



## Newsletter Tool Terms of Service

### **Email Policy**

WTE Solutions / PointShop, Inc. ("WTE") has a strict NO SPAM policy and requires its Clients to abide by the [CAN-SPAM Act](#). Spam, Junk-mail and Unsolicited Commercial Email (UCE) are defined as: the sending of the same, or substantially similar, unsolicited electronic mail messages, whether commercial or not, to more than one recipient. A message is considered unsolicited if it is posted in violation of a privacy policy or if it is sent to a recipient who has not requested or invited the message. UCE also includes e-mail with forged headers, compromised mail server relays, and false contact information. This prohibition extends to the sending of unsolicited mass mailings from another service, which in any way implicates the use of AgileMail Pro software, whether or not the message actually originated from our network.

These mass mailing rules also apply to mailing lists, list serves/services, or mailing services you may contract with. An acceptable mailing list will be focused at a targeted audience that has voluntarily signed up for your e-mail information or that has made their e-mail address available for distribution of information from you. You agree to import, access or otherwise use only Permission Based Lists in connection with your use of the Products. You hereby covenant that you shall not use any other lists in connection with your use of the Products. Each email must also allow for automatic opt-out removal by all end Customers with non-distribution in the future.

WTE reserves the right to restrict frequency of distribution at its sole discretion. Clients may reasonably send four emails a month, but must request permission to increase this frequency in advance. Resending the same newsletter is considered a separate distribution, and this practice can seriously jeopardize our ability to successfully deliver messages. If you feel that an email was not properly sent, you must contact [support@pointshop.com](mailto:support@pointshop.com) for assistance, and should NOT resend an email distribution. Failure to follow these procedures may warrant fines, termination of your services, and/or service reactivation fees.

### **Content Policy**

Client hereby agrees that all material submitted for distribution through WTE's servers will not contain anything leading to an abusive or unethical use of email software products or the host server(s). Abusive and unethical materials and uses include, but are not limited to: pornography, obscenity, nudity, violations of privacy, computer viruses, hacking, and any harassing, offensive and/or harmful materials or uses. WTE management retains the right to determine whether any material falls within one of these categories. Client hereby agrees to indemnify and hold harmless WTE from any claim resulting from your publication of materials or your use of those materials.

WTE is not responsible for typos, pricing or grammatical errors, even in the event that we provide content or Assist services, or an AgileMail Pro Scheduled Email Program. Client is ultimately responsible for proofreading and approving all material in Client's newsletters before send approval.

In the event that WTE determines that the service is being utilized for unlawful purposes by the Client or in contravention with the terms and provisions herewith, WTE may immediately discontinue such service to the Client without liability. In the event that WTE determines the account to be participating in any way with SPAM, including mining of email addresses, sending unsolicited email or any other form of SPAM, WTE may immediately discontinue such service to the Client without liability.

### **CAN-SPAM Required Mailboxes and SPF**

The CAN-SPAM Act requires bulk mail senders maintain two mailboxes for compliancy. AgileMail Pro users must create and maintain the following e-mailboxes on your domain: [abuse@yourdomain.com](mailto:abuse@yourdomain.com) and [postmaster@yourdomain.com](mailto:postmaster@yourdomain.com). For best delivery practices, users should also create, maintain, and send their newsletters from [news@yourdomain.com](mailto:news@yourdomain.com). Client may request WTE-provided email hosting add-on services in order to comply with this requirement, or may have their existing email provider create these mailboxes. Clients that use other WTE services may be entitled to free mailboxes, but Client must request these mailboxes in writing to [support@pointshop.com](mailto:support@pointshop.com) no later than 3 business days prior to the first email send.

Sender Policy Framework File (SPF) is required for successful email delivery, and prevents sender address forgery. If WTE manages your DNS, SPF records will be created for you. If Client self-manages DNS or uses third-party DNS management, WTE will provide information to setup SPF.

### ***Distribution List Send Limits and Overages***

AgileMail Pro program levels provide a monthly send limit (the number of emails distributed within a calendar month). Additional sends within a calendar month will be invoiced separately according to contract Overage rates. A WTE representative may recommend moving to a program level that provides additional monthly sends when appropriate. Such program level changes will not affect Client's original Effective Date, but will replace the remainder of the contract term.

