

## Exchange Hosting Master Service Agreement

THIS EXCHANGE HOSTING MASTER SERVICE AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “Effective Date”) by and between SITESNOW INCORPORATED, an Ohio corporation doing business at 38879 Mentor Avenue, Willoughby, Ohio 44094 (“Host”) and \_\_\_\_\_, a(n) \_\_\_\_\_ doing business at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (“Owner”). Host and Owner are sometimes referred to collectively in this Agreement as the “Parties.”

BY CLICKING "I ACCEPT" AND USING HOST'S SERVICES, YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS.

1. **The Hosting Services.** During the term of this Agreement, including the Initial Term and any Renewal Term (as those terms are defined below), Host shall provide to Owner the services (the “Hosting Services”) described in this Agreement and its attachments, subject to Owner’s satisfaction of the terms and conditions set forth in this Agreement, the Web Services Hosting Online Order (the “Order”), the Terms and Conditions Regarding Use of Microsoft Software (the “MS License Terms”) attached hereto as Attachment “A”, the then-current Exchange Hosting Service Policy, the then-current Acceptable Use Policy, the then-current No-Spam Policy, such further and additional policies as Host may hereafter post and maintain at its website, and all of the other duties and obligations of Owner, as set forth in this Agreement. For purposes of this Agreement, the Shared Hosting Service Policy, the Acceptable Use Policy, the No-Spam Policy and any further and additional policies hereafter posted and maintained by Host are collectively referred to as the “Policies”. During the term of this Agreement, current versions of the Policies shall be posted and maintained by Host at its website (presently found at SitesNow.com). Owner understands and agrees that it may be necessary or appropriate, from time to time, for Host to revise, amend, supplement or otherwise change the Policies during the term of this Agreement. Unless Owner delivers notification in writing (either via electronic mail or via certified mail) of its objections (including a reasonable explanation for same) to any such change within thirty (30) days of Host’s initial posting of such change at Host’s website, Owner’s continued use of the Hosting Services shall constitute acknowledgement, acceptance and agreement to all such revisions, amendments, supplements and other changes.
2. **Fees.** Owner shall pay all charges attributable to its use of the Hosting Services, as described or set forth in the Order. The foregoing notwithstanding, for any Renewal Term (as defined below), Host may increase, decrease or otherwise change the rates and charges for the Hosting Services by providing notification in writing (either via electronic mail or via certified mail) in the renewal invoice described below.
3. **Duration and Renewal.**
  - a. **Initial Term.** The Initial Term of this Agreement shall be for a period of three months, six months or one year, as set forth in the Order, or for such other period as may be set forth in the Order. The Initial Term shall commence on the date of account activation, as described in the Order. Owner understands and agrees that it shall pay for the Initial Term in advance of account activation.

**b. Renewal Terms; Automatic Renewal.** Unless this Agreement is earlier terminated in accordance with this Paragraph or Paragraph 3 below, this Agreement shall automatically renew at the end of each Initial or Renewal Term. Host shall send to Owner a renewal invoice at least thirty (30) days prior to the end of each Initial or Renewal Term, which invoice shall include all reoccurring charges and such other charges as may have accrued pursuant to this Agreement, and Owner shall submit payment prior to the commencement of such Renewal Term. If Owner fails to submit payment prior to the commencement of such Renewal Term, then Host may either terminate this Agreement prior to such commencement or suspend Owner's account. If Owner's account is suspended for such non-payment, Host may renew such account with payment of the renewal invoice amount plus a reinstatement fee, as described in the Order, whereupon a new Renewal Term shall commence.

