

jMailPro Terms of Use

Welcome to jMailPro! We hope that you will enjoy our email marketing online services that will, among other things, enable you to collect visitor email addresses and to create, launch, and manage online email campaigns (“Services”).

These terms of use (“Terms of Use”) are a legal agreement between (i) jMailPro. (“we”, “us” or “our”) and (ii) you (corporation, organization or other legal entity) (“Organization”) and each of the individuals (e.g., employees or consultants) acting on your behalf (the Organization and the individuals, collectively “you” or “your”), setting forth, among other things, the terms and conditions for the provision of the Services by jMailPro to you.

Agreement; Amendments to the Terms of Use

Agreement. By accessing and using the Services, you accept and agree to the provisions of the Terms of Use without any reservations, modifications, additions or deletions. If you do not agree to any provisions contained in the Terms of Use, you are not authorized to use the Services. You may be denied access to the Services, with or without notice to you, if you do not comply with any provisions of the Terms of Use. jMailPro is a monthly service agreement, if you wish to cancel your jMailPro service, you must do so by email at helpdesk@jdynamic.com

Amendments. We reserve the right to update and change the Terms of Use from time to time and will post a copy of the amended Terms of Use on the [jdynamic](http://jdynamic.com) website. If you do not agree to, or cannot comply with, the Terms of Use as amended, you are not authorized to use the Services. You will be deemed to have accepted the Terms of Use, as amended, if you continue to use the Services after any such changes. If you wish to cancel your account because you do not agree with the Terms of Use, please contact us by email at helpdesk@jdynamic.com

Privacy Policy and Anti-Spam Policy

It is important that you read and understand the terms and conditions. By using our Services, you agree to comply with these policies. Any breach by you of the Privacy Policy or the Anti-Spam Policy shall be considered a breach under the Terms of Use.

Power and Authority

You represent and warrant to us that you have the full right, power and authority to access and use the Services and, to the extent necessary, that you have obtained all necessary corporate or other authorizations or consents to access and use the Services. Thus, if you are an individual (e.g., employee or consultant) acting on behalf of an Organization, you represent and warrant that you have obtained all

necessary authorizations or consents (i.e., you must be an authorized representative) to accept the Terms of Use on behalf of such Organization so that, in addition to yourself, such Organization is bound by the Terms of Use.

Account Terms

- **Registration.** We restrict access of the Services to registered users.
- **Age.** You must be 18 years or older (or age of majority in your country of residence) to use the Services.
- **Account Information.** You must provide true, accurate, current, and complete information about yourself (Organization and/or individual, as the case may be), including but not limited to a valid email address (collectively, your “Account Information”). You agree to update your Account Information as necessary to keep it accurate. You understand and agree that you are solely responsible for maintaining the confidentiality of your Account Information (including passwords) and for restricting access to your hardware device while using the Services. You agree to accept responsibility for all activities that occur under your account.
- **Login and Passwords.** Your login may only be used by yourself. Sharing a login with other people is not permitted. An Organization may create separate logins for as many individual users as it wishes. You are responsible for maintaining the security of your account login and passwords.

Payments and Refunds

- **Credit Card Payment.** Payment for Services will be made by a valid credit card accepted by us, unless other payment arrangements have been made. You hereby authorize us to charge your credit card for such amounts according to our pricing terms.
- **No Refund.** All Services fees paid are non-refundable, unless an account is terminated by us without cause, in which case, a refund may be granted on a pro-rata portion of your prepayment.

Content; Intellectual Property

- **Your Content.** All of your Content must comply with Australia and your local state copyright and other intellectual property or other laws. You must only use images and text you are entitled to use. We claim no intellectual property rights over the material you provide through the Services. Your Content materials remain yours.
- **Sanctions.** We may remove any Content or prohibit any use of the Services we believe may be (or is alleged to be) in violation of the Terms of Use.
- **Our Content and Software.** All content displayed by us as well as all the software (including any source code) used in connection with the Services

are our exclusive property or the property of third parties and is protected by copyright laws.

