

Mail Hosting Services Terms & Conditions

In addition to the General Terms and Conditions, your use of the Mail Services is subject to the following additional terms and conditions:

1. ADDITIONAL DEFINED TERMS

Some words used in this Addendum have particular meanings:

"Bulk Mail" means email messages of similar content that are sent to more than 250 recipients. Mail messages sent within the same domain name, or from your domain name to your other domain name(s) hosted on the BayNODE system are not "Bulk Mail" for the purposes of this definition.

"Effective Date" means the date on which you have submitted a signed Agreement for Mail Services and we have received your payment for the first month's service.

"Junk Mail" means email that is captured by our mail filter and other email that is reported by you to BayNODE as undesirable.

"Mail Service" or **"Mail Services"** means the BayNODE Email, Microsoft Hosted Exchange, and/or other email service described in your Services Description, plus Support, as defined below. "Mail Services" does not include any mail applications that BayNODE licenses for use on a fully- or partially-dedicated Hosted System.

"Support" means (i) management of the Mail Service by a customer care team that includes individuals trained in the system you select, and (ii) availability of support twenty-four (24) hours per day, seven days per week, year round.

2. ADDITIONAL BAYNODE OBLIGATIONS.

In addition to its obligations stated in the General Terms and Conditions, BayNODE will provide the following services as part of your Mail Services:

2.1 Administration. BayNODE will provision the initial environment. You will otherwise be responsible for administering your Mail Service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters.

2.2 Service Level Agreement ("SLA"): Your Mail Service will be available 100% of the time in a given calendar month, excluding downtime due to maintenance.

2.2.1 Downtime. Downtime exists if you are unable to send or receive mail as a result of a failure of your Mail Service. Downtime does not exist if you are unable to send or receive mail as a result of a failure outside of BayNODE's reasonable control, such as your connection to the Internet, your computer, your mobile device, or your systems. BayNODE will perform maintenance on the Mail Services on a regularly scheduled basis within its published maintenance windows, which will be announced on our system status page (<http://status.apps.BayNODE.com>). BayNODE may also perform unscheduled emergency maintenance if needed to address new security threats or other non-routine events. Delays that may occur while the Mail Service makes planned transitions between redundant system elements is considered maintenance. If BayNODE expects any maintenance to take more than twenty minutes, it will make reasonable efforts to post an announcement on the system status page at least seven (7) days in advance of the maintenance, but we do not guaranty such notice. Delivery delays are considered downtime only for the period that mail is not being processed.

2.2.2 Credits. In the event of downtime, you are eligible for a credit as follows:

2.2.2.1 if the downtime continues for five (5) consecutive hours or more, you may request a credit equal to the monthly recurring fee for the affected Mail Service (BayNODE Email, Microsoft Exchange, BlackBerry Enterprise Server or ActiveSync) multiplied by the percentage of your mailboxes affected (the "Maximum Credit") or

2.2.2.2 if the downtime continues for less than five (5) consecutive hours, then you may request a prorated portion of the Maximum Credit equal to the number of minutes of downtime divided by five (5) hours (300 minutes).

You are not entitled to a credit if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have cured the breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement.

You must request a credit through your control panel within seven (7) days following the end of the downtime. Your request must describe the downtime, including the specific Mail Service affected, the start and end time of the downtime, a percentage or list of mailboxes affected, and specifically how your use of the Mail Service was adversely affected. BayNODE will apply any credit that is due against your next invoice for Mail Services.

2.3 Support. BayNODE will provide Support to your designated administrator(s) or technical contacts on the account. BayNODE will not provide Support directly to your end users unless specifically agreed in writing.

3. LIMITATIONS ON MAIL SERVICES

3.1 Filtering. BayNODE provides 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. Email that is quarantined by the filtering system is excluded from the Service Level Guaranty.**

3.2 Delivery Failures. BayNODE will use commercially reasonable efforts to deliver your email messages. Third party filtering services may from time to time prevent successful delivery of your messages.

3.3 You hereby release BayNODE and its employees, agents, suppliers, and affiliates from any liability or damages arising from the failure of BayNODE's filtering services to capture unwanted 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.

3.4 Memory Limitations. Mail that exceeds the storage limit when received may be permanently lost. You may adjust the storage capacity of your individual mailboxes via the control panel, and it is your obligation to monitor and adjust the storage capacity of individual mailboxes as needed. An individual email message that exceeds the per-message size limit may also be permanently lost. As of January 2010, the per message size limit is 50MB.

3.5 Backups. BayNODE performs data backups on a "snap shot" basis at a specific moment. Therefore BayNODE 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.

