

This page contains the terms and conditions under which you and/or your users (collectively, "Client") may use the Services of AttainResponse, LLC ("Service Provider") and its email and streaming media sites.

If you accept these terms and conditions, by checking the box: "I have read and agree to the Terms of Service" on the sign-up page or by logging in to the Service Provider's sites, you are indicating that you have read, understand and agree to be bound by all of the terms, conditions and policies set forth herein, including any future amendments (collectively, the "Agreement").

Description of Services

Service Provider will provide the Client with several capabilities, collectively referred to as "Services," including:

- The capabilities to collect visitor email addresses and to create, launch, and manage online text & video email campaigns. ("Email Marketing")
- The capability to send and receive electronic text & video mail (email) through the Web via the SMTP, POP3 and IMAP4 protocols through a local email client available on their desktop and to access their mail via the Internet and a Web browser ("Email Services").
- The capability to record, send and publish streaming media via a Web based systems and various plug-ins to email clients. ("On Demand Streaming Media Hosting").
- The capability to utilize HTML email templates and content in email messages. ("Email Templates").

Service Provider acknowledges that Client has selected a specific package of Services and will provide only those Services that Client has selected to receive. Client acknowledges that extra storage, extra streaming usage, customizable Service Provider sites, email templates, and other features may be available on an upgrade basis.

Service Provider is not responsible for providing Client's access to the Internet or paying for such Services. Service Provider is not responsible for providing any equipment necessary for Client to make a connection to the Internet, including but not limited to computers and modems.

False or Inaccurate Client Information

If any information provided by the Client is false or inaccurate, Service Provider retains the right to terminate the Client's right to use the Email, Email Marketing and On Demand Streaming Media Hosting Services.

No SPAM

These Services may not be used for the sending of unsolicited email (sometimes called "SPAM"). Clients must adhere to our strict [Zero-SPAM Policy](#). SPAM, also called Unsolicited Commercial Email (UCE), will result in immediate cancellation of Client account. Fees paid towards Client account will not be refunded. If SPAM causes a network outage Client agrees to pay \$40 per hour until service is restored, for any Service interruptions that results from Clients direct abuse of our Service.

Suspension of Functionality

Service Provider reserves the right to suspend functionality of Services from a Client account due to, but not limited to: misusing the service, for illegal or unethical practices, or non-compliance with this Service Agreement.

Payment for Services

Payment for Services at Service Provider must be made in US Dollars. Payments are made via Visa, MasterCard, American Express or Discover cards. It is the Clients responsibility to make certain the billing information for each monthly or annually billed account is kept current. If billing data is not kept current, Clients account will be deleted after thirty (30) days.

The Client authorizes Service Provider to charge the credit card provided upon sign up for the monthly or annual Service charges, or for any past-due balances, in order to bring the account to current status. Credit card payments will be billed and charged automatically on the day of the month or year that this Agreement is entered.

Client may cancel at anytime. There are no pro-rated refunds for partial months or partial years. Client agrees the Service Provider is not responsible for over-draft charges that may occur when processing charges against Client account. It is the Clients responsibility to make certain funds are available to cover the monthly or annual recurring charges.

Service provider offers a five (5) day money back guarantee. Client has five (5) days from date of purchase to cancel an account and receive a 100% hassle-free refund. It is the Clients responsibility to cancel their account three (3) days before monthly billing occurs to avoid additional charges. All cancellation requests **must** be submitted via your Support Center. Instructions are as follows:

To cancel, we require a written authorization be submitted via your Support Center.

- From your Mail Client, click the 'Support Center' link on the left hand menu
- Submit an email by clicking the 'Submit an Email' tab
- Fill out the form, including why you have decided to cancel your account
- Be sure to use "Account Cancellation" in the subject line

If you would like a cancellation confirmation, please include an alternate email address (i.e., hotmail, yahoo, AOL, etc.)

Please Note: Only the Account Holder will be able to request cancellation on an account. Your cancellation request could take up to 48 hours to process.

