

EXALT SOLUTIONS, INC.

TERMS OF USE

BY USING THIS SITE, YOU AGREE TO THESE TERMS OF USE (THE “**TERMS OF USE**”) AND THE SERVICE LEVEL AGREEMENT AVAILABLE AT WWW.EXALTSOLUTIONS.COM/privacyandterms (THE “**SLA**”). IF YOU DO NOT AGREE TO THE TERMS OF USE AND THE SLA, YOU MAY NOT USE THIS SITE. eXalt Solutions, Inc. (“**eXalt**”) retains the right to modify the Terms of Use at any time and from time to time. Any modification will be effective upon posting on this site. Any use of this site from and after the time a modification is posted shall constitute acceptance of the modification. As used in the Terms of Use, “**You**” means the individual accessing this site or, if such individual is using the site on behalf of a business or other entity, such business or other entity. If using the site on behalf of a business or other entity, the individual represents and warrants that s/he has the power and authority to bind such business or other entity.

BACKGROUND: eXalt hosts personalized web Portal Services for its customers. “**Portal Services**” means services that You purchase under an order form located at www.exaltsolutions.com and/or other web pages designated by eXalt (the “**Order Form**”), paying the fee specified in on the Order Form, and having your Order Form accepted by eXalt (and not revoked). Your Order Form is incorporated into the Terms of Use by reference.

Your agreement with eXalt includes these Terms of Use (including any Order Form(s) you have submitted), as well as the SLA, and the Terms of Service – Content Link in Service (the “**Terms of Service**”), as applicable (collectively posted at www.exaltsolutions.com/privacyandterms). These various components, as may be amended from time to time, are referred to collectively as the “**Agreement**”.

“**User**” is a person or entity authorized by You to access your Portal Services (i) by clicking through a link on your web-site, or (ii) by following directions, or utilizing a password, provided by you (or by eXalt at your request). Users must be your employees, consultants, contractors and agents; provided, that customers or other third parties may also be “Users” but only to the extent authorized by your purchase of the Customer Edition.

You can use your Portal Services to (i) store data sets from www.exaltsolutions.com and/or other web pages designated by eXalt (each, a “**Library**”), (ii) upload your price list, part numbers and similar information (all such information, “**Your Content**”), and (iii) provide Users access to the Portal Services.

(a) Term and Termination. Your right to maintain your Portal Services shall continue as provided in your Order Form, except that (i) eXalt may terminate your right to maintain your Portal Services, at any time, should you materially breach the Agreement (including without limitation failure to make payments when due), and (ii) you may terminate your right to maintain your Portal Services by written notice to eXalt (A) at any time, should eXalt materially breach the Agreement, and (B) at any time in your discretion. Sections (f) – (m) of these Terms of Use shall survive any termination for any reason. If eXalt materially breaches the Agreement and you terminate your right to maintain your Portal Services pursuant to Section (a)(ii)(A), eXalt will refund to you any unused fees (determined by comparing the number of days paid for and the number of days used before termination in the then-current payment period); otherwise, all fees paid under the Agreement are non-refundable.

(b) eXalt's Responsibilities. eXalt will provide access to your Portal Services via the Internet to you and your Users. eXalt will use commercially reasonable efforts to provide up-to-date virus scanning software, to safeguard passwords, to use and maintain firewalls, and to maintain the Portal Services in a secure environment, but eXalt makes no representation or warranty that the Portal Services are invulnerable or secure, or that the Portal Services will be accessible without interruption. The SLA specifies your sole remedies, and eXalt's sole liabilities, should your Portal Services be unavailable for a period of time. eXalt will use reasonable efforts to give you advance notice of scheduled maintenance downtime. eXalt will not systematically monitor Your Content which is submitted to, stored on or distributed via any hosting service, but eXalt reserves the right to edit or delete any information or other content regardless of whether use of such material is otherwise permitted under applicable law or the Terms of Use. If you suspect an incorrect functioning of your Portal Services or your Libraries (an "**Error**"), you will submit a listing of output and such data as required to reproduce operating conditions similar to those present when the suspected Error occurred. eXalt will use commercially reasonable efforts to address any Errors in the Portal Services or Library.

(c) Your Content and Responsibilities. Our Services allow you to submit Your Content. You retain ownership of any intellectual property rights that you hold in that content. In short, what belongs to you stays yours.

You grant eXalt: (i) a non-exclusive, worldwide, royalty-free license to use and modify Your Content solely in connection with the provision of your Portal Services and any necessary activities related thereto, and to display Your Content as part of your Portal Services; and (ii) a non-exclusive, worldwide, royalty-free license to use, reproduce and display your Brand Features in connection with your Portal Services in accordance with reasonable trademark guidelines and restrictions specified by you. eXalt will discontinue use of your Brand Features upon any expiration or termination of the Terms of Use. "**Brand Features**" means the trademarks, service marks and logos of a party.

