any intellectual property rights to you.

III. USE OF CLIENT SOFTWARE.

You may use the Client Software installed on your Devices by HostLabs only in accordance with the instructions, and only in connection with the services, provided by you by HostLabs.

IV. USE OF REDISTRIBUTION SOFTWARE.

*In connection with the services provided to you by HostLabs, 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, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO HOSTLABS, WHICH TERMS MUST BE PROVIDED TO YOU BY HOSTLABS.** 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 HostLabs.*

V. COPIES.

You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by HostLabs; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph IV ("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 HostLabs, upon notice from HostLabs or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

VI. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILED AND DISASSEMBLY.

You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.

VII. NO RENTAL.

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.

VIII. TERMINATION.

Without prejudice to any other rights, HostLabs may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.

IX. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.

ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY HOSTLABS AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

X. PRODUCT SUPPORT.

Any product support for the SOFTWARE PRODUCTS is provided to you by HostLabs and is not provided by Microsoft or its affiliates or subsidiaries.

XI. NOT FAULT TOLERANT.

THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

XII. EXPORT RESTRICTIONS.

The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control

laws. You agree to comply with all applicable international and national laws that apply to the SOFTWARE PRODUCTS, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issue by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

XIII. LIABILITY FOR BREACH.

In addition to any liability you may have to HostLabs, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

Billing and Acceptance	
First & Last Name: _____	
Domain Name: _____	Number of Users: _____
E-mail Address: _____	
Billing Address: _____	

Billing Type: Visa MC Amex Discover	
Card Number: _____	
Expiration Date: _____	
I Agree: _____	Date: _____
FAX to 877-291-0952	