



# Terms of Service

The Terms of Service are legally binding terms together with our [Acceptable Use Policy](#), [Data Processing Agreement](#), any Service Order (as defined below) and, if applicable, our API collectively constitute a binding agreement (the “**Agreement**”) between POP, Inc. (“**WordFly**”) and you or the legal entity you represent (“**Customer**” or “**you**”). You are agreeing to these terms by using WordFly or by signing up for an account. WordFly (“**WordFly**” or the “**Service**”) is a digital marketing platform offered through the URL [www.wordfly.com](http://www.wordfly.com). WordFly is owned and operated by POP, Inc., a Washington corporation (“**WordFly**,” “we,” or “us”). As a customer of the Service or a representative of an entity that’s a customer of the Service, you’re a “User” according to this agreement (or “you” or “your”). These Terms of Service (“Terms,” including our [Privacy Policy](#), and [Acceptable Use Policy](#)) describe the terms and conditions under which you are allowed to use WordFly and how we’ll handle your account while you’re a User. Please [contact us](#) if you have any questions. We have eligibility requirements to be a User of WordFly. You must:

1. Be at least eighteen (18) years old and able to enter into contracts;
2. Agree to the Terms; and
3. Provide up to date and accurate contact information.

You represent and warrant that you meet all the requirements listed above by using WordFly, and you will not use WordFly in a way that violates any laws or regulations. We may refuse service, close accounts of any Users, and change eligibility requirements at any time.

## 1. Pricing:

(a) You will be billed based on the pricing tier and schedule outlined in the Client WordFly account. Configuration of Your account is invoiced as a one-time fee of \$250.00. Additional features and services may be added to your account at your request for additional cost. Initial online Website training and ongoing technical support are provided at no additional charge. POP reserves the right to review and revise pricing at its sole discretion. In the event POP elects to modify its pricing, You will be given a notice period of no less than 90 days before the new pricing is effective.

(b) Custom template building services will be quoted as a fixed fee and will require your email approval before beginning work.



## **2. Billing:**

We will bill You on the first day of each month for all charges incurred during the previous month. All invoices are due NET 30. **Accounts in default (more than 45 days past due) are subject to a late fee of US\$100.00 per month.** We may suspend or terminate an account with 30-day notice prior notice for non-payment.

## **3. Term and Termination:**

(a) The term of this Agreement shall remain in effect until either party terminates upon 30 days' written notice to the other party, subject to Section 12 (b).

(b) Once terminated, You will no longer have access to Your account. We will remove all of Your email templates, assets, content, campaign results and all related data and files from our Website.

(c) If for any reason POP needs to close your account, we will make a good faith effort to contact you before closing your account and deleting your data. We reserve the right to temporarily limit access to your account at any time without notice.

(d) If You do not send Email from Your account for a period of six (6) months, Your account will be deemed "Inactive" and (without any requirement of further Notice) we will terminate Your account and permanently delete all data (including, but not limited to, Your email templates, assets, content, campaign results) associated with it. We will make a good faith effort to contact you before closing your account. You remain responsible for payment of any outstanding invoices for Services prior to the date of termination.

(e) POP reserves the right to immediately suspend or terminate Your account if we receive an unreasonable number of spam/abuse complaints regarding Your use of the Services, or if You violate the Acceptable Use Policy as outlined in Section 6 and as amended from time to time in the Terms of Service on the Website.

## **4. Data Management and Ownership:**

(a) POP may retain and use information collected in Your use of WordFly for our internal business purposes including but not limited to product development, research, logging, and support. POP will not share information associated with You or Your use of the Website or Services with any third parties unless POP (i) has Your written consent; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of such information is reasonably necessary to protect the rights, property or safety of POP, its users or the public; or (iii) provides such information in certain limited circumstances to third parties to carry out tasks on POP's behalf (e.g.,



billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by POP. When this is done, it is subject to agreements that oblige those parties to process such information only on POP's instructions and in compliance with this Agreement and appropriate confidentiality and security measures.