You shall be responsible for Users' compliance with the Agreement. You will not make the Services available to anyone other than Users as permitted by the Agreement. You will not charge any person to use or access your Portal Services. You shall not post, upload, or otherwise transfer by any means any document, image, communication, or other transmission into your Portal Services which (i) infringes the intellectual property rights of any third party, (ii) is obscene or constitutes child pornography, (iii) is defamatory, or (iv) contains any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Portal Services or any associated Library, software, firmware, hardware, computer or network. Without limiting any other available remedies, eXalt reserves the right to edit or delete any such document, image, communication, or other transmission. You may not use your Portal Services or export any Library and/or any information, document, image, communication or other transmission generated or received in connection with your Portal Services in violation of the laws of any jurisdiction, including but not limited to the privacy and export regulations and restrictions of the United States and the Children's Online Privacy Protection Act of 1998 ("COPPA"). You shall not collect information from children under the age of 13. You shall not use your Portal Services in any manner that may cause loss or damage to any person. You are solely responsible for maintaining the confidentiality of passwords and other means of access to your Portal Services, and for any activity that occurs on your Portal Services as a result of failing to keep such information secure.

(d) eXalt's Protection of Your Content. eXalt shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Content. Except as specifically authorized hereunder, eXalt shall not (a) modify Your Content, or (b) disclose Your Content except that eXalt may disclose Your Content (A) as compelled by law, (B) as expressly permitted in writing by you, (C) as reasonably necessary to provide or market eXalt's Portal Services (in which case disclosure shall not include any substantial portion of Your Content) (D) to address service or technical problems, or (E) at your request in connection with customer support matters.

(e) Grant of License by eXalt. eXalt grants you a non-exclusive, non-transferable license, without right to sublicense, to use your Portal Services, and to permit Users to use your Portal Services, to (i) produce, cache, display and transmit the your Libraries and Your Content, and (ii) copy, download and export any incidental excerpts of your Libraries and Your Content which occur through the normal permitted use of the Portal Services, such as print, CD ROM or Website development. You may not otherwise: modify, distribute, translate, reverse engineer, decompile, disassemble or create derivative works based on your Portal Services or your Libraries or any other work found at, contained on or in any other manner accessed from the Portal Services (other than Your Content); copy the Portal Services or any Library; rent, lease, grant a security interest in, or otherwise transfer rights to the Portal Services or any Library; or remove any proprietary notices or labels from the Portal Services or any Library. You shall not access your Portal Services to build a competitive product or service, build a product or service using similar ideas, features, functions or graphics of your Portal Services, or copy any ideas, features, functions or graphics of your Portal Services.

(f) Ownership by eXalt. As between you and eXalt, eXalt owns all right, title and interest in your Portal Services, the Libraries, the eXalt Brand Features, and all derivatives, enhancements and improvements thereof, and all Intellectual Property Rights therein. You shall not contest the validity of the eXalt Brand Features. No ownership is transferred by eXalt, and no licenses are granted by eXalt except for those expressly set forth in the Agreement. If you or any of your employees acquires any right or interest in any of the foregoing by operation of law, then as additional consideration for the Agreement, you hereby irrevocably assign and transfer to eXalt all right, title and interest worldwide in and to the foregoing, whether or not patentable or copyrighted, made or conceived or reduced to practice, and to all modifications and derivative works thereof, and to all Intellectual Property Rights related thereto. You grant eXalt a royalty-free, worldwide, perpetual, transferable license to use, modify, copy, distribute, display publicly or otherwise exploit any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any User relating to the operation of your Portal Services.

(g) Indemnities. Each of you and eXalt (as the "Breaching Party") shall defend, indemnify and hold harmless the other, its officers, directors, stockholders and agents (the "Indemnified Parties") from and against any losses or damages suffered by the Indemnified Parties arising out of or relating to a breach of the Agreement by the Breaching Party, including without limitation any legal costs (a "Claim"), provided that the Breaching Party (i) is given prompt written notice of any Claim for which indemnification may be requested, (ii) the Breaching Party is given the opportunity to control the defense and settlement of the Claim, and (iii) if the Breaching Party has assumed control of the defense and settlement of the Claim and has (and continues to) diligently defend such Claim, the Indemnified Party does not agree to settle such Claim without the prior written consent of the Breaching Party (not to be unreasonably withheld).

