

## Excel.Net, Inc. Internet Operating Agreement

- 1. INTRODUCTION.** This Agreement is between Excel.Net, Inc. located at 2103 Indiana Avenue, Sheboygan, WI 53081 (hereinafter called "Excel") and "Customer" as noted at the bottom of Agreement. Excel provides access to the Internet information and communication services. This service is accessed through the use of a computer and additional communications hardware. Customer agrees to all terms and conditions outlined below in conjunction with Service Information Sheet.
- 2. DEFINITIONS.** The terms below will be used throughout Agreement to differentiate levels of service and will be interpreted as follows:
- **BROADBAND:** Accessing the Internet using high speed service including but not limited to fixed wireless or DSL service.
  - **RESIDENTIAL, SMALL BUSINESS, BUSINESS:** Each item represents a classification of service provided by Excel to access the Internet. Based on service(s) selected customer will be assigned the appropriate classification.
- 3. TERM.** The initial term for Agreement will commence on the date of signup for Customers or the service/circuit installation date for Broadband Customers. The initial term and disconnect fees are provided for on Service Information Sheet. Upon completion of the initial term, service will be provided on a month by month basis. Excel reserves the right to terminate the services of Customer for any violation of the terms of Agreement. If Customer elects to terminate Agreement, notice must be given in writing. Service fees will not be prorated for the month of termination. Customer account will remain active until the end of the current billing period. Customer is required to pay all amounts in full to Excel within thirty (30) days of termination. Accounts not paid within thirty (30) days will be deemed delinquent and subject to collections. Credit balances at time of termination will be refunded only if credit amount exceeds \$10.00. Balances under \$10.00 will not be refunded due to processing costs. Excel shall not be held liable for any incidental or consequential damages that result from the termination of Agreement.
- 4. DISCLAIMER.** Customer agrees use of the Internet is at Customer's sole risk. Excel does not warrant the service will be error-free or uninterruptible and will not be responsible for any damages Customer may incur as a result. The service is distributed on an "as is" and "as available" basis without warranties of any kind. Excel does not warrant that the services will be free from viruses or other harmful components. Excel is not responsible for any of the actions that Customer performs while using the service. Customer agrees to hold Excel harmless from all claims resulting from Customer's violation of state, federal and local laws, including but not limited to copyrighted material. Excel is not responsible for the truthfulness, reliability or nature of content available on the Internet.
- 5. LOGIN/PASSWORD.** Customer will be assigned a login and password with which Customer will use to access the system, and will be responsible for all use of this service under the assigned login and password.
- 6. BILLING.** All billing information will be sent out via e-mail to the primary address for the account or at Customer request an alternate e-mail address. Payment for the basic service is due in advance. Prices listed on Service Information Sheet do not include applicable taxes and are for a period of one month unless stated differently. Speeds shown are in kilobits per second (Kbps) and reflect maximum speeds as there are many factors which can affect the actual throughput of the connection and affect speeds achieved by Customer. Charges incurred by Customer beyond the base plan shall be invoiced and paid with the next pre-payment billing.
- 7. PAYMENT.** Customers may pay Excel using cash, check, credit card or automatic withdrawal. A penalty of \$25.00 will be assessed on returned checks or declined debit transactions. Payment not made by Customer within thirty (30) days after the billing date are assessed late charges of the greater of \$5.00 or one and one-half percent (1½%) per month shall be due and payable. Failure to remit payment may result in suspension of service, or be reason for termination of Agreement without notice to Customer and at the sole discretion of Excel. Customer is responsible for all fees, no matter how much usage on the service until terminated as specified above. If Customer account is in default, Customer agrees to pay all collection charges incurred in the collection of the amounts that you owe under this agreement - including but not limited to the charges of any collection agency to which we may refer your account. In the event the account is referred to an attorney, Customer agrees to pay all charges and expenses, including reasonable attorney's fees and court costs, to the extent permitted by law.
