

Terms of Service

Last Updated: December 30th, 2017

These Terms of Service (“**Terms**”) apply to your access to and use of the websites, applications and other online products and services, including email services, marketing services, review and message boards and various other message communication applications (collectively, our “**Services**”) provided by Monster Creative, LLC. (“**Monstrous.Email**”, “**we**”, or “**us**”). **By logging into Monstrous.Email you indicate your acceptance of these Terms, or otherwise accessing or using the Services, you agree to these Terms**, and to use our Services in accordance with our Acceptable Use Policy (<https://monstrous.email/legal/me-acceptable-use-policy.pdf>), which is incorporated by reference into these Terms. **If you do not agree to these Terms, including the mandatory arbitration provision and class action waiver in Section 18, do not access or use our Services.** In addition to these Terms, we may ask you to accept additional terms that apply to specific features, products or services. To the extent any additional terms conflict with these Terms, the additional terms govern with respect to your access to or use of the applicable feature, product or service. If you have any questions about these Terms or our Services, please contact us at info@monstrous.email.

1) Eligibility and Authority

You must be at 18 years of age or older to access or use our Services. If you are accessing or using our Services on behalf of another person or entity, you represent that you are authorized to accept these Terms on that person or entity’s behalf and that the person or entity agrees to be responsible to us if you or the other person or entity violates these Terms.

2) Accounts; Account Security; Electronic Communications

You will need to register for an account to access some or all of our Services. If you register for an account, you must provide accurate account information and promptly update this information if it changes. You also must maintain the security of your account, not share your account credentials, and promptly notify us if you discover or suspect that someone has accessed your account without your permission. By creating an Monstrous.Email account, you consent to receive electronic communications from Monstrous.Email (e.g., via email or by posting notices on our Services). These communications may include notices about your account (e.g., payment authorizations, password changes and other transactional information) and are part of your relationship with us. You agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including, but not limited to, that such communications be in writing.

3) Privacy

Please refer to our Privacy Policy (<https://monstrous.email/legal/me-privacy-policy.pdf>) for information about how we collect, use and disclose information about you.

4) Our Services; License.

Our Services may allow you and other users to create, post, store and share marketing or other communications content, including email, text or SMS messages, photos, videos, software and other materials, and review or message boards (collectively, "**Marketing Content**"). Except for the license you grant below, you retain all rights in and to your Marketing Content, as between you and Monstrous.Email. You grant Monstrous.Email a nonexclusive, royalty-free, worldwide, fully-paid, and sub-licensable license to use, reproduce, adapt, publish, translate, distribute, and display your Message Content to the recipients or audience designated by you or otherwise in accordance with the settings you specify in the Services. You may not to create, post, store or share any Message Content that violates these Terms, including our Acceptable Use Policy (<http://monstrous.email/legal/me-acceptable-use-policy.pdf>), or for which you do not have all the rights necessary to grant us the license described above. When using the Services, you may import data regarding your clients ("Client Data"). We use Client Data only to provide Services to you and at your direction, and do not disclose Client Data to third parties, except as follows:

- We may share Client Data with our third party service providers to provide our Services or administer the site.
- If any portion of Monstrous.Email is sold, Client Data may be part of the business assets we transfer. Client Data also may be disclosed if Monstrous.Email is considering or completes the financing, securitization, insuring, sale, assignment or other transfer of all or part of the company.
- We may disclose Client Data as we reasonably believe is necessary to comply with any judicial or governmental subpoenas, warrants or orders.
- We reserve the right to use, disclose and share your information and Client Data to investigate, prevent or take action with respect to any potential or actual fraud, illegal activities, circumstances which threaten the physical safety of any person, violations of these Terms of Service or as otherwise required by law.

5) Prohibited Conduct

5.1) Prohibited Activities on the Services.

You will not violate any applicable law, contract, intellectual property or other third-party right or commit a tort, and you are solely responsible for your conduct while accessing or using our Services. When you access or use our Services, you will not:

- Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- Impersonate any person or entity, including without limitation, any Monstrous.Email official, employee, or falsely state or otherwise misrepresent your affiliation with such a person or entity;
- Use or attempt to use another user's account without authorization from that user and Monstrous.Email;

