



Kinexus Internet Ltd – Terms of Use
Terms of Use

1. EMAIL IQ™ END USER LICENSE AGREEMENT

The terms and conditions in this agreement (the "Agreement") will govern you (the "User") access to email IQ™ ("doing business as Kinexus Internet Ltd") Services and your use of the data you obtain by use of the Services. Kinexus grants to the User a non-exclusive right during the term of this Agreement to use the Services pursuant to the terms and conditions set out herein. Your use of the Services confers no title or ownership in the Services. All ownership rights remain in Kinexus or its third party suppliers, as the case may be.

2. SERVICES TO BE RENDERED AND DELIVERY OF SERVICES

Kinexus offers its services on an "as is" basis. Through the "Services", Kinexus provides marketing tools, information, information management and storage and support. Users can create and send email campaigns using the tools to distribute content supplied by the User to email addresses also supplied by the User. The User acknowledges that Kinexus does not create any content and that Kinexus is not the author or the publisher of any campaign. The User further acknowledges that Kinexus does not rent or sell email lists. Kinexus reserves the right, but is not obligated to, review and approve any content posted by Users. Kinexus disclaims all copyright and other rights in such content and all responsibility for them. Kinexus retains the right to cancel and delete any campaign violating its Usage Rules, see below.

By permitting direct email campaigns, Kinexus makes no warranties or representations of any kind as to the accuracy of the content or suitability of the subject matter. Kinexus specifically disclaims liability for direct, consequential or incidental damages arising from such campaigns. By posting an email campaign from Kinexus, User warrants that the content is true, and that User will indemnify Kinexus against any and all, direct, indirect or consequential claims and alleged claims that may arise from User's use of the Services. User will also indemnify Kinexus in the event that Kinexus shares the User's name with third parties for violations of Usage Rules. By using Kinexus Services, the User is giving Kinexus permission to copy and/or store User content, contact lists and other information. Kinexus will not use the User content, contact lists or other User information for any purpose that violates its privacy statement located on its website at <http://www.emailiq.com/policies.htm>. As part of the Services, Kinexus may notify User, at the email address provided to Kinexus during User registration or as updated at any future time by the User, when the User campaign has been sent. Kinexus will use reasonable efforts to ensure posting of the User campaign at the scheduled time. However, Kinexus reserves the right to alter the time and date of delivery of the campaign and the delivery of the results without prior notification to the User of such a change. Kinexus also reserves the right to limit the number of emails that can be sent, per campaign, at any time. For every e-mail message sent in connection with the Services, Customer acknowledges and agrees that the Services shall automatically add an identifying footer stating "Powered by email IQ™" or a similar message.

No agency, partnership, joint venture, or employment is created as a result of this Agreement, and Customer does not have any authority of any kind to bind Kinexus in any respect whatsoever.

3. ELIGIBILITY

The Services are available to individuals who are eighteen (18) years of age or older as well as companies, corporations and other organisations who can form legally binding contracts under applicable law. If you do not qualify, please do not attempt to use the Services. You will provide true, accurate, current information about yourself as requested by the sign up, registration or billing process. Kinexus may refuse to offer the Services to any person and may change the criteria for eligibility, at any time, in its sole discretion. Kinexus retains the right to terminate your account and your rights to use the Services if there are reasonable grounds to believe that any data you provide is or becomes untrue, inaccurate, not current or incomplete.

4. ACCOUNT PASSWORD AND SECURITY

The User is responsible for maintaining confidentiality of its user name and password. Furthermore, the User is entirely responsible for any and all activities that occur under its user name and password. The User is to immediately notify Kinexus of any unauthorised use of the account or any breach of security.

5. MODIFICATIONS TO THE SERVICESKinexus reserves the right to modify or discontinue the Services, temporarily or permanently, with or without notice to the User and Kinexus is not obligated to support or update the Services. Kinexus will not be liable to the User or any third party in the event that Kinexus exercises its rights to modify or discontinue the Services.