- 8. WIRELESS EQUIPMENT.** Equipment installed for wireless service will at all times remain the property of Excel. Customer shall pay the full retail cost or the repair/replacement cost of any lost, stolen, unreturned, damaged (by lightning or other means), sold, or transferred equipment. In addition, Customer will be liable for all costs incurred by Excel in obtaining or attempting to obtain any such equipment, including but not limited to collection costs to insure full cost of equipment recovered.
- 9. WIRELESS INSTALLATION.** All Customers installation will include a standard mount, antenna, lightning arrestor and standard labor. Residential Customer installation fee will include fifty (50) feet of cable. Small Business and Business Customers installation fee will include one hundred (100) feet of cable. Business Customers installation fee will include a router with Ethernet connections if required. In the event that special construction or additional equipment is needed to complete the installation, Customer will be responsible for charges associated with such items including materials and labor. Excel will inform Customer of additional charges prior to starting the installation. Customers moving service to a new location will be charged the installation fee again for the new location.
- 10. WEB PAGE STORAGE.** Customers will receive five (5) megabytes of storage on Excel's server at no additional charge. Broadband Business Customers will receive twenty (20) megabytes of storage on Excel's server at no additional charge in lieu of base five (5) megabytes. Additional storage is available on all plans at an added fee. Additionally, upgraded plans may include added capabilities such as scripting or SSL service. These are not available with Customers base storage plan.
- 11. IP ADDRESSES.** Customers will be dynamically assigned an IP address. Business Broadband Customers may request a block of up to 8 IP addresses as required with plan. Customer acknowledges that all addresses remain the property of Excel and in the event of termination will be returned to Excel for reassignment. Additional IP address blocks are available to Business Broadband Customers for an added fee as needed.
- 12. RESTRICTIONS.** Customers, except Broadband Business Customers, are prohibited from running servers including but not limited to web, mail, and ftp. Customer agrees service is for use by the individual or company represented in Agreement and service will not be resold without prior written consent of Excel. Customer is prohibited from using Excel's service to send unsolicited advertising or promotional materials (commonly known as SPAM or UCE) over the network. Customer's total transfer will be limited to as outlined on Service Information Sheet. Customer that exceeds that amount will be billed the additional rate also found on Service Information Sheet.
- 13. ELECTRONIC DATA.** Excel agrees to store all electronic data without charge for thirty (30) calendar days at which time it may be eligible to be purged. Excel does not guarantee storage of data larger than five (5) accumulated megabytes of space for e-mail purposes. Excel does not guarantee storage of data larger than contracted amount for Customer's web page storage. Excel will not be responsible for loss or non-delivery of electronic data.
- 14. PURCHASES.** If Customer chooses to order merchandise, services or information from through the Internet, Customer is solely responsible for payment of said items. Excel is not a party to these transactions and makes no warranty or guarantee for Customer's satisfaction of these items.
- 15. EQUIPMENT.** Excel offers equipment for customer purchase. These items include but are not limited to Ethernet adapters, routers, surge suppressors, DSL modems and wireless access devices. This equipment carries the manufacturer warranty where applicable and will not be replaced by Excel. Customer will need to contact manufacturer for details on such equipment.
- 16. TELEPHONE CHARGES.** Customer is responsible for telephone charges associated with accessing our service and is responsible for ensuring that the Customer is accessing the service through the proper location(s). Excel is not responsible for long distance or other charges resulting from Customer connecting to the service.
- 17. CONTRACTS WITH MINORS.** Customers must be at least eighteen (18) years of age to subscribe to our services. An adult who will be legally responsible for that contract must sign contracts for minors.
- 18. INDEMNIFICATION/RELEASE.** Customer, its agent, successor agrees to indemnify and release Excel, its affiliates, employees, agents or subcontractors from any liability for any claims, losses, actions, damages or suits arising from the installation, use or termination of Excel services.
- 19. GOVERNING LAW AND VENUE.** The laws of the State of Wisconsin shall govern the terms of Agreement. The parties hereto stipulate and agree that the exclusive venue for the resolution of all disputes concerning this Agreement shall be Sheboygan County, Wisconsin.
- 20. MODIFICATIONS.** Excel reserves the rights to modify this agreement at its sole discretion and with ten (10) days prior notice to Customer. Notice of changes does not need to be in writing but may be handled by web site, e-mail or other means.