3.6 Bulk Mail. You may not use the Mail Services to send Bulk Mail except via a BayNODE-approved mail marketing service. You may not send bulk or commercial mail that has a BayNODE Mail Service return address or references a BayNODE Mail Service address, unless approved by BayNODE in advance. You may not intentionally use your Mail Service for the purpose of receiving bulk mail from others. For example, you may not submit any Mail Service email address to a "Safelist" or "Free for All" list.

3.7 Unsolicited Mail. You may not send email to anyone with whom you do not have a pre-existing relationship, unless the recipient has published or otherwise provided his or her email address in a manner which implies consent to receive the email.

3.8 System Abuse. You may not use the Mail Services in a way that creates technical disturbances for other BayNODE mail customers or for the BayNODE systems generally. Specifically, but without limitation:

3.8.1 No Shared Mailboxes. Each mailbox may be used by one natural person at a time. Attempts to log into a single mailbox simultaneously from more than one computer are prohibited. You may not use automated tools such as "Fetchmail" or "Microsoft Exchange Connector" to virtualize one mailbox into multiple mailboxes;

3.8.2 Automated Use. Mailboxes are not designed for automated use, such as sending email from web servers, or receiving email from automated programs. Such use is permitted provided that you do not violate this Agreement or disrupt the normal operation of the mail system, but we do not provide technical support for this type of use.

4. CUSTOMER SECURITY OBLIGATIONS.

The General Terms and Conditions require you to use reasonable security precautions in light of your use of the Services. For Mail Services, this includes using a desktop virus scanner and firewall on computers that are connected to the Internet.

5. ADDITIONAL TERMS FOR CERTAIN SERVICES.

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

5.1 Migration Services. At your request, we will provide an advance estimate of fees based on the information you provide to us. However, you acknowledge that our fee will be calculated on the basis of the actual number of mailboxes and amount of data migrated and may exceed the estimate. 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. You acknowledge that there is a **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. 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.

5.2 Domain Name Services. If you register, renew or transfer a domain name through BayNODE, BayNODE will submit the request to its domain name services provider (the "Registrar") on your behalf. BayNODE's sole responsibility is to submit the request to the Registrar. BayNODE is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the applicable legal terms of the Registrar posted on their website. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar.

5.3 Records Retrieval. For BayNODE Mail, you will be able to recover deleted messages yourself via the administrative control panel for up to fourteen (14) days from the day deleted. For BayNODE Microsoft Exchange, you will not be able to recover your deleted mail yourself, but BayNODE will recover your deleted mail for you on a fee basis for up to fourteen (14) days from the day deleted. For both BayNODE Mail and BayNODE Microsoft Exchange your deleted messages may not be available after fourteen (14) days from the day deleted. Records retrieval services will be performed on a fee basis and will take up to two (2) hours for a deleted item, and up to six (6) hours for an entire mailbox. At your written request made at or prior to the termination of your Mail Service, BayNODE will provide a complete copy of your mail data 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 BayNODE's release of the copy of the data to you.

5.4 Archiving Services. If you 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, **we will destroy your archived data** unless you have made other arrangements with us.

BayNODE's archiving services are designed to help you comply with various legal and regulatory requirements that may be applicable to you. However, you are responsible for understanding the legal and regulatory requirements applicable to your business and for using your archiving service in a manner that complies with the applicable requirements. In addition, BayNODE's archiving service has certain limitations that may mean it is not an appropriate archiving solution for you.

5.5 DVD/CD Backup Services. If you purchase DVD/CD backup services, then you acknowledge that BayNODE will store the data on the DVD/CD in unencrypted form. BayNODE has no liability to you arising from a data breach or other harm arising from the shipment of the DVD/CD to you.

6. 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.BayNODE.com/information/legal/wirelessmsa.pdf>;
b) for Goodlink™, Good Technology Inc.'s license terms and Acceptable Use Policy at http://www.good.com/corp/content/Documentation/forms_license.doc; (collectively, the "Wireless License Terms"); **provided, however** that any provisions regarding Goodlink's customer support shall **not** be applicable, and you acknowledge that you shall look solely to BayNODE for customer 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 BayNODE does not have expertise or specialized training with respect to the wireless components, and agree that BayNODE'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.

7. TERM

The initial term of each Agreement begins on the Effective Date and continues for the period stated in the Service Description. Upon expiration of the initial term, the Agreement will automatically renew for successive renewal terms of one month each unless and until one of us provides the other with thirty (30) days advance written notice of non-renewal.

8. TERMINATION FOR CONVENIENCE

You may terminate the Agreement for convenience at any time on thirty (30) days advance written notice. BayNODE may terminate for convenience at any time on one hundred and twenty (120) days advance written notice. If you terminate for convenience, we will refund any amount you prepaid for any period extending past your committed term.

