

# Regulations for the Provision of Services (Terms of Service)

## § 1. Subject of the Regulations

These Regulations define the rules for the provision and quality guarantee of the online website hosting Service provision and maintenance by Smarthost Sp. z o.o. under the brand name Smarthost (hereinafter referred to as Smarthost).

The terms used herein shall have the following meaning:

1. Smarthost - an entity providing Services by electronic means in accordance with the provisions of the below Regulations, i.e. Smarthost sp.z o.o. with its registered office at 42-217 Częstochowa, Poland, ul. Partyzantów 1, KRS: 656356, VAT-EU PL5732874847, REGON: 366194822.
2. Regulations - these Regulations for the Provision of Services, issued pursuant to Art. 8, section 1 of the Act of July 18, 2002, on the provision of services by electronic means, available at [www.smarthost.uk](http://www.smarthost.uk)
3. Price List - Smarthost services price list, available at [www.smarthost.uk](http://www.smarthost.uk)
4. Agreement – the agreement concluded between Smarthost and the Customer for the provision of the Service, defining the conditions for the provision of the Service, the integral part of which are the Regulations.
5. Customer - a natural person (private individual), legal person (entity) and an organizational unit with no legal personality (unincorporated), having legal capacity, that commissioned Smarthost to provide the Service by filling the electronic order form available at [www.smarthost.uk](http://www.smarthost.uk)
6. Consumer - a natural person (private individual) who concludes or for whom an agreement for the provision of services has been concluded, for a purpose not directly related to his/her business operations or professional activity.
7. Party – Smarthost or the Customer, collectively also referred to as the Parties.
8. Service:
  1. Service provided by Smarthost to the Customer, with the parameters specified in the specification of the given Service, made available by Smarthost upon the registration thereof or
  2. Service involving Smarthost's intermediation in concluding an agreement for the provision of the Service by a third party for the Customer, in particular with respect to intermediation in domain registration for the Customer, including the accompanying administrative and technical support.
9. Service Specification - description of the Service offered and provided by its service provider.
10. Transfer - the traffic limit set by Smarthost and included in the specification of the given Service, calculated on the IP layer "from" and "to" the Customer Service, to be utilized in the billing period; the limited traffic package includes: data downloaded from the WWW server, HTTP request and response headers and the transfer generated by FTP (FTP server), SMTP, IMAP, POP3 and other services launched for the Customer's needs.
11. Subscription Fee - remuneration for the service provided by Smarthost in the billing period. This remuneration does not include, in particular, the costs related to gaining access to the Service, telecommunications, banking and postage (mailing) fees, purchase of hardware or software required to use the Service, designing websites or configuring the Customer's computer system.
12. Billing Period - the period based on which Smarthost settles the remuneration for the Service provided to the Customer, by default equal to the period for which the Agreement is concluded.

13. Domain Registrar - the entity managing the registry of Internet names in the domains specified on the website icann.org, eurid.eu, dns.pl or another entity that is directly or indirectly authorized to register and maintain a domain.
14. Domain - a unique string of characters that is or may be registered by the domain registrar, consisting of a chosen name and an extension.
15. Spam - information sent electronically that was not the subject of the addressee's order, e.g. unsolicited commercial information.
16. Failure – a deficiency (irregularity) in the provision of the Service by Smarthost, resulting in an interruption in the provision of the Service or a material reduction of its quality.
17. Customer Panel - an application used by the Customer to manage the status of services, Customer's data, payments and invoices for the Services,
18. Force Majeure - an external event impossible to predict and prevent, the source of which may be, in particular, a catastrophic act of nature, acts of the legislative and executive authorities, as well as some disturbances of the collective life.

