



DiamondLiveChat End User License Agreement

1. Services and Support

- 1.1 The Services are provided subject to this Agreement, as it may be amended by DiamondLiveChat, and any guidelines, rules or operating policies that DiamondLiveChat may establish and post from time to time (the "Agreement"). By posting updated versions of the Agreement on the Service or at the DiamondLiveChat.com web site, or otherwise providing notice to you, DiamondLiveChat may modify the terms of the Agreement and may discontinue or revise any or all other aspects of the Services in its sole discretion. All such changes shall become effective upon posting of the revised Agreement on the Service.
- 1.2 The Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to individuals under the age of 18. If you do not qualify, you are not permitted to use the Services.
- 1.3 The Services enable corporate web sites, small business web sites, organizational web sites, and community sites integrate call center application that enables chat, email and self-service interaction; fully integrated reporting application; Callback Request; Trouble Ticket management; and Knowledge base management systems.
- 1.4 The Services will be subject to monthly subscription fees ("Paid Services"). Access to the Services will be limited until payment is received. Paid Services are billed monthly or pre-paid, in advance, according to the Fee Schedule provided to you by DiamondLiveChat. The Fee Schedule, including subscriber levels and prices, are subject to change at any time. Amounts paid for the services are not refundable.
- 1.5 You must complete the registration form in writing or on the Sign Up page in order to use the Services. You will provide accurate information about yourself as requested in the registration form. As part of the registration process, you will identify an email address for your DiamondLiveChat account. You are responsible for maintaining the security of your account, passwords, and files, and for all uses of your account and of the Services in your name. DiamondLiveChat reserves the right to refuse registration of, or cancel, accounts it deems inappropriate.
- 1.6 If DiamondLiveChat is for any reason unable to effect payment via your credit card or by check for invoiced accounts, you will be notified via email and your DiamondLiveChat account will be disabled until payment is received. Please note that allowing a credit card to expire or not submitting payment by check regardless of invoice receipt status will not automatically cancel your account. We continue to incur cost due to the maintenance of all account data, and providing access to your account. You will remain responsible for paying the monthly charge until we receive a cancellation notice as defined in Section Three (3) of this Agreement. We will send notice to the email address on record if a card is declined. We may also follow-up by phone or mail. If you are past due on payment of your invoice, we reserve the right to delete your data from our systems and discontinue Services in their entirety without any direct or third party liability whatsoever. We reserve the right to send delinquent accounts to a collection agency if they are not paid within three (3) months of invoice date. Any payment not received from Customer by the due date may accrue, at DiamondLiveChat's discretion, late charges at the rate of one and a half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 1.7 You acknowledge that you will purchase a certain number departments and number of user seats. Each department and seat will have a unique username to log in to the DiamondLiveChat system. You can upgrade or downgrade the number of user seats at any time.

2. Restrictions and Responsibilities

- 2.1 This is an Agreement for Services, and you are not granted a license to any software by this Agreement. You will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services ("Software"); 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 be used for your internal business (which includes civic or charitable) purposes only and you shall not use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party. If you are using the Services in any country in the European Community, the prohibition against modifying, translating, reverse engineering, decompiling, disassembling or creating derivative works based on the Services or the Software does not affect your rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.
- 2.2 You acknowledge and agree that the Services and the DiamondLiveChat company names and logos and all related product and service names, design marks and slogans, are the property of DiamondLiveChat or its affiliates or suppliers (collectively, the "Marks"). You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of DiamondLiveChat. Your use of the Services confers no title or ownership in the Service, the Software or the Marks and is not a sale of any rights in the Service, the Software or the Marks. All ownership rights remain in DiamondLiveChat or its third party suppliers, as the case may be.
- 2.3 You represent, covenant, and warrant that you will use the Services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You agree you will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited email to any third party. You hereby agree to indemnify and hold harmless DiamondLiveChat against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Services. Although DiamondLiveChat has no obligation to monitor the content provided by you or your use of the Services, DiamondLiveChat may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.
- 2.4 The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates United States federal, state or other laws that may apply in this jurisdiction or your local area is prohibited. This may include material that is obscene, threatening, harassing, libelous, or in any way a violation of intellectual property laws or a third party's intellectual property rights. See DiamondLiveChat's Prohibited Content and Commerce Statement for details.
- 2.5 You acknowledge and agree that the Services may automatically add an identifying footer stating "Powered by DiamondLiveChat" or a similar message. You agree to cooperate with and provide reasonable assistance to DiamondLiveChat in promoting and advertising the Services.
- 2.6 In using the varied features of the Services, you may provide information (such as name, contact information, or other registration information) to DiamondLiveChat. DiamondLiveChat may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Service, or communicate separately with you. If you licensed the Services as a result of solicitation by a Marketing Partner of DiamondLiveChat, DiamondLiveChat may share your information with the Marketing Partner. DiamondLiveChat will not provide information to companies you have not authorized, and DiamondLiveChat will not permit the companies that get such information to sell and redistribute it without your prior consent.
- 2.7 DiamondLiveChat will not use your customer list or any other customer information for any other purposes than those intended with the service. Your customer information will not be shared with any other parties. In addition, DiamondLiveChat will not use your customer information for the purpose of sending unsolicited commercial e-mail.
- 2.8 Bandwidth usage. You acknowledge and agree that for each 2000 daily visitors to your website you must purchase one user seat.

3. Termination

- 3.1 Term of Agreement. This Agreement commences on the date your services initially began - the Effective Date - and continues until you terminate as defined in section 3.2. Services shall automatically renew for additional periods at the same contractual term as the previous Agreement at the list price in effect at the time of renewal unless Customer terminates as defined herein.
- 3.2 Termination. You may terminate this Agreement at any time by sending written notice to the attention of Accounting at DiamondLiveChat at 1400 Bristol St N. Suite 150, Newport Beach, CA 92260. DiamondLiveChat may terminate this Agreement or the Services at any time with or without cause, and with or without notice. DiamondLiveChat shall have no liability to you or any third party because of such termination. All sections of this Agreement which by their nature will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.
- 3.3 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to DiamondLiveChat prior to the effective date of termination.
- 3.4 Customer Data. After cancellation, DiamondLiveChat shall have no obligation to maintain or provide any Customer Data and may, at its sole discretion, thereafter delete all such data from its systems or any other forms otherwise in its possession or under its control. If you are past due on payment of your invoice, we reserve the right to delete your data and discontinue Services in their entirety without notice to the Customer and such discontinuance would not result in any direct or third party liability whatsoever for DiamondLiveChat.

4. Warranty Disclaimer; Remedies USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. DIAMONDLIVECHAT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND DIAMONDLIVECHAT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

Your sole and exclusive remedy for any failure or nonperformance of the Services shall be for DiamondLiveChat to use commercially reasonable efforts to adjust or repair the Services.

5. Limitation of Liability TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL DIAMONDLIVECHAT OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "DIAMONDLIVECHAT") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF DIAMONDLIVECHAT SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, DIAMONDLIVECHAT IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF DIAMONDLIVECHAT TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

6. Export of Services or Technical Data You may not remove or export from the United States or allow the export or re-export of the Services, or any direct product thereof, including technical data, in violation of any restrictions, laws, or regulations of the United States or any other applicable country.

7. Miscellaneous

- 7.1 If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 7.2 DiamondLiveChat and you agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.
- 7.3 No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind DiamondLiveChat in any respect whatsoever.
- 7.4 In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.
- 7.5 The Agreement shall be governed by the laws of the State of California, USA without regard to its choice or law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in Irvine, California.