

EMAIL SERVICES AGREEMENT

This Email Services Agreement is entered into as of _____ (the “Effective Date”) between All In One Email, LLC, a Delaware limited liability company with a principal place of business at 10000 Marshall Dr., Lenexa, KS, 66215 (hereafter referenced as “Company” or “we”) and _____, a _____ [corporation/limited liability company] with a principal place of business at _____ (hereafter referenced as “Customer” or “you”). Company and Customer may each also be referenced herein as a “Party” and together, as the “Parties.”

Any capitalized terms not defined herein shall have the meaning set forth in the Company’s Standard Terms and Conditions, located at <https://www.allinoneemail.com/terms-of-services.pdf> (the “Standard Terms”). The Standard Terms, Company’s Data Processing Terms and Conditions located at <https://www.allinoneemail.com/data-processing-agreement.pdf>, the Company’s Privacy Notice located at <https://www.allinoneemail.com/AllinOne-Privacy-Notice.pdf>, and the company’s Acceptable Use Policy located at <https://www.allinoneemail.com/Acceptable-Use-Policy.pdf> are integral to, integrated with and incorporated by reference into this Email Services Agreement, and, along with any exhibits or schedules attached to this Email Services Agreement, are hereafter collectively referenced together with this Email Services Agreement as the “ESA”.

WHEREAS, Company offers a suite of commercial email services in various combinations, packages, modules or subscriptions, hereafter described, to help generate, manage and optimize commercial email campaigns, including through the provision of Plug and Play SMTP Integration, email automations, segmentation, template editors, personalization, analytics and email validation (collectively, referenced hereafter as the “Services”); and

WHEREAS, Customer sends commercial email and desires to utilize the Services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. SCOPE OF SERVICES AND REGISTRATION

- 1.1. Company enables Customers to use the Services and access key metrics, preferences, settings, payments, reporting and other functions through the Company Platform, located on the Company Website. Company may offer services such as marketing tools, analytics, personalization, and other features as part of the Services which may change from time to time, may be offered for free or reduced or promotional pricing for some period of time, or may be subject to additional fees or premium pricing. Additional information shall be provided to Customer, including through notice on the Company Website.
- 1.2. Company reserves the right to suspend, update, modify, change, upgrade, downgrade or discontinue the Services in whole or in part, from time to time, at any time, in the Company’s sole discretion. Company may notify Customer of some or all of such

changes as a courtesy, including through notice on the Company Website.

- 1.3. In order to use the Services, the Customer shall register and create an Account. The Account Information shall be processed and maintained in accordance with the [Company's Privacy Notice](#). Company may, in its sole discretion, refuse to offer access to or use of the Services to any person or entity, and change its eligibility criteria at any time. This provision is void where prohibited by law and this right is revoked in such jurisdictions.
- 1.4. Customer is solely responsible for all activities in its Account, including any activity by an Authorized User. The Customer is solely responsible for selecting and providing access to an Authorized User, and shall, throughout the Term, promptly notify Company in writing (email shall suffice) of the name and contact information of each Authorized User, and including when such person is no longer authorized, so that Company shall at all times have a complete and updated list of all of Customer's Authorized Users.

2. LIMITED LICENSE AND INTELLECTUAL PROPERTY RIGHTS

- 2.1. Company owns, controls, licenses and retains all right, title and interest in and to Company Intellectual Property, including without limitation, the Company Platform and the Services. Other than as expressly stated herein, the ESA reserves and does not transfer, license or sub-license ownership or any other right, title or interest in or to the Company Platform, the Services, Company Intellectual Property or Company Confidential Information to Customer or to any third party.
- 2.2. Subject to the terms of the ESA and the Documentation, Company grants Customer and each Authorized User, throughout the Term, a limited, revocable, non-exclusive, payment-bearing, non-transferable, non-sublicensable, worldwide, right and license to use of the Company Platform and Services, solely for the Customer's own use, in connection with its own business.
- 2.3. Subject to the terms and conditions of the ESA (including but not limited to those set forth in Section 6) and the Documentation, Customer grants Company, throughout the Term, a limited, revocable, non-exclusive, royalty-free, fully paid-up, non-transferable, non-sublicensable, worldwide, right and license to use Customer Data for performance of the ESA.

3. **REPRESENTATIONS AND WARRANTIES.** Each Party hereby represents and warrants that: (i) it is a business entity duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization or formation and has the corporate power and is duly authorized under all applicable laws, regulations, ordinances, and orders of public authorities to carry on its business in all material respects as it is now being conducted; (ii) it has the full legal authority to be engaged by and perform its obligations under this ESA; and (iii) nothing contained in the ESA nor the performance thereof shall place the relevant Party in breach or default of any obligation or other agreement, law or regulation by which it is bound or to which it is subject, or requires the consent of any person or entity.