## **§ 2. Conclusion of the Agreement**

1. The conclusion of the agreement for the provision of the Service is preceded by the Service registration. The commencement of the provision of the Service to the Customer (provided it is possible in the case of the given Service) takes place immediately following the acceptance of the registration form, of which the Customer will be informed by e-mail to the address provided in the registration form, for a test (trial) period of 14 days. The test (trial) period is used by the Customer to become familiar with the functionality of the given Service.
2. Upon Service activation, a pro-forma invoice is issued for the Service maintenance, available in the customer's panel.
3. The transfer limit that can be achieved during the trial period, measured on the IP layer in the direction "from" and "to" the Service, may not exceed 10GB of data. Smarthost reserves the right to introduce a limit on the number of email messages sent using the Service, restricting the number of email messages to 10 per hour during the trial period.
4. The conclusion of the agreement for the provision of the services shall take place when Smarthost's bank account is credited with the full amount of the subscription fee, under the conditions set out in these Regulations, Smarthost's offer containing the Price List and the Service Specification, as well as in the Regulations of specific services and in the promotion Regulations.
5. The amount of the first subscription fee is based on the Price List in effect on the registration date, and in case of the subscription fees for the subsequent billing periods, on the Price List in effect on the 28th day before the end of the current billing period. Any subsequent changes to the Price List do not affect the amount of the subscription fee for the given subscription period and will be applicable only to the next billing period.
6. The agreement is concluded for an indefinite period of time, unless a different term of the agreement stems from the Regulations of a specific Service or the promotion Regulations.
7. If the Service Provider's account is not credited with the payment for the server service within 14 days from the date the Service is ordered, the Service access will be blocked on the 15th day from the date the Service is ordered for the next 14 days. If Smarthost's account is credited with the payment for the maintenance (continuation) of the Service during that time, the Service access will be unblocked and the subscription will be extended for the billing period running from the date the Service is ordered.
8. A service not paid for within 28 days from the date the service is ordered will be deleted along with the Additional Services ordered for such a Service and all data stored on the shared disk space. The order will be canceled and Smarthost will inform the Customer thereof via e-mail. The order cancellation will be equivalent to the agreement termination.

9. Smarthost shall be authorized to process personal data within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), in connection with the provision of the services and in this respect its obligations and rights will be defined by the referenced regulation, subject to the modifications contained in the Act of July 18, 2002, on the provision of electronic services (Journal of Laws of 2002 No. 144, item 1204).
10. The data collected by the Customer, who is not a natural person (private individual), shall remain the property of the Customer, who is the data controller and performs the obligations specified in the referenced regulation in relation to such data. To the extent required to perform the agreement, the Customer entrusts data to Smarthost under a separate agreement for entrusting personal data processing.
11. Smarthost, acting pursuant to Art. 13, section 1 and section 2 of the General Data Protection Regulation of April 27, 2016, shall inform the Customers who are natural persons (private individuals) that:
  1. The controller of the Customer's personal data shall be Smarthost sp.z o.o. with its registered office at 42-217 Częstochowa, Poland, ul. Partyzantów 1, KRS: 656356, NIP PL5732874847, REGON: 366194822.
  2. Customer's personal data will be processed for the purpose of performing the agreement for the provision of hosting services or another agreement for the provision of the services offered by Smarthost. Customer's personal data will be processed pursuant to art. 6 (1) (b) of the General Data Protection Regulation.
  3. The recipients of the Customer's personal data, to the extent required to provide the service ordered by the Customer, will be entities indicated on the website at: [www.smarthost.eu/gdpr-cooperating-entities](http://www.smarthost.eu/gdpr-cooperating-entities). The processing of the Customer's personal data by the aforementioned entities is voluntary but may be necessary to provide the service or to make an electronic payment.
  4. Customer's personal data will be transferred to a third country/an international organization pursuant to Art. 49, section 1, sub-section b, for a purpose related to the performance of the agreement, including service registration. Customer may obtain a copy of the personal data transferred to a third country. A copy of the personal data will be forwarded to the Customer by e-mail based on an e-mail request sent to the address [hosting@smarthost.eu](mailto:hosting@smarthost.eu)
  5. Customer's personal data will be stored for the duration of the performance of the hosting service or other service ordered by the Customer.
  6. Customer shall have the right to access its data and the right to rectify, delete, restrict processing of the data, the right to transfer data, the right to file an objection.
  7. Customer shall have the right to lodge a complaint with the competent supervisory authority if he/she deems that the processing of his/her personal data is in breach of the provisions of the General Data Protection Regulation of April 27, 2016.
  8. Providing of personal data by the Customer is a prerequisite for concluding the agreement.
  9. Customer's data will be processed in an automated manner, including also in the form of profiling, using such tools as, in particular, Google Analytics, Pixel Facebook, Yandex Metrica, Tawk.to, Freshdesk. The consequence of such personal data processing will be the analysis of the website statistics and optimization of advertisements developed by Smarthost, including advertisements tailored to the Customer.
12. By accepting these regulations, the Customer confirms that he/she has been informed about the purpose, scope of data collection and processing by Smarthost and the entities indicated in section 11, sub-section 3.
13. During Service registration the Customer provides the data required by Smarthost, in line with reality, that includes:

