



Associate Membership

Parties and Purpose

This is a business services agreement (this "Agreement") by and between ExWin LLC dba Exciting Windows! ("ExWin") and a window coverings retailer identified on the signature page of this Agreement referred to as "Member" in this Agreement. Names and addresses of both parties are set out below.

The purpose of this Agreement is for Member to receive certain limited marketing and business services and guidance (the "Membership") to expand and grow its business (the "Business") operated at the "Business Address" outlined below.

MEMBER INFORMATION:

Date: _____

Owner name: _____

Title: _____

Business Name: _____

Business Address: _____

City: _____ State: _____ Zip: _____

Business Phone: _____

Member's Mobile Phone: _____

Website: _____

E-mail _____

**THIS AGREEMENT REQUIRES CERTAIN DISPUTES
TO BE SUBMITTED TO BINDING ARBITRATION**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member and ExWin agree as follows.

1. ExWin Services. Please note that the benefits under this Associate Membership are different than those benefits under a Full Membership.

1.1. Initial Set Up Services – ExWin agrees to provide the following services as part of the Membership:

- 1.1.1. Business analysis and recommendations by members of ExWin's team regarding certain portions of the operation of Member's Business;
- 1.1.2. Access to library of recordings of past weekly Zoom conferences regarding certain portions of the Membership; and
- 1.1.3. Access to supplier discounts in connection with the operation of Member's Business.

1.2. Continuing Services. ExWin will provide the following ongoing services as part of the Membership:

- 1.2.1. Rights to attend continuing education conferences and events regarding certain portions of the operation of Member's Business;
- 1.2.2. Optional weekly Zoom conferences with other members and national authorities;
- 1.2.3. Optional participation in annual national conferences (live or virtual) for a reasonable registration fee; and
- 1.2.4. Access to weekly recordings of Zoom conferences.

1.3. Notwithstanding the foregoing, the precise nature, scope and format of the services, both initial and continuing, provided by ExWin are subject to change as determined thereby from time to time.

2. General Web and Technology.

2.1. ExWin shall use commercially reasonable efforts to provide access to, and use of, the Website by Member on 24 hours a day, seven (7) days a week basis throughout the Term for Member's optional use. Member acknowledges and agrees that from time to time the Website may be inaccessible or inoperable for various reasons, including, without limitation, equipment malfunctions, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, or other failures (collectively, "Downtime"). ExWin shall not be liable to Member for any Downtime or any other time where the Website is inaccessible.

2.2. ExWin does not designate or require Member to:

- 2.2.1. use any specific system or method to follow-up with customers;
- 2.2.2. use specific suppliers or services in connection with the operation of the Business;
- 2.2.3. use any operational methods or practices in connection with the operation of the Business; or
- 2.2.4. operate its Business under the Exciting Windows! trademarks and/or trade name.

3. **Reputation.**

3.1. Member agrees to conduct its Business with all third parties in a manner that will reflect, and does reflect, favorably on ExWin and the Exciting Windows! name and brand.

3.2. Member agrees to be financially responsible and pay bills when due to all vendors, workrooms, and installers with whom ExWin has business dealings.

4. **Limited License.** Member reserves the right to conduct its Business using its own means, methods, policies and procedures; provided, however, ExWin grants Member a limited, non-exclusive, revocable, royalty-free license to use the Exciting Windows! name in the promotion or conduct of Member's Business. Member agrees not to issue any press release, or otherwise publicize or disclose any information concerning its Membership, without ExWin's prior written consent.

5. **Term and Renewal; Termination.**

5.1. The term of this Agreement is three years from date of execution and shall be automatically renewed for two successive three-year periods, unless one party notifies the other party no less than 90 days prior to date of expiration of this Agreement (collectively, the "Term").

5.2. Termination:

5.2.1. Either ExWin or Member may request early termination at any time without cause with 30 days' written notice to the other party.

5.2.2. ExWin may terminate this Agreement upon notice if Member breaches any provision in this Agreement and fails to cure said default within 15 days' of receipt of ExWin's notice outlining said default.

