

Exabytes Domain Proxy Service - Terms & Conditions

1. Introduction

These Exabytes Domain Proxy Service Terms and Conditions ("Domain Terms and Conditions") shall apply upon Your subscription to Exabytes' domain proxy services ("Services"). You agree that these Domain Terms and Conditions shall be read together with such other terms, conditions and policies published on Exabytes' Website and other addendum or forms ("Agreement"). You and Exabytes together may be referred to herein as the "Parties" and each may be referred to herein as a "Party".

You represent to Exabytes that You are lawfully able to enter into contracts. If You are entering into this Agreement for a legal entity, You represent to Exabytes that You have legal authority to bind that legal entity. You acknowledge that You have read the Agreement, and acknowledge that Exabytes may from time to time, vary or modify the terms and conditions of this Agreement (including any policies) by posting a revised version on the Exabytes Website. The modified terms and conditions will become effective upon posting or, if Exabytes notifies You by email, as stated in the email message. By continuing to use the Services after the effective date of any modifications to this Agreement, You agree to be bound by the modified terms and conditions. It is Your responsibility to check the Exabytes Website regularly for modifications to this Agreement.

2. Term and Renewal

The term of this Agreement will commence on the date of Your payment to Exabytes for the Services, and the Services will be renewed on an annual basis, unless sooner terminated pursuant to other terms and conditions of this Agreement, and except as otherwise provided in this Agreement and any addendum signed by the Parties, this Agreement shall remain in effect throughout the Service period.

3. Domain Proxy Services

You understand that for the provision of the Services, Exabytes may engage such other service provider ("Service Provider") to provide the Services. Upon Your subscription to the Services, each of Your domains under the Services shall be registered under the name of Exabytes or Service Provider as registrant. Your personal information will not be made publicly available in "Whois" subject to the ICANN policy:

- A. Exabytes' or Service Provider name being the Registrant of the domain name and a proxy email address, phone number and postal address for the Registrant's contact information;
- B. A proxy postal address and phone number for the domain name registration's technical contact;
- C. A proxy email address, postal address and phone number for the domain name registration administrative contact;
- D. A proxy email address, postal address and phone number for the domain name registration billing contact;
- E. The primary and secondary domain name servers You have designated for the domain name;
- F. The domain name's original date of registration and expiration date of the registration; and
- G. The identity of the Registrar.

For the avoidance of doubt, You should refer to the Exabytes Website: <https://www.exabytes.my/domains/domain-proxy-service> to learn more about the domain extensions supported under the Services.

4. Fees and Renewal

4.1 You agree that payment will be made to Exabytes upon your acceptance of the Service and the payment for renewal of the Services shall be paid annually. If You have opted for credit card payment, You acknowledge that the renewal fees will be debited automatically from Your registered credit card with Exabytes. All the fee and charge shall be payable in Malaysia Ringgit (MYR).

4.2 In the event of an invoice dispute, You shall pay all undisputed amounts on the invoice due date. To the extent that You dispute any portion of the invoice, You shall notify Exabytes in writing and provide documentation supporting Your dispute before the invoice due date or Your right to any billing adjustment shall be waived. If the dispute is resolved against You, You shall pay such amount due plus interest as set forth in this Agreement from the date the payment was originally due.

4.3 You understand that the fees paid are non-refundable, unless otherwise agreed by Exabytes as it deems necessary or advisable.

5. Tax

You will be responsible for the payment of all tax (including withholding tax and service tax), duty (including stamp duty), fee and other charges made by any government authority in relation to the Services (other than tax payable on the overall income of Exabytes).

6. Use of Services

You agree that You will use the Services in accordance with the Agreement, including Exabytes' Acceptable Use Policy, and to follow any lawful and reasonable instruction of Exabytes. You understand that Exabytes reserves the sole discretion to suspend or terminate the Services with You if Exabytes notices that You have breached the Agreement. Any proposal of remedy to the breach shall be subject to the consent of Exabytes. Any variation of the Services shall be done by a written notification to Exabytes, and subject to the consent of Exabytes.

7. Rights & Responsibilities

7.1 Your rights in the domain: While subscribing to the Services, Exabytes' or Service Provider's name will show in the "Whois" directory as the Registrant of Your designated domain name registration. Nonetheless, You will retain the full benefits of domain name registration with respect to each registered domain under the Services, including:

- A. The right to sell, transfer or assign each domain name registration, which shall require termination of the Services associated with each such domain name registration;
- B. The right to control the use of each domain name registration, including designating the primary and secondary domain name servers to which each domain name points;
- C. The right to cancel each domain name registration;
- D. The right to terminate the Services associated with each domain name registration and/or Your privacy services with Exabytes (Note: by doing so Your contract information will be listed in the "Whois" directory); and
- E. The right to renew each domain name registration upon its expiration, subject to the applicable rules and policies.

