

# Terms of Service - GoMahalo, Inc.

## Welcome

These Terms and Conditions set forth the terms and conditions pursuant to which GoMahalo (“we”, “us”, or “our”) will provide the Services to you (“Agreement”). Capitalized terms used but not defined herein have the meanings ascribed to them in the Order. If you do not agree to the terms of any modification, you may terminate this Agreement in accordance with the Termination section below.

## Contracting Party and Authorized Users

- While signing up, you provided personal information of the account owner (“Customer”). The Customer is the sole owner of the account. By agreeing to these terms, you represent and warrant that you have the authority to bind Customer to this Agreement.
- You may designate through the customer portal up to four users that have authority to make changes to the account (“Authorized User(s)”). In addition, any other individual who is able to provide us with evidence satisfactory to us that such individual has the authority to act on your behalf (e.g. the last four digits of the credit card used for the Fees) will also be able to access the account.
- Each person or entity that accesses your account is required to abide by the terms of this Agreement. You acknowledge that you are fully responsible for all liabilities incurred through use of the account the Services including all damages, losses and liabilities caused by each user. You shall promptly notify us in the event that you become aware of any violation of this Agreement. You are solely responsible for the security and confidentiality of the account information, including user names and passwords, and you will ensure that no unauthorized party uses the account.

## Provision and Use of the Services

- Subject to the terms and conditions of the Agreement, we will provide the Services to Customer. The Services may only be used for their intended purposes and in accordance with this Agreement. You shall provide us with all assistance as reasonably required for us to activate and operate the Services.
- You acknowledge that we may engage third parties to provide or enable elements of the Services.
- From time-to-time we may cease supporting aspects of the Services (any such event, an “End of Life”). Should components of the Services come to an End of Life, we will attempt to replace them with comparable components, but may not be able to do so. An End of Life is not a breach of this Agreement.
- While we do provide backup, there is no guarantee that the backup will work properly and that the content will be completely recovered or formatted properly. You are solely responsible for keeping a separate backup of any data that you do not want to lose.

## Support

- We provide support through a variety of methods (e.g. FAQ, email, chat) (“Support”).
- If you abuse our support staff or any employee of GoMahalo, we may terminate this agreement and your access to the Services effective immediately.
- During our interactions with you, including while providing Support, we may solicit or you may provide feedback about the Services. You agree that we are free to use and disclose this feedback for any purpose. If we make any changes to our current services or products, or develop new products or services, using the feedback, then you agree that we own all right, title and interest to such changes or new products or services.

## Fees

- The charges for the Services are set out on the Order (“Fees”). Fees applicable to any renewal Term will be at our then-current rates. Overages may apply if your use of the Services exceeds your plan limits (e.g. exceeding the number of monthly visitors, bandwidth and diskspace). Additionally, we may adjust the Fees if there is a change

to the configuration your sites or your use of the Services (including changes to CPU or RAM consumption, cacheability, bandwidth, visitors, or transfer).

- You will be charged the Fees beginning on the Effective Date.

### **Proprietary Rights**

- We do not claim any ownership rights in your content that you provide to us in connection with the Services (“Customer Content”). However, to provide the Services, we need you to grant us a right to use the Customer Content. As such, you hereby grants to us, our affiliates, providers of Third Party Services, and subcontractors a non-exclusive, fully-paid, perpetual, royalty-free, , transferable, revocable, worldwide license to use, modify, publicly perform, publicly display, reproduce, and distribute the Customer Content (in whole or in part) but only to the extent necessary to provide the Services.
- GoMahalo and its licensors own all right, title, and interest in and to Services and the systems and networks used to provide such Services (including all system generated data (e.g. performance data)), including all modifications, improvements, upgrades, derivative works, and feedback provided by you or any Authorized User and all intellectual property rights in and to any of the foregoing. You agree to assign all right, title, and interest you may have in the foregoing to us. Except for the express rights granted herein, we do not grant any other licenses, whether express or implied, to any of GoMahalo’s intellectual property including software, services and products.

### **Confidentiality**

- “Confidential Information” means any information disclosed by us to you, either directly or indirectly, in writing, orally, or by inspection of tangible objects (i) that we identify as confidential or proprietary; or (ii) that reasonably appears to be confidential or proprietary because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. You agrees to preserve the confidential nature of the our Confidential Information by retaining and using the Confidential Information in trust and confidence, solely for its use as permitted and in connection with this Agreement. We will have the right to seek an injunction (without having to post a bond) to prevent any breach or continued breach of this section. You agree to promptly report any breaches of this section to us.

### **Warranties**

- Each party represents and warrants that it has the power, authority and legal right to enter into this Agreement and to perform the obligations set out in it, and those set out in contracts incorporated by reference.
- Customer represents and warrants that it owns or has a license for all intellectual property and other proprietary rights necessary to make the license grants to us contained herein. At our request, Customer will provide us evidence of this ownership or license. Customer represents and warrants that our use of the Customer Content in accordance with such license will not infringe the intellectual property or other proprietary rights of any individual or entity. Customer also represents and warrants that all information it provides to us is complete, accurate and up-to-date. Finally, Customer represents and warrants that if it is a natural person, that it is over eighteen years of age.

### **Disclaimer**

- OTHER THAN AS IS EXPRESSLY SET OUT IN THE SLA, THE SERVICES ARE PROVIDED AS-IS, AS AVAILABLE, AND WITH ALL FAULTS. EXCEPT AS EXPRESSLY PROVIDED IN THE WARRANTIES SECTION, ABOVE, (i) GOMHALO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND (ii) GOMHALO AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO: ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, UNINTERRUPTED OR ERROR FREE SERVICE, ERROR CORRECTION, AVAILABILITY, ACCURACY AND ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**Limitation of Liability and Remedies**

- IN NO EVENT SHALL OUR LIABILITY ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE AMOUNT OF FEES PAID OR OWED BY CUSTOMER TO US IN THE THREE MONTHS PRECEDING THE CLAIM.
- IN NO EVENT SHALL WE OR OUR LICENSORS HAVE ANY LIABILITY TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICES, INCLUDING, BUT NOT LIMITED TO, THE USE, OR INABILITY TO USE, THE SERVICES OR FOR ANY CONTENT, OR ANY INTERRUPTION IN THE SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- CUSTOMER AGREES THAT OUR SLA CONTAINS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTERRUPTION, PARTIAL UNAVAILABILITY, AND COMPLETE UNAVAILABILITY OF THE SERVICES, AND ANY OTHER ITEM SET OUT IN THE SLA.
- THE DISCLAIMERS AND LIMITATIONS PROVIDED HEREIN DO NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**Indemnification**

- You agree to defend us against any claim, demand, suit or proceeding made or brought against us by a third party arising out of your conduct that constitutes a violation of our Authorized Use Policy. Customer will indemnify us for damages finally awarded against us in connection with any such claim (or for a settlement amount Customer consents to).

**Security; Safe Harbor**

- We will maintain commercially reasonable administrative, physical and technical safeguards designed to help ensure the security of our internal networks from malicious activity and to provide for the privacy, confidentiality and integrity thereof. However, security is a shared responsibility. You agree to configure your use of the Services in such a way as to maintain the security of our Services and network (e.g. by only uploading software that has been demonstrated to be secure, installing patches, and not sharing passwords).
- Should we determine that there has been a security breach that has compromised your account we agree to notify you as soon as reasonably possible but only after we have investigated the breach and fulfilled our legal obligations under applicable law. You agree to the same notification obligations should you determine that there has been a breach.