5.3. Upon termination, the rights and licenses granted to Member under this Agreement shall cease, and neither party shall have any further rights against the other except for money owed and such other rights as by their nature must survive termination of this Agreement. Member agrees to remove all Exciting Windows! trademarks from advertising and Internet use and to return all items containing the Confidential Information (as defined below) immediately after termination at Member's sole cost to an address provided by ExWin. Furthermore, upon termination, ExWin will cease all services to Member and deny all access to online resources in connection with the Membership.

5.4. Member agrees to search the Internet for any use of the Exciting Windows! trademark linked to the Business and to pay continuing monthly fees and the national advertising fee so long as unauthorized use of the trademark continues and in addition is responsible for damages in violation of trademark use.

6. **Initial Setup and Continuing Fees.**

6.1. Member agrees to pay the following fees to ExWin in the amount specified in Exhibit A attached hereto:

6.1.1. an initial fee for the initial services set out in this Agreement;

6.1.2. a continuing monthly fee for ExWin's continuing services set out in this Agreement; and

6.1.3. a technology & website services fee.

6.2. ExWin requires that Member pay above fees by credit card on file or to set up an automatic draft from bank account (debit transfer). No payments by check or advance invoice permitted.

7. Acknowledgments.

- 7.1. Member is an independent contractor and not an agent or employee of ExWin and will not give any person reason to believe that it is an agent or employee of ExWin. As an independent contractor, Member will not make any representations or warranties of any kind on behalf of ExWin. Member is not authorized or permitted to distribute goods or services for or on behalf of ExWin. ExWin has no right to exercise any significant degree of control concerning Member's method of operation, management, marketing plans, promotional activities, or business affairs.
- 7.2. Member agrees to comply, and acknowledges it is solely responsible for compliance, with all applicable laws and regulations in connection with the operation of its Business, including, without limitation, obtaining and maintaining proper and adequate insurance, including commercial general liability, auto, and workers' compensation, if required, payment of all federal and state taxes when due (including, but not limited to, payroll taxes and unemployment insurance.) and licensing/permitting and other legal requirements of the jurisdictions governing the Member's Business. Member has had the opportunity to seek the advice of independent legal counsel in connection with the negotiation and execution of this Agreement.
- 7.3. Member acknowledges and agrees that ExWin may enter into a contract with a member located anywhere during the Term and Member may solicit, offer and sell its products and services anywhere during the Term.
- 7.4. Member understands, acknowledges and agrees that access to the services under the Membership provided by ExWin are only one (1) aspect of the overall business operations of the Business. Member independently operates its Business and did not acquire the right to do so from ExWin. Member will be solely responsible for all operations of its Business including, without limitation:
 - 7.4.1. selecting and maintaining the site and location, and obtaining vehicles and equipment;
 - 7.4.2. personnel hiring, policies and practices;
 - 7.4.3. setting hours of operation;
 - 7.4.4. setting prices for products and services;
 - 7.4.5. determining accounting practices and systems;
 - 7.4.6. determining what marketing, advertising, or promotional campaigns Member utilizes; and
 - 7.4.7. determining the geographic area and reach in which Member will operate its Business.
- 7.5. Member acknowledges and agrees that ExWin makes no representations, warranties, or guarantees as to any revenues or other benefits Member may derive from participation as a member of the Membership.

8. **Confidentiality.** ExWin has developed and will provide Member, or grant Member access to, certain confidential and proprietary information as part of the Membership (the "Confidential Information"). Member agrees that it will maintain the confidentiality of the Confidential Information, will not disclose it to any third party, and will not utilize it for any other business activities.