#### 4. Termination.

- a. Owner's Responsibilities upon Termination.** THE OTHER TERMS OF THIS AGREEMENT NOTWITHSTANDING, THE TERMINATION OF OWNER'S ACCOUNT SHALL NOT RESULT IN CANCELLATION OR WAIVER OF ANY FEES OR OBLIGATIONS OWED TO HOST AS OF THE DATE OF SUCH TERMINATION. OWNER'S DATA, CONTENT AND ACCOUNT SETTINGS ARE IRREVOCABLY DELETED AFTER ACCOUNT TERMINATION, INCLUDING BUT NOT LIMITED TO, WEB SITE CONTENT, DATABASES AND E-MAIL MESSAGES. SECURING ALL NEEDED DATA FROM OWNER'S ACCOUNT PRIOR TO ACCOUNT TERMINATION SHALL BE OWNER'S SOLE RESPONSIBILITY.
- b. Termination without cause.** Either party may terminate this Agreement at any time without cause by providing written or electronic mail notice of termination to the other party not less than ninety (90) days prior to the end of any Initial or Renewal Term.
- c. Refunds following a termination without cause.**
- i. Fees for non-reoccurring services shall not be refunded by Host. Any fees previously waived or discounts applied may be reinstated if Owner terminates the account for no cause during the term or if Owner breaches this Agreement.**
  - ii. Refunds upon termination by Owner.** Upon termination without cause by Owner prior to the end of an Initial or Renewal Term, Host shall not be required to refund to Owner any hosting fee amounts already paid or accrued. Additionally, Host shall be entitled to payment of an Early Termination Fee (as defined below), any fees that are accrued and unpaid, any previously waived fees and any discounts that were previously taken. For purposes of this Agreement, the "Early Termination Fee" shall consist of the portion of the fees attributable to either two months or the remaining period of the Initial or Renewal Term, whichever is lesser. Previously waived fees and discounts shall include but not be limited to, free months of service at signup and any promotional discounts.
  - iii. Refunds upon termination by Host.** Upon termination without cause by Host prior to the end of an Initial or Renewal Term, Host shall refund to Owner any portion of the pre-paid hosting fees attributable to the period subsequent to the effective date of such termination, and with Host entitled to retain any portion of the fee attributable to a full or partial calendar month prior to the effective date of such termination. This refund will be issued within thirty (30) calendar days of account termination to the credit card on record at the time of termination. In the event that a refund is calculated to be less than Ten Dollars (\$10.00), no refund shall be given.
  - iv. Plan or feature changes.** All plan or feature changes must result in a total fee that is equal to or greater than the prepaid fees remaining at the time of the change. No refunds shall be issued for any plan downgrades or elimination of plan features.

- v. In no event shall any refund be greater than the hosting fees paid during the Initial or Renewal Term in effect at termination.**
- d. Termination for cause.** Owner may terminate this Agreement if Host violates the terms of this Agreement; provided, however, that before any such termination, Owner shall provide to Host in writing, either via electronic mail or via certified mail, the details of the Host's violation, and that Owner shall permit Host a reasonable time (which shall be not less than thirty (30) days) to cure any such violation prior to the effective date of any such termination of this Agreement. This cure period shall be extended in the event a cure is delayed, in whole or in part, by events beyond the control of Host, including but not limited to natural disasters, governmental prohibitions or regulations, viruses that did not result from the acts or omissions of Host, or technical faults of Host's service providers or vendors. HOST MAY TERMINATE THIS AGREEMENT, OR SUSPEND HOSTING SERVICES TO OWNER, IMMEDIATELY AND WITHOUT PRIOR NOTICE UPON ANY MATERIAL BREACH OF THIS AGREEMENT BY OWNER. Host may terminate this Agreement, or suspend the Hosting Services to Owner, for any nonmaterial breach of this Agreement by Owner, provided, however, that before any such termination of suspension, Host shall provide to Owner in writing, either via electronic mail or via certified mail, the details of Owner's violation, and that Host shall permit Owner a reasonable time to cure any such violation prior to the effective date of any such termination of suspension. IN THE EVENT OF ANY TERMINATION FOR CAUSE, WHETHER BY OWNER OR HOST, HOST SHALL NOT REFUND ANY PAID FEES. TERMINATION FOR CAUSE WILL NOT CANCEL OR WAIVE ANY FEES OWED TO HOST ON OR PRIOR TO THE EFFECTIVE DATE OF ANY SUCH TERMINATION.
- 5. Credit cards; Excess Use Charges.** If requested in advance by Host, Owner agrees to be billed at the beginning of the Initial or any Renewal Terms via its credit card for all reoccurring and one-time charges, including but not limited to late fees and termination charges, for all services of Host ordered by Owner, and for any other fees Owner owes to Host. If requested in advance by Host, Owner further agrees to be billed for any additional services ordered at the time the additional services are ordered and also at the beginning of each Renewal Term. If Host bills any such charges via Owner's credit card, invoice information shall be provided to Owner by Host upon request by electronic mail. Owner understands and agrees that it is responsible for monitoring and maintaining its accounts within all plan-specified limits. In the event Owner's usage exceeds these limits, Owner agrees that Host may charge Owner for such excess usage via its credit card at the then-published price on Host's web site. Usage and associated charges for excess usage shall be determined based solely by Host's statistical information. Unused monthly allotments shall not accrue or carry over from one month to any other month.
- 6. Taxes.** Host shall not be liable for taxes and other governmental fees and assessments to be paid which are related to purchases made from Owner from or through Host's server. Owner agrees that it 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 Owner by Host.
- 7. "Beta" Hosting Products.** This paragraph applies only to customers with accounts created on experimental, testing "beta" plans and platforms (hereafter, "Beta Accounts"). In exchange for Host providing Beta Account services, Owner agrees to comply with this Agreement as it applies to Beta

Accounts. All provisions of this Agreement shall apply to Beta Accounts, with the exception of Paragraphs 1, 2 and 4 above.