9. FEES

9.1 Recurring fees will be billed in advance either monthly, quarterly, or annually, as agreed. Non-recurring fees, such as migration services and records retrieval, will be billed monthly in arrears. Fee changes due to changes in the services (e.g. increase or decrease in number of mailboxes or amount of storage, addition or deletion of wireless service components) will be effective either: (i) as of the date of the change to the service, with a prorated amount due for any partial month, or (ii) as of the beginning of the next calendar month, at BayNODE's option.

9.2 Fees are due within five (5) days of invoice date. If you have arranged for payment by credit card or ACH, BayNODE may charge your card or account on or after the invoice date. BayNODE may suspend all Services, including services provided pursuant to any unrelated agreement if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Services are reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee. BayNODE may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days and BayNODE brings a legal action to collect, you must also pay BayNODE's costs of collection, including reasonable 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. Fees must be paid in U.S. Dollars. Invoices that are not disputed within 180 days of invoice date are conclusively deemed accurate.

9.3 We may increase our fees for Mail Services at any time by posting the new fees in the control panel or providing notice to you via ticket. Fee increases will not be applied to your Mail Services purchased prior to the time of the fee increase until at least forty-five (45) days after the date the new fees are first published, but any new Mail Services you purchase after a fee increase will be charged at the new fees.

10. ADDITIONAL SUSPENSION, TERMINATION AND INDEMNIFICATION GROUNDS

In addition to the other grounds for suspension and termination stated in Section 10 (Suspension) and Section 11.2 (Termination for Breach) of the General Terms and Conditions, we may suspend your Mail Services or terminate the Agreement immediately and without notice if: (i) you use your Mail Service in violation of the use restrictions in the Agreement, including those in the AUP and at Section 3.6 (Bulk Mail) or Section 3.7 (Unsolicited Mail) above, (ii) your Mail Service email address or related IP number(s) is/are blacklisted by any third party, or BayNODE is retaliated against as a result of your email, regardless of whether you are in breach of the AUP or other part of the Agreement, or are otherwise at fault, or (iii) we receive excessive or repeated complaints from your email recipients, regardless of whether you are in breach of this AUP or are otherwise at fault. Complaints from email recipients and third party abuse agencies (e.g. SpamHaus or Spamcop) shall be deemed proof of the facts stated therein unless you provide compelling evidence to the contrary. Your indemnity obligations stated in [Section 14](#) (Indemnification) of the General Terms and Conditions shall, in addition to the other grounds stated, cover any third party claim arising from your use of the Mail Service, except to the extent such claim arises from BayNODE's breach of the Agreement, negligence, recklessness, or willful misconduct.

11. PRIVACY

11.1 Content/Message Routing Data. Your email messages and other items sent or received via the Mail Service will include: (i) the content of the communication ("**content**"), and (ii) certain information that is created by the systems and networks that are used to create and transmit the message (the "**message routing data**"). The content includes things like the text of email messages and attached media files, and is generally the information that could be communicated using some media other than email (like a letter, telephone call, CD, DVD, etc.) The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email.

11.2 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 in the General Terms and Conditions, [Section 12](#) (Confidential Information). 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.

11.3 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 backups are being performed properly;
- iii. for Bulk Mail, to ensure compliance with our requirements for Bulk Mail stated in the Acceptable Use Policy;
- iv. as appropriate to the exercise of our rights to use and disclose your Confidential Information as described below in the General Terms and Conditions, [Section 12](#) (Confidential Information); 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 the General Terms and Conditions, [Section 12](#) (Confidential Information). 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.

You acknowledge that BayNODE is required to establish an abuse@[yourdomain].com and postmaster@[yourdomain].com address for each of your domains. BayNODE personnel will review the content of all mail received at these addresses. You may configure your Mail Service such that mail is not received at these addresses but is instead forwarded to someone within your organization.

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.

11.4 Usage Data. We may 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.

11.5 Changes to Privacy Terms. We may change Subsection 11.3 (Our Limited Right to View and Use Your Content) under the same procedures described for amendments to the AUP in the General Terms and Conditions, Section 9 (Changes to the Acceptable Use Policy).

12. IP ADDRESSES.

Upon expiration or termination of the Agreement, you must discontinue use of the Mail Services and relinquish use of the IP addresses and server names assigned to you by BayNODE in connection with Services, including pointing the DNS for your domain name(s) away from BayNODE Services.

13. RESALE

You may not resell the Mail Services without BayNODE's prior written consent.

This Product Addendum for Mail Services constitutes the final agreement between you and BayNODE regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral.