

Ellie, LLC

TERMS OF SERVICE

Updated on October 22nd, 2019

1. Mutual Cooperation. Each party shall (a) cooperate with the other in all matters relating to this Agreement and (b) respond promptly to any request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for such party to perform its obligations in accordance with this Agreement.

2. Payment Terms. In consideration of the provision of the services by Company and the rights granted to Client under this Agreement, Client shall pay the Initial Fee by credit card on the date of this Agreement. The Monthly Fee is due in advance on the same day each beginning one month following the Go Live Date. Any applicable taxes and/or duties shall be the responsibility of Client. Company reserves the right to suspend services immediately in the event the Monthly Fee is not paid in full when due.

3. Intellectual Property. All intellectual property rights in and to the services and all computer code used in providing the services are owned by the Company including, without limitation, trademark, copyright and design rights. Client shall not represent that it has any rights title or interest in and to the intellectual property of the Company. This Section 3 shall survive termination of this Agreement.

4. Confidentiality. Company may disclose to Client certain non-public information relating to Company's business, including technical, marketing, financial, personnel, planning, and other information that is marked confidential, or which the Client should reasonably know to be confidential given the nature of the information and the circumstance of disclosure ("**Confidential Information**"). Client agrees that it will not disclose Company's Confidential Information except (a) to the employees, contractors, advisors or agents of Client to the extent that they need to know that Confidential Information for the purpose of performing the Client's obligations under this Agreement or performing their obligations to the Client, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this Section 4; or (b) as required to be disclosed by law, to the extent required to comply with that legal obligation, provided that the Client will promptly notify Company of such obligation;
TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT OF THE INITIAL FEE ACTUALLY PAID TO COMPANY PURSUANT TO THIS AGREEMENT.

5. Representation and Warranty. Company represents and warrants to Client that it shall perform all services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

6. Collection and Use of Client Information. Company, in the provision of the services, will collect email addresses and other information that is submitted on Client's website through Company's platform. Company does not currently, nor does it intend to in the future, use collected information for any purposes other than providing the services. However, Company reserves the right to transfer all such collected information to a third party in the event of a transfer of all or substantially all of the Company's assets.

7. Limitation of Liability; Indemnification.

(a) IN NO EVENT SHALL COMPANY BE LIABLE TO CLIENT OR ITS REPRESENTATIVES OR TO ANY THIRD PARTY FOR ANY INJURY TO PERSONS OR PROPERTY UNLESS SUCH INJURY IS THE DIRECT RESULT OF COMPANY'S GROSS NEGLIGENCE, NOR SHALL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF AGREEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS

(c) CLIENT SHALL INDEMNIFY COMPANY AND ITS OFFICERS, MANAGERS, MEMBERS, EMPLOYEES AND AGENTS FROM ANY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM CLIENT'S OR ITS REPRESENTATIVES' ACTIONS OR OMISSIONS, AND ANY DAMAGES OR COSTS INCURRED BY COMPANY RELATED TO ANY BREACH OF CLIENT'S REPRESENTATIONS OR OBLIGATIONS HEREUNDER. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT,

8. Governing Law; Jurisdiction. Any disputes that may arise regarding the terms of this Agreement are governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction). The parties hereto hereby submit to the exclusive jurisdiction of the state and federal courts located in Wake County, North Carolina.

9. Force Majeure. Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, Internet, or telecommunication outage not caused by either party; acts of government; civil unrest; acts of terror; strikes or other labor problems; or denial of service attacks or any technical issues not within a party's control (individually and collectively, a "**Force Majeure Event**").

10. Refunds. See Refund Policy at GetEllie.com