Beta Account services are provided to such customers on an AS IS, AT YOUR OWN RISK basis. Service level agreement commitments (including the Service Level Hosting Policies) do not apply to beta accounts. Any such customer is strongly discouraged from using accounts on “beta” plans or platforms for hosting any production applications, production web sites, or for storing sensitive or valuable data. Host may but shall not be required to change Beta Account services. Host hereby notifies any such customer that Beta Account service changes may not be compatible with the prior services and that loss of functionality or interruption of service may occur as a result of such changes. Such customers UNDERSTAND AND AGREE THAT HOST SHALL NOT BE REQUIRED TO REMEDY NOR WILL IT BE LIABLE FOR SUCH INCOMPATIBILITIES, FUNCTIONALITY LOSSES, OR INTERRUPTIONS. Host may terminate some or all Beta Accounts at any time by providing notice to such customers at least fifteen (15) day in advance of such termination.

- 8. Materials and Products.** Any material and data Owner provides to Host in connection with Host’s services shall be “Server Ready.” For purposes of this Agreement, the term “Server Ready” is defined as being in a condition and form, as determined solely by Host, which requires no additional manipulation or verification on the part of Host. Attempting to place or requesting placement of non-Server-Ready material or data on Host’s servers shall be a breach of this Agreement.

Host may, in its sole discretion, reject material or data that Owner has placed, attempted to place, or has requested be placed on Host’s servers. Host agrees to notify Owner immediately of its rejection of any such material or data, and to provide Owner with an opportunity to amend or modify the material or data to meet the requirements of Host.

All content stored by Owner on its web site, or transmitted using the Hosting Services, shall at all times remain Owner’s property. Owner grants to Host a non-exclusive worldwide license to such content, but only to the extent necessary for hosting the web site.

- 9. Disclaimer of Warranties; Limitation of Liability.** HOST PROVIDES SERVICES AS IS AND WITH ALL RISKS. OWNER EXPRESSLY AGREES THAT USE OF HOST’S SERVICES IS AT OWNER’S SOLE RISK. Host, its agents, affiliates, vendors and the like do not represent or warrant that the Hosting 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 Hosting Services or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Hosting Services. Host expressly disclaims the warranties of merchantability and fitness for a particular purpose and all warranties not expressly contained in this Agreement. The Parties understand and 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. Host, its agents, affiliates and vendors shall not be liable for any indirect, incidental, special, punitive, exemplary 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 Hosting 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 Host

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 Host's records, programs, or the Hosting Services, whether in contract, tort or otherwise. Owner understands and agrees that Host's total aggregate liability and Owner's sole remedy for any non-accessibility to the Hosting Services or other downtime is limited to the remedies listed in the then-current Shared Hosting Services Policies; however, in no event shall Host's liability exceed the total aggregate amount paid by Owner to Host under this Agreement during the Term, including all fees, attorney fees, and costs. Host shall exercise no control over the content of the information passing through Host's network except those controls expressly provided herein.

- 10. 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 Owner, and Owner agrees that all right, title, and interest in any Hosting Services, including their constituent parts, provided to Owner are the property of Host, its agents, affiliates and vendors. The Hosting Services and their constituent parts are only for Owner's use in connection with the Hosting Services provided to Owner, as outlined in this Agreement. Owner expressly warrants and represents to Host that it has the right to use any patented, copyrighted, trademarked or proprietary material which Owner uses, posts or otherwise transfers to or by way of Host's servers. Breach of this warranty shall be a material breach of this Agreement.
  
- 11. Hardware, Equipment, and Software.** Owner shall be responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access Host's servers, including adequate Internet connectivity necessary for Owner to access the Hosting Services fully. Host makes no representations, warranties, or assurances that Owner's equipment will be compatible with the Hosting Services.
  
- 12. Age and Capacity.** Owner expressly represents and warrants that it and any person to whom it grants access to Owner's account will have reached the age of eighteen (18) and that Owner is not subject to any limitation on its ability to enter into and fully perform the terms and condition of this Agreement.
  