- Access the Services by any means other than through the standard industry-accepted or Monstrous.Email-approved application program interfaces;
- Use our Services in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying our Services or that could damage, disable, overburden or impair the functioning of our Services in any manner;
- Delete or revise any material, including Marketing Content, posted by another person or entity;
- Delete or modify any author attributions, legal notices or proprietary designations or labels that you upload to any communication feature;
- Register, subscribe, attempt to register or subscribe, unsubscribe or attempt to unsubscribe, any party for any Monstrous.Email product or Service if you are not expressly authorized by such party to do so;
- Reverse engineer any aspect of our Services or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any part of our Services;
- Attempt to circumvent any content-filtering techniques we employ or attempt to access any feature or area of our Services that you are not authorized to access;
- Develop or use any third-party applications that interact with our Services without our prior written consent, including any scripts designed to scrape or extract data from our Services;
- Bypass or ignore instructions contained in our robots.txt file that controls automated access to portions of our Services;
- Export or attempt to export certain data points, including but not limited to EGEO and ERJA data, that cannot be exported from the Services; or
- Use our Services for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.

5.2) Compliance with Laws

You represent and warrant that your access to and use of the Services will comply with all applicable laws, rules and regulations, including but not limited to those that relate to privacy and data protection and to the sending of electronic communications. You further represent and warrant that you have all necessary permissions to allow Monstrous.Email to process and send Marketing Content and communications to customers, users or followers who consent to receiving marketing messages from you (“**Subscribers**”) on your behalf. You (and not Monstrous.Email) are responsible for ensuring that you meet all notice and consent obligations for sending communications to individuals in the jurisdictions where they reside. For more information and best practices tips, please see our Consent page (<http://monstrous.email/legal/me-consent-policy.pdf>). You are solely responsible for determining whether our Services are suitable for use in light of any laws and regulations that govern your entity, industry, or relationship with your own Subscribers, including but not limited to consumer protection, privacy, advertising, intellectual property or other laws. You may not use our Services for any unlawful or discriminatory activities, including acts prohibited by the Federal Trade Commission Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, or other laws that apply to commerce.

5.3 Reporting Abuse

If you think anyone using the Services is violating any of these Terms, please notify us immediately by emailing info@monstrous.email.

6) Terms of Sale

6.1) Subscriptions

When you sign up for our Services, you agree to a monthly subscription contract with Monstrous.Email. WHEN YOU REGISTER FOR A SUBSCRIPTION, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT (A) Monstrous.Email (OR OUR THIRD PARTY PAYMENT PROCESSOR) IS AUTHORIZED TO CHARGE YOU ON A MONTHLY BASIS FOR YOUR SUBSCRIPTION (IN ADDITION TO ANY APPLICABLE TAXES AND OTHER CHARGES) FOR AS LONG AS YOUR SUBSCRIPTION CONTINUES, AND (B) YOUR SUBSCRIPTION IS CONTINUOUS UNTIL YOU CANCEL IT OR WE SUSPEND OR STOP PROVIDING ACCESS TO THE SERVICES IN ACCORDANCE WITH THESE TERMS. For more information about pricing and subscription plans.

6.2) Cancellation.

You may cancel your subscription at any time by logging into your account and following the instructions on your account dashboard for cancellation or by contacting us at info@monstrous.email. Such cancellation notice must be sent by the designated account owner or an authorized signatory. Inactivity does not constitute automatic cancellation, so unless you cancel your account in accordance with this section, you will continue to be charged for subscription to the Services. All cancellation requests will take effect at the end of then-current subscription period in which the cancellation request is made, and you will be responsible for all fees and any applicable taxes and other charges rendered up through the cancellation date. In the event you cancel your subscription, please note that we may still send you promotional communications about Monstrous.Email, unless you opt out of receiving those communications by following the unsubscribe instructions provided therein.

6.3) One-Time Purchases

Some features of our Services, such as templates, may be offered as a standalone, non-subscription products. We will charge your payment method at the time of such purchases as a one-time purchase.

6.4) Free Trials

From time to time, to the extent legally permitted, we may offer free trials of certain subscriptions for specified period of time without payment. If we offer you a free trial, the specific terms of your free trial will be provided in the marketing materials describing the particular trial or at registration. We reserve the right to modify or terminate free trials at any time, without notice and in our sole discretion.

6.5) Payment and Billing Information

By providing a credit card or other payment method that we accept, you represent and warrant that you are authorized to use the designated payment method. In addition, you authorize (or our third party payment processor) to charge your payment method for the total amount of your subscription fees (and applicable taxes and other charges). If the payment method cannot be verified, is invalid or is otherwise not acceptable, your account may be suspended until your payment is processed. You must resolve any problem we encounter in order to proceed. You acknowledge that the amount billed may vary due to promotional offers, changes to your subscription or changes in applicable taxes or other charges, and you authorize us (or our third party payment processor) to charge your payment method for the corresponding amount.