6. MODIFICATION OF TERMS AND CONDITIONS

Kinexus may, at any time and at its sole discretion, modify the terms and conditions of this Agreement. Any such modifications will be made available online and will be effective immediately upon posting to Kinexus's hosted site. User agrees to assume responsibility for periodically reviewing this Agreement. By continuing to use the service, following the initial posting date of modifications made by Kinexus, User agrees to be bound by the Agreement as amended. If at any time, User disagrees with the terms and conditions of this Agreement, User may terminate this Agreement as provided below.

7. USAGE RULES

- (i) The User represents, warrants, covenants that use of the Services will only be in compliance with this Agreement and all applicable laws.
 - (ii) With regard to email campaigns, the User specifically agrees not to use the Services:
 - (iii) To send email to any party who has not given their permission to receive email from the User. User understands the repercussions if a complaint or complaints are received. See Kinexus's Anti-Spam policy at <http://www.emailiq.com>
 - (iv) For any unlawful purposes.
 - (v) To harass, threaten, embarrass or cause distress, unwanted attention or discomfort to a person or entity.
 - (vi) To send content or links to content that contains nudity or sex pornography material of any kind to individuals under age 18, or to anyone on lists that are not limited to people age 18 or older.
 - (vii) To send, submit or publish any defamatory, inaccurate, abusive, obscene, profane, or threatening material which is racially or ethnically offensive or which infringes upon the right of any third party, as determined by Kinexus.
 - (viii) To send content that contains links to web pages that contains nudity, sex, pornography, tasteless images, foul language, hate propaganda, anything illegal, illegal software, serial numbers for unlocking software, mail fraud, pyramid schemes or is otherwise insulting to another person(s).
 - (ix) To encourage the use of any controlled substance, transmission of material, information or software in violation of any local, national or international laws and treaties.
 - (x) To impersonate any person, including but not limited to, an official of Kinexus or an information provider, or communicate under a false name or a name that the User is not entitled or authorised to use.
 - (xi) To upload, post or reproduce in any manner any material protected by copyright without the permission of the copyright owner. To send content that promotes or provides instructional information about illegal activities, or promoting physical harm or injury against any group or individual.
- The User agrees not to directly or indirectly reverse engineer, decompile, disassemble, or otherwise attempt to discover source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services of any software, documentation, or data related to the Services. The User also agrees not to remove any proprietary notices or labels from the Services or any software, modify, translate, or create derivative works based on the Services or any software, or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any software. The Services shall not be used to create campaigns to be sent by other email service providers.

The User agrees not to remove or export from the United Kingdom or allow the export or reexport of the Services, or any direct product thereof, including technical data, in violation of any restriction, laws or regulations of the United Kingdom or any other country.

In the event that the User violates one of the above usage rules, or for any other reason deemed appropriate by Kinexus, Kinexus reserves the right to suspend or terminate, with or without notice, access to the User's account and all related data. Kinexus also reserves the right to modify the Users data with email notice provided to the User within one business day. In addition, if Kinexus gets any complaints from the User's use of the Services, being complaints from email recipients, ISPs, domain name providers, or other complaints, Kinexus reserves the right to share the User's name and the fact that there have been complaints, with any third party, including other providers of email marketing services.

8. USE AND STORAGE

Kinexus may store User information, content, contact lists, emails, campaign activity statistics, reports and other information in its databases for the User. We reserve the right to establish general practices and limits concerning the use of the Services, including without limitation the maximum number of days that information is stored, the maximum amount of disk space that will be allotted to each User, the maximum size of campaigns sent through our Services and the maximum number of occasions that the User may access the Services in a given period of time. Kinexus has no responsibility or liability for the deletion or failure to store any messages, content or other information maintained or transmitted through the Services. At any time Kinexus may determine that User information can no longer be stored by Kinexus or deem User information to be inappropriate and remove it from its databases with or without notice to the User. If the User does not log into its account for more than 90 days, the account will become inactive. When an account is inactive, at Kinexus's sole discretion, Kinexus will notify the User by email. Inactive accounts have 30 days to become active after notification or the account and its data may be permanently removed from the Kinexus databases.

9. OWNERSHIP OF PROPRIETARY INFORMATION

The User acknowledges and agrees that the Services and Kinexus logos and trade names are the property of Kinexus or its affiliates or suppliers. User also acknowledges that Kinexus owns and/or has all requisite rights in and to any software necessary to provide the Services under this Agreement.

