



AFFILIATE PROGRAMME TERMS & CONDITIONS

This Affiliate Programme Agreement (“**Agreement**”) shall govern the Affiliate Programme and shall be constitute the understanding between Exabytes and the party who has applied for and/or participated the Exabytes Affiliate Programme, and that the application web form Affiliate had submitted via <https://www.exabytes.my/affiliate> or the email from Affiliate containing all information requested by Exabytes is incorporated into this Agreement.

1. This Agreement applies to Affiliate’s participation in Exabytes Affiliate Programme as described in this Agreement (“**Programme**”).
2. Exabytes appoints Affiliate on a non-exclusive and non-transferrable basis to perform Affiliate’s responsibilities under the Programme and the Agreement. Affiliate agrees that Exabytes will only deal with the contact as registered in the system (“**Primary Contact**”). Any requests made by any third party other than the Primary Contact may be rejected by Exabytes. Any transfer of the account’s ownership shall be done by the Primary Contact solely.
3. **Responsibilities:** Under the Programme, Affiliate will:
 - (a) identify itself as Exabytes Affiliate on its promotional channels.
 - (b) provide the prospective customers (“**Prospect**”) with complete and accurate information about services offered by Exabytes (“**Exabytes Services**”). A Prospect becomes “**Exabytes Customer**” when it completes any Qualified Transaction.
 - (c) place the unique hyperlink made available by Exabytes to Affiliate (“**Affiliate Link**”) on any channel in order to promote Exabytes Services to the public.
 - (d) direct any Prospect or Exabytes Customer (as the case may be) to purchase Exabytes Services via Affiliate Link. Use of Exabytes Services is subject to Exabytes Terms of Use as may be updated from time to time on <https://www.exabytes.my/legal/terms> (“**Exabytes Website**”), including this Affiliate Programme. This Agreement shall prevail over the Exabytes Terms of Use should there be any inconsistencies.
 - (e) respond to any day-to-day queries raised by Prospect or Exabytes Customer (as the case may be).
 - (f) provide basic customer support to Exabytes Customer.
 - (g) escalate any technical issues about Exabytes Services to Exabytes, and Exabytes will provide support for escalated issues.
 - (h) grant Exabytes a royalty-free, worldwide and transferable license to use Affiliate’s logo, trademark and slogan in order to identify Affiliate as Exabytes Affiliate on Exabytes promotional channels.
 - (i) inform Exabytes of any claim, complaint or lawsuit made by Exabytes Customer regarding the content, performance or quality of Exabytes Services.
4. **Rights of Exabytes:** Exabytes may:
 - (a) conduct training about Exabytes Services from time to time.
 - (b) make available any other benefits under the Programme to Affiliate as may be updated from time to time on Exabytes Website.
 - (c) make any direct sales of any part of Exabytes Services.
5. **Commission:** Affiliate will be entitled to Commission as stated on <https://www.exabytes.my/affiliate>. Affiliate will be responsible for payment of all taxes (including withholding tax), duties, governmental charges and other charges levied on the Commission. The tax or wire transfer charges on payment shall be borne by the party making the payment. Affiliate will indemnify, defend and hold Exabytes harmless from and against any claims arising from or relating to charges resulting from Exabytes’s payment of Commission under this Agreement. All amounts payable by Exabytes to Affiliate is subject to set off by Exabytes against any amounts owed by Affiliate to Exabytes.
6. **Restrictions:** Affiliate will not (through itself or a third party):
 - (a) direct any Prospect or Exabytes Customer (as the case may be) to purchase Exabytes Services from other affiliate’s unique hyperlink made available by Exabytes.
 - (b) appoint or use any sub-reseller, agent, or dealer to promote Exabytes Services without the prior written consent of Exabytes.