7.2 Your responsibilities: You agree that for each domain name for which you use the Services, You undertake to provide accurate and current information as to:

- A. Your name, the email address, postal address, phone and fax numbers for the domain name registration's Registrant contact;
- B. The email address, postal address, phone and fax numbers (if any) for the:
 - i. domain name registration's technical contact,
 - ii. domain name registration's administrative contact;
 - iii. domain name registration's billing contact; and
- C. You agree to provide government issued identification and/or government issued business identification as required for verification of identity when required.

7.3 Exabytes' rights:

- A. Suspension and termination of Services: You understand and agree that Exabytes has absolute and all power in its sole discretion, and without responsibility and liability to You, to suspend or terminate the Services, including closing Your account, make public Your information.
- B. To take any action in response to any claims in relation to Your domain, including providing Your information to such a third party.
- C. Such other actions as Exabytes deem necessary in compliance with the laws, regulations, and requirements of service providers, and to safeguard the rights, interest and reputation of Exabytes.

8. Personal Data

8.1 Required Personal Data: You understand that You are required to provide us Your personal information for the subscription of the Services, and Your personal information will be processed subject to Exabytes' Privacy Policy.

8.2 Disclosure of Personal Data: You further understand and agree that if Exabytes or the Service Provider is named as a defendant in, or investigated in anticipation of, any legal or administrative proceeding arising out of Your domain name registration or Your use of the Services, Your Services may be terminated, which means the domain name registration will revert back to You and Your identity will therefore may be revealed in the Whois directory as Registrant.

9. Protection and Security

You agree You are entirely responsible for maintaining the confidentiality of Your customer number/login ID and password ("Login Credential") and the security of Your account. It is Your responsible to notify Exabytes immediately of any unauthorized use of Your account or any other breach of security. You agree that Exabytes will not be liable for any loss that You may incur as a result of any use of Your Login Credential by any third party, either with or without Your knowledge. You further agree You could be held liable for losses incurred by Exabytes or another party due to someone else using Your Login Credential. For security purposes, You agree that You are entirely responsible for all activity in Your account, whether initiated by You, or by others. Exabytes specifically disclaims liability for any activity in Your account, regardless of whether You authorized the activity.

10. Representation and Warranties

10.1 You warrant that all information provided by You to Exabytes is truthful, complete, up-to-date and accurate. You also warrant that You are using the Services in good faith and, at Your best knowledge, assure that Your domain name has not infringed upon or conflicted with the legal rights of a third party or a third party's trademark or trade name.

10.2 You also warrant the domain name being registered by Exabytes on Your behalf will not be used:

- A. for any unlawful purpose such as, but not limited to, vice, gambling or other criminal purpose whatsoever or for sending to or receiving from any person or displaying any message or posting which is offensive on moral, religious, communal or political grounds, or is abusive or of an indecent, obscene or menacing character;
- B. for any purpose which is against public interest, public order or national harmony;
- C. to publish defamatory, infringing, obscene or other unlawful material;
- D. in connection with the infringement of the copyright, patent, trademark, trade secret or other propriety right of any third party or right of publicity or privacy;
- E. to interfere with, damage, disrupt or unlawfully use or gain access to any service, equipment or computer network without authorisation by the owner of the said service, equipment or computer network;
- F. to resell the Service or otherwise provide the Service to anyone unless permitted by Exabytes.
- G. in violation of any laws relating to unfair competition, anti-discrimination or false advertising; or
- H. that result in distribution of viruses, Trojan horse, worm, time bomb, bots, or other similar harmful or deleterious programming routine.

11. Forwarding Communication

11.1 Considering that the name and identity of Exabytes or Service Provider will be published, Exabytes or Service Provider will occasionally receive both postal mail and email addressed to You. You agree and understand that Exabytes and Service Provider may review these communications and will forward email as soon as reasonably possible; paper mail correspondence will only be forwarded digitally if it is clearly addressed to You, involves a legal issue, and allows for identification of Your and Your accounts. Otherwise, Exabytes or Service Provider will either discard or return all such correspondence to the sender unopened. You agree and authorize Exabytes and Service Provider to take these actions, and You agree to waive any and all claims arising from Your failure to receive correspondence that was sent to Your domain name but not forwarded to You by Exabytes.

