

TERMS OF SERVICE

These terms of service (these "Terms") governs your use of the website www.getmime.com and other MIME-related sites, applications, including the Flawless by MIME mobile application, software, communications, capabilities and services as accessed by you directly or indirectly through our customers (collectively, the "Service"). "We" or "us" or "our" means MIME, Inc., a Delaware corporation, with offices located at 7491 N Federal Hwy, Suite C-5 #171, Boca Raton, Florida 33487. "You" or "your" means the person indicating acceptance of these Terms or using the Services.

Note: These Terms include your agreement to arbitrate most disputes in Section 8.

BY ACCEPTING THESE TERMS, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY ACCESSING AND USING THE SERVICE, YOU AGREE TO THESE TERMS.

1. USE OF THE SERVICE

1.1 Use of the Service. Subject to the terms and conditions of these Terms, we grant you a limited, non-exclusive, non-transferable right during the term of these Terms to use the Service solely for your personal use. Your rights to use the Service are subject to and contingent upon your compliance with the these Terms. You are solely responsible for your conduct, any data uploaded into the Service, or otherwise provided for processing by the Service (collectively, "Your Data"), the content of Your Data and legality and means by which you acquired it, and all communications with others while using the Service. You acknowledge that we have no obligation to monitor any information on the Service, but we may remove or disable any information that you make publicly available on the Service at any time for any reason or for no reason at all. You, and not us, are responsible for the availability, accuracy, appropriateness, or legality of Your Data or any other information you may provide when using the Service.

1.2 Acceptable Use. Except as otherwise explicitly provided in these Terms or as may be expressly permitted by applicable law, you will not, and will not permit or authorize third parties to: (a) rent, lease, or, except as explicitly set forth in these Terms, otherwise permit third parties to use the Service; (b) use the Service to provide services to third parties as a service bureau or in any way that violates applicable law; (c) circumvent or disable any security or other technological features or measures of the Service, or attempt to probe, scan or test the vulnerability of a network or system, or to breach security or authentication measures; (d) upload or provide for processing any information or material that is false, misleading, illegal, defamatory, offensive, abusive, obscene, or that violates privacy or intellectual property rights of any third party; (e) use the Service to harm, threaten, or harass another person or organization; (f) send, store, or distribute any viruses, worms, Trojan horses, or other disabling code or malware component harmful to a network or system; (g) use any robot, spider, site search/retrieval application, or other manual or automatic device or process to download, access, retrieve, index, "data mine", or in any way reproduce or circumvent, avoid, bypass, remove, or deactivate the navigational structure or technical measures or presentation of the Services or its contents; (h) attempt to probe, scan or test the vulnerability of the Services or any of our systems or network or breach any security or authentication measures; or (i) use, display, "frame" or "mirror" any part of the Services, our names, any of our trademarks, logos or other proprietary information, or the layout and design of any page or form contained on a page, without prior written authorization from us. You will not copy, reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the Service or its underlying software. You will neither alter nor remove any trademark, copyright notice, or other proprietary rights notice that may appear in any part of the Service and will include all such notices on any copies.

1.3 Accounts. We may provision one or more accounts and access credentials to you. You may not share your account or access credentials with anyone else. You are responsible for maintaining the confidentiality of your login, password, and account and for all activities that occur under your login and account.

1.4 Reservation of Rights. We retain all right, title, and interest in and to the Service, its underlying technologies, and all related intellectual property rights, including without limitation any modifications, updates, customizations, cards, apps, or other add-ons. Your rights to use the Service on are limited to those expressly set forth in these Terms. We reserve all other rights in and to the Service and its underlying technologies.

1.5 Technical Requirements. You will need certain equipment, software, and Internet access to be able to access the Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely your responsibility. MIME neither represents nor warrants that the Services will be accessible through all web browser releases or operating systems.