- (c) remove from Exabytes Services (or materials) any mark, trademark, logo, trade name, or copyright notices without Exabytes's prior written approval.
 - (d) misuse the Affiliate Link.
 - (e) use the Affiliate Link to purchase Exabytes Services for Affiliate's own use.
7. **Payment:** The payment and withdrawal of the Commission are as set out in Annexure One. Affiliate shall be responsible for all the fees or charges incurred during the withdrawal or payment transaction if any.
8. **Intellectual Property Rights:** All rights, title and interest in all patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights in respect to Exabytes Services is the exclusive property of Exabytes.
9. **Grant of License:** Exabytes grants to Affiliate a royalty-free, worldwide, non-exclusive, non-transferable, limited right to use Exabytes mark or logo relating to Exabytes Services during the term of this Agreement solely for the purpose of promoting Exabytes Services in accordance with this Agreement.
10. **Warranty:** In performing this Agreement, Affiliate represents and warrants that:
- (a) Affiliate will comply with, will not violate or cause Exabytes to violate all applicable laws and regulations (including (but not limited to) Malaysian Anti-Corruption Commission Act 2009 and Personal Data Protection Act 2010).
 - (b) Affiliate has rights and authorization to participate in the Programme and enter into this Agreement.
 - (c) Affiliate entering into this Agreement will not conflict with Affiliate's existing agreement or arrangement with any third party.
11. **Term:** This Agreement is effective from the date of acceptance of Exabytes of Affiliate's application to participate in the Programme and remains valid until it is terminated by in accordance with Clause 12.
12. **Termination:** Either party may terminate this Agreement:
- (a) at any time upon written notice to the other party if the other party breaches this Agreement and fails to remedy such breach within fifteen (15) days after receipt of written notice of the breach.
 - (b) the other party is liquidated.
 - (c) the other party commences dissolution proceedings.
 - (d) the other party assigns its assets and debts to the benefits of credits.
 - (e) the other party otherwise becomes the subject of bankruptcy or other similar proceedings.
 - (f) the other party ceases to carry out its business.
 - (g) for no reason upon sixty (60) days written notice to the other party.
- In the event of a termination by one party as a result of the other party's breach of this Agreement, the non-defaulting party shall have all rights and remedies available to such party at law or in equity.
- Upon termination of this Agreement: (a) all rights granted under this Agreement will terminate; (b) each party will cease to perform respective obligations under this Agreement; (c) Exabytes will pay Commission due and payable to Affiliate prior to the effective date of termination of the Agreement. Clause 11 will survive the termination of this Agreement.
13. **Referral Tracking**
Affiliate understands that cookies will be installed by Exabytes on the devices of the visitors upon their access to the Referral Links, and the cookies will last for 60 days. Affiliate further aware that prior to payment, Exabytes Customer may have clicked into different Referral Links of different affiliates. Nonetheless, the Exabytes system will finalise the Commission subject to Exabytes Customer's last clicked Referral Links.
14. **Records:** Affiliate must maintain complete and accurate records in respect of its performance of this Agreement ("**Record**") for a period of five (5) years from the termination of this Agreement. Exabytes may, upon thirty (30) days of written notice to the Affiliate, perform an audit on the Record once every twelve (12) months. Clause 14 will survive the termination of this Agreement.
15. **Confidential Agreement:** Each party will keep confidential all information of the other party which should reasonably be recognised as confidential ("**Confidential Information**") including the personal data of employees of Exabytes and Exabytes Customer.



Each party must not (a) disclose the Confidential Information to any person other than the party's employees on a need-to-know basis and for the purposes of performing the Party's obligations within this Agreement without the other party's prior written consent; and (b) use the Confidential Information other than performing that party's obligations under this Agreement.

Notwithstanding the above, each party may disclose Confidential Information (a) if required by applicable law or regulation; (b) to the extent the Confidential Information is already or becomes public knowledge without a breach of any agreement by any Party; or (c) for the purpose of any legal proceeding arising from this Agreement, yearly financial audit or legal due diligence for corporate exercise.

Upon termination of this Agreement, each party will, to the extent permitted by law, return or destroy all Confidential Information that is in each party's possession.

Affiliate must within twenty-four (24) hours from the occurrence of any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction of Confidential Information notify Exabytes by providing full details of the incident to Exabytes and co-operate with Exabytes on any investigation pertaining to the occurrence.

This Clause 15 will survive the termination of this Agreement for a period of five (5) years.

