

Hosted Exchange Agreement

MAIL SERVICES

Burgess will provide initial setup of the Hosted Exchange email system, which includes:

- Mailboxes
- Distribution lists
- Contacts
- Multiple inbound domain
- Global address list
- Offline address list

LIMITATIONS ON SERVICES

Filtering. Certain services designed to filter unwanted email, such as spam, phishing scams, and email infected with viruses. **You acknowledge that the technological limitations of the filtering service will likely result in the capture of some legitimate email, and the failure to capture some unwanted email, including email infected with viruses.** Burgess recommends that you employ additional security measures, such as a desktop virus scanner and firewall, on computers that are connected to the Internet.

Memory Limitations. Mail that exceeds the storage limit when received may be permanently lost. You will receive an automated message when your mailbox is near the storage limit. An individual email message that exceeds the per-message size limit may also be permanently lost. As of November 2008 the per message size limit per message is 50MB.

Backups. Data backups on a "snap shot" basis at a specific moment may not create a backup of every item that is sent, received or stored. The backup will only capture those items (including mailboxes and public folders) that are present during the time of the backup. Data on backups may be retrieved only for a limited number of days. See information in section below regarding Records Retrieval services.

SUPPLEMENTAL SERVICES

The following additional terms will apply if you elect to purchase one of the supplemental services described below.

Migration Services. You acknowledge that there is **special risk** that data will be lost during a migration. You agree that you will create a reliable back up of all data to be migrated prior to the time that we begin the migration, or you will contract with Burgess to back up the data as a separate service, to be billed appropriately. You agree that we are not liable to you for damages resulting from the loss or

corruption of your information as part of the migration. You acknowledge that after we begin the migration services we may discover technical limitations related to the configuration of your data that prevent us from successfully completing the migration. We will not charge you a fee if we are unable to successfully migrate your data.

Records Retrieval. Burgess will be able to recover your deleted Microsoft Exchange messages for up to fourteen (14) days from the date deleted on your request. Records retrieval services will be performed on a fee basis. At your written request made at or prior to the termination of your Mail Service, Burgess will provide a complete copy of your mail data then in its possession on a fee basis no later than ten (10) days following the date of the request, provided that all payments on your account must be made prior to Burgess's release of the copy of the data to you. Unless you have made such a request, Burgess's obligation to store email messages and other items terminates at the effective date of termination of the Mail Services.

Archiving Services. Burgess will not archive your email or other items unless you purchase archiving services. If you elect to purchase archiving services the archiving services will capture only the email that you send or receive after the date that the archiving services are implemented. Upon termination of your account for Mail Services, or your archiving service, **Burgess will destroy your archived data** unless you have made other arrangements with Burgess.

Burgess's archiving services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for using your archiving service in a manner that complies with the applicable requirements.

In addition, Burgess's archiving service has certain limitations that may mean it is not an appropriate archiving solution for you. Please see the product description at <http://www.burgesstechnologyservices.com/documents> for more information.

WIRELESS

If you elect to use a wireless component of your Mail Service your use of the wireless component shall be governed by the following additional terms, as applicable:

a) for BlackBerry®, the terms at <http://www.burgesstechnologyservices.com/documents> (collectively, the "Wireless License Terms"); **provided, however** that any provisions regarding Goodlink's Client support shall **not** be applicable, and you acknowledge that you shall look solely to Burgess for Client support in connection with the wireless components of the Mail Service. You may use the wireless components only with the types of handhelds specified in the "Wireless License Terms." You acknowledge that Burgess does not have expertise or specialized training with respect to the wireless components, and agree that Burgess's support obligation with respect to these components is limited to

such efforts as may be reasonably expected of technicians having generalized knowledge and training in information technology systems.

The wireless components of the Mail Service contain "strong encryption" that is controlled for export by U.S. laws and the laws of other countries.

YOUR OBLIGATIONS

You must comply with the Burgess Technology Services Acceptable Use Policy (including the affirmative opt in requirement for bulk mail), Rackspace Acceptable Use Policy and Microsoft license terms which govern the general policies and procedures for use of the Services. The Burgess Technology Services Acceptable Use Policy is posted on Burgess Technology Services' Web site at <http://www.burgesstechnologyservices.com/documents> and may be updated from time-to-time. The Rackspace Acceptable Use Policy can be found at <http://www.rackspace.com/information/legal/aup/php>, and may be updated from time-to-time. The Microsoft license terms can be found at <http://www.rackspace.com/aboutus/legal/microsoftlicense.php>, and may be updated from time-to-time. YOU SHOULD CAREFULLY READ THE ACCEPTABLE USE POLICIES AND LICENSE TERMS. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE ACCEPTABLE USE POLICIES AND LICENSE, AND ANY MODIFICATIONS THERETO. BURGESS TECHNOLOGY SERVICES RESERVES THE RIGHT TO TERMINATE YOUR ACCOUNT FOR ANY VIOLATION OF THE ACCEPTABLE USE POLICIES, LICENSE TERMS OR THIS CONTRACT. TERMINATION FEES WILL APPLY FOR VIOLATIONS OF ACCEPTABLE USE POLICIES OR LICENSE TERMS. PLEASE REFER TO THE ACCEPTABLE USE POLICIES AND/OR LICENSE TERMS FOR MORE SPECIFIC INFORMATION.

You may not use the Mail Services to send Bulk Mail, which is defined as a message having more than 250 recipients.

You must use reasonable security precautions in light of your use of the Mail Services.

You must cooperate with Burgess's reasonable investigation of outages, security problems, and any suspected breach of the Agreement.

You must pay when due the fees for the Mail Services.

PROMISES WE DO NOT MAKE

We do not promise that the Mail Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information, and property. Burgess has no obligation to provide security other than as stated in this Agreement.