- 13. Indemnification.** Owner shall defend, indemnify and hold harmless Host (including its shareholders, directors, officers, employees, agents, consultants, affiliates, suppliers, successors and assigns) (hereafter, the "Indemnitees") from any and all threatened or actual claims, demands, causes of action, suits, proceedings, losses, damages, fines, penalties, liabilities, costs and expenses or any nature, including attorney fees and court costs, sustained or incurred by or asserted against any Indemnitee by any corporation, limited liability company, partnership, proprietor, government agency or authority, or other person or entity by reason of or arising out of or relating to any one or more of the following: (a) Owner's violation or breach of any term, condition, representation or warranty of this Agreement or the Policies, (b) Owner's conduct, including but not limited to Owner's negligence or intentional misconduct, (c) Owner's use of the Hosting Services, including any misuse or improper or illegal uses, (d) any claim by a former employee of Owner whose employment has been or may be terminated in connection with or as a result of the execution of this Agreement or the performance of the Hosting Services by Host, (e) any claim relating to Owner's services or products, or Owner's installation or use of any third-party software, including but not limited to advertising, product liability claims or infringement or any trademark, copyright, patent, trade

secrets or non-proprietary rights of a third party (including, without limitation, defamation, libel or violation of privacy or publicity); or (f) any compromise of Owner's website security or encryption.

#### 14. Miscellaneous.

- a. **Governing Law; Jurisdiction; Forum.** This Agreement shall be governed by and construed in accordance with the laws of the state of Ohio without regard to its conflicts of laws or its principles. The Parties agree, in the event any claim or suit is brought in connection with Host's provision of the Hosting Services to Owner, to submit to the jurisdiction of the state of Ohio, and agree to the jurisdiction and venue of the courts of Lake County, Ohio.
- b. **No Fiduciary Relationship.** No agency, partnership, joint venture or employment relationship is created by this Agreement, and neither party has the power to bind the other party.
- c. **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.
- d. **Waiver; No Oral Modification.** No waiver by Host of any breach by Owner 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, 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, and then only to the extent set forth in such writing.
- e. **Neutral Construction and Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.
- f. **No Assignment.** No right, 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.
- g. **Entire Agreement; Third Party Beneficiaries.** This Agreement constitutes the entire agreement for provision of the Hosting Services to Owner and supersedes all other prior agreements and understandings, both written and oral, between Owner and Host with respect to the Hosting Services. The Parties understand and agree that Owner and Host intend to include, as the sole third party beneficiaries of this Agreement, Host's software vendors, with all rights and remedies available as if such vendors were parties to this Agreement.

## **ATTACHMENT A.**

### **TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE**

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

#### **I. DEFINITIONS.**

For purposes of this Attachment, all definitions set forth in the Agreement shall apply, and the following additional definitions also 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.** The SOFTWARE PRODUCTS are licensed to Host 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. Owner's possession, access or use of the SOFTWARE PRODUCTS does not transfer any ownership of SOFTWARE PRODUCTS or any intellectual property rights to Owner.

**III. USE OF CLIENT SOFTWARE.** Owner may use the Client Software installed on its Devices by Host only in accordance with the instructions, and only in connection with the services, provided to Owner by Host.

**IV. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to Owner by Host, Owner may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). OWNER MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS OWNER EXPRESSLY AGREES TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO HOST, WHICH TERMS MUST BE PROVIDED TO OWNER BY HOST. Microsoft does not permit Owner to use any Redistribution Software unless it expressly agrees to and complies with such additional terms, as provided to Owner by Host.

**V. COPIES.** Owner may not make any copies of the SOFTWARE PRODUCTS; provided, however, that Owner may (a) make one (1) copy of Client Software on its Device as expressly authorized by Host; and (b) Owner may make copies of certain Redistribution Software in accordance with Paragraph IV (“Use of Redistribution Software”). Owner must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of the Agreement with Host, upon notice from Host or upon transfer of Owner’s Device to another person or entity, whichever first occurs. Owner may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

**VI. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILE AND DISASSEMBLY.** Owner 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.** Owner may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute SOFTWARE PRODUCTS to any third party, and Owner 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, Host may terminate Owner’s rights to use the SOFTWARE PRODUCTS if Owner fails to comply with these terms and conditions. In the event of termination or cancellation, Owner 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 HOST AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

**X. PRODUCT SUPPORT.** Any product support for the SOFTWARE PRODUCTS is provided to Owner by Host 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. Owner agrees 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 Owner may have to Host, Owner agrees that it will also be legally responsible directly to Microsoft for any breach of these terms and conditions.