16. **Personal Data Protection:** Affiliate agrees that (a) its personal information will be processed in accordance with Exabytes Privacy Policy in <https://www.exabytes.my/legal/privacy>; (b) Exabytes may send promotional materials to Affiliate using the information in application web form Affiliate had submitted via <https://www.exabytes.my/affiliate> or the email from Affiliate containing all information requested by Exabytes.
17. **Expenses:** Affiliate will be solely responsible for its and its employee expenses, including expenses incurred for promoting Exabytes Services and participation in this Programme.
18. **Indemnity:** Affiliate will indemnify, defend and hold Exabytes, its affiliates, directors, officers and employees harmless against any and all claims and losses of whatsoever nature including reasonable attorneys' fees, in connection with, in whole or in part: (a) any misrepresentation, negligent act or omission by, or any willful misconduct on the part of, the Affiliate; or (b) any breach of this Agreement by the Affiliate.
19. **Disclaimer:** Exabytes disclaims all warranties, either express or implied, including any warranty of merchantability or fitness for a particular purpose, in regard to Exabytes Services. This Clause 19 will survive the termination of this Agreement.
20. **Relationship:** This Agreement is not intended to create a fiduciary relationship, partnership, joint venture, or relationship of trust or agency between the parties. Affiliate is an independent contractor of Exabytes and must not enter into any agreement on behalf of Exabytes, will make no warranty either express or implied on behalf of Exabytes and must not incur any cost and expenses on behalf of Exabytes.
21. **Governing Law:** This Agreement shall be interpreted and construed under the laws of Malaysia without regard to conflict of laws principles. If a dispute arises in connection with this Agreement, the parties agree to negotiate with each other to attempt to resolve it. If the dispute is not resolved through those negotiations, the parties agree to submit the dispute to a court of Malaysia for final settlement.
22. **Entire Agreement:** This Agreement is the entire agreement between the parties regarding the Programme and the subject matter under this Agreement and supersedes all prior or contemporaneous oral or written agreements, negotiations, communications, understandings and terms, whether express or implied.
23. **Amendment:** This Agreement may be modified, at any time at the sole discretion of Exabytes by posting a change notice or a new agreement on Exabytes's Website and by email to Affiliate. If any modification is unacceptable to Affiliate, Affiliate may terminate this Agreement with sixty (60) days prior written notice.

24. **Waiver:** 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.
25. **Force Majeure:** A party shall not be obliged to perform any of its obligations herein if it is prevented from doing so by a situation of force majeure i.e. events beyond the reasonable control of the parties such as acts of God, acts of government, acts of nature, strikes or riots.
26. **Severability:** If any of the provisions of this Agreement are or become invalid, unlawful or unenforceable to any extent such provisions will to that extent be severed from the remaining provisions, which will continue to be valid to the fullest extent permitted by law.
27. **Assignment:** Affiliate shall not, directly or indirectly assign all or any of Affiliate's rights under this Agreement without Exabytes's prior written consent. This Agreement will inure to the benefit of the parties successors and assigns. Notwithstanding anything to the contrary in this Agreement, Exabytes may assign part or whole of this Agreement at its discretion.
28. **Notice:** All notices required by this Agreement must be in writing to be delivered to (a) Exabytes at its email address affiliate@exabytes.my, and (b) Affiliate's email address provided in the application web form Affiliate had submitted via <https://www.exabytes.my/affiliate> or the email from Affiliate containing all information requested by Exabytes.
29. **Electronic Copy:** In respect of electronic storage of this Agreement, any hard copy printout of that electronically stored information will constitute an original of this Agreement.
30. **Counterpart:** This Agreement and other documents to be delivered pursuant to this Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other party.
31. **Signature:** The electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to have the same force and effect as manual signatures.
32. **Format:** Delivery of a copy of this Agreement or any other document contemplated hereby, bearing an electronic signature by electronic mail in "portable document format" (".pdf") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original signature.
33. **Interpretation:** (a) The headings in this Agreement are for convenience only and have no legal effect. (b) Unless otherwise specified, the parties' rights and obligations, which, by their nature would continue beyond the termination of this Agreement, shall survive termination of this Agreement.

A reference to (a) a clause or an annexure is to a clause in or an annexure to this Agreement; (b) including and similar words do not imply any limitation; (c) RM means the currency of Malaysia.

