

NESS TERMS OF USE

Posted date:

Effective date:

This Terms of Use ("Agreement") constitutes a legally binding contract between Ness App LLC. with a mailing address of Ness App LLC., 90 State Street, STE 700 Office 40 Albany, NY 12207 ("NESS", "we," "us," "our") and you, as a User ("User", "Users", "you" or "your") with respect to the NESS Services located at <https://www.nessapllc.com>. If you become a licensed user of any NESS websites, software, apps, and other services (collectively, our "Services"), the terms of your relationship with NESS will be governed according to this Terms of Use.

It is important that you carefully read and understand the terms and conditions of this Agreement. By accessing and using our Services, you are providing your consent to abide by this Agreement. If you do not agree to these terms and conditions of the Agreement, you are not authorized to use the Services and we ask that you cease any use of our Services.

Please note that this Agreement contains disclaimers of warranties and limitations on liability that may be applicable to you.

1. **Intended Users.** NESS Services are intended to be used by users from all over the world. While using the Service, your use of the Service must not violate any applicable laws, including copyright or trademark laws, export control or sanctions laws, or other laws in your or our jurisdiction. You are responsible for making sure that your use of the Service is in compliance with laws and any applicable regulations.
2. **Permitted Uses**
 - a. **License.** Subject to full compliance with this Agreement, NESS grants you a nonexclusive, nontransferable, non-sublicensable, terminable license to access and use our Services for your use.
 - b. **Private Use.** The services made available on, by or through our Services, as well as any information provided on, by or through our Services, including but not limited to data, text, graphics, designs, logos, images, audio/visual materials, links, and references (collectively, the "**Information**"), are provided for use only and not for any for-profit or commercial activities or purpose or for resale, except as expressly permitted herein.
 - c. **Reproduction.** Without the express written consent of NESS, no Information or any other NESS materials or property may be copied, reproduced, displayed, republished, downloaded, posted, digitized, translated, modified, transmitted, distributed, or commercially exploited in any way, except as expressly permitted in this Agreement.
 - d. **Unauthorized Use.** You understand and agree that you may not authorize any Information to be reproduced, modified, displayed, performed, transferred, distributed, or otherwise used by any third party, and you agree that you will take all reasonable steps to prevent any unauthorized reproduction and/or other use of the Information. You agree to advise

NESS promptly of any such unauthorized use of which you are aware. Failure to abide by these conditions will immediately terminate permission to use our Services and may result in the infringement of the copyrights and/or trademarks and other proprietary rights of NESS or others.

3. Ownership of Your Content: When you share or upload content, like photos or videos, on our Services, you still own the intellectual property rights. Your rights to your own content are not taken away by these Terms. To make our services work for you, we need your permission (also known as a "license") to use the material you share. When you share, post, or upload photos, videos or other material that have copyrights or other rights on our platforms, you will be giving us a special kind of permission to keep and use this material. You grant us a worldwide, non-exclusive, transferable, sub-licensable, royalty-free license. This will allow us to store, copy, and share your content on our Services.
4. Third Party Links. Our Services may contain links to other Services for your convenience. The fact that we offer such links does not indicate any approval or endorsement by us of any linked Services or any material contained on any linked Services, and we disclaim any such approval or endorsement. We do not control the linked Services, or the content provided through such Services, and we have not reviewed, in their entirety, such Services. Your use of linked Services is subject to the privacy practices and terms of use established by the specific linked Services, and we disclaim all liability for such use.
5. Information Collected. Use of our Services includes the submission of personal information through our online forms and while using our application. You are agreeing to submit personal information including your name, email address, phone number, time zone, location information, images uploaded by you, videos uploaded by you, your contacts, and Services usage. We may collect additional mobile application data including device type (e.g., smartphone, tablet), device model, operating system version, unique device identifiers (e.g., IMEI, MAC address), and mobile network information (e.g., carrier name, connection type). While using our Services, we may automatically collect data on how you interact with and use our services, including date and time of access, app features or pages visited, duration of your sessions, actions taken within the app, and error logs.
6. IP Ownership.
 - a. NESS Copyright. Our Services are owned and operated by NESS and its licensors, and the Information (and any intellectual property and other rights relating thereto) is and will remain the property of NESS. The Information is protected by U.S. and international copyright, trademark, and other laws, and you acknowledge that these rights are valid and enforceable. Except as set forth in this Agreement, you may not copy, reproduce, modify, adapt, translate, republish, upload, post, transmit, distribute, sub-license, sell, reverse engineer, decompile, or disassemble any part of our Services or any Information without our prior written permission. Our Services and Information may be used solely (a) to the extent permitted in this Agreement or (b) as expressly authorized in writing by

NESS. Use of our Services or any Information for any other purpose is strictly prohibited. You acknowledge that you do not acquire any ownership rights by using our Products and Services or any Information.

