



# Postini - Customer Profile

Start Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ (Registration Date)

NAME: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

URL: www. \_\_\_\_\_

EMAIL ADDRESS(s):	ALIASES (IF APPLICABLE - 5 MAX):	POSTINI:
_____	_____	[ ]
_____	_____	[ ]
_____	_____	[ ]
_____	_____	[ ]
_____	_____	[ ]
_____	_____	[ ]
_____	_____	[ ]
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### Summary of Services:

- Setup fee per domain (one time) \$ 25
- Standard SPAM filtering: \$1/month/email account # of accounts: \_\_\_\_\_ x \$1ea. \$ \_\_\_\_\_
- Mobile SPAM filtering: \$5/month/email account # of accounts: \_\_\_\_\_ x \$5ea. \$ \_\_\_\_\_
- Off-Location Message archiving \$ \_\_\_\_\_
- Message Encryption \$ \_\_\_\_\_
- Email Spooling (In the event of disaster or planned maintenance - your email will never go down) \$ \_\_\_\_\_

### Payment Terms:

Postini fees are billed quarterly in advance with hosting invoice (when applicable), additional service fees are billed on the following billing cycle invoice. Termination for non-payment will occur within 30 days adter due date of invoice. Reactivation fees apply (\$25/incident). There will be a \$35 service fee billed for all returned checks. All payment are made payable to IE Entertainment.



## POSTINI USER AGREEMENT

### 1. FEES, ACTIVATION, BILLING START DATE, CANCELTION

- a) FEES AND ACTIVATION. The amount that is indicated on page 1: 'Pricing Overview' for this agreement represents the setup fee and amount that is due from the Customer each month.
- b) FEES. IE Entertainment shall have the right to revise the per user fee or monthly minimum (when applicable) at any time during the initial term of this agreement by providing notice via email to the customer thirty (30) days prior to the next billing cycle (quarterly). All fees are due on or before the first day of the billing cycle as listed on the quarterly invoice.
- c) BILLING AND START DATE. Each recurring billing period started on the first day of the quarterly cycle.
- d) TERMINATION DATE. Termination date of this agreement shall be twelve (12) calendar months from the billing start date, except as provided by section 2, renewal.
- e) CANCELLATION. Customer may cancel this agreement at any time provided IE Entertainment has received and acknowledged a written notice of cancellation, not less than (15) business days prior to the next billing period. A billing period is quarterly based upon the start date of your hosting contract.

### 2. RENEWAL

- a) This agreement shall be renewed automatically for a period of (12) months from the termination date of this agreement.
- b) IE Entertainment shall have the right to revise the per user fee or minimum billing (when applicable) on the renewal of the term date
- c) Current terms and conditions will apply and may or may not have been superceded in its entirety or in parts hereof.

### 3. INTELLECTUAL AND PROPERTY RIGHTS – CHANGES

IE Entertainment maintains thru Postini all Intellectual and Property rights to the Postini services that it resells to the customer. IE Entertainment reserves the right to make changes, provide upgrades or terminations of the Postini Services at any time as provided by Postini. Postini owns worldwide right, title and interest in and to the services, included in Intellectual Property Rights therein. Nothing in this Agreement to otherwise will be deemed to grant to customer an ownership interest in the services, in whole or in part.

### 4. WARRANTY

Customer understands and acknowledges that there is no guarantee that all spam and all viruses will be eliminated and that legitimate email will not be occasionally quarantined as spam, and that the above warranty does NOT include such promises. Further, disaster recovery services are provided only up to the spooling level selected and purchased by the customer (when applicable) and is such spooling levels are exceeded, messages may bounce back to the sender.

### 5. DISCLAIMER

Except as set forth in this agreement, IE Entertainment disclaims all warranties with regard to service, including but not limited to all implied warranties of fitness for a particular use. IE Entertainment does not endorse any tool of software as being ideal for a particular use. In addition, IE Entertainment offers no guarantees or warranties with regard to the results of using the Postini services.