- **Trademarks.** Our company or other third party names and logos and all related product and service names, design marks, trademarks and slogans that our displayed on or through the Services or used in connection with the Services, are our sole property or the property of our affiliates or licensors (collectively, “Marks”). You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without our prior written consent.
- **No License.** Nothing appearing on or through the Services will be construed as granting you any license, right, title or interest relating to the Marks or other intellectual property used in connection with the Services (collectively, “Intellectual Property”) and the Intellectual Property remains our exclusive property or the property of its owners. Except as stated herein, you agree not to display, copy, reproduce, use or distribute any Intellectual Property without our prior written consent. Also, you cannot mirror any material contained on the Services or made available through the Services.
- **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, we reserve all right, title and interest in and to the Services, including all related intellectual property rights, to the fullest extent possible under applicable laws. You may not assign, transfer or otherwise affect any rights granted to you under the Terms of Use, and any attempt to assign, transfer or otherwise affect any part of your rights under the Terms of Use is void.
- **Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein, (ii) create derivate works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on your own intranets or otherwise for your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- **Feedback.** We shall own all right, title and interest in and to any suggestions, requests or recommendations for improvements or enhancement to the Services or other feedback provided by you relating to the operation of the Services (collectively, “Feedback”). You hereby irrevocably assign all right, title and interest in and to the Feedback to us and waive all your moral rights in the Feedback.

Service Interruptions

- **Interruptions.** You acknowledge that: (i) the provision of Services may be suspended for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including as

a result of power outages, system failures or other interruptions; and (ii) we are entitled, without any liability to you, to suspend access to any portion or all of the Services at any time (a) for scheduled downtime to permit us to conduct maintenance or make modifications to the Services; (b) in the event of a denial of service attack or other attack on the Services or other event that we determine, in our sole discretion, that a risk to the Services, to you or to any of our other users may be created if the Services were not suspended; or (c) in the event that we determine that any Service is prohibited by law or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons (collectively, “Service Interruptions”).

- **No Liability.** We shall have no liability whatsoever for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur as a result of any Service Interruption.

Prohibited Acts; Prohibited Services

- **Prohibited Acts.** So that the Services are available for all users to enjoy, you represent, warrant and covenant that you (including, if you are an Organization, somebody acting on your behalf such as an employee or consultant) (i) will use the Services only in compliance with the Terms of Use (including the Privacy Policy and Anti-Spam Policy) and all applicable laws, including without limitation all privacy laws and anti-spam laws and (ii) will not, and will not or permit or enable third party to:
 - Use automated tools to operate the Services (scripts, etc.);
 - Use the Services to store Social Security Numbers, passwords, security credentials or sensitive personal information;
 - Host images and files on our servers other than those intended for use in your email campaigns;
 - Use the Service to design an email campaign and send it through another means; or
 - Use the Services in a way (including without limitation displaying, posting, transmitting or otherwise making available any Content) that (i) violates the Terms of Use (including, without limitation, through the posting of any Content that violates third party rights or applicable laws including anti-spam laws); (ii) you do not have the right to disclose or make available under any law or under contractual or fiduciary relationships (such as proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements); (iii) is unlawful, infringing, harmful, threatening, tortious, defamatory, libelous, abusive, obscene, invasive of another’s privacy, hateful, fraudulent or malicious; (iv) harasses or advocates harassment of another person; (v) involves the transmission of “junk mail,” “chain letters,” or unsolicited mass mailing or

“spamming” as those terms are normally understood, or as defined in any anti-spam law applicable to you; (vi) involves the sending of any virus, Trojan horse, worm, harmful code, shutdown mechanism or similar mechanism; (vii) promotes information that you know is false, misleading, defamatory or promotes illegal activities or conduct; (viii) solicits passwords, or personal identifying information for commercial or unlawful purposes from other users; (ix) interferes with or disrupts the Services ; (x) collects or “harvests” from or through the Services the names and/or other information of other users for the purpose of transmitting to third parties (including other users of the Services) unsolicited commercial messages; or (xi) otherwise violates any local, national or other applicable laws or regulations including applicable privacy laws, anti-spam laws and regulations.

