

# Web-Based Email Services Terms of Service and Conditions of Use

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## 1. BASIC AGREEMENT

These Web-Based Email Services Terms of Service and Conditions of Use (the “Terms and Conditions”) apply to any and all use of the web-based email and other services available through [www.mybullseyeonline.com](http://www.mybullseyeonline.com) (the “Services”) and supersede any inconsistent BullsEye Telecom (“BullsEye”) terms set forth in the Master Service Agreement and the Data Service Terms and Conditions, which are available at [www.bullseyetelecom.com/DataAgreement.aspx](http://www.bullseyetelecom.com/DataAgreement.aspx) and are otherwise herein incorporated by reference. Copies of these Terms and Conditions, the Master Services Agreement and the Data Service Terms and Conditions will be made available upon request. These Terms and Conditions, the Master Service Agreement and the Data Service Terms and Conditions are collectively referred to as the “Agreement.” Capitalized terms that are not defined in these Terms and Conditions will have the meanings given to them in the BullsEye Telecom Master Service Agreement.

## 2. SERVICES

2.1 Access and Use. Subject to the Agreement, BullsEye shall permit Customer to access and use the Services as part of the Data Services ordered by Customer.

2.2 Modification of the Services. BullsEye reserves the right, at its sole discretion, to modify the functionality of the Services at any time.

## 3. FEES

Customer agrees to pay the fees as set forth in the BullsEye Service Order and in accordance with the Agreement.

#### 4. LIMITED LICENSE

4.1 License to the Services and BullsEye Content. BullsEye grants to Customer a non-transferable, non-exclusive license to permit Customers to access and use the Services solely in accordance with the Agreement. As part of the Services, Customers shall have access to information, communications, photos, text, video, graphics, music, sounds, images and other material and services posted onto the Services by BullsEye or third party content and service providers ("Service Providers") and designated for use by Customers (collectively, "BullsEye Content"). BullsEye grants to Customer a non-transferable, non-exclusive license to permit each of Customer's authorized users to download one copy of BullsEye Content to a single computer for purposes of viewing, browsing and utilizing the Services. Customer will not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works from, distribute, perform, or display the BullsEye Content, incorporate the BullsEye Content into another web site, or mirror the Services. Title to and ownership of the Services shall be and at all times remain in BullsEye. The BullsEye Content is owned by BullsEye and Service Providers and is protected by United States and foreign intellectual property laws. Unauthorized use of the BullsEye Content may violate copyright, trademark and other laws.

4.2 License to Software. BullsEye grants to Customer a non-exclusive, non-transferable license to access and use the software on [www.mybullseyeonline.com](http://www.mybullseyeonline.com) and downloadable from that website ("Software"). Customer agrees that Customer shall only use the Software from a server controlled by BullsEye and only in connection with Customer's use of the Services. This license does not confer upon Customer any right to copy the Software or to use it on computers other than a server controlled by BullsEye. Customer may not sublicense, reverse engineer, decompile, disassemble, modify, adapt, translate, create derivative works of, copy, distribute, or transfer the Software. Customer acknowledges that the Software is intended for access and use by means of web browsing software, and that BullsEye does not commit to support any particular browsing platform. If any of the Software is accompanied by an end user license agreement, then use of such Software shall be governed by the terms of that license agreement.

4.3 License to Use Customer Name. Customer agrees that BullsEye may use Customer's name and logo to identify Customer as a customer of BullsEye on the BullsEye website and in promotional and corporate materials. Additionally, Customer agrees that BullsEye may issue a press release identifying the Customer as a customer and explaining the Customer's intended use of BullsEye and the benefits it expects to receive.

#### 5. CUSTOMER NAME AND PASSWORD

Customer and each of Customer's authorized users shall be required to select a user name and password. Customer and the applicable authorized users are responsible for maintaining the confidentiality of such user names and passwords, and for all uses of such user names and passwords. Customer agrees to immediately notify BullsEye of any unauthorized use of a user name or password.

## 6. SUBMITTING CONTENT

6.1 Restrictions. Customer is responsible for its authorized users' use of the Services. Customer agrees that neither it nor its authorized users will:

- \* communicate or upload material that is copyrighted, unless Customer is the copyright owner or has the written permission of the copyright owner to communicate or upload it;
- \* communicate or upload material that reveals trade secrets, unless Customer owns them or has the written permission of the owner;
- \* communicate or upload material that infringes any intellectual property rights of others or their privacy or publicity rights;
- \* communicate or upload material that is obscene, defamatory, threatening, harassing, abusive, or hateful to another Customer or any other person or entity;
- \* communicate or upload a sexually-explicit image or statement;
- \* communicate or upload advertisements or solicitations for business without BullsEye's prior approval;
- \* communicate or upload chain letters, pyramid schemes, or similar content; or
- \* impersonate another person.