1. last name as well as first and middle names,
  2. PESEL (Polish Resident Identification Number) number, if the Customer is a Consumer (it may not be required in case of some Services), or - if this number has not been assigned - the number of the passport, ID card or other document confirming identity,
  3. full company name and NIP (tax identification number) number, if the Customer is an entrepreneur (a business undertaking),
  4. residence address or registered office address,
  5. mailing address, if different than the address mentioned above,
  6. Customer's e-mail address and contact telephone number.
14. Smarthost is entitled to refuse to conclude an agreement and provide the Service or to withdraw from an already concluded agreement, if:
1. Customer provides the data requested by Smarthost that is not in line with reality,
  2. Smarthost has previously terminated an agreement with the Customer due to circumstances attributable to the Customer,
  3. there is a justified (reasonable) concern that the Service will be used for purposes not in line with the nature and purpose of the Service, in particular when it will be used by the Customer in a way that prevents or interferes with the use of Smarthost's or other Customers' hardware resources,
  4. there is a concern that illegal activities will be performed using the Service, in particular spam will be distributed,
  5. previously, personally or jointly with other persons or through other persons, the Customer used the Service in a manner not in line with its intended use,
  6. during registration or in connection with the previous use of the Service, the Customer has infringed upon third party rights or the generally applicable regulations, including, among others, has committed an unlawful act.
15. Upon registration the Customer represents that he/she:
1. is familiar with the content of the documents constituting the basis for concluding the agreement,
  2. consents to the conclusion of the agreement by electronic means,
  3. all data that has the personal data status is provided by the Customer voluntarily and the Customer is aware that Smarthost, the Customer and entities to which Smarthost will transfer the data for the purpose of the performance of the agreement, will have access to such data,
  4. agrees to receive VAT invoices in an electronic form available in the Customer Panel.

### **§ 3. Duration (term) of the agreement, extension of services and agreement termination**

1. The Agreement is concluded for the period specified therein, i.e. the billing period and is automatically extended for subsequent billing periods provided that the Customer has paid the Subscription Fee due to Smarthost for the next Billing Period before the Agreement expiration date.
2. 28 days before the end of the current billing period (for services with a billing period longer than one month) or 20 days before the end of the current billing period (for services with a billing period shorter than or equal to one month), Smarthost will inform the Customer via e-mail about the expiration of the billing period and the amount of fees for extending the subscription for the next billing period and will make a proforma invoice available in the Customer Panel for the Service maintenance (continuation) for the next billing period.
3. Customer shall extend the Service for the next billing period by making a payment to the bank account indicated by Smarthost, on the basis of a proforma invoice available in the Customer Panel, for the Service maintenance (continuation) for the next billing period.
4. Customer shall be obliged to make a payment for the next billing period at least 7 days before the expiration of the Service's previous billing period.

