

## ***EMAIL HOSTING TERMS OF SERVICE***

Updated: December 23, 2024

The Terms of Services/Acceptable Use Policy for Web Services is an agreement between Ness Web Solutions, LLC here as known by “Host” or “us”, and the client who uses our Email Hosting Services will here as known by “Client” or “you”. The “Host” will also be used to refer to its employees, agents, or representatives. “Service(s)” is what is described as our Email Hosting Service of Standard Email and Business-Class Email..

“Agreement” refers to this document.

“Content” refers to all information and data that is stored on our servers for use of the Services.

“Account” refers to all email accounts which the Client has with the Host.

By using our services, the Client agrees to the following Terms of Service:

**1. GENERAL CONDITIONS.** By using our Services, the Client agrees that they are at least 18 years of age. The Client must provide the Host with their full legal name, current mailing address, and any other information as required by the Host at sign up. If the information required to use the Services changes, the Host will ask for the new information, and the Client must provide said information within 30-days of the request.

**1.1. SERVICE LOCATION.** While the Host is located within the United States, the Host has contracted with a company located in Quebec, Canada for the Services, and Content as part of the Services will be stored on servers located in Canada.

**2. SERVICES PROVIDED.** We provide email hosting services. Please see the Email Hosting Plan Attachment for complete service details.

**3.1. BILLING AND FEES.** The Client is responsible for paying all invoices and fees associated with their Account and Services. The Service is post-paid, with limited exceptions for pre-paid Clients. Full Payment is expected within 15 calendar days of the invoice date, Net 15. Invoices will be generated by the 5<sup>th</sup> day of the next month of when services were provided. Invoices will be available inside the Client Portal and will be emailed to the person/people who signed this contract, along with any other individuals the Client/Business Account Holder indicates. Payments will be credited to the oldest unpaid invoices first before the payment can be applied to any current/new charges on the account.

**3.1.1. MAILED-IN PAYMENT APPLIED DATE.** If the payment is mailed-in the postmark date will be considered the payment date.

**3.1.2. PAYMENT MAILING ADDRESS.** The most current and up-to-date mailing address can be found on the invoice. If the payment is mailed to the wrong address and the payment is able to be retrieved by the Host, there will be a payment retrieval and processing fee of \$10 added to the account.

**3.2. LATE FEES.** If the full payment is not received by the due date, there will be a \$5 late fee applied to the invoice. If the invoice is still not paid in full by the end of the month, there will be a 2% late fee (24% APY) applied to the outstanding balance every month that the invoice is not paid in full. If the account still has an outstanding balance after 60 days, it will be in default.

**3.3. ACCOUNTS IN DEFAULT.** If the account is in default, the Host has the option to treat such failure to pay as a material breach of this Contract and may cancel this Contract and/or seek legal remedies. The Client shall pay all costs of collection, including without limitation, reasonable attorney fees. In addition to any other right or remedy provided by law. The Host has the right to suspend services if an account is in Default.

**3.4. REFUNDS FOR SERVICES.** There are no refunds given for the Service, unless stated otherwise.

**3.5. MONEY BACK PERIOD.** If there is no money back period specified for the Services, there is no money back period.

**4. USER RESPONSIBILITIES.** By using our Service the Client agrees to:

- a. Use the Services in compliance with applicable laws and regulations;
- b. provide accurate and up-to-date account information;
- c. maintain the confidentiality of account credentials; and
- d. immediately notify the Host of any unauthorized use of Client's account.

**4.1 PROHIBITED ACTIONS.** By using our Service, the Client agrees to not use the Service in any of the following ways. By using the Service in any ways listed below may result in suspension, termination, or charging of fees to the Client.

- a. Sending spam, phishing, or other unsolicited bulk emails;
- b. distributing malware, viruses, or harmful software;
- c. using the Services for illegal activities or fraud; and
- d. violating the intellectual property rights of others.

**5. EMAIL DELIVERABILITY DISCLAIMER.** While the Host will take all reasonable steps to ensure deliverability of Client emails, the Host cannot guarantee:

- a. Delivery to recipients' inboxes due to factors like third-party spam filters, recipient server issues, internet issues, or blacklisting of the Client's or the recipients server/email address/domain name.
- b. It is the Client's responsibility to monitor email sending practices to maintain a good sender reputation.