- **Prohibited Services.** We do not allow Organizations that offer the following types of services, products, or content, to use our Services:
 - Pornography, nudity, escorts or anything sexually explicit
 - Illegal goods or services
 - Pharmaceutical products
 - Work from home opportunities
 - Online trading
 - Gambling
 - Multi-level marketing
 - Affiliate marketing
 - Credit repair, Mortgages and/or Loans
 - List brokers or List rental services
 - Any other Content that we deem inappropriate
- **Sanctions.** ANY USE OF THE SERVICES (I) IN BREACH OF THE TERMS OF USE (INCLUDING BUT NOT LIMITED TO THE ABOVE SUBSECTIONS ENTITLED “PROHIBITED ACTS” AND “PROHIBITED SERVICES”, THE PRIVACY POLICY OR THE ANTI-SPAM POLICY) OR (II) THAT IS NOT SPECIFICALLY PERMITTED UNDER THE TERMS OF USE, IS STRICTLY PROHIBITED AND MAY RESULT, AT OUR DISCRETION, IN THE SUSPENSION OR TERMINATION OF YOUR ACCOUNT.

Disclaimer

- **Security.** We endeavour to use reasonable security measures to protect against unauthorized access to your account and Account Information, and to any data, which may be stored by us. We cannot, however, guarantee absolute security of your account or the personal information we collect, and we cannot promise that our security measures will prevent third-party “attackers” from illegally accessing the Services or their content. YOU ACKNOWLEDGE THAT YOUR SUBMISSION OF ANY INFORMATION ON OR THROUGH THE SERVICES IS AT YOUR OWN RISK AND you accept all risks of

unauthorized access to the Services, your Account Information and any other information you provide to us or through the Services. We will not be responsible for any losses arising out of the unauthorized use of your account and you agree to indemnify and hold us harmless, our officers, directors, shareholders, employees, distributors, agents, partners, licensors, information providers and account providers (COLLECTIVELY, “REPRESENTATIVES”), as applicable, for any improper, unauthorized or illegal uses of your account. You agree to immediately notify us of any unauthorized use or your account, or any other breach of security. For the purposes of this Section “Disclaimer” and Section “Limitation of Liability; Indemnity”, “we” or “us” means jMailPro and our Representatives.

- “As is” Basis. THE SERVICES ARE PROVIDED “AS IS”. THE USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WE MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES THAT THE SERVICES WILL BE FREE FROM LOSS, DESTRUCTION, DAMAGE, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND WE DISCLAIM ANY LIABILITY RELATING THERETO.
- Warranty Disclaimer. WE MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES (I) THAT THE SERVICES ARE OR WILL BE ACCURATE, RELIABLE, CURRENT, UNINTERRUPTED OR ERROR FREE OR (II) AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES. IN PARTICULAR, EMAIL DELIVERY TO THE RECIPIENT INBOX IS NOT GUARANTEED. WITHOUT PRIOR NOTICE, WE MAY MODIFY, SUSPEND, OR DISCONTINUE ANY ASPECT OR FEATURE OF THE SERVICES OR YOUR USE OF THE SERVICES. IF WE ELECT TO MODIFY, SUSPEND, OR DISCONTINUE ANY PART OF OR ALL OF THE SERVICES, WE WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY.
- Exclusive Remedy. The sole and exclusive remedy for any failure or NONPERFORMANCE of the Services shall be for US to use commercially reasonable efforts to adjust or repair ANY PORTION OF THE Services THAT CAUSED ANY SUCH FAILURE OR NONPERFORMANCE.

Limitation of Liability; Indemnity

- **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, DELICT, QUASI-DELICT, NEGLIGENCE, CONTRACT, WARRANTY, STRICT LIABILITY OR

ANY OTHER THEORY OF LIABILITY, SHALL WE OR ANY OF OUR REPRESENTATIVES BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE DAMAGES, SPECIAL ADMINISTRATIVE MONETARY PENALTIES OR OTHER PENALTIES OR DAMAGES UNDER ANTI-SPAM LEGISLATION, OR OTHER DAMAGES ARISING OUT OF OR RELATING TO (I) YOUR USE, MISUSE OR INABILITY TO USE THE SERVICES, (II) THE INTERRUPTION, SUSPENSION OR TERMINATION OF ANY PART OF OR ALL THE SERVICES, OR (III) YOUR VIOLATION OF ANY APPLICABLE LAW INCLUDING BUT NOT LIMITED TO ANTI-SPAM LAWS AND EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, WE ARE FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, OUR LIABILITY TO YOU WILL BE LIMITED TO THE AMOUNT PAID FOR THE LAST 3 MONTHS OF SERVICE PRECEEDING THE EVENT GIVING RISE TO THE LIABILITY.