(b) You are the owner and are responsible for all data (including graphics, content, email addresses and other personal information of Your customers) You add or upload to the Website. Except as described in section 4, POP will never use, sell or distribute the data that You own.

(c) We agree to temporarily store Your data on the Website during the term of this Agreement. In the event the Agreement is terminated Your data will be permanently deleted.

(d) We reserve the right to delete or archive any data that is more than twelve (12) months old after giving written notice thirty (30) days prior to any deletion or archival of data.

(e) If you participate in the WordFly benchmarking service, POP will take data created through your use of the Services, remove all identifiable information about your use of the Services and then combine that data with anonymous data from other Clients in comparable industries and offer benchmark reports in an aggregate form.

## **5. WordFly Policies:**

Client will not violate the Policies located at <https://www.wordfly.com/terms-of-use> and <https://www.wordfly.com/acceptable-use/>. We reserve the right to modify or amend our Policies by making changes available on our Website. When POP makes a change to a Policy that, in POP's sole discretion, is material, POP will notify you in accordance with the notice provisions at Section 12 (h). By continuing to access or use the Services after those changes become effective, you agree to be bound by the revised Policy.

## **6. Warranties and Disclaimers:**

a) Each party represents and warrants that: it has full power and authority to enter into this Agreement; and it will comply with all laws and regulations applicable to its provision or use of the Services.

b) You represent and warrant to us that You will not add or upload any content to the Website to create an email or for any other purpose unless You are the owner of all proprietary rights to that content (or have been given a valid



license from the owner of the proprietary rights to such content) and have obtained releases for all related privacy and publicity rights.

c) POP warrants that the service will perform substantially in accordance with all specifications and representations provided or made regarding the service. Notwithstanding anything in this Section 6, POP makes no representation or warranty about the services. To the fullest extent permitted under applicable law, POP disclaims any implied or statutory warranty, including any warranty of title, non-infringement, merchantability or fitness for a particular purpose.

#### **7. Liability:**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL POP BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR: (A) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, UNDER ANY THEORY OF LAW, INCLUDING TORT OR (B) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, POP'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT FOR ALL CLAIMS OF ANY KIND WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO POP UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY; PROVIDED, HOWEVER, THAT THE LIABILITY CAP WILL NOT APPLY TO LIABILITY FOR FRAUD OR WILFUL MISCONDUCT.

#### **8. Indemnity:**

a) POP will indemnify, defend, and hold harmless (collectively defined as "indemnity", "indemnification", or some variation thereof) Client from and against all liabilities, damages, expenses, and costs (including settlement costs and reasonable attorneys' fees) (collectively "Loss") arising out of a third party claim that the WordFly technology used to provide the Services to Client infringes any copyright, U.S. patent, trademark or trade secrets of such third party. However, in no event will POP have any obligation or liability under this Section arising from: (a) use of any Services in a modified form or in combination with software, technologies, products, or devices not provided by POP; or (b) any content or data provided by Client, End Users, or third parties.

b) Client will indemnify, hold harmless and (if required by POP in writing) defend (collectively defined as "indemnity", "indemnification", or some variation thereof) POP from and against all Loss arising out of a third party



claim (including in relation to any claim made or investigation conducted by a data protection or privacy regulator) regarding or in connection with: (a) Customer Data (including claims that Customer Data infringes or misappropriates a third party's Intellectual Property Rights or violates applicable law); or (b) Customer's use of the Services in violation of the WordFly Acceptable Use Policy.

c) If POP believes the technology used to provide the Services may infringe or may be alleged to infringe a third party's Intellectual Property Rights, then POP may: (a) obtain the right for Client, at POP's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe. If POP does not believe that the foregoing options are commercially reasonable, then POP may suspend or terminate Client's use of the impacted Services and provide a pro rata refund of any fees prepaid by Client applicable to the period following the termination of such Services.

#### **9. Assignments:**

You may not assign any of Your rights hereunder. We may assign all rights to any other individual or entity at our discretion.