5. By making a payment for the Service maintenance (continuation) for the next billing period, and in case the payment is made by a third party, by proceeding to use the Service, the Customer represents that he/she has studied and accepted the terms of the current Regulations, Price List and the Service Specification, available on Smarthost's websites and this way the agreement for the provision of the Service for the next billing period is concluded. The approved terms and conditions shall be the only binding terms and conditions under which Smarthost provides the service.
6. After Smarthost's account has been credited with the payment for the Service maintenance (continuation) for the next billing period, the Service provision period will be extended by the next billing period running from the end of the previous billing period.
7. If Smarthost's account has not been credited with the payment for the server Service maintenance (continuation) for the next billing period by the last day of the Service billing period, the Service access will be blocked from the day following the end of the billing period. Customer expresses its consent for the storage of data for the next 14 days.
8. If, within 14 days from the end of the previous billing period, Smarthost's account is credited with the payment for the Service maintenance (continuation) for the next billing period, the Service access will be unblocked and the Service maintenance (continuation) time will be extended by the next billing period running from the end of the previous billing period.
9. If Smarthost's account is not credited with the payment for the Service maintenance (continuation) for the next billing period by the 14th day following the end of the previous billing period, the agreement with Smarthost will be terminated and the Service will be deleted, along with the Additional Services ordered for the Service and all data stored on the shared disk space.
10. Smarthost may terminate the Agreement in writing, effective immediately, in the event of a breach by the Customer of the provisions of the Regulations, in particular the occurrence of the premises specified in §5, if the Customer has not remedied the breach by the deadline indicated by Smarthost.
11. Each Party may terminate the Agreement, effective immediately, in the event of a recurring or gross breach of the provisions of the Agreement by the other Party, and also in case Force Majeure circumstances made it impossible to perform the provisions of the Agreement for a total of 60 (sixty) days. Party that has encountered difficulties in the performance of the Agreement as a result of Force Majeure shall be obliged to notify the other Party thereof within 5 days from the date of its occurrence.
12. In the event of a unilateral termination of the Agreement by the Customer or by Smarthost, for reasons attributable to the Customer, before the deadline specified in the Agreement, the Customer shall not be entitled to a refund for the unrealized part of the Service. This rule shall not be applicable to the situations where the Customer is a Consumer - in such case Smarthost will refund the Customer the subscription fee reduced pro rata by the fee due for the period during which the Customer used the Service.
13. In the event of a unilateral termination of the Agreement by the Customer or by Smarthost, for reasons attributable to the Customer, before the expiry of the deadline specified in the Agreement, the conclusion of which was related a discount granted to the Customer, the Customer shall be obliged to pay liquidated damages equal to the amount of the discount granted to the Customer.
14. After the Agreement has been terminated, Smarthost reserves the right to delete data stored by the Customer as part of using the Service, in particular website and e-mail account files.
15. After the Agreement has been terminated, Smarthost reserves the right to temporarily store a copy of the Customer's data in an automated system that makes backup copies in accordance with its execution schedule, for at least 90 days after the agreement was terminated. A copy of the data stored in the automated back-up system may promptly be deleted upon the Customer's request.
16. The termination of the Agreement may be made in writing, by fax or by electronic means.

17. Customer who is a Consumer, when concluding the Agreement remotely (not at the service provider's registered office), may withdraw from the Agreement without specifying the reasons, by submitting a relevant statement in writing within ten days from the date of concluding the Agreement, unless the exceptions specified in Art. 10, section 3 of the Act on the protection of certain consumer rights and liability for damage caused by a hazardous product are applicable.