- **Indemnity.** YOU WILL INDEMNIFY AND HOLD US AND OR OUR REPRESENTATIVES HARMLESS WITH RESPECT TO ANY SUITS, CLAIMS OR DEMANDS (INCLUDING REASONABLE LAWYERS' FEES) ARISING OUT OF (I) YOUR BREACH OF THE TERMS OF USE, INCLUDING THE PRIVACY POLICY OR THE ANTI-SPAM POLICY; (II) ANY DAMAGES MADE BY YOU OR THROUGH YOUR USE OF THE SERVICES, INCLUDING THIRD PARTY DAMAGES; AND (III) YOUR USE OR MISUSE OF THE SERVICES.

Termination of Your Account

- **Account.** For the purposes of this Section “Termination of Your Account”, “account” includes, for an Organization, the account of that Organization and all of the accounts of the users of the Services, which act on behalf of such Organization, such as employees and consultants.
- **Termination by You or by Us.** Your account will be automatically terminated at the end of your pre-paid period if you ask us to stop providing the Services to you (you must send us a notice at least 7 days in advance). We reserve the right to modify or discontinue, temporarily or permanently, all or part of the Services, at any time with or without notice, without any liability whatsoever.
- **Termination for Breach.** We may suspend your account immediately in the event of any breach by you (including, if you are an Organization, somebody acting on your behalf such as an employee or consultant) of the Terms of Use, including the Privacy Policy and the Anti-Spam Policy. Specifically, but without limiting the generality of the foregoing, an account will be suspended for malicious use or malicious intention, violation of any applicable laws including anti-spam laws, or any use of the software in a manner for which it is not designed or intended to be used. We will notify you

by email of your account suspension. If the breach is not cured within 72 hours of the notice of suspension, we may, at our sole discretion, terminate immediately your account without incurring any liability whatsoever. If we terminate your account(s) for breach, no refund will be issued.

- **No Liability.** We shall have no liability to you or any third party because of any termination of your account.
- **Consequences of Termination.** All of your content and data used in connection with the Services (collectively, “Content”) will be immediately deleted from our servers upon termination of your account. This information cannot be recovered once your account is terminated.
- **Account Inactive.** If you do not log into a free account for more than 6 months, we reserve the right, at our sole discretion, to classify the account as inactive and terminate it.
- **Survival.** All provisions of the Terms of Use which by their nature should survive expiration or termination shall survive the expiration or termination of your account, including, without limitation, all ownership provisions, warranty disclaimers, limitations of liability and indemnification obligations contained in the Terms of Use.

Miscellaneous

- **Severability.** If any provision of the Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Use will otherwise remain in full force and effect and enforceable.
- **Entire Agreement.** You agree (i) that the Terms of Use (including the Privacy Policy and Anti-Spam Policy) are the complete and exclusive statement of the mutual understanding between you and us and supersede and cancel all previous written and oral agreements, communications, and other understandings relating to the subject matter hereof and (ii) that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under the Terms of Use or existing at law or equity shall be considered a waiver of such right or remedy.
- **No Agency.** No agency, partnership, joint venture, or employment is created as a result of the Terms of Use, and you do not have any authority of any kind to bind us in any respect whatsoever.
- **Subcontract.** We may subcontract, without having to obtain your consent, any or all part of the provision of the Services and our obligations under the Terms of Use.
- **Governing Law; Jurisdiction.** The Terms of Use shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada applicable to agreements made and entirely to be performed within the

Province of Québec, Canada, excluding any rules of private international law or the conflict of laws which would lead to the application of any other laws. Regardless of where you access or use the Services, you agree that any action at law or in equity arising out of or relating to the Terms of Use or your use of the Services shall be filed and adjudicated only in the federal or provincial courts located in the Province of Québec, Canada (district of Montreal), and you hereby irrevocably and unconditionally consent and attorn to the exclusive jurisdiction and venue of such courts over any suit, action or proceeding arising out of the Terms of Use or your access or use of the Services.

- **Language.** The parties hereto acknowledge having expressly required that these Terms of Use, the Privacy Policy and the Anti-Spam Policy are to be drawn up in the English language.