- b. NESS Trademarks. The trademarks and logos displayed on our Services (collectively, the “**Trademarks**”) are the registered and unregistered trademarks of NESS. Nothing contained in this Agreement, or our Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark(s) without the express written permission of NESS, except as set forth in this section. You acknowledge and agree that all rights in and to the NESS trademarks are our exclusive property, and any goodwill generated by your use of any NESS trademark will inure to our exclusive benefit. You will not take any action that conflicts with our rights in or ownership of any NESS trademark.

7. DMCA Notices. If you are a copyright owner or an agent thereof and believe that any User Generated Content or other content on the site infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“**DMCA**”) by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail): A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
 - Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
 - Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
 - A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You can send your notice to privacy@nessapllc.com. A copy of your DMCA Notification will be sent to the person who uploaded the material addressed in the Notification. Please be advised that under Section 512(f) of the Digital Millennium Copyright Act, you may be held liable for damages and attorneys’ fees if you make material misrepresentations in a DMCA Notification.

7. No Use by Children under 18. You hereby affirm that you are over the age of 18, as these Services are not intended for children under 18. If you are under 18 years of age, then you may not use our Services. You further affirm that you are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement.

8. Term & Termination. This Agreement is effective from the date that you first access our Services and shall remain effective until terminated in accordance with its terms. NESS may immediately terminate this Agreement, and/or your access to and use of our Services, or any portion thereof, at any time and for any reason, with or without cause, without prior notice. You understand that NESS may exercise this right in its sole discretion, and this right shall be in addition to and not in substitution for any other rights and remedies available to NESS. This Agreement will also terminate automatically if you fail to comply with any term or provision of this Agreement. Upon termination of this Agreement by either party, your right to use our Services shall immediately cease, and you shall destroy all copies of information that you have obtained from our Services, whether made under the terms of this Agreement or otherwise. All disclaimers and all limitations of liability and all NESS rights of ownership shall survive any termination.

9. Disclaimers. OUR SERVICES ARE PROVIDED “AS IS” AND “WITH ALL FAULTS” AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND ANY WARRANTIES THAT THE INFORMATION AND SERVICES ARE CURRENT AND/OR UP-TO-DATE ARE HEREBY EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

THERE IS NO WARRANTY, REPRESENTATION OR GUARANTEE THAT OUR SERVICES, OR YOUR USE OF OUR SERVICES, WILL BE UNINTERRUPTED, COMPLETE, ACCURATE, CURRENT, RELIABLE, ERROR-FREE, SECURE, OR THAT ANY PROBLEMS WILL BE CORRECTED, OR THAT OUR SERVICES, OR ANY INFORMATION OR OTHER MATERIAL ACCESSIBLE FROM OUR SERVICES, IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION REGARDING THE USE OF, OR THE RESULTS OF THE USE OF OUR SERVICES, AND YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF OUR SERVICES AND INFORMATION AND YOUR RELIANCE THEREON.

10. Liability. NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OF ANY KIND, NEITHER NESS NOR ANY OF ITS AGENTS, SUCCESSORS, OR ASSIGNS, NOR NESS MEMBERS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES, ARE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, LOST SAVINGS, OR LOSS OF DATA) OR LIABILITIES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY MANNER TO OUR SERVICES, INFORMATION, AND/OR ANY LINKED PRODUCTS AND SERVICES, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES. **YOUR SOLE REMEDY WITH RESPECT TO ANY CLAIMS RELATED TO THESE SERVICES, THE INFORMATION, OR ANY LINKED PRODUCTS AND SERVICES IS TO STOP USING OUR SERVICES, OR LINKED SERVICES, AS APPLICABLE AND A FULL REFUND OF THE FEES PAID FOR THE SERVICES.**

NEITHER **NESS** NOR ANY OF ITS AGENTS, SUCCESSORS, OR ASSIGNS, NOR **NESS'S** MEMBERS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES WILL HAVE ANY LIABILITY TO YOU FOR ANY DAMAGES, EXPENSES OR OTHER LIABILITY INCURRED BY YOU AS A RESULT OF ANY INACCURACY, INCOMPLETENESS OR MISREPRESENTATION OF ANY INFORMATION, CONTENT, POSTINGS.