#### **§ 4. Payments**

1. The fee for the Service is determined according to the Price List provided on Smarthost's websites, applicable on the date the Service is ordered or 28 days before the commencement of the next billing period for the Service. The subscription fee is indivisible.
2. Payment for the service is settled in the billing periods.
3. Customer shall be obliged to make a payment for the Service to the bank account, indicated by Smarthost, assigned to the Customer (to be used for the settlements with the given Customer). In case the payment is made by a third party, to the bank account assigned to the Customer, indicated by Smarthost, the Customer confirms the will to conclude the agreement, expressed through the third party who has made the payment, by using the Service.
4. The payment date shall always be the date Smarthost's bank account is credited with the full remuneration amount. Any additional fees related to the payment, including bank and postage fees, will be charged to the Customer.
5. In case no payment is made by the set deadline, Smarthost shall be entitled to halt further Service provision or limit its functionality, including restricting the traffic package, without incurring any liability towards the Customer in this respect. A failure to make payment by the next 14-day deadline will result in the agreement being terminated upon the expiration of such deadline. In such case, all data entered by the Customer into Smarthost's system will be deleted, without Smarthost incurring any liability in this respect.
6. Smarthost reserves the right to change the Service prices. New prices shall be provided in the updated Price List available on Smarthost's websites and shall take effect as of the date the change is introduced. A change of the Service price within the current billing period shall not entail additional costs for the Customer until the end of the already paid for billing period for the Service.
7. A VAT invoice for the Service maintenance (continuation) shall be issued based on the Customer's data provided in Smarthost's Customer Panel. The VAT invoice will be issued, based on the Customer's data, within 7 days from the date Smarthost's account is credited with the payment. The invoice will be made available to the customer in the Customer Panel.
8. Settlements of transactions made using a payment card and e-transfer shall be carried out via Przelewy24.pl (PayPro S.A.) or Paypal.com.

#### **§ 5. Obligations of the Parties**

1. Customer shall be obliged to inform Smarthost of any changes affecting the performance of the agreement.
2. Customer shall be obliged to provide true data in the Service ordering process.
3. Customer shall be obliged to make timely payments.
4. Customer undertakes to use the Service in a manner that does not breach the legal regulations, as well as third party rights stemming therefrom (in particular, personal rights, copyrights), in accordance with good conduct principles. Customer shall be responsible for the way the Service is used by third parties to whom the Customer makes the Service available for use.
5. Smarthost shall be obliged to provide the full scope of the Service with due diligence. Smarthost shall not be liable for a failure to perform or improper performance of the Service for reasons attributable to other entities.

6. Smarthost shall have the right to update the software on the servers in order to perform the Service with due diligence.
7. Smarthost reserves the right to make the shortest possible technical breaks in the functioning of the Service during the lowest load periods, related to the system support and maintenance, of which the Customer will be informed by e-mail.
8. In accordance with the rules of the complaint procedure specified in the Regulations, the Customer shall be obliged to promptly inform Smarthost of the Service non-availability or any irregularities thereof. Smarthost will ensure rectification of a failure without undue delay.
9. Smarthost shall be entitled to temporarily suspend the Service provision or limit its functionality, without warning and without incurring any liability in this respect, if the Customer:
  1. is in breach of the provisions of these Regulations,
  2. uses the Service in a way that may compromise the proper functioning of Smarthost's networks and computer systems,
  3. disrupts the operation of online services of Smarthost's Customers or Internet users,
  4. carries out activities aimed at gaining unauthorized access to computer systems or information stored therein, involving, in particular, circumventing or hacking security mechanisms and procedures,
  5. makes changes, deletes or adds any entries to third party information without the consent thereof,
  6. stores illegal data as part of the Service,
  7. infringes upon the copyrights to the software installed as part of the Service,
  8. performs unauthorized scans or tests of other systems' vulnerability,
  9. uploads, publishes, copies or distributes any software that contains viruses or other harmful content,
  10. commits a prohibited act (tort) within the meaning of the applicable law, for example, distributes commercial offers without a documented consent for receiving such correspondence by the recipient (spam),
  11. uses an e-mail server, whose software is not protected against unauthorized use by unauthorized persons, to send e-mail messages, usually spam (the so-called open relay),
  12. acts to the detriment of other Smarthost's Customers or Internet users, for example by violating privacy or taking part in fraudulently obtaining confidential personal information (e.g. phishing),
  13. uses the Service to carry out or provide assistance in carrying out the "denial of service" attacks on other websites or online Services,
  14. uses unauthorized IP addresses that are beyond the scope of the concluded agreement,
  15. is unavailable for Smarthost based on the contact details provided in the customer panel,
  16. fails to perform other material obligations under the agreement, in particular delays payment of all or a part of the fees due.
10. In the event control over the Service management tools is lost, in particular the customer panel access password has been disclosed to unauthorized persons, the Customer shall be obliged to promptly report this fact to Smarthost, which will take steps aimed at restoring control over the Service.
11. Each year during which Smarthost provides the Service to the Customer, the duration of the assistance covered by the Subscription Fee shall not exceed one hour, regardless of the agreement term.
12. A billing period lasting a calendar year shall be deemed to constitute a year. In the event of providing assistance for more than one hour per year, the Customer shall be obliged to pay a fee for the assistance provided, in accordance with the Price List.
13. Customer represents that he/she has knowledge that the use of the Service may require specific IT competences.