Accounts that are cancelled due to Service Agreement violation do not qualify for a refund.

Termination and Non-Renewal

Upon termination or non-renewal of Service, Client agrees that Service Provider and the Service Provider Network shall no longer support Client's Services and shall no longer be required to store any of Client's data.

In the event of termination or non-renewal of Service, Service Provider may delete all of Client's information and email data after thirty (30) days. Exports of the database that contains Client's information and email data are available upon request. Requests for such data must be made at least thirty (30) days prior to the termination or non-renewal of Services. Upon receiving the request for such data, Service Provider shall make the data available to Client within fourteen (14)

days. Service Provider reserves the right to charge a fee for providing data exports when the request is not related to termination or non-renewal of Services.

Understanding for Termination

The Client agrees that Service Provider may terminate or freeze the Client's use of the Services if it believes that the Client has violated or acted inconsistently with the letter or spirit of this Agreement, or that the Client has violated the rights of Service Provider or other Clients or parties.

Service Provider reserves the right to terminate or freeze Clients account(s) due to, but not limited to: non-payment, SPAM complaints, illegal activities, or non-compliance with these Terms of Service. In a situation where Client has an overdue balance, Service Provider will make a reasonable effort to contact Client using the contact methods previously provided by Client, in order to obtain full payment for the overdue balance, before terminating Client's use of the Email Services.

Client agrees that Service Provider has the right to delete the Client's account(s), and all data associated with Client account(s), if payment is not made after 24 hours when due.

Client Responsibilities

This section describes Client's additional responsibilities under this Agreement. Client will designate qualified personnel to act as liaisons between Client and Service Provider, and confirm electronically or in writing to Service Provider the names of such designated personnel from time to time.

- Client shall be responsible for the administration of all end user login names, passwords and related settings for the purpose of authenticating and authorizing access to the Email Services.
- If Client is re-selling Services, they shall be responsible for handling all communication, technical support to and business relations with end users who Client has authorized to use the Services, including but not limited to responding to inquiries and questions from end users.
- Client understands that a valid email address is required by Service Provider for its Services. Service Provider will NOT give Client email address to any 3rd party. Any correspondence sent to Client comes directly from Service Provider.
- Client is solely responsible for all Content, including any subsequent changes or updates made or authorized by Client. Service Provider does offer email templates and various content to Client and is to be used at the sole discretion of Client. Client represents and warrants that all Content: (a) will not infringe or violate the rights of any third party including, but not limited to, intellectual property, privacy or publicity rights of others; (b) is not abusive, profane or offensive to a reasonable person; or (c) will not be hateful or threatening. Violations of the foregoing by Client may result in early termination of Services by Service Provider in Service Provider's sole discretion.
- Client is solely responsible for the Content of its transmissions and the transmissions of third parties accessing the Services through Client. Client agrees to comply with U.S. law with regard to the transmission of technical data, which is exported from the United States through the Email Services.
- Client may not rent, lease, sublicense, or lend the Email Templates.
- Client further agrees not to use the Services (a) for illegal purposes or (b) to interfere with or disrupt other network clients, network Services or network equipment. Interference or disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, and use of the network to make unauthorized entry to any other machine accessible via the network. Violations of the foregoing by Client may result in early termination of Services by Service Provider in Service Provider's sole discretion.

- Upon termination of this Agreement, Client must discontinue use of all Services and relinquish use of the IP addresses or address blocks assigned to it by Service Provider in connection with the Email Services.

Copyright

The Email Templates and any copies that you make are owned by AttainResponse and KMT Software and its suppliers, and its structure, organization and code are the valuable trade secrets of KMT and its suppliers. The Email Templates are also protected by United States Copyright Law and International Treaty provisions.

Client must treat the Email Templates just as they would any other copyrighted material, such as a book. Client may not copy the Email Templates, except as set forth in section 3 of "Use of the Email Templates" in the [Acceptable Use Policy](#). Any copies that you are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Email Templates.

Except for Content as permitted in section 3, you agree not to modify, adapt or translate the Email Templates. You also agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Email Templates.