7) Limited License; Copyright and Trademark

Our Services and the text, graphics, images, photographs, videos, illustrations, trademarks, trade names, service marks, logos, slogans and other content contained therein (collectively, the “**Monstrous.Email Content**”) are owned by or licensed to Monstrous.Email and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, Monstrous.Email and our licensors reserve all rights in and to our Services and the Monstrous.Email Content. You are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Services and Monstrous.Email Content for (i) your own personal use or (ii) if you are a business or organization, to communicate about your business or organization with your Subscribers. However, such license is subject to these Terms and does not include any right to (a) sell, resell or commercially use our Services or Monstrous.Email Content; (b) copy, reproduce, distribute, publicly perform or publicly display Monstrous.Email Content, except as expressly permitted by us or our licensors; (c) modify the Monstrous.Email Content, remove any proprietary rights notices or markings, or otherwise make any derivative uses of our Services or Monstrous.Email Content; (d) use any data mining, robots or similar data gathering or extraction methods; and (e) use our Services or Monstrous.Email Content other than for their intended purposes. Any use of our Services or Monstrous.Email Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the license granted herein.

8) Third Party Content

We may display content, advertisements and promotions from third parties through the Services (“**Third Party Content**”). We do not control, endorse or adopt any Third Party Content, and we make no representations or warranties of any kind regarding such Third Party Content, including, without limitation, regarding its accuracy or completeness. You acknowledge and agree that your interactions with third parties providing Third Party Content are solely between you and such third parties.

9) Feedback

Any questions, comments, suggestions, ideas, original or creative materials or other information you submit about Monstrous.Email or our products or Services (collectively, “**Feedback**”), is non-confidential and will become the sole property of Monstrous.Email. We will own exclusive rights, including, without limitation, all intellectual property rights, in and to Feedback and will be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

10) Copyright Complaints

We have a policy of limiting access to our Services and terminating the accounts of users who infringe the intellectual property rights of others. If you believe that anything on our Services infringes

any copyright that you own or control, you may notify Monstrous.Email's Designated Agent as follows:

Designated Agent: Mac Rogers

Address: 18010 R. Plaza Suite 102 Omaha, NE 68135

Telephone Number: (800) 601-6765

E-Mail Address: info@info@monstrous.email

Please see [17 U.S.C. §512\(c\)\(3\)](#) for the requirements of a proper notification. Also, please note that if you knowingly misrepresent that any activity or material on our Services is infringing, you may be liable to Monstrous.Email for certain costs and damages.

11) Indemnification

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless Monstrous.Email, our parent, subsidiaries and affiliates, and each of our respective officers, directors, agents, partners and employees (individually and collectively, the "**Monstrous.Email Parties**") from and against any loss, liability, claim, demand, damages, expenses or costs ("**Claims**") arising out of or related to (a) your access to or use of our Services; (b) your Marketing Content or Feedback; (c) your violation of these Terms; (d) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with our Services. You agree to promptly notify Monstrous.Email Parties of any third party Claims, cooperate with Monstrous.Email Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys' fees). You also agree that Monstrous.Email Parties will have control of the defense or settlement of any third party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and Monstrous.Email or the other Monstrous.Email Parties.

12) Disclaimers

We do not control, endorse or take responsibility for any Marketing Content or third-party content available on or linked to by our Services. Your use of our Services is at your sole risk. Our Services are provided "as is" and "as available" without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, Monstrous.Email does not represent or warrant that our Services are accurate, complete, reliable, current or error-free. While Monstrous.Email attempts to make your access to and use of our Services safe, we cannot and do not represent or warrant that our Services or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Services.

13) Limitation of Liability

Monstrous.Email and the other Monstrous.Email Parties will not be liable to you under any theory of liability—whether based in contract, tort, negligence, warranty, strict liability or

otherwise—for any indirect, consequential, exemplary, incidental, punitive or special damages or lost profits, even if Monstrous.Email or the other Monstrous.Email Parties have been advised of the possibility of such damages. The total liability of Monstrous.Email and the other Monstrous.Email Parties, for any claim arising out of or relating to these Terms or our Services, regardless of the form of the action, is limited to the amount paid, if any, by you to access or use our Services. The limitations set forth in this section will not limit or exclude liability for the gross negligence, fraud or intentional misconduct of Monstrous.Email or the other Monstrous.Email Parties or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

14) Release

To the fullest extent permitted by applicable law, you release Monstrous.Email and the other Monstrous.Email Parties from responsibility, liability, claims, demands, and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between users and the acts or omissions of third parties. **You expressly waive any rights you may have under California Civil Code § 1542 as well as any other statute or common law principles that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.**

15) Transfer and Processing Data;

By accessing or using our Services, you consent to the processing, transfer and storage of information about you in and to the United States and other countries, where you may not have the same rights and protections as you do under local law.