#### **10. Compliance with Law:**

In using the Service, You agree that You will comply with all applicable international, federal, state and local laws. If You are sending any Form of Email to Residents of the European Economic Area ("EEA") You also warrant and represent that in compiling Your Email distribution list, sending Emails via the Website and Service and collecting information as a result of individuals visiting Your website or otherwise, with respect to Your customers and potential customers who reside in the EEA, You:

- a) Will have clearly described, and will continue to clearly describe, in writing how You intend to use any data collected, including for sending Emails if You obtain express consent from Your customers and potential customers to use the data in that manner, and include an express consent to transfer the data to WordFly as part of this process, and otherwise comply with whatever privacy policy You have posted.
- b) Represent and warrant that You have complied, and will comply, with all data protection and privacy laws and regulations applicable to the countries in which You are sending any form of Email via WordFly. You represent and warrant that You have collected, stored, used and transferred all data relating to any individual in accordance with all data protection laws and regulations relating to the country in which such individual resides and obtained all



necessary consents to enable WordFly to receive and process that data and forward communications to that individual on Your behalf.

You further agree to indemnify and hold us harmless from any losses, including attorney fees, resulting from Your breach of any part of the foregoing warranties.

**11. Applicable Law and Jurisdiction:**

This Agreement shall be governed by the laws of the State of Washington, and both Parties consent to jurisdiction and venue in the state and federal courts sitting in King County, Washington. The Parties also waive all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either Party in the manner authorized by applicable law or court rule. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision hereof, or in any dispute arising under this Agreement regardless of whether the subject of litigation, the prevailing Party shall be entitled to recover its costs, including reasonable attorneys' fees.

**12. Miscellaneous:**

(a) Force Majeure. We shall not be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond our control and without our fault or negligence, such as acts of God, acts of civil or military authority, current laws and regulations and changes thereto, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, acts of hackers and other illegal activities of third parties, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation or telecommunications common carriers or acts, omissions, overloading or slowdowns over the Internet or any third-party internet service providers.

(b) Survivability. Sections 2, 3, 4, 5, 7, 8, 9, 10, and 12 shall survive expiration or termination of this Agreement for any reason.

(c) Severability. The unenforceability or invalidity of any term, provision, section or subsection of this Agreement shall not affect the validity or enforceability of any remaining terms, provisions, sections or subsections of this Agreement, but such remaining terms, provisions, sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the parties hereto.

(d) Amendments. Except as otherwise set forth herein, either party may amend or waive observance of any term hereof, either generally or particularly, either retroactively or prospectively, but only by a writing signed by both



parties and dated after the Effective Date, which amendment or waiver will bind both parties. A waiver of, exception to, or failure to enforce any term herein shall not be deemed a further or continuing waiver of such or any other term.

(e) Emails We Send You. You agree that we may send Emails to You and access and use Your information as set forth in in Section 4 of this Agreement.

(f) Publicity. You agree that POP may use the name of Your organization, Your logo and Your publically available information (such as email templates) for our PR and marketing efforts.

(g) Further Actions. You agree to execute any and all documents and take any other actions reasonably required to effectuate the purposes of this Agreement.

(h) Notices. All notices must be in writing and will be deemed given when: (i) personally delivered, (ii) verified by written receipt, if sent by postal mail with verification of receipt service or courier, (iii) received, if sent by postal mail without verification of receipt, or (iv) verified by automated receipt or electronic logs if sent by email. Notices to Client may be sent to the email address associated with Client's designated primary administrator for the relevant Service ("Primary Admin"). Billing-related notices (including notices of overdue payments) may be sent to the relevant billing contact designated by Client.

(i) Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties, and supersedes all prior agreements, representations and understandings between the parties hereto, relating to the subject matter hereof.

### **13. Requested Changes to Terms:**

The Terms outlined in this agreement cannot be modified for any one User or Account due to the number of Users using WordFly. Managing individual changes is logistically impossible so there will be no exceptions to allowing changes.