

These Terms of Service (“Terms”) describe our commitments to you, and your rights and responsibilities when using our services. Please read them carefully.

**You must agree to these Terms in order to use our Services.**

## Terms of Service

By accessing or using any part of our Services, you agree to be bound by all of the Terms and all other operating rules, policies, and procedures that we may publish from time to time on our website at 100percentweb.ca (collectively, the “Agreement”). You also agree that we may automatically change, update, or add to our Services as stated in the Terms, and the Agreement will apply to any changes.

If you use our Services, you represent that you are of the legal age of majority in the jurisdiction where you live to legally form a binding contract with us, otherwise you can only use our Services under the supervision of a parent or legal guardian who agrees to the Agreement.

### 1. Who’s Who

100 Percent Helpdesk Ltd. uses the trade name 100% Webhost and includes any subsidiary companies including Modern Earth Inc. We refer to these entities collectively throughout these Terms as “Webhost”, “we”, and “us”.

“You” means any individual or entity using our Services, and includes your directors, officers, employees and agents.

### 2. Services

We agree provide you with the Services described in the contract or invoice presented to you (the “Services”).

### 3. Term & Renewal

Except as provided herein, this Agreement shall be for one year, beginning from the earlier of the contract date or date of the first invoice for the Services (the “Term”). Where Services are provided on monthly basis with monthly billing, the Term shall be monthly by calendar month. Notwithstanding the foregoing, where this Agreement applies to Services with differing dates (such as domain name registrations or SSL/TLS certificates), the Term shall automatically extend to include the full term of those Services.

This Agreement will automatically renew for a further Term unless you provide us with written notice of intent not to renew at least 30 days before the end of the Term.

### 4. Your Account

You agree to provide us with complete and accurate information and to keep the information current so that we can communicate with you about your account. In addition to billing, we may need to send you emails about notable updates, or to let you know about legal inquiries or complaints we receive about the ways you use our Services so you can make informed choices in response. We may limit your access to our Services until we’re able to verify your account information. When create an account account or request the provision of our Services, we consider that to be an inquiry about our products and services, which means that we may also contact you to share more details about what we have to offer. You can opt out of marketing communications communications from us but cannot opt out of certain communications relating to your use of the Services. You are solely responsible and liable for all activity under your account. You’re also fully responsible for maintaining the security of your account (which includes keeping your password secure). We’re not liable for any acts or omissions by you, including any damages of any kind incurred as a result of your acts or omissions. Do not share or misuse your access credentials. Notify us immediately of any unauthorized uses of your account, store, or website, or of any other breach of security. If we believe your account has been compromised, we may suspend or disable it. Any personal data you provide us is governed by our Privacy Policy.

### 5. Service Availability

For clarity, this section specifically addresses email and web hosting services and is not directly applicable to development, support, online marketing, or similar services.

#### 5.1 Service Interruption

We will use commercially reasonable efforts to attempt to provide the Services twenty-four (24) hours per day, seven (7) days per week (100% uptime), however such continuous uninterrupted service is not a guarantee. You understand, acknowledge and agree that



**5.1.1** from time to time the Services may be unavailable or inaccessible for any reason including but not limited to equipment malfunctions, periodic maintenance, repairs or replacements that we undertake from time to time;

**5.1.2** the Services may be unavailable or inaccessible or from causes beyond our reasonable control or which are not reasonably foreseeable including but not limited to interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures, or failures of third-party providers;

**5.1.3** we have no control over the availability of the Services on a “guaranteed” continuous or uninterrupted basis and that we assume no liability to you or any other party with regard thereto;

**5.1.4** we are not responsible for interruptions caused by you as a result of custom scripting, coding or the installation of third-party applications, or outages related to the reliability of any programming environment or third-party service, including but not limited to APIs (Application Programming Interfaces) or failure to maintain valid software licenses;

**5.1.5** at our sole discretion, we may temporarily or permanently suspend provision of the Services in the event that invoices are unpaid;

**5.1.6** certain server and network resources may be shared among users, so if your site or data adversely affects our servers or network performance due to scripting errors, network traffic, or other factors, we may throttle or temporarily disable the Services until the situation is modified or corrected, or you may be asked to upgrade to a different web hosting product or service level;

**5.1.7** we reserve the right to refuse or discontinue without notice or refund any Services where the material or application to be hosted is in our sole discretion considered indecent or pornographic, or which in any way promotes activities which are illegal, or which distribute malware, or which may promote hate or discrimination, or which may adversely affect networks connected to the Internet or which reflect bad “netiquette” (e.g., spam), or which in any other way violates our Acceptable Use Policy (“AUP”).