- 3.1. Company further represents and warrants that: (i) it owns or has the legal rights in the Company Platform and the Services; and (ii) it will use commercially reasonable best

efforts throughout the Term to provide the Services in a timely and professional manner which will conform to and operate in accordance with the Documentation and the terms of this ESA.

- 3.2. Customer further represents, warrants and covenants that: (i) the Account Information tendered at time of registration is complete and accurate and the Account Information shall be promptly updated as necessary to remain complete and accurate at all times throughout the Term; (ii) the Customer Data will not violate any applicable law and the Customer has all required rights and authorizations to upload Customer Data to the Company Platform for the purpose of receiving the Services; (iii) it will use the Services in compliance with this ESA and the Documentation, and without limiting the generality of the foregoing, will comply with the Standard Terms; (iv) it is solely responsible for any content or data uploaded, processed, submitted or transmitted by it through the Services, including any Campaign; (v) it specifically understands and agrees Company has no duty or responsibility to review the Customer Data or any Campaign or any other content uploaded through the Services; (vi) it understands and agrees it is solely responsible for all activities occurring under its Account and shall immediately notify Company in writing if there is reason to believe there may be unauthorized access to Customer's Account or login credentials; (vii) it shall be jointly and severally responsible for any act or omission of any Authorized User in the performance of this ESA.

4. **FEES AND PAYMENTS**

- 4.1. The Services are offered in differing combinations of features, with varying prices and payment terms as detailed on the Company Website at the following pricing page: <https://allinoneemail.com/index.html#pricing>. All prices are published and in charged in United States Dollars.
- 4.2. Payment shall be by major credit card or any other method approved by Company, and shall be charged on a monthly basis at the beginning of each subscription period.
- 4.3. Subscriptions and purchases of Services are nonrefundable, except in the sole discretion of Company.
- 4.4. Once Customer purchases a subscription, the subscription will renew automatically and Customer's selected payment method will be charged the applicable fees, unless Customer cancel's its subscription as detailed below.
- 4.5. Features, fees and payment terms may be modified by the Company from time to time in Company's sole discretion. New pricing and payment terms will take effect affected upon Customer's next subscription period following notice of the change.
- 4.6. Customer may cancel Services for convenience, and Company shall issue any applicable refund on a pro-rata basis.
- 4.7. All amounts charged by Company shall be exclusive of any tax, levy or similar governmental charge.
- 4.8. Company shall periodically provide Customer with key metrics for all measured services purchased by Customer, viewable through a dashboard maintained and accessible on the Company Website via Customer's Account. COMPANY'S MONITORING AND REPORTING OF SERVICES METRICS SHALL BE FINAL AND CONCLUSIVE.

- 4.9. Company reserves the right, at its sole discretion, to investigate and modify provision and reporting of Services. Customer shall promptly cooperate with reasonable requests from Company for information pertaining to its investigation into any provision and performance of Services.
- 4.10. Customer shall present a valid credit card at time of opening Account, which shall be automatically and regularly billed on or around the same time each month by Company, following Company's approval of the Account. Company may change the billing schedule from time to time following notice to Customer. Any invoices from Company presented to Customer shall be due upon receipt. If Customer's invoice remains unpaid for more than thirty (30) days for any reason, it will accrue interest at the rate of one and three quarters percent (1.75%) per month (or the highest amount permitted by applicable law, if 1.75% is in excess of that amount), and Company reserves the right upon notice to Customer to suspend Services until the statement is paid, or to cancel Services and close Customer's Account. If legal action is undertaken to collect an account due, Customer agrees to pay Company's collection costs and expenses, including reasonable attorneys' fees, incurred by Company.
- 4.11. Company may offer, at its sole discretion, a free trial ("**Free Trial**"). Customer acknowledges and agrees that Customer may need to cancel a free trial subscription within the free trial period, otherwise at the end of the end of the Free Trial, Customer will be automatically billed subject to the then-current terms of the applicable subscription selected by Customer.