14. Smarthost will be providing the Customer, by electronic means or by phone, with explanations and instructions on the functionality of the Service provided. The scope of the assistance provided will be related solely to the information required for the proper use of the Service ordered.
15. Smarthost undertakes to regularly make backup copies of the Customer's data stored as part of the Service, unless specific Regulations provide otherwise.
16. Smarthost does not guarantee the ability to provide telephone or e-mail support in matters directly related to the administration of operating systems, among others Linux or Windows, and the use of external software.
17. Smarthost reserves the right to refuse to implement an instruction related to the operation of the Service if there is a suspicion that it was issued by an unauthorized person. In such case, Smarthost may require a written confirmation of the instruction.
18. Customer shall be obliged to maintain the legality and security of the IT system employed to use the Service by regularly installing security updates provided by software vendors and to use anti-virus software updated at least once a week.
19. Smarthost shall not be responsible for securing the software installed by the Customer against third party interference.
20. Smarthost shall not be liable for the infringement of copyrights to the software installed by the Customer.
21. Smarthost undertakes to notify the Customer, not less than 30 days in advance, of any changes to the Regulations or Price Lists, including indicating the date the changes take effect. In such case, the Customer, who is a Consumer, may terminate the agreement by submitting a statement (notice) within 14 days from the date he/she is able to become familiar with Smarthost's notification, where it shall be deemed that the agreement is terminated as a result of the submitted statement (notice) on the last day of the billing period applicable to the Customer. The existing provisions of the Regulations or Price Lists shall be applicable during that period,. A failure by the Customer to submit the statement (notice) by the above-mentioned deadline shall signify acceptance of the changes to the Regulations and the Price List.
22. Customer shall not be entitled to terminate the Agreement in the event a change to the Price List involves a reduction of the prices specified in the Price List.

## **§ 6. Complaint procedure**

1. Customer shall be entitled to file a complaint against the service provided by Smarthost, in particular due to irregularities in access to the Service caused by a malfunction or a failure to perform the Service in a manner consistent with the agreement.
2. Customer's complaint regarding a failure to perform or improper performance of the services should be sent to Smarthost in writing to Smarthost's mailing address, and it should specify:
  1. Customer data to enable contact therewith and identification thereof as a Smarthost Customer,
  2. name and type of the Service it is related to,
  3. identification of the subject of the complaint and the period it is related to,
  4. circumstances substantiating the complaint,
3. The provision shall not apply to the Customers' submissions that only include a request to rectify a failure or provide assistance in technical matters. A submission of a failure rectification (service) request is not equivalent to filing a complaint.
4. A complaint should be filed in writing or by e-mail to the address [hosting@smarthost.eu](mailto:hosting@smarthost.eu).
5. Smarthost shall review complaints within 14 days of receiving a complaint from the Customer, indicating whether it accepts the complaint and how it intends to deal therewith, or providing information that there are no grounds for accepting the complaint along with the justification of its position. Should it be necessary to examine additional circumstances related to the