1.6 Service Availability. You are responsible for making Your Data available that is necessary for us to provide the Service. We will attempt to provide the Services at all times, except for periods for maintenance and repair or in the case of emergencies or outages. The Services may be subject to unavailability for a variety of factors beyond our control including, without limitation, emergencies, third-party service failures, transmission, equipment or network problems or limitations, interference, signal strength, and may be interrupted, limited or curtailed. Delays or omissions may occur. We are not responsible for data, messages or pages lost, not delivered, delayed or misdirected because of interruptions or performance issues with the Services or communications services or networks. We

may impose usage or Services limits, suspend the Services, or block certain kinds of usage in our sole discretion to protect users, data, our systems, or the Services. The accuracy and timeliness of data received is not guaranteed.

2. RIGHT TO RESTRICT OR TERMINATE ACCESS

2.1 Termination. If you are using the Services free of charge, we may deny, suspend, terminate or restrict your access to all or part of the Services without notice in our reasonable discretion.

2.2 Post-Termination Obligations. Following any expiration or termination, you shall immediately cease use of the Services and any license granted to you under any agreement related to your use of the Services shall immediately terminate. Termination of these Terms does not affect your right to pay any amounts previously owed to us. Upon termination, we may delete all of your data, and other information stored on our servers. Sections 1.4, 2.2, 4.2, 6, 6, 7, 8, and 9 will survive termination.

3. **CHANGE TO THE TERMS**. We may add to, change or remove any part of these Terms, at any time without prior notice to you. Such modification shall be effective immediately upon posting a notification within the Services. As your next use of the Services may be governed by different Terms, we encourage you to look for a new effective date on these Terms when you use the Services. It is your responsibility to check these Terms periodically for changes. Your use or continued use of the Services following the posting or notice of any changes to these Terms shall constitute your acceptance of the changed Terms.

4. DATA

4.1 Data Transmission. We use commercially reasonable efforts designed to protect Your Data. You acknowledge that use of the Service involves transmission of Your Data and other communications over the Internet and other networks, and that such transmissions could potentially be accessed by unauthorized parties due to the inability to protect against all threats at all times arising from the use of the internet. You must protect your login name and password from access or use by unauthorized parties, and are solely responsible for any failure to do so. You must promptly notify us of any suspected security breach at support@getmime.com.

4.2 Your Data. Your Data is your property. We use data in accordance with our privacy policy found at <https://www.getmime.com/privacy-policy/>. You grant us a non-exclusive, worldwide, perpetual, royalty-free license to use, copy, transmit, sub-license, index, store, aggregate, and display Your Data as required to provide or perform the Service, account management and support services, and technical services, and to publish, display, and distribute de-identified information derived from Your Data and from your use of the Service for any lawful purposes, including, without limitation, improving our products and services, developing new products and services, and developing, displaying, and distributing benchmarks, analysis and similar reports, provided that we do so in accordance with all applicable laws.

4.3 Removal of Data. If MIME is required by any third-party rights holder to remove any data, content or information, or receives information that any data, content or information provided to you may violate applicable law or third-party rights, we may discontinue your access to such data, content or information through the Services.

5. WARRANTY; DISCLAIMERS

5.1 Warranty Disclaimer. EXCEPT AS SPECIFIED IN SECTION **Error! Reference source not found.**, YOUR USE OF THE SERVICES IS AT Y OUR SOLE RISK. WE DO NOT MAKE ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. WE EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. WE DO NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICE. WE DO NOT WARRANT THAT THE SERVICE IS ERROR-FREE OR THAT OPERATION OR USE OF THE SERVICE WILL BE SECURE OR UNINTERRUPTED. WE EXERCISE NO CONTROL OVER AND EXPRESSLY DISCLAIM ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF USE OF THE SERVICE OR DOCUMENTATION.