16) Export Compliance

All or part of our Services may be subject to U.S. export control and economic sanctions laws (“**Export Controls**”). You agree to abide by all Export Controls as they relate to your access and use of our Services. You may not access or use our Services if you are located in a jurisdiction where the provision of our Services is prohibited by law (a “**Prohibited Jurisdiction**”), and you may not provide access to our Services to any government, entity or individual located in any Prohibited Jurisdiction. You represent and warrant that: (a) you are not named on any U.S. government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) you are not a national of, or a company registered in, any Prohibited Jurisdiction; and (c) you will comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which you are located.

17) Commercial Items

If acquired by any agency of the U.S. Government, such agency acknowledges that (a) the App and Services constitute "commercial computer software" or "commercial computer software documentation" for purposes of 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable; and (b) such agency's rights are limited to those specifically granted under these Terms.

18) Dispute Resolution; Binding Arbitration

Please read the following section carefully because it requires you to arbitrate certain disputes and claims with Monstrous.Email and limits the manner in which you can seek relief from us. Except for small claims disputes in which you or Monstrous.Email seek to bring an individual action in small claims court located in the county of your billing address or disputes in which you or Monstrous.Email seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and Monstrous.Email waive your rights to a jury trial and to have any dispute arising out of or related to these Terms or our Services resolved in court. Instead, all disputes arising out of or relating to these Terms or our Services will be resolved through confidential binding arbitration held in Douglas County, Nebraska in accordance with the Streamlined Arbitration Rules and Procedures ("**Rules**") of the Judicial Arbitration and Mediation Services ("**JAMS**"), which are available on the [JAMS website](#) and hereby incorporated by reference. You either acknowledge and agree that you have read and understand the rules of JAMS or waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason. **You and Monstrous.Email agree that any dispute arising out of or related to these Terms or our Services is personal to you and Monstrous.Email and that any dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding.** You and Monstrous.Email agree that these Terms affect interstate commerce and that the enforceability of this Section 18 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "FAA"), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual. You and Company agree that for any arbitration you initiate, you will pay the filing fee and Company will pay the remaining JAMS fees and costs. For any arbitration initiated by Company, Company will pay all JAMS fees and costs. You and Monstrous.Email agree that the state or federal courts of the State of Nebraska and the United States sitting in Douglas County, Nebraska have exclusive jurisdiction over any appeals and the enforcement of an arbitration award. Any claim arising out of or related to these Terms or our Services must be filed within one year after such claim arose; otherwise, the claim is permanently barred, which means that you and Monstrous.Email will not have the right to assert the claim. You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section 18 by emailing us at info@monsrous.email. In order to be effective, the opt out notice must include your full name and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 19.

19) Governing Law and Venue

These Terms and your access to and use of our Services will be governed by and construed and enforced in accordance with the laws of State of Nebraska, without regard to conflict of law rules or principles (whether of Nebraska or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of Nebraska and the United States, respectively, sitting in Douglas County, Nebraska.

20) Changes to these Terms

We may make changes to these Terms from time to time. If we make changes, we will post the amended Terms to our Services and update the “Last Updated” date above. We may also attempt to notify you by sending an email notification to the address associated with your account or providing notice through our Services. Unless we say otherwise in our notice, the amended Terms will be effective immediately and your continued access to and use of our Services after we provide notice will confirm your acceptance of the changes. If you do not agree to the amended Terms, you must stop accessing and using our Services.

21) Termination

We reserve the right, without notice and in our sole discretion, to terminate your right to access or use our Services. We are not responsible for any loss or harm related to your inability to access or use our Services.

22) Severability

If any provision or part of a provision of these Terms is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.

23) Miscellaneous

These Terms constitute the entire agreement between you and Monstrous.Email relating to your access to and use of our Services. The failure of Monstrous.Email to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third party beneficiary rights upon any other person or entity. This Agreement may not be assigned or transferred by you except with our prior written consent.