Under-utilization of Client's AgileMail Pro program level does not alleviate Client from their monthly payment commitment.

### ***AgileMail Pro Scheduled Email Program***

Clients may register for an AgileMail Pro Scheduled Email Program, which bundles advice from WTE's emarketing experts, pre-coded templates, sends performed on your behalf, and post-send reports delivered via email to make creation, sending, and send analysis for emails simple. This annual commitment, fee-based service add-on includes:

- Verify and assist with SPF sender record setup.
- Import of a single subscriber list for each send. Additional import requests are billable separately at the current Professional Services rate.
- Send email blast to subscribers. (Send quantities are dependent on base AgileMail Hosting Contract.)
- Executive Report for each send sent via email. The report includes click and open information and a campaign review.
- Report explanation document.
- Access to reports in the admin system if base package allows for self emailing.
- Eighteen total newsletters sent over a consecutive twelve month period. (The emails will be sent on a pre-determined schedule.)
- One email will be sent each month and six "floater" emails to be sent on dates of client choice.
- Choice of a single template layout from Scheduled Mail Program layout options, for seventeen of the eighteen emails. Templates are designed according to best design and delivery practices for professional looking newsletters.
- Choice of Holiday Email Template from Holiday template options.
- Two hours of communication, emails and phone calls, for emarketing planning.

Under this program, Client may supply graphics and content, or may request WTE create graphics and content at billable time at the current Professional Services rate. Delay of client-provided materials or approval of WTE provided materials will delay a newsletter creation.

A proof will be provided to Client prior to distribution of each email. Client is responsible for reviewing and returning correction notes according to the timeline specified to meet the pre-determined distribution schedule. Delay in proof approval will delay a newsletter send.

Under-utilization of AgileMail Pro Scheduled Email Program services does not alleviate Client from their monthly payment commitment.

### ***Policy Violations***

Any Client that ignores or violates this policy will be terminated and is subject to fines imposed by WTE's relationship with IronPort's Bonded Sender license. No refunds will be issued for such termination, and no re-activation will be allowed.

In addition, if your actions have caused WTE mail servers or IP address ranges to be placed on black-lists and other mail filtering software systems used by companies on the internet, a \$100 charge will be assessed to your account plus \$100 per hour for administrative charges incurred to remove and protect our mail servers and IP ranges.

## ***Warranties***

This Agreement constitutes a binding contract between WTE and the Client and does not extend to any other person or entity. With respect to the service to be provided herein, the Client acknowledges that WTE makes absolutely no warranties whatsoever, express or implied. As a result, the Client agrees that WTE shall not be liable to the Client for any claims or damages which may be suffered by the Client, including, but not limited to, losses or damages resulting from the loss of data (including database data in any format), email data, delays, non-deliveries, service interruptions, or inaccessibility of software.

## ***Payment Policy***

Payment for the AgileMail Pro newsletter tool are due on the 1<sup>st</sup> of each month for that month's service. Assistance Fees, Additional Template fees, Distribution Overages, and Support Services fees will be invoiced as services are utilized and are due upon receipt. WTE accepts automated payment by credit card or ACH bank draft. Client is responsible for keeping payment account information up to date. Declined credit card charges will be notified via email or by phone, and are payable immediately with a temporary or permanent alternative payment method. Payments returned for insufficient funds will incur a service charge of \$35. The full balance on the account, including this service charge is due immediately through a temporary or permanent alternative payment method.

## ***Ownership and Use of Information***

All page layout, design, graphics work, data files, image maps, HTML coding, software tools and applications used to design, construct, service and maintain the email newsletters are and will remain the sole property of WTE. Client retains ownership of the content supplied by Client to WTE; provided, however, that WTE will have no responsibility regarding the return of any physical materials supplied to WTE. WTE will maintain data about Client and its information on its servers, and WTE may disclose any information regarding the Client or its information to third parties in order to conduct the business of WTE, promote the Client's email newsletter, to process payments pursuant to this Agreement, or for any other purpose related to the business of WTE. In addition, WTE may disclose any information in the good faith belief that such action is reasonably necessary: (a) to comply with any law or regulation or legal process of any kind; (b) to enforce this Agreement; (c) to respond to claims that the Client is engaged in activities that violate the rights of third parties; or (d) to protect the rights and interests of WTE or others; provided, however, that nothing in this section will impose a duty on WTE to make any such disclosures.