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Date

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Business Name (if applicable)

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Customer's Printed Name

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Customer's Signature

**Virus Filter Addendum**

- 1. INTRODUCTION.** This is an agreement between Excel.Net, Inc. (hereinafter called "Excel") and "Customer" noted on front of agreement covering the E-mail Virus Scanning Service ("Service") which Excel will furnish to the Customer.
- 2. SERVICE.** The Service uses anti-virus software to scan every e-mail message that is received by the Excel's e-mail scanner. The software is provided by a major vendor or vendors and is updated frequently. The purpose is to eliminate dangerous attachments such as executable files, script files, and files hiding their true nature with various tricks. The Service cannot and does not guarantee elimination of viruses. Among other things, the Service does NOT do the following:
  - Protect against encrypted files or files compressed with unusual compression methods.
  - Reduce or eliminate spam. See our separate Spam Filter service for this functionality.
  - Protect against messages which succeed in passing directly and bypass our e-mail scanner.
  - Protect against viruses where the Customer connects to other e-mail systems, such as AOL, Yahoo, MSN, Hotmail, etc.
  - Protect against viruses received from web sites, downloaded files, FTP, floppy discs, CD-ROMs, DVDs or any other method besides e-mail. This includes no protection against viruses received as a result of clicking on a link embedded in an e-mail. We scan the e-mail, but cannot and do not scan any locations to which an e-mail may link.
  - Protect against any virus which has not been identified (normally a new virus) and therefore is not in our anti-virus software (although updated frequently).
- 3. FORCE MAJEURE.** In particular in the event that our e-mail scanner is not working for any reason beyond our control, the Service will not protect against viruses and Excel assumes no responsibility for the consequences.
- 4. TERM.** The term of this agreement is from the date when Excel begins to implement the Service for which the Customer is subscribing and terminates on five days' notice from Excel to the Customer or from the Customer to Excel, as the case may be. Customers with annual Internet subscriptions will forfeit any remaining months left on their virus filter service in the event that the annual Internet service is cancelled/terminated prior to the end of the term. Excel may, at its option, with or without notice to the Customer, terminate the Service to the Customer for failure to make payment for Service.
- 5. NO WARRANTY.** Excel makes no warranty whatsoever, express or implied, in connection with the provision of the Service and, specifically, without limitation, makes NO WARRANTY OF MERCHANTABILITY and NO WARRANTY OF FITNESS OR SUITABILITY FOR PURPOSE.
- 6. LIMITATION OF LIABILITY.** Excel is not liable to the Customer for ordinary negligence and the Customer releases any claim against Excel which the Customer might otherwise have based on ordinary negligence in connection with the provision of the Service.
- 7. LIMITATION OF DAMAGES.** In any event, Excel shall not be liable for indirect, incidental, special, punitive or consequential damages arising from or related to the Service, regardless of the legal theory under which such liability is asserted and regardless of whether Excel has been advised of the possibility of such liability, loss or damage. Further, in any event, if there should be liability for any reason whatsoever, the Customer's right to damages hereunder shall be limited to an amount not exceeding one month's payment for the Service.
- 8. INDEMNIFICATION.** Customer agrees to indemnify Excel and hold harmless against any third party claims, demands, suits or actions, relating to or based upon the Service provided (or defectively or not at all provided) to the Customer.
- 9. REPRESENTATIONS OF CUSTOMER.** The person accepting this agreement for the Customer is fully authorized to do so, and the acceptance by such person is binding upon and enforceable against the Customer.

**Signature required here only if signing up for virus filter service.**

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Date

Business Name (if applicable)

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Customer's Printed Name

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Customer's Signature