We disclaim any and all warranties not expressly stated in the Agreement including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. You are solely responsible for the suitability of the service chosen. Unless otherwise agreed, all Supplemental Services are performed on an "AS IS, AS AVAILABLE" basis.

UNAUTHORIZED ACCESS TO YOUR DATA OR USE OF THE SERVICES

Burgess is not responsible to you for unauthorized access to your data or the unauthorized use of the Mail Services unless the unauthorized access or use results from Burgess's failure to meet its security obligations stated in this Agreement. You are responsible for the use of the Mail Services by any employee of yours, any person to whom you have given access to the Mail Services, and any person who gains access to your data or the Mail Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

TERM

This Agreement shall continue for a period of twelve months. If no notification is received as detailed above, the Agreement will automatically renew for another twelve-month period.

TERMINATION FOR CONVENIENCE

You may terminate the Agreement for convenience at any time on thirty (30) days advance written notice. Burgess may terminate for convenience at any time on one hundred and twenty (120) days advance written notice. If you terminate for convenience you will receive a refund of any prepaid amount, prorated for any partial month.

YOUR RIGHT TO TERMINATE WITHOUT NOTICE

You may terminate the Agreement without providing thirty (30) days notice as required above if: (i) we materially fail to provide the Mail Services as agreed and do not remedy that failure within two days of your written notice describing the failure, or (ii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within ten (10) days of your written notice describing the failure.

OUR RIGHT TO TERMINATE FOR BREACH

We may terminate the Agreement for breach on written notice if: **(i)** we discover that the information you provided to us for the purpose of establishing the Mail Services is materially inaccurate or incomplete, **(ii)** the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the Client, **(iii)** your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of

our written notice, **(iv)** a credit report indicates you no longer meet our reasonable credit criteria, **(v)** you use your Mail Service in violation of the AUP, or **(vi)** you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure.

FEES

The fees for the Services will be as stated in the Price Quotation. We may increase our fees at any time after the initial Term of the Agreement on forty five (45) days advance written notice to you. Recurring fees will be billed monthly in advance. Non-recurring fees, such as migration services and records retrieval, will be billed monthly in arrears.

Fees are due on receipt of invoices, net 30. Burgess may suspend all Services if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our notice to your billing contact. You agree that if your Service is reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee not to exceed \$250.00. Burgess may charge interest on overdue amounts at 1.5% per month. If any amount is overdue by more than thirty (30) days and Burgess brings a legal action to collect, you must also pay Burgess's reasonable costs of collection, including attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. You authorize Burgess to obtain a credit report at any time during the term of the Agreement.

SUSPENSION OF SERVICES

You agree that we may suspend Services without liability if: (i) we reasonably believe that the Services are being used in violation of the Agreement; (ii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) your Mail Services are accessed or manipulated by a third party without your consent, or (iv) as required by law. We will give you reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, if such grounds are capable of cure.

PRIVACY/CONFIDENTIAL INFORMATION

Content Privacy. We respect your privacy. The content of your items is your Confidential Information and is subject to the restrictions on use and disclosure described below. In addition to those restrictions, we agree that our personnel will not view the content of your items except in the specific ways defined below. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

Our Limited Rights to View and Use Your Content. You agree that our personnel may view the content of your email and other items for the following purposes:

- i. as necessary to respond to your specific support request;
- ii. to ensure that back-ups are being performed properly;
- iii. for Bulk Mail, to ensure compliance with our requirements for Bulk Mail stated in the Agreement, including the Acceptable Use Policy;
- iv. as appropriate to the exercise of our rights to use and disclose your Confidential Information as described below in this Section; and
- v. for Junk Mail, to improve our email filter.

If we use third party vendors to help us provide Services to you, we may permit those vendors to view and use your email content for the same purposes described above, provided that the vendors are subject to confidentiality and privacy restrictions at least as stringent as those stated in this Agreement. In addition, we may share the content of your Junk Mail with independent third party abuse agencies and trade groups for the purpose of assisting in industry initiatives to control undesirable email.

WE WILL NOT EMPLOY TECHNOLOGY TO READ YOUR EMAIL MESSAGES IN ORDER TO TARGET, DISPLAY OR SEND MARKETING ADS BASED ON THE CONTENT OF THOSE EMAIL MESSAGES.

Usage Data. We collect and store information related to your use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. You agree that we may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

Confidential Information.

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- (i) to our respective service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement,
- (ii) to law enforcement or government agency if required by a subpoena or other compulsory legal process, or if either of us believes, in good faith, that the Confidential Information reflects conduct that may violate applicable law;
- (iii) as required by law; or
- (iv) in response to a subpoena or other compulsory legal process, provided that each of us agrees to

give the other written notice of at least seven days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

LIMITATION ON DAMAGES

We are not liable to you for failing to provide the Mail Services unless such failure results from our gross negligence, willful misconduct, or intentional breach of the Agreement.

Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

You hereby release Burgess and its employees, agents, affiliates and third party suppliers from any liability for damages arising from the failure of Burgess's filtering services to capture unwanted email or from the capture of legitimate email, or from a failure of your email to reach its intended recipient as a result of a filtering service used by the recipient or the recipient's email service provider.

Notwithstanding anything in the Agreement to the contrary, except for claims based on our willful misconduct, the maximum aggregate monetary liability of Burgess and any of its employees, agent, suppliers, or affiliates, under any theory of law (including breach of contract, tort, strict liability, and infringement) shall not exceed three times the monthly recurring fee payable under the Order(s) in effect for the Mail Service at the time of the occurrence of the event(s) giving rise to the claim.

FORCE MAJEURE

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant 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.