## ***No Software Rights and Use of Product***

This is an Agreement for services and access to the AgileMail Pro Software-as-a-Service web site, and Client is not granted a license to any software by this Agreement. Client will not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the AgileMail Pro Tool or any software, documentation, or data related to the AgileMail Pro Tool ("Software"); remove any proprietary notices or labels from the AgileMail Pro Tool or any Software, modify, translate, or create derivative works based on the AgileMail Pro Tool or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the AgileMail Pro Tool or any Software.

Client may not display, copy, reproduce, or distribute the Software, any component thereof, any documentation provided in connection with the AgileMail Pro Tool or the Software, or any content, including but not limited to newsletters, distributed to you by WTE in connection with the AgileMail Pro Tool. Violation of these restrictions may result in the termination of this Agreement.

If you are using the Software in any jurisdiction which restricts the ability of a software provider to restrict your right to reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software or Products, then you hereby covenant that, prior to engaging in such activities, you must request that WTE provide a full license of AgileMail Pro at its standard professional license rate.

## ***Terms and Termination of Agreement***

The Initial Term of this Agreement will commence upon the Effective Date (i.e., the date that the Agreement is signed by an authorized representative of WTE) and will remain in effect for twelve (12) months. Upon expiration of the initial period, this Agreement will automatically renew for successive twelve (12) month periods (each, a "Renewal Term") unless either party provides the other with written notice of termination at least thirty (30) days prior to the desired termination date.

In addition, WTE may terminate this Agreement if: (a) Client fails to pay in full any charges hereunder within ten (10) days of the date due; or (b) Client commits any breach of this Agreement other than a breach described in the Policy Violations clause and fails to cure it within ten (10) days of receipt of notice of such breach. WTE reserves the right to

immediately suspend Client's access to and use of the AgileMail Pro Tool upon a breach of this Agreement. Termination for non-payment or breach does not alleviate Client's responsibility to pay their full contract commitment.

The termination of this Agreement by WTE will not be deemed in any way to constitute an election of remedies or a waiver of any rights, remedies or actions available to WTE under this Agreement or otherwise, and all such rights, remedies and actions are expressly reserved by WTE. Upon termination, WTE reserves the right to delete from its servers any and all information contained in Client's account or relating to the Client or the Client's AgileMail Pro Tool, including but not limited to mailing lists, newsletter drafts and prior distributions, reports and statistics, and any Web page links created through the AgileMail Pro Tool. Any provision of this Agreement that by its terms imposes continuing obligations on the parties shall survive the termination of this Agreement.

#### ***Changes in Terms of Agreement***

WTE reserves the right to make changes to the terms and conditions of this Agreement. It is the Client's responsibility to periodically review the AgileMail Pro Tool Terms of Service Agreement. Utilization of the service by the Client following the effective date of such change shall constitute acceptance by the Client of such change(s).

#### ***Entire Agreement and Understanding***

This instrument and the application for email tool technology constitute the entire agreement between WTE and the Client, and represent the complete and entire understanding of the parties with respect to the subject matter of this Agreement.

#### ***Governing Law***

This Agreement shall be governed by the laws of the State of North Carolina in the United States of America. In the event that any term or provision of this instrument is held by a court of competent jurisdiction to be unenforceable, then the remaining provisions of this instrument and the agreement which it evidences shall remain in full force and effect.

**IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, and in consideration of the covenants and agreements contained herein, do hereby execute this instrument, with each party warranting their ability to enter into this agreement for the person or entity herein named as a party hereto. I understand this Email Marketing policy and agree to abide by its strict NO SPAM intent.**

Signed on \_\_\_\_\_

by:

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

RETURN THIS SIGNED AGREEMENT VIA EMAIL TO [SUPPORT@POINTSHOP.COM](mailto:SUPPORT@POINTSHOP.COM) OR BY FAX TO 919-882-9109.