Should we fail to maintain the services for at least 99.9% of any calendar month, you may apply for an account credit by making a request in writing to [support@100percenthelpdesk.com](mailto:support@100percenthelpdesk.com) within seven (7) days following the end of the calendar month. Third-party monitoring service reports will not be used for verification of an interruption to the Services due to a variety of factors, including the monitor’s network capacity and reliability. The

uptime of the server is defined as the reported uptime from the operating system and the Apache Web Server which may differ from the uptime reported by other individual services. Exceptions as defined herein are not considered downtime for the purposes of calculating billing credits, which are at our sole discretion.

## 5.2 Internet Protocol (“IP”) Addresses and DNS Entries

If we assign you an IP address to use, the right to use that IP address shall remain with us, and you will not have a right to it except as permitted by us. You acknowledge and agree that as a normal course of business, it may be necessary for us to migrate servers or otherwise reassign IP addresses. We do not guarantee that you will be able to consistently maintain any given IP numbers.

You understand, acknowledge, and agree that if your DNS entries are managed by you or a third party, we cannot guarantee that our internal network changes or server migrations will cause an outage if those DNS entries are not updated in a timely fashion as advised by us.

## 5.3 Discontinued Services & End of Life Policy

We reserve the right to cease offering or providing any of the Services at any time, for any reason. Although we make reasonable efforts to maximize the lifespan of the Services, there are times when a Service we offer will be discontinued or reach its End-of-Life (“EOL”). If that is the case, that product or service will no longer be supported by us in any way, effective on the EOL date.

In the event that any Service we offer has reached or will reach EOL, we will attempt to notify you thirty or more days in advance of the EOL date. It is your responsibility to take all necessary steps to replace the Service by migrating to a new Service before the EOL date, or by entirely ceasing reliance on the Service before the EOL date. We may, with or without notice to you, migrate you to the most up-to-date version of the Service, if available. You agree to take full responsibility for any and all loss or damage arising from any such migration.

We will not be liable to you or any third party for any modification, suspension, or discontinuance of any of the Services we may offer or facilitate access to.



## 6. Terms & Conditions Applicable to Specific Services

### 6.1 Hosting Migrations

Hosting migrations (also called website transfers) are provided as a courtesy service, and we do not make any guarantee regarding the availability, possibility, or time required to complete a Hosting Migration. Each hosting company is configured differently, and some hosting platforms or content management systems save data in an incompatible or proprietary format, which may make us unable to assist you in the transfer of data from a third-party host. We reserve the right to charge a fee for migrations.

You are responsible for reviewing the functionality and accuracy of migrated content in its new location following a Hosting Migration. We do not perform or retain website backups from your prior web host in connection with a Hosting Migration, and we recommend that you back up your third-party hosted website before migration to ensure that no data is lost. You agree not to make any changes or revisions to your website during the migration process.

You agree that we are not liable for any delay in website resolution or loss of data related to your Hosting Migration.

We may install a plugin on your external WordPress site for the purpose of facilitating your WordPress migration into our own WordPress hosting environment. You are welcome to disable the plugin on your source site after the Hosting Migration has been completed.

After migration, the website may not function in precisely the same manner, and may require additional work to restore some functionality. We will attempt to notify you of any anticipated shortcoming, but you acknowledge and agree that this is not always foreseeable, and accept that we cannot guarantee the outcome.

### 6.2 Managed WordPress Services

For some managed hosting services, we will install additional software such as WordPress plugins or other server software, particularly on dedicated virtual machines. You agree not to disable or remove the additional software, as it facilitates our management of the Services. Our provision of managed hosting services is not unlimited or without reservation. You accept, acknowledge, and agree that:

**6.2.1** additional charges may result from our provision of the Services based upon the amount of effort required per incident or request or due to the cumulative effort spent during the current Term;

**6.2.2** we will attempt to notify you in advance when requested changes are expected to incur an additional

charge, but may not always do so before the changes are completed;

**6.2.3** the time we spend managing your website in connection with the Services may include activities not directly requested by you, such as replacing or updating software packages or removing of malware.

### 6.3 Search Engine Listings

We are not directly associated with any search engines and are not responsible for the ranking of your web site in search results. We do offer certain Search Engine Optimization services (SEO) that may assist you in obtaining favourable search engine rankings with specific search engines, using specific keywords, however because search engines are outside of our direct control, we cannot and do not guarantee specific results.

## 7. Your Acknowledgements, Representations, & Obligations

### 7.1 Use of the Services on Behalf of Others

If you use our Services on behalf of another person or entity, you represent and warrant that you are authorized to accept the Agreement on that person's or entity's behalf, that by using our Services you are accepting the Agreement on behalf of that person or entity, and that if you, or that person or entity, violates the Agreement, you and that person or entity agree to be responsible to us.