11.2 Exabytes will attempt to send You all correspondence via email. If You fail to respond to those email requests regarding urgent matters, disputes, or legal issues, Exabytes reserves the right to disclose Your identity by providing Your personal information to third parties, or by reverting Your WHOIS directory to Your personal information that You have provided.

12. Termination

12.1 Exabytes may terminate this Agreement immediately upon giving thirty (30) days' written notice to You:

- A. if Exabytes 's relationship with a third party partner or provider to provide the Service expires, terminates or requires Exabytes to change the way Exabytes provides the software or other technology as part of the Service;
- B. if Exabytes believes that providing the Service could create a substantial economic or technical burden or material security risk for Exabytes;
- C. in order to comply with the law or request of governmental entity;
- D. if Exabytes determines that use of the Service by You or Exabytes' provision of any of the Service to You or any end user has become impractical or unfeasible for any legal or regulatory reason; or
- E. without having to give any reason.

12.2. Exabytes reserves the right to refuse the Service to anyone. Exabytes, in its sole discretion, may immediately terminate this Agreement if:

- A. You engage in any of the activities as spelled out but not limited to in Clause 10 above; or
- B. Exabytes or You commit a material breach of its obligations under this Agreement which is incapable of remedy; or
- C. Exabytes or You commit a material breach of its obligations under this Agreement which is capable of remedy but which is not remedied within thirty (30) days after the receipt of written notice of default from the other Party; or
- D. Exabytes or You is insolvent or takes any corporate action, or other step is taken or legal proceeding is commenced for its winding up, liquidation or dissolution (other than for the purposes of solvent reconstruction on terms approved by the Party proposing to terminate this Agreement) or for the appointment of a receiver, receiver and manager, official manager, liquidation, provisional liquidator, trustee or similar officer of it or of any or all of its revenue and asset, or
- E. in the event any equipment or combination thereof, including hardware and software used by Exabytes in offering of its Service, become affected in their performance and/or functionality so as to render it impossible for Exabytes to continue to provide the Service. In such event, the sole extent of Exabytes liability shall be the refund of any advance fee paid by You for the duration of the interruption prior to termination.

12.3. If the Agreement or Service is terminated by Exabytes due to non-compliance by You of any provision in this Agreement prior to the expiry of the Service period, You shall pay Exabytes in full charges equivalent to one (1) month service fee for each Service subscribed.

12.4. You may terminate this Agreement by giving Exabytes a thirty (30) days' written notice. If the Agreement or Service is terminated by You prior to the expiry of the Service Period, You shall pay Exabytes in full charges equivalent to one (1) month service fee for each Service purchased.

12.5. On termination or expiration of this Agreement, You shall pay Exabytes :

- A. all amount invoiced to You in accordance with this Agreement and remains unpaid as at the termination date together with the interest charged on that amount; and
- B. all amount incurred by You but not invoiced to You as at the termination date.

12.6. Termination of this Agreement by either You or Exabytes for any reason whatsoever shall be without prejudice to any other right, remedy or claim Exabytes may have against You under this Agreement or at law in respect of any antecedent breach by You of any provision of this Agreement.

12.7. If Exabytes terminates Your right to access or use any portion or all of the Service:

- A. Exabytes obligations under this Agreement shall cease;
- B. You remain responsible for all fees and charges You have incurred prior to the date of termination;
- C. You remain responsible for any applicable fee and charge for any Service to which You continue to have access, as well as applicable data storage fee and charge, and fee and charge for in-process tasks completed after the date of termination;
- D. Any such termination shall not be a breach by Exabytes of this Agreement.

13. Limitation of Liability

13.1 Under no circumstances, unless specifically made within the terms and conditions of this Agreement, shall Exabytes/Service Provider, its officer, agent, or anyone else involved in creating, recreating, producing or distributing the Service be liable whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any indirect, incidental, special or consequential loss or damages (including loss of revenue or profit) that result from the use of or inability to use of the Service; nor shall liability be accepted for that which results from any mistake, omission, interruption, deletion or loss of file, error, defect, deficiency, deterioration in quality, incompatibility, unsuitability, delay in operation, or transmission or any failure of performance, whether or not limited to act of God, communication failure, power failure, theft, destruction, deletion, corruption or unauthorized access to Exabytes' record, equipment, programs or the Service.

13.2. Exabytes' aggregate liability arising out of this Agreement and the use of the Service will not exceed the total fee and charges You have paid to Exabytes for the Service under this Agreement. Applicable law may not allow the limitation or exclusion of liability or incidental or consequential damages, so the above limitation or exclusion may not apply to You. In such cases, Exabytes' liability will be limited to the fullest extent permitted by applicable law.