5. **TERM AND TERMINATION**

- 5.1. This ESA is effective on the Effective Date and, unless terminated or cancelled as provided herein, shall remain in effect for two (2) years. This ESA will thereafter automatically renew for successive one-year periods, unless either Party gives written notice to the other Party of its intention not to renew at least thirty (30) days prior to the end of the then-current renewal term. Collectively, these periods may be referred to herein as the "Term" of the ESA.
- 5.2. Company reserves the right to suspend the Services and terminate this Agreement at any time, in its sole discretion, upon providing prior written notice to the Customer through the Account or using the Account Information provided by Customer.
- 5.3. Customer may cancel any or all Services, or may terminate this ESA, by notifying Company through its Account, upon thirty days advance notice.
- 5.4. Customer shall be liable for all costs incurred and Services provided until the effective date of termination of the Services, or this ESA.
- 5.5. Subject to compliance with the DPA, Company will retain Customer Data for up to 24 months. After this time period we cannot promise to save any Customer Data and the client will take full responsibility for doing so.
- 5.6. Sections of the ESA with the titles "Representations and Warranties," "Term and Termination", "Confidentiality", "Limitations of Liability", "Indemnity" and all payment obligations incurred during the term of this ESA shall survive the expiration, cancellation or termination of this ESA. All other rights, obligations and grants made to the Parties shall cease upon expiration, cancellation or termination of this ESA.

5.7. Upon termination, cancellation or expiration of this ESA, each Party will promptly return Confidential Information in its possession or control which belongs to the other Party, or will, upon request, certify in an Officer-signed writing, approved in form and substance by the requesting Party, to the destruction of such Confidential Information; provided, however, that the legal and finance departments of a Party may retain, solely for tax, legal, compliance or other record-keeping obligations, retain certain Confidential Information as required by law, regulation or such record-keeping obligations.

6. **DATA PROTECTION**

For the purpose of providing the Services, Company shall process Personal Data on the Customer's behalf pursuant to the terms and conditions of the Data Processing Agreement available, at [Data Processing Agreement](#).

7. **CONFIDENTIALITY**

- 7.1. A Party receiving Confidential Information agrees (1) that it is claimed to be a trade secret of the other Party, (2) not to disclose it to any third party or use any of such Confidential Information for its own use or for any purpose except as necessary and consistent with the terms of this ESA, (3) to limit the use of and access to such Confidential Information to such employees who have a need to know such Confidential Information, (4) that it will promptly notify the other Party in a reasonably detailed writing of any unauthorized disclosures and/or use thereof.
- 7.2. In the event of unauthorized use, reproduction, distribution or disclosure of any Confidential Information, the Parties agree that the Disclosing Party will not have an adequate remedy at law, and that injunctive or other equitable relief may be appropriate to restrain such use, reproduction, distribution or disclosure, as detailed in this Section.

8. **MISCELLANEOUS**

- 8.1. Company shall not be liable for any delay or failure to perform its obligations under the ESA if and to the extent that such delay or failure to perform is caused or otherwise brought about by circumstances beyond Company's reasonable control, including without limitation, strikes, lockouts, labor troubles, restrictive government or judicial orders or decrees, riots, insurrection, war, terrorism, acts of God, inclement weather, plague, pandemic, or other condition which Company is unable to prevent by the exercise of reasonable due diligence.
- 8.2. If any provision of the ESA is judged unenforceable, then such provision will be reformed or modified to most closely reflect the herein terms and conditions, or if this is not possible, the provision shall be struck from the ESA; provided; however, all remaining provisions of this ESA shall remain in full force and effect.
- 8.3. This ESA has been negotiated at arm's-length by parties of equal bargaining strength, each represented by counsel or having had but declined the opportunity to be represented by counsel. No presumption in favor of or against any Party in the construction or interpretation of this Agreement or any provision hereof shall be made based upon which Party might have drafted this ESA or such provision.
- 8.4. Each Party is an independent contractor and as such will not have any authority to bind or commit the other Party. Nothing herein shall be deemed or construed to create a joint venture, fiduciary or agency relationship between the Parties for any purpose.
- 8.5. Customer may not assign or transfer this Agreement in whole or in part without the prior written consent of Company, and any attempt to assign or transfer shall be null

- and void without Company's consent.
- 8.6. The Services and this ESA and any dispute arising in connection therewith shall be solely governed by and construed in accordance with the laws of the United States of America and the State of Kansas, as applied to agreements performed wholly within the State of Kansas. Customer agrees that any interpretation of this ESA or dispute related to or arising under this ESA shall be brought exclusively in the state or federal courts located in Douglas County, Kansas. Customer waives, to the fullest extent permitted by law, formal service of process requirements and agrees to service of process by any reasonably verifiable means, including verified electronic mail and expedited courier with confirmed delivery.
- 8.7. This ESA may be executed in one or more counterparts, each in the English language and each of which shall be deemed to be an original instrument, and all such counterparts shall together constitute the same agreement. A facsimile or electronic signature shall be recognized with the same force and effect as a handwritten signature.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

For ALL IN ONE EMAIL, LLC, a
Delaware limited liability company:

For CUSTOMER [Name]:

Signature

Signature

Name

Name

Title

Title