(h) Warranties. EXCEPT AS SPECIFICALLY PROVIDED IN THE AGREEMENT, EXALT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO YOUR PORTAL SERVICES OR ANY LIBRARY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

(i) Privacy Policy. The access to and use of the Portal Services are subject to your privacy policy. You shall provide a copy of your privacy policy to eXalt for posting on the Portal Services. You represent and warrant that your privacy policy, as in effect from time to time, complies with all applicable laws and regulations. You will promptly notify eXalt in writing if at any time either your privacy policy or applicable law prohibits eXalt's collection of User information (including without limitation user IP addresses). Absent such notice, you represent and warrant to eXalt that collection of such information is permitted by your privacy policy. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS EXALT FOR ANY AND ALL CLAIMS, LOSSES AND DAMAGES, INCLUDING WITHOUT LIMITATION COURT COSTS AND ATTORNEYS' FEES, ARISING AS A RESULT OF YOUR FAILURE TO PROVIDE A PRIVACY POLICY, YOUR FAILURE TO COMPLY WITH YOUR PRIVACY POLICY OR THE FAILURE OF YOUR PRIVACY POLICY TO COMPLY WITH APPLICABLE LAW.

(j) Limitation of Liability. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, (i) EXALT SHALL HAVE NO LIABILITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SUBJECT MATTER OF THE AGREEMENT, INCLUDING WITHOUT LIMITATION LOST DATA OR LOST PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (ii) EXALT'S AGGREGATE LIABILITY FOR ALL CASES AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER OF THE AGREEMENT SHALL NOT EXCEED THE AMOUNT EXALT HAS BEEN ACTUALLY PAID BY YOU UNDER THE AGREEMENT DURING THE FIRST TWELVE MONTHS FOLLOWING THE INITIAL ACCEPTANCE OF THESE TERMS OF USE.

(k) Confidentiality. Each of you and eXalt (acting as a "Receiving Party"), agrees to keep confidential all Proprietary Information received from the other (acting as a "Disclosing Party") and to use such Proprietary Information solely for the purposes permitted by these Terms of Use. Each Receiving Party agrees to use commercially reasonable efforts to prevent disclosure of the Disclosing Party's Proprietary Information to any unauthorized third party. "Proprietary Information" means (i) all computer software and documentation, and (ii) all other information marked by the Disclosing Party as "Secret," "Confidential" or a similar marking; provided, that "Proprietary Information" does not include any information (A) which is in the Receiving Party's possession on the date hereof and of which it did not learn through its contact with the Disclosing Party previous to the date hereof, (B) which is lawfully received by the Receiving Party without restriction on confidentiality from a third party, (C) which is independently developed by the Receiving Party without reference to the Disclosing Party's Proprietary Information, or (D) disclosure of which is necessary to comply with law or the valid order or requirement of a governmental agency or court of competent jurisdiction; provided further, that this Section (k) shall not be read to limit eXalt's ability to disclose Your Content as permitted in Section (d).

(l) Legal Fees. In any dispute arising out of the subject matter of the Agreement, the prevailing party shall be entitled to recovery of its legal fees and expenses.

(m) Miscellaneous. (i) The Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to any choice of law principles. All disputes hereunder shall be resolved in the applicable state or federal courts of Massachusetts. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available. (ii) The Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, and permitted successors and assigns. You may not assign the Agreement or any portion thereof without the prior written consent of eXalt. (iii) No waiver by either party of any default shall be deemed a waiver of any other default. (iv) If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement. (v) The Agreement constitutes the entire understanding of the parties with regard to its subject matter, revoke and supersede all prior agreements between the parties regarding the subject matter, are intended as a final expression of their agreement, shall not be modified or amended except in writing signed by the parties and specifically referring to the appropriate portions of the Agreement, and shall take precedence over any other documents that may be in conflict therewith. The section headings used in the Agreement are intended for reference and convenience only, and shall not enter into the interpretation of the terms and conditions of the Agreement. (vi) The parties are independent contractors, and no partnership, joint venture, employee-employer, or agency relationship between the parties is intended or created by the Agreement or any of the terms and conditions contained herein. Neither party will have the power to bind any other party or incur obligations on another's behalf without the other's prior written consent. (vii) The Agreement controls the relationship between you and eXalt, and does not create any third party beneficiary rights. (viii) All fees are exclusive of applicable taxes. You shall pay all taxes associated with the services and content provided by eXalt pursuant to the Agreement, excluding taxes solely on eXalt's net income. (ix) eXalt shall not be liable or deemed to be in default for any breach of the Agreement, service outage or failure in performance resulting from acts of God, or from any causes beyond the reasonable control of eXalt.