### 7.2 Your Use of the Services

You represent and warrant that your use of the Services:

**7.2.1** Will be in accordance with the Agreement;

**7.2.2** Will comply with all applicable laws and regulations (including, without limitation, all applicable laws regarding online conduct and acceptable content, privacy, data protection, the transmission of technical data exported from the country in which you reside, the use or provision of financial services, notification and consumer protection, unfair competition, and false advertising);

**7.2.3** Will not be for any unlawful purposes, to publish illegal content, or in furtherance of illegal activities, or in any other manner which violates the terms of our AUP (including, without limitation, any use which promotes, encourages or engages in child pornography or the exploitation of children, terrorism, violence against people or property, or which promotes hate or discrimination);

**7.2.4** Will not infringe or misappropriate our intellectual property rights or those of any third party;



**7.2.5** Will not overburden or interfere with our systems or impose an unreasonable or disproportionately large load on our infrastructure, as determined by us in our sole discretion;

**7.2.6** Will not disclose the personal information of others or otherwise violate the privacy or publicity rights of any other person or entity, or breach any duty of confidentiality that you owe to another person or entity;

**7.2.7** Will not promote, encourage or engage in the sending of any spam or other unsolicited bulk emails, or computer or network hacking or cracking, cloaking or sneaky redirects;

**7.2.8** Will not interfere with, disrupt, or attack any service or network;

**7.2.9** Will not be used to create, distribute, or enable material that is, facilitates, or operates in conjunction with, malware, spyware, adware, or other malicious programs or code;

**7.2.10** Will not involve reverse engineering, decompiling, disassembling, deciphering, or otherwise attempting to derive the source code for the Services or any related technology that is not open source;

**7.2.11** Will not involve renting, leasing, loaning, selling, or reselling the Services or related data without our consent.

## 7.3 Storage and Security

You agree to maintain a backup of your data so that you can access and use it when needed. We will make efforts to back up your data, but do not warrant that we will do so or that such backups will be complete. You agree to accept as a risk the loss of any and all of your data.

Our servers are not an archive and we shall have no liability to you or any other person for loss, damage or destruction of any of your content. The Services are not intended to provide a PCI (Payment Card Industry) or HIPAA (Health Insurance Portability and Accountability Act) compliant environment and therefore should not be used or considered as one.

## 7.4 Website and Server Content

You are responsible for providing, updating, uploading and maintaining your website or server and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through your website or server including, but not limited to, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software and text. You acknowledge and agree that in the course of providing you with technical assistance, it may be necessary for our support staff to modify, alter or remove the content of your hosted product. Your website or server content shall also include any

registered domain names provided by you or registered on behalf of you in connection with the Hosting Services.

## 7.5 Third-Party Software and Services

If you request that we install any third-party software not provided as part of the Services, you represent and warrant that you have the right to use and install the software, that you hold and maintain a valid license for the software, and the software does not and shall not infringe on the intellectual property rights of any other person or entity.

If access to a third-party hosting website is required in the provision of any Service, you represent and warrant that you are authorized to provide us with access to the third-party hosting account for the purposes of this Agreement. You agree that you retain sole contractual and any other legal or fiduciary responsibilities related to your third-party hosting account.

## 7.6 Other Agreements

You agree to the terms of our Privacy Policy and to abide by the terms of our Acceptable Use Policy, which are hereby incorporated by reference.

**7.6.1** If the Services include cPanel on your server, you agree to be bound by the cPanel End-User-License-Agreement, which is hereby incorporated by reference. The cPanel Fair Usage Policy is a guide to understand the intended uses of our Services, and to prevent exploitation and abuse of the features offered in our plans. We may assess additional usage charges for accounts in excess of the our determined threshold or restrict additional accounts from being created. Where possible, we will provide you with notice when your usage is in excess of the threshold.

**7.6.2** You understand and acknowledge that in the course of our provision of the Services, we may accept certain agreements on your behalf for such services including but not limited to domain name registration, SSL/TLS certificates, analytics, third-party software, and APIs. You acknowledge and agree that you will be bound by these agreements as if you had accepted them directly, and shall hold us harmless for any violation of their terms.

**7.6.3** You agree to abide by the terms of Canada's Anti-Spam Legislation ("CASL"), and by the terms of The Personal Information Protection and Electronic Documents Act (PIPEDA) or other such legislation as may apply to your jurisdiction. (For more information, see [www.priv.gc.ca](http://www.priv.gc.ca).)



## 8. General Provisions

### 8.1 Intellectual Property

The Agreement doesn't transfer any intellectual property to you, and all right, title, and interest in and to such property remains with us.

### 8.2 Disclaimers

Our Services are provided "as is." Webhost and its suppliers and licensors hereby disclaim all warranties of any kind, express or implied, to the maximum extent allowed by applicable law, including, without limitation, the warranties of merchantability, fitness for a particular purpose and non-infringement. Neither we, nor our suppliers and licensors, make any warranty that our Services will be error free or that access thereto will be continuous or uninterrupted.