6. **INDEMNIFICATION**. You agree to defend, indemnify and hold us, our affiliate companies, and each of our respective directors, officers, employees, contractors, agents, successors and assigns harmless from any claim or demand, including reasonable attorneys' fees, arising out of or relating to (i) any violation of these Terms by you; (ii) Your Data or any other content or material you submit or otherwise transmit through our Services; (iii) your violation of any applicable laws or rights of another; (iv) your negligent or more culpable conduct; or (v) your use of the Services. We may, at our own expense, elect to assume the exclusive defense and control of any third party claim otherwise subject to defense by you. You may not settle or compromise any claim subject to this section without our prior written consent in our sole discretion.

7. LIMITATIONS OF LIABILITY

7.1 Disclaimer of Indirect Damages. UNDER NO CIRCUMSTANCES WILL WE, OUR AFFILIATES, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, LICENSORS OR OTHER THIRD PARTY PARTNERS ("MIME PARTIES") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF OUR SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY; INCLUDING WITHOUT LIMITATION DAMAGES RESULTING FROM PERSONAL INJURY, DEATH, LOST PROFITS, LOST DATA, LOSS OF BUSINESS OR BUSINESS INTERRUPTION, WHETHER DIRECT OR INDIRECT, ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF OUR SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR

ANY OTHER LEGAL THEORY. YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT SHALL BE FOR YOU TO DISCONTINUE YOUR USE OF THE SERVICES.

7.2 Cap on Liability. TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL ANY MIME PARTIES' TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED \$1,000 .

7.3 Exception. Some states or jurisdictions may not allow the exclusion or the limitation of liability. In such states or jurisdictions, the MIME Parties' liability to you shall be limited to the full extent permitted by law.

8. ARBITRATION AGREEMENT; CLASS ACTION AND JURY TRIAL WAIVERS

8.1 Mandatory Arbitration; Exceptions and Opt-Out. You agree that any dispute, claim or controversy arising out of or relating to these Terms or the Services (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right to bring an individual action in small claims court. You will also have the right to litigate any other Dispute if you provide us with written notice to opt out of arbitration ("Arbitration Opt-out Notice") by email at support@getmime.com within thirty (30) days following the date you first accept these Terms, or if you have not registered for an account, then within thirty (30) days following the date you first use our Services. If you don't provide us with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute except as expressly set forth above. The exclusive jurisdiction and venue of any litigation following timely provision of an Arbitration Opt-out Notice will be the state and federal courts located in the Northern District of Georgia and each of the parties hereto waives any objection to jurisdiction and venue in such courts. In the case of any litigation following a timely Arbitration Opt-out Notice, each party hereby acknowledges and agrees that it waives the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.

8.2 No Class Actions. Further, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If a decision is issued stating that applicable law precludes enforcement of any limitations set forth in this agreement to arbitrate on the right to arbitrate claims on a class or representative basis, or as part of a consolidated proceeding, as to a given claim for relief, then that claim (and only that claim) must be severed from the arbitration and brought in the state or federal courts located in the Northern District of Georgia. All other claims will be arbitrated.

8.3 Rules. The arbitration will be administered by the *American Arbitration Association* ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Arbitration Agreement" section. (The AAA Rules are available at <https://www.adr.org/Rules> or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

8.4 Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. AAA provides a general form for a Demand for Arbitration and may provide a separate form for Demand for Arbitration for residents of a particular state, such as California. The arbitrator will be either a retired judge or an attorney licensed to practice law with at least 15 years of experience and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

8.5 Arbitration Location and Procedure. If you are a business, the arbitration will be conducted in Sussex County, Delaware. If you are a consumer, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that are submitted to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

8.6 Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law. We will not seek, and hereby waive all rights we may have under applicable law to recover, attorneys' fees and expenses if we prevail in arbitration.

8.7 Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, we will pay all such fees unless (a) the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), or (b) we settle our dispute without resort to arbitration or litigation, in which case each party will bear its own costs.

8.8 Changes. Notwithstanding anything to the contrary in these Terms, if we change this “Arbitration Agreement” section after the date you accepted these Terms or access our Services, you may reject any such change by sending us written notice (including by email to support@getmime.com) within 30 days of the date such change became effective, as indicated in the “Effective Date” listed at the beginning of these Terms or in the date of our email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and us in accordance with the provisions of this “Arbitration Agreement” section as of the date you accepted these Terms, or accessed our Services.