Trademarks shall be used in accordance with accepted trademark practice, including identification of trademark owners' names. Except as stated above, this Agreement does not grant you any intellectual property rights in the Software. This Agreement provides the terms and conditions under which you are licensed to use the Email Templates. It is not an Agreement for the sale of the Email Templates to you.

Acceptable Use Policy

Service Provider and Client will adhere to the [Acceptable Use Policy](#) with respect to the use of the All Services.

Privacy Policy

Service Provider and Client will adhere to the Email [Privacy Policy](#) with respect to the collection and use of Client's personal information by Service Provider.

In Case of Modifications to Terms of Service

Service Provider may modify this Agreement at any time, at which point notices will be sent to the Client using any of the contact methods provided by Client. The Client's continued use of the Email Services for twenty-four (24) hours after notice of the modification is dispatched will constitute an affirmative acknowledgment by the Client of the Agreement and its modifications as well as an agreement to abide by such terms.

Rights

Notwithstanding anything to the contrary stated herein, Service Provider maintains all rights, title and interest in All Services, Service Provider Software, Project Software and Work Product, and Client may not claim ownership of or use the Services, Service Provider Software, Project Software and Work Product in a resale capacity or allow access to the Services, Service Provider Software, Project Software and Work Product by any third parties.

Service Provider reserves all rights to use the Services, Service Provider Software, Project Software and Work Product in whatever manner it chooses, including for other Service Provider clients.

Disclaimer of Warranties

THE CLIENT EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT THE CLIENT'S SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

NEITHER SERVICE PROVIDER NOR ANY BUSINESS AFFILIATES OF SERVICE PROVIDER (INCLUDING ANY SUCH BUSINESS AFFILIATE THROUGH WHICH CLIENT BECAME A CLIENT OF THE SERVICE) MAKES ANY WARRANTY THAT THE SERVICES WILL MEET CLIENT REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES SERVICE PROVIDER MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED.

THE CLIENT UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT THE CLIENT'S OWN DISCRETION AND RISK AND THAT CLIENT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE CLIENT'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

SERVICE PROVIDER WILL NOT BE HELD LIABLE FOR ANY DAMAGES SUFFERED TO CLIENT, INCLUDING, BUT IS NOT LIMITED TO: LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES OF EMAIL, MIS-DELIVERIES OF EMAIL, OR SERVICE OUTAGES CAUSED BY SERVICE PROVIDER'S NEGLIGENCE.

NEITHER SERVICE PROVIDER NOR ANY BUSINESS AFFILIATES OF SERVICE PROVIDER (INCLUDING ANY SUCH BUSINESS AFFILIATE THROUGH WHICH CLIENT BECAME A CLIENT OF THE SERVICE) MAKES ANY WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICE OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT FROM SERVICE PROVIDER OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

Limitation of Liability

NEITHER SERVICE PROVIDER NOR ANY BUSINESS AFFILIATES OF SERVICE PROVIDER (INCLUDING ANY SUCH BUSINESS AFFILIATE THROUGH WHICH CLIENT BECAME A CLIENT OF THE SERVICE) SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

No Resale or Profiteering of the Service

Although a Client may choose to register multiple accounts, any account of the Client is understood as a stand-alone single account. The Client may choose whether the account shall be used for personal or corporate purposes. However, the Client agrees not to resell or make any commercial use (leasing or selling of accounts) of Email Services, without the express consent of Service Provider.

Indemnification

The Client agrees to defend, indemnify and hold harmless Service Provider, its employees, directors, officers, agents and business affiliates (including any such business affiliate through which Client became a Client of the Service), and their respective successors and assignees from, and against, any and all liabilities, damages, losses, costs and expenses, including attorney's fees, caused by or arising out of claims based upon the use of your account or the content contained in any email that has been sent or received through the Email Services, including any claim of libel, defamation, violation of rights of privacy or publicity, loss of service by other subscribers and infringement of intellectual property or other rights.