"email iQ™" and the Kinexus logo are trademarks of Kinexus. All other marks that appear throughout the Services are the property of their respective owners. The User fully understands and acknowledges that they are not granted any right or license whatsoever to use any of the marks and logos owned by Kinexus or of any such other entity, and that all such uses of any of the marks appearing throughout the Services is strictly prohibited without prior written consent of Kinexus.

The User understands that the Kinexus Services and its website also contain or may contain copyrighted or other proprietary materials of Kinexus, its sponsors, advertisers or other third parties. The User understands and acknowledges that, except as strictly necessary for personal viewing and use of the Services or the Kinexus website by means of a standard Internet browser (such as Microsoft Internet Explorer and Netscape Navigator), the User is not granted any right or license to use, link to, reproduce, reverse engineer, modify, duplicate, distribute, display or perform any such copyrighted materials used or displayed on thisWebsite or to permit others to do the same, and that all such uses are prohibited without the prior written consent of Kinexus.

10. DISCLAIMER OF WARRANTIES

At Kinexus's request, the User agrees to defend, indemnify and to hold harmless Kinexus, its officers, directors and employees from any claims arising from the User's use of Kinexus Services or the User's breach of the Terms of service, including, without limitation, claims of copyright infringement, patent infringement, misappropriation of trade secrets, libel, slander, trade libel, defamation, harassment, invasion of privacy or fraud.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND THE INFORMATION ARE PROVIDED BY KINEXUS ON AN "AS IS" BASIS, AND KINEXUS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT

LIMITATION

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY,

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ACCURACY, OMISSIONS, COMPLETENESS, TIMELINESS OR DELAYS WITH RESPECT TO THE SERVICE, INFORMATION OR PRODUCTS.

IN NO EVENT WILL KINEXUS BE LIABLE FOR ANY DAMAGES OF ANY KIND WHATSOEVER WITH RESPECT TO THE SERVICES, INFORMATION OR PRODUCTS PROVIDED ON THE WEBSITE. IN PARTICULAR, KINEXUS WILL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOSS OF REVENUE, OR LOSS OF USE,

ARISING OUT OF OR RELATED TO THE USE OF KINEXUS'S SERVICES, ITS WEBSITE OR THE INFORMATION OR DATA CONTAINED THEREIN, WHETHER SUCH DAMAGES ARISE IN CONTRACT,

NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW OR OTHERWISE.

KINEXUS, ITS AFFILIATES ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S)

FOR DAMAGES RELATING TO THE SERVICE, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR TORT, WILL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES FOR SERVICES PAID BY THE USER TO KINEXUS WITH RESPECT TO ANY SERVICES DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIM(S).

11. TERMINATION

This Agreement may be terminated by Kinexus at any time; and by the User upon prior written or email notice to Kinexus. The termination of the Agreement by either party will not affect

(i) the User obligation to pay the charges incurred for services consumed, of
(ii) Kinexus's responsibility to return the User's funds for Services not consumed in the event that the User has prepaid for Services for a period greater than one month save and except for a £162.50 cancellation fee.. All terms of this Agreement which by their nature survive termination, will survive termination, including without limitation, ownership, warranty disclaimers, indemnification and limitations of liability.

Upon termination by Kinexus, the User's right to use the Services will terminate immediately. The User acknowledges and agrees that Kinexus may remove the User's files and information.

12. MISCELLANEOUS

User acknowledges that the software, algorithms and other processes used to provide the Services, the content (other than content owned by the user or any third party), Usernames, passwords, look, feel and functionality of the services are the property of Kinexus or in the case of services being offered by Kinexus's partners under approved distribution agreements, the property of Kinexus's partners. These terms and conditions represent the complete, final and exclusive agreement between Kinexus and the User, and supersede and merge all prior oral, written or electronically transmitted agreements, representations and understandings between Kinexus and the User.

The laws of the England and Wales will govern this Agreement. If any of the provisions of this Agreement is determined by a court to be void, invalid, unenforceable or illegal, the enforceability of the other provisions of this Agreement will not be affected.

13. PAYMENT AND REFUNDS

Payment can be made using the following cards; Switch/Maestro, Visa, MasterCard and American Express.

All payments are taken in British Sterling (GBP).