[End]



ANNEXURE ONE
Commission Structure, Payment Term and Withdrawal

Part I: Commission Structure

1. Affiliates will be entitled to a one-time commission for each Qualified Transaction. Subject to Paragraph Annexure One, "Qualified Transaction" completes when any Prospect or Exabytes Customer (as the case may be) makes the prepaid payment for paid Exabytes Service plan ("**Paid Service Plan**") on Exabytes Website based on Exabytes' record.
2. "Qualified Transaction" **does not include** the following:
 - (a) any services or products that are not listed on <https://www.exabytes.my/affiliate>;
 - (b) Prospect or Exabytes Customer (as the case may be) purchases any Paid Service Plan on Exabytes Website without clicking on Affiliate Link based on Exabytes record.
 - (c) Prospect or Exabytes Customer (as the case may be) clicks on other affiliate's unique hyperlink made available by Exabytes after clicking on Affiliate's Link and subsequently pays for any Paid Service Plan on Exabytes Website based on Exabytes record.
 - (d) within two (2) months from Prospect's or Exabytes Customer's (as the case may be) initial click on Affiliate Link, Prospect signs up for free Exabytes Services plan without paying for any Paid Service Plan based on Exabytes record.
 - (e) after the end of the second (2nd) month from Prospect's or Exabytes Customer's initial click on Affiliate Link, Prospect or Exabytes Customer pays for any Paid Service Plan on Exabytes Website based on Exabytes record.
 - (f) Exabytes Customer cancelled the Paid Service Plan within 30 days after the payment ("Cooling Off Period") to Exabytes;
 - (g) any other situation as reasonably determined by Exabytes.
3. Commission for all Qualified Transactions completed will be reflected in the Affiliate's Commission Account under Pending Commission after the Exabytes Customer made the payments. The amount of the Commission will be brought forward to Available to Withdraw Balance if there is no cancellation by Exabytes Customer during the Cooling Off Period. The amount shown in Pending Commission is not withdrawable. Affiliates can only withdraw the Commission as reflected in Available to Withdraw Balance.

For illustration:

- Exabytes Customer made the payment to Exabytes on 1st July 2022. The Affiliate is entitled to a one-time Commission of RM350.00 for July 2022.
 - The Commission of RM350.00 will be reflected in the Pending Commission amount on 1st July 2022.
 - On 1st August 2022 (or the date after the Cooling Off Period), and there is no cancellation of the service, the RM350.00 will be reflected in the Available to Withdraw Balance.
 - If the Paid Service Plan is cancelled on 15th July 2022 (within the Cooling Off Period), the Commission will be deducted from the Pending Commission and the Affiliate is not entitled to the Commission.
4. Exabytes has the right to change the commission structure by sending an email to the Affiliate.

Part II. Payment Term

1. Commission payment under this Agreement will be in the following currency via the following payment method(s) to the following account(s):
 - (a) Currency:
 - (b) Payment method(s): PayPal
 - (c) Affiliate's PayPal account(s) details:

| | |
|----------------------|--|
| Account ID/No.: | |
| Account Holder Name: | |

2. The minimum withdrawal amount of the Commission through PayPal is RM400.00. Exabytes will process the withdrawal requests on the 15th day of each month. The payment for each withdrawal request made before the 15th day of the month will be made within 30 days from the 15th of the month. Any withdrawal request made after the 15th will be processed on the 15th of the next month.



For illustration:

- Affiliate submits the following withdrawal requests:

| | Date of withdrawal request submitted | Amount (RM) |
|----|---|--------------------|
| 1. | 2nd September 2022 | 1000.00 |
| 2. | 10th September 2022 | 3000.00 |
| 3. | 20th September 2022 | 2000.00 |

- The Commission of RM4000.00 will be paid to the Affiliate within 30 days from the 15th of September 2022.
 - The Commission of RM2000.00 will be paid to the Affiliate within 30 days from the 15th of October 2022.
3. Payment through other payment channels will be further arranged by the parties. Any payment through bank transfer is subject to a minimum withdrawal amount of RM5,000.00.
 4. If there is any dispute to any payment received by Affiliate under this Agreement, Affiliate must notify Exabytes within seven (7) days from the receipt of each payment ("**Period**") failing which that payment will be deemed accurate and conclusive upon expiration of the Period.
 5. Exabytes may reject or suspend the payment of the Commission due to reasons if the withdrawal request fails to meet the requirements as set out in this Annexure One, or any other situation as reasonably determined by Exabytes.

[End of Annexure One]