Right to Set-Off

If, under this Agreement, Service Provider becomes obligated or liable to pay money to Client, that sum may at the election of Service Provider, and without limiting or waiving any right or remedy against Client, be set-off against and applied to any amounts which are due and owing by Client to Service Provider until such amount has been completely set-off.

Entire Agreement

This Agreement comprises the entire Agreement between Client and Service Provider and supersedes any and all prior Agreements between the parties regarding the subject matter contained herein. In the case where the Mutual Non-Disclosure Agreement is in effect, that together with this Agreement will remain in effect.

Non-Waiver

Failure of Service Provider to insist upon strict performance of any of the Terms of Service contained herein shall not be deemed a waiver of any right or remedy that Service Provider shall have in respect thereof, and shall not be deemed a waiver of any subsequent default in performance of the Terms of Service.

Provision of Notice

All notices to a party shall be in writing and shall be made either through email or conventional mail. Service Provider may broadcast notices or messages through the service to inform Clients of changes to this Agreement, the service, or other matters of importance; such broadcasts shall constitute notice to the Clients.

Applicable Laws

The Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and the United States of America, excluding that body of law known as conflicts of laws and the United Nations Convention on Contracts for the Sale of Goods. The Client and Service Provider agree to submit to the exclusive jurisdiction of the courts of the State of Colorado. If any provision(s) of this Agreement is held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Service Provider's failure to act with respect to a breach by the Client or others does not waive its right to act with respect to subsequent or similar breaches. This Agreement sets forth the entire understanding and agreement between the Client and Service Provider.

Specific to Video Email Marketing Service

Action for SPAM Complaints

Service Provider reserves the right to delete a list from an email marketing account that is receiving SPAM complaints in order to prevent further email from being sent.

Use of Auto Reply Email Address

Client must ONLY use the email campaigns auto reply email address in the body of an email, or on your web site, in reference to receiving more information. You must never use your attainresponse-vem email address as a means for anyone to send you personal email messages. You must never use your attainresponse-vem address as the "reply to", "from", or "return" address in any correspondence.

The only acceptable use is to reference your attainresponse-vem address within the "body" of your email, not as the "From" email address. You must never use your attainresponsevem address as your email address when submitting any material to search engines, link submitters, FFA sites, banner exchanges etc. You must never send unsolicited email to anybody that includes a reference to attainresponse-vem.com or any of our other corporate domains.

Must Adhere to CAN-SPAM Regulations

Clients must adhere to the CAN-SPAM (Bill S. 877 - took effect on January 1, 2004) regulations regarding not sending email with descriptive subject lines. Client must use their name or business name in the From: field, and not a sales pitch or marketing message. Clients must also put their valid physical postal address within all email messages sent by the Service Provider service. Service Provider will ensure that message headers are valid and accurate and that a functional remove link is placed in all emails sent.

Periodic Promotional Offers to Free Accounts

Service Provider reserves the right to send periodic promotional offers (via email) to FREE account Clients. We will never send promotional emails to any PRO account Clients, however, often a PRO account Client has several free accounts which 'are' subject to receiving these offers.

Multiple Video Email Marketing Campaigns

Multiple video email marketing campaigns are for single users only. If Service Provider determines multiple users are accessing a single multiple campaign account, or if the unlimited campaigns account is being used to provide email marketing Services to your Clients or members of your organization, said account will be frozen and potentially deleted. Service Provider has sole discretion over determining if a violation has occurred in regards to this paragraph.

Specific to Business Video Email Hosting

Service Level Agreement ("SLA")

Service Provider guarantees that the Business Video Email Hosting Services will be available 99.99% of the time in a given month, excluding scheduled maintenance.

Uptime includes the functioning of all network infrastructure within the Service Provider facilities, the mail servers that provide SMTP, POP3, IMAP and Web access, and the software that is run on those servers (collectively, the "Service Provider Network"). Downtime exists when Client is unable

to send and receive email as a result of a failure of the Service Provider Network. This Service Level Agreement does not cover Client's connection to the Internet or any systems or software outside of the Service Provider Network.