**6. SERVICE LEVEL AGREEMENT (SLA).** The Host guarantees an uptime of 99.9% over the course of a one-month rolling period. If in the last 30-days, the uptime of the email hosting service is not 99.9%, the Client is subject to a 1 free day of Service per hour of downtime for all Accounts. All Service credits will be applied at the Customer's request within 15 days the Client becomes eligible for Service credits. The Service credits will automatically be applied to the next month of Services. Service credits are not redeemable for cash value.

**6.1. SLA EXCLUSIONS.** Some performance issues and outages that are excluded from the SLA include the following:

- a. issues caused by factors outside of the Host's reasonable control;
- b. issues caused by the actions or inactions of any third-party or the user;
- c. issues caused by the owner of any equipment not owned by either the Host or the Host's email service provider;
- d. issues caused by the Client;
- e. issues caused by suspension, termination, or other issues that arrive from the violation of any Contract the Client has with the Host, or violation of any other agreement, including but not limited to Acceptable use Policy;
- f. downtime caused by scheduled maintenance that is announced in advance by at least 12 hours; and
- g. downtime caused by emergency maintenance that is required.

**6.2. HOST USE OF CONTENT.** The Host may use the intellectual property of the Client to do the following, to the extent necessary to perform the Services:

- a. digitize, convert, install, upload, select, order, arrange, compile and synchronize, use, reproduce, store, process, retrieve, transmit, and hyperlink the Content;
- b. make archival or back-up copies of the Content;
- c. allow the Host to review all Content; and
- d. utilize 3<sup>rd</sup> party services with valid contracts with the Host, to perform Email Hosting duties as described under this agreement.

**7. NATURE OF CONTENT:** The Client shall agree to abide by the [Acceptable Use Policy for Web Services](#)

**8.1. USER DATA:** The Client retains all ownership of data stored in the Services. The Client may remove all Content by cancelling their Service, and deleting all Accounts. Upon Cancellation of Service, the Host will not be required to retain any Content.

**8.2. CONTENT REVIEW.** The Host retains all rights to review any Content as part of the Service, and may do so at any time for all uses in section 3.2 of this Agreement, and to comply with all law enforcement or applicable regulations in the United States or Canada. If Content violates any law in the United States or Canada or endangers any minor or protected persons, the Host may provide all Content to applicable law enforcement.

**8.3. CONTENT RULING:** Ness Web Solutions, LLC will be the sole judge of content on whether it violates this agreement.

**9.1. VIOLATION NOTIFICATION.** If the Client violates this agreement, they will typically have 24 hours to cure the violation. The Client will be notified via email. If the Client does not respond to the email or contact the Host within the allotted time specified in the violation email, the Client's account or Service may be canceled. If canceled, the Client or Registrant are not subject to any refund or loss of use.

**9.2. FEES FOR VIOLATIONS.** If the Client violates this agreement, they will typically have 24 hours to cure the violation. If they do not cure the violation within the allotted time, the website hosting and other services will be suspended until the violation is cleared up by the Host and the Client will be billed at \$100/hour worked, billed in 15 minute increments, or the Host may terminate the Client's account or Service without refund and/or at regular billing for that time period. The Client is responsible for all fees assessed by the Host for violating this Agreement.

**9.3. FEES PASSED ALONG.** If the Host is assessed any fee by any service partner, agency, or governmental entity, or other source for the content of the Clients website or for violating any 3<sup>rd</sup> party service agreement as listed above, the Client will be responsible for those fees.

**9.4. FEE AMOUNTS.** The Client will be charged the exact fees charged to the Host, along with a Host fee for the violation of \$100.00 per violation.

**10. CHILD ENDANGERMENT.** If a website violates this agreement in regards to harming, conspiring to harm, or anything related to child endangerment, the account will be terminated immediately without notification, and the Client, website, and all individuals affiliated with the will be reported to law enforcement and the National Center for Missing and Exploited Children (NCMEC). There will be no refunds given in this instance, and the Client will be billed for the entire month of services.