11. Indemnification. You agree to fully indemnify, defend, and hold NESS it's agents, successors, and assigns and NESS's directors, officers, employees, consultants, and other representatives, harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees), and other expenses that arise directly or indirectly out of or from: (a) your breach of this Agreement; (b) any allegation that any materials you submit to us or transmit to our Services infringe or otherwise violate the copyright, patent, trademark, trade secret, or other intellectual property or other rights of any third party; (c) your activities in connection with our Services or other Services to which our Services are linked; and/or (d) your negligence or willful misconduct.

12. Other Jurisdictions. NESS makes no representation that our Services operate (or are legally permitted to operate) in all geographic areas, or that our Services or Information are appropriate or available for use in other locations. Accessing our Services from territories where our Services or any content or functionality of our Services or portion thereof is illegal is expressly prohibited. If you choose to access our Services, you agree and acknowledge that you do so on your own initiative and at your own risk, and that you are solely responsible for compliance with all applicable laws.

13. Notice. By use of our Services, you consent to receive electronic communications from NESS. You also agree that any such communications satisfy any legal requirement to make such communications in writing under this Agreement or under any applicable laws or regulations. Specifically, we may provide notice to you by sending an email to the address that you provided as part of your registration for our Products and Services. Any notice to NESS will be provided by both (a) send via an email to legal@nessapllc.com and (b) providing a copy by certified mail, return receipt requested to: NESS Inc., 90 State Street, STE 700 Office 40 Albany, NY 12207, ATTN: Legal.

14. No Waiver. No delay or omission by either party in exercising any rights under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

15. Assignment. Neither this Agreement nor any right, obligation, or remedy hereunder is assignable, transferable, delegable, or sublicensable by you except with NESS' s prior written consent, and any attempted assignment, transfer, delegation, or sublicense shall be null and void. NESS may assign, transfer, or delegate this Agreement or any right or obligation or

remedy hereunder in its sole discretion.

16. Right to Change Terms. We reserve the right at any time, with or without cause, to (a) change the terms and conditions of this Agreement; (b) change our Services; or (c) deny or terminate your use of and/or access to our Services. Any changes we make will be effective immediately upon our making such changes to our Services, with or without additional notice to you. You agree that your continued use of our Services after such changes constitutes your acceptance of such changes. You hereby acknowledge that you have carefully read all the terms and conditions of our Privacy Policy (which can be accessed at <https://www.nessapplc.com/privacy>) and agree to all such terms and conditions. Be sure to return to this page periodically to ensure familiarity with the most current version of this Agreement. YOUR CONTINUED USE OF OUR SERVICES AFTER SUCH POSTING MEANS YOU ACCEPT AND AGREE TO BE BOUND BY THE MODIFIED TERMS OF USE.

17. Mediation and Arbitration. Any controversy between the Parties to this Agreement involving the construction or application of any of the terms, provisions, or conditions of this Agreement, shall on written request of either party served on the other, be submitted first to mediation and then if still unresolved to binding arbitration. Said mediation or binding arbitration shall comply with and be governed by the provisions of the American Arbitration Association for Commercial Disputes unless the Parties stipulate otherwise. The attorneys' fees and costs of arbitration shall be borne by the losing party unless the Parties stipulate otherwise, or in such proportions, as the arbitrator shall decide.

18. Governing Law & Venue. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of Texas. The Courts of Harris County, Texas shall be the exclusive forum for any mediation, arbitration, litigation, or dispute resolution.

19. Class Action Waiver: To the maximum extent permitted by applicable law, You and NESS agree to only bring Disputes in an individual capacity and shall not 1. seek to bring, join, or participate in any class or representative action, collective or class-wide arbitration, or any other action where another individual or entity acts in a representative capacity (e.g., private attorney general actions); or 2. consolidate or combine individual proceedings or permit an arbitrator to do so without the express consent of all parties to this Agreement and all other actions or arbitrations.

20. Enforceability. If any provision of this Agreement is found to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

21. Entire Agreement. This Agreement, along with the Privacy Policy, constitutes the entire agreement with respect to the relationship between NESS and you and supersedes all prior agreements, whether written or oral, concerning such relationship. This Agreement may not be changed, waived, or modified except by NESS as provided herein or otherwise by written instrument signed by NESS.