9. **Indemnification.** Member must indemnify, defend and hold ExWin harmless from and against any losses, liabilities, claims, obligation, taxes or damages (actual or consequential) arising out of, and all reasonable costs and expenses of defending any, claim brought against ExWin or any action in which ExWin is named as a party (including, without limitation, attorneys' fees and litigation expenses), which ExWin may suffer, sustain or incur, directly or indirectly, by reason of, arising from, or in connection with, the operation of its Business.
10. **Dispute Resolution.**
- 10.1. Member agrees that it will not withhold payments of any fees or any other amounts of money owed to ExWin for any reason, on grounds of alleged nonperformance thereby of any obligation hereunder. All such claims by Member, if not otherwise resolved by ExWin and Member, shall be submitted to arbitration as provided in this Agreement.
- 10.2. Except for controversies or claims relating to the ownership of any and all intellectual property rights, including, but not limited trademarks, Confidential Information, and the like, and non-payment of fees owed hereunder, any dispute or difference between the parties arising out of or in connection with this Agreement or as to the rights or liabilities of either such party relating to the services provided by ExWin shall be first set out in writing by the purported non-breaching party to the purported breaching party pursuant to the notice provisions of this Agreement and if not resolved within 30 days shall be referred to non-binding mediation conducted before a sole neutral mediator designated by ExWin and reasonably acceptable to Member. in the State of New Jersey. Mediation does not apply to fees set out in this Agreement.
- 10.3. THIS AGREEMENT EVIDENCES A TRANSACTION INVOLVING COMMERCE AND, THEREFORE, THE FEDERAL ARBITRATION ACT, TITLE 9 OF THE UNITED STATES CODE IS APPLICABLE TO THE SUBJECT MATTER CONTAINED HEREIN.
- 10.4. IF ANY DISPUTE IS NOT RESOLVED UPON COMPLETION OF MEDIATION, AND EXCEPT FOR CONTROVERSIES OR CLAIMS RELATING TO THE OWNERSHIP OF ANY AND ALL INTELLECTUAL PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TRADEMARKS, CONFIDENTIAL INFORMATION, AND THE LIKE, AND NON-PAYMENT OF FEES OWED HEREUNDER,THE DISPUTE SHALL BE SETTLED BY BINDING ARBITRATION WITHIN 30 DAYS ACCORDING TO GENERAL PRACTICES OF THE AMERICAN ARBITRATION ASSOCIATION. THE PROCEEDINGS WILL BE HELD BY A SINGLE ARBITRATOR AGREED UPON BY THE PARTIES. THE DECISION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON THE PARTIES. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING PERSONAL AND SUBJECT MATTER JURISDICTION.
- 10.5. MEMBER ACKNOWLEDGES THAT IT HAS READ THE TERMS OF THIS BINDING ARBITRATION PROVISION AND AFFIRMS THAT THIS PROVISION IS ENTERED INTO WILLINGLY AND VOLUNTARILY AND WITHOUT ANY FRAUD, DURESS OR UNDUE INFLUENCE ON THE PART OF EXWIN OR ANY OF EXWIN'S AGENTS OR EMPLOYEES.
- 10.6. All mediation, arbitration, and litigation arising out of or under this Agreement will be held in the State of New Jersey, in the state or federal court, as applicable, serving the county of ExWin's headquarters.