### 8.3 Limitation of Liability

In no event will Webhost, or its suppliers, partners, or licensors, be liable (including for any third-party products or services purchased or used through our Services) with respect to any subject matter of the Agreement under any contract, negligence, strict liability or other legal or equitable theory for: (i) any special, incidental or consequential damages; (ii) the cost of procurement for substitute products or services; (iii) for interruption of use or loss or corruption of data; or (iv) for any amounts that exceed \$250 or the fees paid by you to us under the Agreement during the twelve (12) month period prior to the cause of action, whichever is greater. We shall have no liability for any failure or delay due to matters beyond its reasonable control. The foregoing shall not apply to the extent prohibited by applicable law.

### 8.4 Indemnification

You agree to indemnify and hold harmless Webhost, its contractors, and its licensors, and their respective directors, officers, employees, and agents from and against any and all losses, liabilities, demands, damages, costs, claims, and expenses, including attorneys' fees, arising out of or related to your use of our Services, including but not limited to your violation of the Agreement or any agreement with a provider of third-party services used in connection with the Services, content that you post, and any ecommerce activities conducted through your or another user's website.

### 8.5 Severability & Assignment

The Agreement (together with any other terms we provide that apply to any specific Service) constitutes the entire agreement between Webhost and you concerning our Services. If any part of the Agreement is unlawful, void, or unenforceable, that part is severable from the Agreement, and does not affect the validity or enforceability of the rest of the Agreement. A waiver by either party of any term or condition of the Agreement or any breach thereof, in any one instance, will not waive such term or condition or any

subsequent breach thereof. Webhost may assign its rights under the Agreement without condition. You may only assign your rights under the Agreement with our prior written consent.

### 8.6 Industry Terms

Words having well-known technical or trade meanings shall be so construed, as the context reasonably requires.

### 8.7 Entire Agreement

This Agreement constitutes the entire agreement between us and you with respect to the matters referred to herein, and supersedes all prior negotiations, proposals, agreements, representations, and warranties, whether oral or written, with respect to such matters.

### 8.8 Enurement

This Agreement shall be binding upon and enure to the benefit of Webhost and you and to the respective successors and permitted assigns of each.

### 8.9 Governing Law

This Agreement shall be governed by and interpreted according to the laws of the Province of Manitoba and the laws of Canada applicable therein.

### 8.10 Interpretation

In this Agreement, the sections and headings are for convenience of reference only and shall not affect its construction or interpretation.

### 8.11 Non-Waiver

No waiver of any term or provision or of any breach or default shall be valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any other terms or provision or any subsequent breach or default of the same or similar nature.

### 8.12 Force Majeure

Any delay or failure of either party to perform its obligations under this Agreement shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as (for example and not limited to) acts of God or Nature including fires, floods, windstorms, earthquakes or other natural disasters, epidemic, war, acts of terrorism, insurrection, revolution, riots or civil disputes, nuclear reaction, explosions, inability to obtain power, material, labour, equipment or transportation, action, decision, order or regulation by any governmental authority or court of competent jurisdiction.

### 8.13 Independent Contractors

The parties to this Agreement agree that the relationships created by this Agreement is that of independent contractors.





## 8.14 Confidential Information

"Confidential Information" means any data, documentation or other information of a proprietary nature, and which a party ought to know is confidential or proprietary, which is disclosed or made available to the other party in connection with the negotiation, preparation or performance of this Agreement and the design, installation, delivery or implementation of the Services, including without limitation, the network design specifications.

Each party agrees not to disclose the Confidential Information of the other party without the other party's written consent, except as required by law, and agrees to take such care to protect the confidentiality of the Confidential Information as would be taken by a reasonable party to protect its own confidential information from disclosure.

This Section "Confidential Information" (in its entirety) shall not apply to information which either party gains or may gain through independent sources, provided such information is not gained from a third party in breach of a similar non-disclosure agreement.

This Section "Confidential Information" shall not apply to requests for information from a law enforcement, government, or agency having jurisdiction over us or you, nor

shall it apply to information requested pursuant to a subpoena or other legal proceeding.

The rights and obligations of both parties under this Section "Confidential Information" survive any termination of this Agreement for a period of 24 months.

## 8.15 Non-Solicitation of Employees

During the Term and for 12 months following, you are not permitted to encourage or solicit an employee to complete work for you outside of Webhost, or to recruit or attempt to recruit an employee of Webhost, or to hire or engage an employee or former employee of Webhost whose employment agreement will have ended less than one year prior to the date of recruitment.

## 8.16 Language

Les parties aux présentes ont exigé que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en langue anglaise.

The parties hereto have required that this Agreement and all documents and notices related thereto and/or resulting therefrom be drawn up in the English language.