**11. WARRANTY AGAINST UNLAWFUL USE.** Host warrants and represents that Client shall use Services only for lawful purposes and in accordance with all valid federal, state, and local laws and regulations governing use of e-mail and the Internet, whether or not specifically prohibited elsewhere in this Agreement. Failure to abide by the terms of this paragraph shall be grounds for immediate termination of Client's account for cause.

**12. NO WARRANTY; LIMITATION OF DAMAGES:**

- a. Client expressly agrees that use of Services provided by Host is at Client's sole risk.
- b. Host, its agents, affiliates, licensors or the like, do not represent or warrant, expressly or impliedly, that their services will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of their services or as to the accuracy, reliability, or content of any information service or merchandise contained in or provided through their services, unless otherwise expressly stated in this Agreement.
- c. Host, its officers, agents, or anyone else involved in providing services shall not be liable for any direct, indirect, incidental, special, or consequential damages that result from the use or inability to use services; or for any damages that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance, whether or not limited to acts of god, communication failure, theft, destruction, or unauthorized access to Host's records, programs, or services.
- d. Host makes no warranties or representations of any kind, express or implied, for the services it is providing. Host also disclaims any warranty of merchantability or fitness for a particular purpose and will not be responsible for any damages that may be suffered by Client, including loss of data resulting from delays or non-deliveries.

**13. SECURITY.** The Host shall handle all content in accordance with industry best practices for securing the website and the data and the terms of this agreement. Client is ultimately responsible for ensuring their website is secure, and is responsible for using secure passwords.

**14. PATENTS, COPYRIGHTS, TRADEMARKS, AND OTHER INTELLECTUAL AND PROPRIETARY RIGHTS.** Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to Client. Client agrees that all right, title, and interest in any product or service provided to Client belongs to Host. These products and services are only for Client's use in connection with Services provided to Client as outlined in this Agreement. The Client owns all their data, and this agreement does not in any way transfer ownership to the Host. The Host will not manipulate or change Client data.

**14.1. HOST PROPERTY RIGHTS.** All tools, know-how, and technology leased or licensed to the Host with respect to the hosting of the Website are the sole property of the Host, and the Client has no ownership or other intellectual property rights in or to such items

**15. HARDWARE, EQUIPMENT, AND SOFTWARE.** Client is responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access their data. Host makes no representations, warranties, or assurances that Client's equipment will be compatible with Host Services.

**16. CONTINUING CLIENTSHIP OF EXISTING TRADEMARKS.** The Host recognizes the Client's interest in all service marks, trademarks, and trade names used by the Client and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair the Client's

right, title, and interest therein, nor shall the Host cause diminishment of value of those trademarks or trade names through any act or representation. The Host may not apply for, acquire, or claim any interest in those service marks, trademarks, or trade names, or others that may be confusingly similar to any of them, through advertising or otherwise. Effective as of the termination of this agreement, the Host will stop using all of the Client's trademarks, marks, and trade names.

**17. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES HEREBY SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

**18. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFIT OR LOST BUSINESS, COSTS OF DELAY OR FAILURE OF DELIVERY, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE.

**19. INDEMNITY.** Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, distributors, representatives, and employees from any and all third party claims, demands, liabilities, costs and expenses, including reasonable attorney's fees, costs and expenses resulting from the indemnifying party's material breach of any duty, representation, or warranty under this Agreement.

**20. CONTRACT CONFLICT.** This agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

**21. CUMULATIVE RIGHTS.** Any specific right or remedy provided in this contract will not be exclusive but will be cumulative of all other rights and remedies.

**22. FORCE MAJEURE.** If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or other labor disputes, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

**23. COMPLIANCE WITH LAWS.** Both the Host and Client shall comply with all applicable legal requirements governing the duties, obligations, and business practices of their business, and shall obtain any permits, or licenses necessary for its operations. Neither the Host or the Client shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party.

**24. CHANGES TO THIS STATEMENT.** Ness Web Solutions, LLC reserves the right to change this Terms of Service/Acceptable Use Policy from time to time. We will notify about significant changes to this policy by sending a notice to the primary email address specified in your account 30-days prior to the changes affecting you account. Your continued use of our services after such modifications will constitute your: (a) acknowledgment of the modified Terms of Service/Acceptable Use Policy; and (b) agreement to abide and be bound by that Terms of Service/Acceptable Use Policy.