6.2 Non-Infringement. Customer warrants and represents to BullsEye that all information, communications, software, photos, text, video, graphics, music, sounds, images and other materials transmitted or uploaded by Customer to the Services or to BullsEye are solely owned by Customer or are provided with the express written authority of the applicable owner(s) and do not infringe upon any third party's rights (including, without limitation, intellectual property rights), or contain any material or information that is obscene, defamatory, libelous, slanderous, that violates any personal right of publicity or privacy, or that will otherwise result in any tort, injury, damage or harm to any person.

6.3 License and Ownership. Customer shall retain all right, title and interest in all information, data and other materials uploaded by Customer or its authorized users to any non-public areas of the Services.

## 7. LIMITATIONS ON USE

Customer agrees that neither it nor its authorized users shall (i) rent, sell, lease or otherwise transfer the Services, (ii) use the Services in a manner that violates applicable law, (iii) violate or attempt to violate the security of the Services or use the Services to violate the security of other web sites by any method, including, without limitation, (a) accessing data not intended for Customer or the authorized users or logging into a server or account which Customer or the or the authorized users are not authorized to access, (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization, (c) attempting to interfere with service to any member or Customer of the Services, including, without limitation, by submitting a virus to the Services, overloading, "flooding," "spamming," "mailbombing," attempting "denial of service" attacks, or "crashing," (d) sending unsolicited e-mail, including promotions and/or advertising of products or services, or (e) forging any BullsEye packet header or any part of the header information in any e-mail or newsgroup posting. Customer shall be liable to BullsEye for any failure by authorized users to comply with the terms of the Agreement.

## 8. CONFIDENTIALITY

8.1 Confidential Information. "Confidential Information" shall mean any information relating to or disclosed in connection with the Agreement, including the terms of the Agreement, technical processes, formulas, product designs, sales, cost and other unpublished financial information, product and business plans, and projections and marketing data, that is marked as confidential or proprietary or should be reasonably understood to be confidential or proprietary to the disclosing party.

8.2 Confidentiality Obligation. All Confidential Information shall be retained by the receiving party in confidence for the term of the Agreement and for a period of three (3) years thereafter and shall not be used except in connection with performance under the Agreement.

8.3 Exceptions. Nothing in the Agreement shall in any way restrict the right of the receiving party to use, disclose, or otherwise deal with any information that (i) was already known to the receiving party at the time of disclosure as evidenced by written documents in the receiving party's possession prior to disclosure; (ii) was generally available to the public or becomes publicly known through no wrongful act of the receiving party; (iii) was received by the receiving party from a third party who had a legal right to provide it; or (iv) was developed independently of knowledge of Confidential Information received by the receiving party from the disclosing party. Nothing in the Agreement shall prevent a receiving party from disclosing information as may be required by law.

## 9. TERM & TERMINATION

9.1 Term. The Agreement shall be effective as of the date of initial service activation and shall continue in full force and effect for a period equal to the term set forth in the Service Order, unless extended or sooner terminated in accordance with the provisions of the Agreement.

9.2 Loss of Access, Files and Content Upon Termination of Data Services. If the Data Services ordered by Customer are terminated for any reason, then the Services will be terminated seven days from the date the Data Services are terminated. Termination of the Services includes: (i) removal of access to the Services; (ii) deletion of all user names and passwords for Customer and any of its authorized users; and (iii) deletion of all files and content on the Services that are associated with Customer or any of its authorized users.

9.3 Security. Without limiting anything else in the Agreement, BullsEye reserves the right to suspend Customer's access to the Services or immediately terminate the Agreement in the event Customer or its authorized users engage in activities that in BullsEye's reasonable judgment present a security risk to BullsEye, BullsEye's network or equipment, or BullsEye's other customers.

## 10. INDEMNITY

Customer shall defend, indemnify, and hold harmless BullsEye, Service Providers, and their respective officers, directors, employees and agents, from and against any claims, actions or demands, including without

limitation reasonable legal and accounting fees, alleging or resulting from Customer's or any authorized user's use of the Services or breach of the warranties or obligations under the Agreement. BullsEye shall notify Customer of any such claim, suit, or proceeding and shall reasonably cooperate with Customer in defending any such claim, suit or proceeding at Customer's expense.

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