- Services provided to Smarthost by entities for which Smarthost is not responsible, Smarthost shall send information on the need to examine such circumstances within 14 days.
6. Responses to complaints shall be provided in writing or by e-mail.
  7. In case a complaint is formally deficient, preventing the review thereof, due, in particular, to a failure to take into account the elements specified in section 2 of this paragraph, Smarthost will promptly call the Customer to supplement it within 7 days of receiving the information on the need to supplement the complaint. After the deadline specified in this paragraph has expired to no avail, the complaint shall be rejected.
  8. The complaint shall not be reviewed if it has not been submitted by an authorized person.
  9. A submission of a complaint does not exempt from making a timely payment for the Service being the subject of the complaint. This provision shall not apply to agreements concluded with a Consumer.
  10. After the complaint has been accepted, a discount shall be granted by reducing the invoice amount in the subsequent billing period. If the complaint was filed in the last billing period, the Customer shall also have an option to apply the discount towards the purchase of any of Smarthost's services or to have the last invoice for the service amended followed by the refund of the applicable part of the subscription fee paid to be transferred to the indicated bank account.

### **§ 7. Data privacy and confidentiality**

1. Subject to the obligations arising from the generally applicable legal regulations, Smarthost shall ensure Customers privacy of the information sent by Smarthost's servers, as well as personal data protection.
2. Smarthost represents that it processes Customer's personal data pursuant to Art. 23, section 1, sub-section 2 and Art. 23, section 1, sub-section 5 of the Act on the Protection of Personal Data in connection with Art. 18 of the Act on the Provision of Services, to the extent specified by the indicated legal regulations.
3. Customer expresses consent for processing of personal data by Smarthost following the completion of the Service provision, which is required for the purposes of advertising, market as well as behavior and preferences research, with the intended use of the results of such studies for the purpose of improving the quality of services.
4. Smarthost reserves an option (right) to disclose the name of the Customer, who is not a Consumer, in advertising and marketing materials as well as reference letters as a Smarthost customer, also after the Customer has finished using the Service, unless the Customer objects in writing to such use of its data.
5. As a consequence of the ceasing of the conditions entitling Smarthost to process the Customer's personal data, Smarthost will delete such data without undue delay, except for the data that is:
  1. necessary for the settlement of the Service and for pursuing claims for payments due for the use of the Service,
  2. necessary to examine (review) the circumstances of using the Service in contravention of the Regulations or the applicable regulations,
  3. allowed for processing under separate laws or agreement.
6. Based on a written request the Customer shall have the right to demand that Smarthost, as the data controller, should supplement, update, rectify personal data, temporarily or permanently suspend its processing or delete it if it is incomplete, out of date, untrue or has been collected in breach of the legal regulations or is no longer relevant for the purpose for which it was collected.
7. Customer shall have the right to object to the personal data processed by Smarthost pursuant to and in accordance with the provisions of the Act on the Protection of Personal Data.