If for some reason the Email Service does not meet these standards, Client may request a refund in the amount of 5% of their monthly fee for each 30 minutes of continuous downtime (up to 50% of Client's monthly fee). Alternatively, if no single period of downtime was 30 minutes or greater, Client may request a refund equal to the percentage of downtime during the affected month multiplied by Client's monthly Email Service fee. In either case, such refund will be Client's sole remedy for the failure of Service Provider to maintain 99.99% uptime during a given month.

Refunds will be issued in the form of a credit towards Client's next invoice, unless the affected month is Client's last month of service, in which case the refund will be issued via check or credit card within sixty (60) calendar days.

Period of Performance

This Agreement and Client's use of the Email Services shall become effective on the date the order is submitted by Client to Service Provider ("Effective Date"). The Period of Performance of this Agreement shall commence on the Effective Date and shall continue for a period as selected by Client during the ordering process ("Initial Period").

Thereafter, this Agreement shall automatically renew for additional like periods ("Renewal Periods") on the same terms and conditions as herein agreed, as may be amended from time to time, unless and until either party provides the other party with written or electronic notice of termination at least thirty (30) days prior to the end of the Initial Period, or any Renewal Period.

Maintenance Windows

Service Provider makes every effort to perform all system maintenance activities during a scheduled maintenance window. The maintenance windows are currently scheduled for Saturdays and Sundays from 12:00 a.m. to 4:00 a.m. ET, though not every maintenance window is utilized. If system downtime is planned during a maintenance window, Service Provider will make an announcement prior to the date of the activity.

Email Message Filtering

Service Provider may optionally provide filtering of email messages that pass through the Service Provider Network for the purpose of identifying SPAM, known viruses and other disruptive content (collectively "Junk Email"). Service Provider makes reasonable effort to configure its automated software to accurately identify Junk Email, however Client acknowledges and agrees that it is not possible to identify such content with 100% accuracy and that Service Provider is not obligated to do so.

Service Provider does not guarantee that it will identify and block all of the Junk Email that Client receives through the use of the Email Services, nor does Service Provider guarantee that the emails that are identified or blocked by the filtering software truly contain Junk Email content. Client acknowledges that it is always a good idea to run a desktop virus scanner and firewall on computers that are connected to the Internet as a secondary line of defense in case such content slips through the email message filters and to reduce the risk of Client's systems being infected by viruses that spread via other methods besides email.

Client agrees to and understands the risks associated with using the Email Services and receiving and transmitting email messages via the Internet. Client agrees to hold harmless and indemnify Service Provider from and against any liabilities, damages, losses, costs and expenses, including

attorney's fees, of every kind and nature, caused by or arising out of claims based upon the receipt, transmission or loss of any content.

Email Message Storage

The Email Services have a fixed storage limit per mailbox, which upon request can be upgraded for a fee. Email messages when received may not be stored if the size of such email would put the destination mailbox over its storage limit. It is Client's responsibility to monitor the size of their mailboxes in order to prevent it from reaching its storage limit. Service Provider assumes no responsibility for the deletion of or failure to store email messages.

Email Message Data Backup and Restore Policy

Client's Business Email Hosting email messages are backed up to separate storage systems daily for the purpose of recovery from errors or system failure ("Data Backups"). The Data Backups consist of a snapshot of the contents within each mailbox at a specific moment in time. The Data Backups may not store every email that is transferred or received using the Email Service, but rather it stores a copy of the email messages that exist within each mailbox during the time the Data Backups are processed each day. Copies of email messages may remain in the Data Backups for approximately two (2) weeks, even after Client deletes the email messages from their mailbox or after termination of Email Services. Service Provider employees do not access email messages in the Data Backups unless a data restore is needed.

In the event that Client deletes email messages from their mailbox as a result of something other than a failure of the Service Provider Network, and wishes for those email messages to be restored, Client may request a data restore from any of the recent Data Backups snapshots. Client will be charged a fee per mailbox for each restore.