11. Miscellaneous

- 11.1. The rights and duties of Member under this Agreement are personal and may not be assigned or delegated in whole or in part by operation of law or otherwise without the prior express written consent of ExWin. ExWin may assign its contractual rights with notice not to exceed 30 days following the assignment and with written documentation that the assignee will be obligated to fulfill all provisions of this Agreement required of ExWin.
- 11.2. Failure at any time or from time to time by either party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of such provision or of such party's right to thereafter enforce each and every provision hereof.
- 11.3. This Agreement shall be governed in all respects by the laws of the State of New Jersey, regardless of its choice of laws rules. THE FEDERAL ARBITRATION ACT SHALL GOVERN ALL MATTERS SUBJECT TO ARBITRATION.
- 11.4. This Agreement contains the entire agreement between Member and ExWin and supersedes and cancels all prior agreements, if any, between the parties and shall not be amended, altered, or changed except by a written agreement signed by both parties. There are no understandings, agreements, warranties, guarantees or representations between Member and ExWin other than expressly stated in this Agreement. If any part of this Agreement is invalid for any reason, the remainder will not be affected and will remain in full force and effect.
- 11.5. The titles and subtitles used in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit, increase or modify the terms and provisions of this Agreement.
- 11.6. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or by overnight courier (prepaid), or e-mail address, read receipt requested, addressed to the parties at the addresses provided below. All notices and other communications shall be deemed to be given at the expiration of five (5) days after the date of mailing. The addresses to which notices, or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided above.
- 11.7. All obligations of the parties which expressly or by their nature survive the expiration or termination of this Agreement continue in full force and effect subsequent to and regardless of the expiration or termination of this Agreement and until they are satisfied or by their nature expire.
- 11.8. All remedies available to the parties in the event of a breach of this Agreement by the other party will be cumulative. The exercise of any particular remedy will not be exclusive to the ability to seek other remedies for any breach of this agreement. If any part of this Agreement is deemed unenforceable by virtue of its scope in terms of geographical area, type of business activity restricted and/or length of time, but may be rendered enforceable by reducing any part or all of it, ExWin and Member agree that it will be enforced to the fullest extent permissible under applicable law and public policy. If for any reason any part of this Agreement is held to be invalid, that determination will not impair any other part, or the rest of, this Agreement.

- 11.9. Neither party will be liable for loss or damage to the other, or be deemed to be in breach of this Agreement if failure to perform obligations results from compliance with applicable laws, acts of God, storm, labor strikes or work stoppages, riots, war, national emergency, acts of terror, earthquake, and like events affecting the parties or their suppliers, or acts or omissions of a similar event or cause outside of each party's control.
- 11.10. This Agreement shall first be executed by the Member and submitted to ExWin for its written acceptance within 10 days after the Effective Date. In the event ExWin fails or refuses to deliver written acceptance of this Agreement to Member within 10 days after receiving a properly executed Agreement, this Agreement shall be null and void and without force or effect.

IN WITNESS WHEREOF, Member and ExWin have caused this Agreement to be executed as of the date first written above by their duly authorized representatives.

APPROVED: Member

Signed: _____

Printed: _____

APPROVED: ExWin – ExWin LLC dba Exciting Windows!

Signed: _____

Vincent Nigara, President; E-mail: vince@excitingwindows.biz

Phone: 973-632-5881 Address: ExWin LLC 22 Camlet Court, Roseland, NJ 07068

EXHIBIT A

Fees

Initial Set up Fee

\$3,800

Monthly Technology & Web Services Fee

\$120

Covers technology and Web service for website advertising ExWin system and the membership. A National Advisory Council of Exciting Windows! Members provides oversight. National Advertising Fee is due on the 5th day of the month following Effective Date, and on the 5th day of each month thereafter, charged to credit card on file.

Monthly Continuing Fee for Continuing Services

\$_____

Amount of monthly fee is based on Business' annual sales beginning on Effective Date and measured during each calendar year and pro-rated based on the Effective Date, in accordance with the chart below. Continuing Fee is due on the 1st day of the month following Effective Date, and on the 1st day of each month thereafter. Amount will be charged to credit card on file or via ACH.

ANNUAL SALES	Continuing Fee	Total
<i>Less than</i>		
\$150,000	\$300	\$420
\$750,000	\$375	\$495
\$1,000,000	\$425	\$545
\$3,000,000	\$500	\$620
\$6,000,000	\$750	\$870
We hope that you can sell		\$50M
Your fees will never exceed		\$870 USD

Member agrees to provide ExWin a report of sales from January 1 to December 31, of each year by January 15, of the following year.

Exciting Windows! Trademark Fee - Semi-Annual Fee

\$100

A semi-annual fee of \$100 for right to use the Exciting Windows! Trademark with consumer advertising, Websites, and email, plus all other promotion determined by Member. Amount of \$100 is payable January 15th and July 15th of each year.