## **§ 8. Liability**

1. Smarthost undertakes to ensure continuity of Service operation, in each monthly period, in the scope stemming from the Regulations, without a Failure, within the meaning of these provisions, for 99% of the time in each calendar month covered by the subscription fee.
2. The obligation specified in section 1 of this paragraph shall not include, in particular, events and consequences of events related to:
  1. exhaustion of the disk space available as part of the Service,
  2. exceeding of the limits covered by the Agreement,
  3. malfunctioning of websites, due to the operation of scripts or the modification thereof by the Customer or persons authorized by the Customer, as well as hackers, viruses, etc.,
  4. problems caused by the loss of files and data for reasons attributable to the Customer or actions related to the recovery thereof,
  5. Customer's own software installations,
  6. problems related to the use of the Service to support (handle) disproportionately high online traffic,
  7. sending of unsolicited commercial information (spam) by the Customer,
  8. system maintenance, the need for expansion or other planned activities, of which Smarthost will provide notice at least 24 hours in advance,
  9. operation of the Customer Panel with respect to settings unrelated to the main functions of the Service. This exclusion shall apply in particular to such functions as the ability to preview invoices issued to the Customer, edit contact details, etc.,
  10. suspension of the Service provision due to the regulatory reasons,
  11. Force Majeure.
3. Smarthost reserves the right to interrupt Service provision, not longer than for 3 hours at a time, due to the need to carry out maintenance works, however not longer than for 12 hours per quarter and carried out between 23.00 and 6.00 hours. Smarthost will inform the Customer of any such interruption appropriately in advance.
4. Neither Party shall be liable for any damage, nor otherwise for any omission or delay in the performance of any obligations under the Agreement, other than the obligation to pay, provided that such an omission or delay is caused by Force Majeure.
5. Smarthost shall not be liable for any potential damage caused, among others, as a result of:
  1. lack of continuity in the provision of services caused by third party's actions or omissions,
  2. natural disasters,
  3. misuse of the Service provided,
  4. use of the information provided to the Customer to authorize access to the Service by third parties,
  5. breach of the agreement's provisions by the Customer.
6. Smarthost shall not be responsible for the information downloaded by the Customer from the Internet or for the consequences of its use
7. Smarthost shall not be liable for the content posted on the Customer's service website.
8. Smarthost shall not be liable for lost benefits.
9. Smarthost's liability shall in any case be limited to the amount of the fee paid by the Customer.
10. Liability limitations specified in sections 5, 6, 7, 8, 9 shall not apply to the Customers who are Consumers.
11. Smarthost shall not be liable for any Customer damage arisen as a result of:
  1. interruptions referred to in §5, section 9,
  2. improper use of the Service by the Customer, in particular due to the use of software or devices that may affect the stability of the servers' operation,
  3. Customer providing untrue, incomplete data or the data having not been updated by the Customer,
  4. breach by the Customer of the provisions of the Regulations or the Agreement,

5. use of the Service by third parties to whom the Customer has made the service available, in particular the access passwords,
6. changes to certain functions of the software provided by third parties that Smarthost has no control over.
12. In case Smarthost fails to achieve the Service availability specified in §8, section 1 of the Regulations, the Customer shall be entitled to claim a discount in the amount equal to a single daily rate, which is a pro rata part of the subscription fee for the Service subject to the declared availability time, for each hour of Service unavailability exceeding the Service availability time.
13. The discount shall be granted in response to the Customer's written complaint by reducing the invoice in the next billing period. If a failure to achieve the service availability took place in the last billing period, the Customer shall have an option to apply the discount towards the purchase of any Smarthost service or to have the last invoice, for the Service that the failure to achieve the availability time was related to, amended followed by the refund of the relevant part of the Subscription Fee paid.
14. Smarthost's maximum total liability (liability cap) for the Service unavailability time shall be limited to 100% of the Subscription Fee. This provision shall not apply to the Customers who are Consumers.
15. Granting of discounts or payouts provided for in this paragraph shall fully exhaust Smarthost's liability towards the Customer. Customer may not claim damages in excess of the above. This provision shall not apply to the Customers who are Consumers.
16. Customer shall be entitled to terminate the Agreement, effective immediately, should a Failure rectification time exceed 3 business days.

#### **§ 9. Final provisions**

1. Polish law shall apply to the agreement between the Customer and Smarthost. Parties shall be obliged to comply with the law currently in force in Poland.
2. Any disputes that may arise from the agreements between the Customer and Smarthost regarding the provision of services by Smarthost, which cannot be prevented through a complaint procedure, will be resolved by the common court competent for Smarthost's registered office. The above specification of the court's jurisdiction shall not apply to the Customers who are Consumers. The place of the Service provision shall be Smarthost's registered office.
3. Smarthost reserves the right to block the Service and terminate the agreement for the provision of the Service by Smarthost, should the Customer breach the Regulations or the law.
4. Regulations and Price Lists, as well as the relevant provisions of the generally applicable law shall apply in matters not covered by the Agreement.
5. The provisions of the Regulations shall not prejudice consumer rights granted under the applicable law which shall take precedence over the provisions of the Regulations.
6. Regulations shall take effect on February 27, 2025.