### 6. CONFIDENTIALITY

- a) IE Entertainment and customer both acknowledge that in the course of this agreement, either party may obtain certain confidential and/or propriety information. Each party hereby agrees that all such information communicated to it by the other party, it's affiliates, or customers, whether before or after the Effective Date, shall be used only for the purpose of this agreement and shall not be disclosed without prior written consent of the other party, except as may be necessary by reason of legal, accounting, or regulatory requirements beyond either party's reasonable control. For clarity, Customer's Confidential Information shall also include customer's emails that are subject to the services.
- b) The obligations of this Section 6 shall not apply to Confidential information that (1) was in the possession of, or was rightfully known by a receiving party, without obligation to maintain its confidentiality, prior to the time of disclosure; (2) is or becomes generally known to the public without violation of this Agreement; or (3) is obtained by a receiving party in good faith from a third party having the right to disclose it without an obligation of confidentiality.
- c) Each party hereby agrees that during the term of this Agreement and after the expiration of this Agreement, it will not make any such Confidential Information available to any third party and will not use the other's Confidential Information for any purposes other than to exercise its rights and perform its obligations under this Agreement.
- d) IE Entertainment acknowledges that within its own Agreement with Postini, Inc., that Postini further agrees that it will not change or copy Customer's email, and it will not read or distribute Customer's email except as required to perform the services. Postini hereby agrees that it has implemented industry standard procedures to: (1) ensure the security and confidentiality of Customer's Confidential Information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information. If this Contract is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the parties agree to comply with the applicable laws that there under and shall negotiate in good faith, if necessary, to execute any other documents that may be required to comply with such applicable laws.



## 7. SERVICE SUPPORT

All support will be limited to the usage of the Postini Service provided to the Customer, and will not include any support on the other Customer provisioned services.

## 8. ACCEPTABLE USE POLICY (AUP)

Customer agrees that in addition to those obligations that may be set forth elsewhere in the Agreement: Customer may provision Postini services provided by IE Entertainment to and acquire compensation from its individual consumer customers, hosted email or managed email service customers; (b) Customer agrees that it shall not resell the Services either directly or through a third party; (c) For each mailbox that the Customer will be routing email through the Postini data centers, Customer shall establish a Message Center Account (MCA) in the Postini Message Center (c)(1) Excludes non-account virus filtering; (d) Customer shall not allow more than five (5) alternative addresses/aliases for each MCA in the Postini Message Center; (d)(2) overages may be deleted without the consent of the customer; (e) Customer is and will remain solely responsible for the complying with all laws, rules and regulations regarding the management and administration of its email system, including but not limited to, obtaining consent and/or acknowledgement from its employees and service provider (if applicable) in managing its email system; (f) If the Customer fails to comply with the obligations set forth in this Section 8, IE Entertainment shall inform Customer and reserves the right to suspend or limit the services until such failure is remedied. Notwithstanding the foregoing, the failure to the Customer to comply with the obligations set forth in this Section 8 and at the sole discretion of IE Entertainment, deem the failures as a breach of this Agreement, (g) IE Entertainment reserves the right to make changes to this AUP at any time.

## 9. DAMAGES

Customer agrees and accepts that (a) IE Entertainment assumes no responsibility for any problems or damages that may occur in the Customer's hardware or software that resides on the Customer's hardware. IE Entertainment and Postini will have no liability for a claim of any kind to the extent that it results for the following (each a 'Damage Exclusion'): (i) the combination, operation or use of the Services with equipment, devices, software or data not supplied by Postini, if a claim could not have occurred but for such combination, operation or use; or (ii) Customer's use of the Services other than in accordance of this Agreement.

## 10. LIMITATIONS OF LIABILITY

IE Entertainment shall have no agreement of otherwise for special, incidental, consequential, punitive or exemplary damages even if IE Entertainment has been advised of the possibility of such damages. (a) in no event shall IE Entertainment's liability for any reason and upon any cause of action whatsoever exceed the Monthly Minimum (if applicable) during any 12-month period preceding the term of this Agreement. (b) Neither party shall be liable to the other pursuant to this Agreement for any amounts representing loss of profits or loss of business, loss of goodwill or loss of data; (c) Customer fully agrees and understands that the service provided in through that of the Postini operations centers and no directly form IE Entertainment which only resells the Postini services within its own terms and Agreement with Postini (thru FSM Marketing Group, Inc). (d) Customer acknowledges and agrees that IE Entertainment and Postini's responsibilities and liability do not extend to the internal management of Customer's email system and that Postini is merely a data-processor and does not control and is not responsible for the management or administration of Customer's email and/or its data.

## 11. FORCE MAJEURE

IE Entertainment and its affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives shall not be considered in default under any provision of this Agreement by any reason of any delay or failure in its performance of its obligations if such delay or failure is caused by events beyond its reasonable control, including but not limited to acts of nature or the public enemy; riots or insurrections; war; accidents; floods; storms; explosions; fire; strikes; earthquakes; labor difficulties (whether or not the party is in a position to concede to such demands); material shortages; embargoes; judicial action; terrorism; governmental action of civil or military and Domain Name Server (DNS) issues outside the direct control of IE Entertainment.