14. Disclaimer

THE SERVICES ARE PROVIDED "AS IS". OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT, EXABYTES MAKES NO REPRESENTATIONS OR WARRANTIES TO YOU WITH RESPECT TO THE SERVICES, SYSTEM, AND ANY UPDATES, ENHANCEMENTS, DOCUMENTATION, SOFTWARE/HARDWARE OR ANY SERVICES PROVIDED, OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. FURTHER, EXABYTES CANNOT AND WILL NOT WARRANT AGAINST HUMAN AND SYSTEM ERRORS, OMISSIONS, DELAYS, INTERRUPTIONS, OR LOSSES, INCLUDING LOSS OF DATA OR INABILITY TO ACCESS DATA. YOUR SUBSCRIPTION TO AND USE OF THE SERVICES ARE ENTIRELY AT YOUR RISK. EXABYTES CANNOT AND DOES NOT WARRANT THAT THE SERVICES PERFORMED WILL BE UNINTERRUPTED OR ERROR-FREE. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAW.

15. Indemnity

You shall Indemnify, defend and hold harmless Exabytes and Service Provider from any and all liability, penalty, loss, damages, cost on a solicitor-and-client basis, expense, attorneys' fee of whatever nature arising out of or in connection with (i) any claim or action made against Exabytes or Service Provider caused by or resulting directly or indirectly from Your use of the Service without any limitation or exception or from Your conduct; or (ii) breach of third party intellectual property rights anywhere in the world (e.g. copyright, trademark, or other proprietary rights). This indemnification and hold harmless agreement extends to all issues associated with You, including Your website content and content on Your social media, webpage or account.

16. Notice

16.1 Exabytes may provide any notice to You under this Agreement by delivering in person or sent by one of the following methods: (i) registered mail, or (ii) electronic mail, to the address or email address stated in the Exabytes invoice accepted by You.

16.2. To give Exabytes notice under this Agreement, You must contact Exabytes (i) by emailing Exabytes consultant stated in Exabytes invoices, or (ii) by personal delivery, overnight courier or registered or certified mail to Exabytes address stated in Exabytes invoices.

16.3. Notice by email will be effective on the acknowledgement of the email by recipient. Notice provided by personal delivery will be effective immediately. Notice provided overnight courier will be effective one business day after they are sent. Notice provided by registered or certified mail will be effective three (3) business days after it is sent.

17. Others

17.1 This Agreement shall be governed and construed in all respects in accordance with the laws of Malaysia and the Parties hereto hereby submit to the jurisdiction of the courts of Malaysia.

17.2. This Agreement constitutes the entire agreement between the Parties; it supersedes any and all prior or contemporaneous oral or written agreement, negotiation, communication, understanding and term, whether express or implied.

17.3. Additional terms and conditions and policies set out in Exabytes Website are in addition to this Agreement and Exabytes reserves the right to revise those terms and conditions from time to time. In the event of any conflict or inconsistencies between the provisions of this Agreement and any terms and conditions set out in Exabytes Website, the terms and conditions set out in Exabytes Website shall prevail.

17.4. This Agreement is not intended to create a partnership, joint venture, or relationship of trust or agency, or employer and employee between the Parties. Exabytes shall be Your independent contractor.

17.5. We will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Exabytes' reasonable control, including acts of God, fire, flood, theft, labour dispute or other industrial disturbance, systemic electrical, telecommunication, or other utility failure, earthquake, storm or other element of nature, blockage, embargo, riot, act or order of government, act of terrorism, or war.

17.6 In case any provision in the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

17.7. You shall not assign or transfer any of Your rights or obligation under this Agreement without Exabytes' prior written consent.

17.8. The failure of any Party to enforce any right resulting from breach of any provision of this Agreement by the other Party shall not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

17.9. This Agreement is binding on the Parties and enure to the benefit of their respective assign and successor, including liquidator and/or receiver.

17.10. In the event any of this term, condition and provision or those of any schedule, additional term, condition or policy published on Exabytes Website, or other addendum will be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision, additional term, condition or policy published on Exabytes Website, or other addendum will to that extent be severed from the remaining terms, conditions and provisions, additional terms, conditions or policies published on Exabytes Website, or other addendum which will continue to be valid to the fullest extent permitted by law.

17.11. The Parties' rights and obligations, which, by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.

17.12. All communication and notice to be made or given pursuant to this Agreement must be in the English language.

-END-