## 12. ASSIGNMENT

Customer may not assign, without prior written consent of IE Entertainment, its rights, duties or obligations under this Agreement, in whole or in part, to any person or entity. Any such attempted assignment or sub-license shall be void and shall constitute a material breach of this Agreement.

## 13. WAIVER

The waiver of failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver for any further right hereunder.

## 14. ENTIRE AGREEMENT

This agreement, Exhibits and Addendum(s) attached hereto constitute and entire Agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing between the parties hereto are expressly canceled.

## 15. GOVERNING LAW

This agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts on law. Both parties consent to the jurisdiction of the State of Federal courts located in Los Angeles, California.



## 16. SEVERABILITY

If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

## 17. ENFORCEABILITY

If one or more of the provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of this Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of this Agreement shall be enforceable in accordance with its terms.

## 18. NOTICES

All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All notices will be sent to Customer to the address set forth in the 'Customer Profile Sheet', and to IE Entertainment to addresses set forth in the footers of this Agreement or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

## 19. INDEMNITY

**IE Entertainment Indemnity:** IE Entertainment will indemnify and hold harmless Customer and its affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against any and all costs, losses, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including but without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of or are incurred in connection with: (i) IE Entertainment's performance or failure of performance under this Agreement and any direct or indirect results thereof; (ii) IE Entertainment's lawful or unlawful acts or omissions (or those of any IE Entertainment's employees or agents, whether or not such acts are within the scope of employment of such employees or agents) relating to the sale, marketing, advertisements, promotion or distribution of Services and Products, (iii) the breach of any of IE Entertainment's representations or warranties herein; all purchases, contacts, debts and/or obligations made by IE Entertainment; (iv) the failure of IE Entertainment to comply with, or any actual or alleged violation; (v) the failure of IE Entertainment to comply with any provision of this Agreement; (vi) the failure of IE Entertainment to collect adequate taxes and remit same to as required herein; (vii) any claim brought by IE Entertainment's employees for agents for compensation and/or damages arising out of the expiration or termination of this Agreement; or (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks.

**Customer Indemnity:** Customer shall indemnify, defend and hold harmless IE Entertainment and its affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against any and all costs, losses, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including but without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of or are incurred in connection with: (i) Customer's performance or failure of performance under this Agreement and any direct or indirect results thereof; (ii) Customer's lawful or unlawful acts or omissions (or those of any Customer's employees or agents, whether or not such acts are within the scope of employment of such employees or agents) relating to the sale, marketing, advertisements, promotion or distribution of Services and Products, (iii) the breach of any of Customer's representations or warranties herein; all purchases, contacts, debts and/or obligations made by Customer; (iv) the failure of Customer to comply with, or any actual or alleged violation; (v) the failure of Customer to comply with any provision of this Agreement; (vi) the failure of Customer to collect adequate taxes and remit same to as required herein; (vii) any claim brought by Customer's employees for agents for compensation and/or damages arising out of the expiration or termination of this Agreement; or (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks.

## 20. COUNTERPARTS – DULY AUTHORIZED

- a) This Agreement may be executed simultaneously in two or more counterparts, each counterpart shall be deemed to be an original, and all counterparts individually or together shall constitute one and the same instrument. Each party represents and warrants that the person whose signature appears on the customer Overview sheet is duly authorized to enter into this Agreement on behalf of the party.
- b) The Parties agree that receipt of a fully executed copy of this Agreement via facsimile transmission shall be binding, and may be used as admissible evidence that the party so transmitting intends to be bound by the terms set forth herein. In the event such facsimile transmission occurs, then the party so sending shall send the executed original(s) of the Agreement via priority or regular mail postmarked within 10 (ten) business days of the facsimile to the other party for final execution.



**AGREED AND ACCEPTED:**

By the Customer signing this Agreement, the signing agent certifies their binding authority and that the Customer has received, understands and agrees to all of the components and has executed this Agreement on the date set forth below.

**COMPANY:** \_\_\_\_\_

**IE ENTERTAINMENT, INC.**

**BY:** \_\_\_\_\_  
**(Signature)**

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME: De Eldridge**

**TITLE:** \_\_\_\_\_

**TITLE: President**

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

To commence business please sign and fax all pages to: i.e. entertainment, inc.: **818-487-2506**