8.9 Survival. This “Arbitration Agreement” section will survive any expiration or termination of these Terms.

9. CONSENT TO ELECTRONIC COMMUNICATIONS

9.1 Consent. You agree that we may send the following to you by email or by posting them on our website and mobile application: legal disclosures; these Terms; Privacy Policy; future changes to any of the foregoing; and other notices, policies, communications or disclosures and information related to the Services. You agree that we may contact you via email, phone, text, or mail regarding your subscription or the Services. You consent to receive such communications electronically. You agree to update your contact information to ensure accuracy. Your consent to conduct actions electronically covers all interactions between you and us.

9.2 Updating your Consent. If you later decide that you do not want to receive certain future communications electronically, please send an email to support@getmime. You may also opt out of certain electronic communications through your account or by following the unsubscribe instructions in any communication you receive from us. Your withdrawal of consent will be effective within a reasonable time after we receive your withdrawal notice described above. We will need to send you certain communications electronically regarding the Services. You will not be able to opt out of those communications – e.g., communications regarding updates to the Terms or information about billing. Your withdrawal of consent will not affect the legal validity or enforceability of the Terms provided to and accepted by, you. If you withdraw your consent to receive communications electronically, certain Services may become unavailable to you.

10. GENERAL PROVISIONS

10.1 Access by Competitors. You may not access the Service if you are our direct competitor, except with our prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive purpose.

10.2 United States Only. The Services are intended for use only within the United States and its territories. We make no representation that the Services are appropriate, or are available for use outside the U.S. Those who choose to access and use our Services from outside the U.S. do so on their own initiative, at their own risk, and are responsible for compliance with applicable laws.

10.3 Assignment and Delegation. You may not assign any of your rights or delegate any of your obligations under these Terms (in whole or in part) without our prior written consent, except in connection with a change of control, merger, or by operation of law. Your assignment or delegation will not relieve you of your obligations under these Terms nor release you of your liability under these Terms. We may voluntarily, involuntarily, or by operation of law assign any of our rights or delegate any of our obligations under these Terms without your consent. Any purported assignment or delegation in violation of this Subsection will be null and void. Subject to this Subsection, these Terms will bind and inure to the benefit of each party’s respective permitted successors and permitted assigns.

10.4 Notices. Any notice required or permitted to be given in accordance with these Terms will be effective if it is in writing and sent by certified or registered mail, or overnight courier, return receipt requested, to the appropriate party at the address at the address provided by the other party and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Subsection. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

10.5 Force Majeure. We will not be liable for, or be considered to be in breach of or default under these Terms on account of, any delay or failure to perform as required by these Terms as a result of any cause or condition beyond our reasonable control.

10.6 Governing Law. These Terms will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Georgia, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Subject to the venue requirements of the arbitration section, you consent to the exclusive jurisdiction of the state and federal courts in Fulton County, Georgia, USA.

10.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to these Terms.

10.8 Waiver and Modifications. Failure, neglect, or delay by a party to enforce the provisions of these Terms or its rights or remedies at any time, will not be construed as a waiver of the party’s rights under these Terms and will not in any way affect the validity of the whole or any part of these Terms or prejudice the party’s right to take subsequent action. Exercise or enforcement by either party of any right or remedy under these Terms will not preclude the enforcement by the party of any other right or remedy under these Terms or that the party is entitled by law to enforce.

10.9 Severability. If any part of these Terms is found to be illegal, unenforceable, or invalid, the remaining portions of these Terms will remain in full force and effect. If any material limitation or restriction on the use of the Service under these Terms is found to be illegal, unenforceable, or invalid, your right to use the Service will immediately terminate.

10.10 Headings. Headings are used in these Terms for reference only and will not be considered when interpreting these Terms.

10.11 Entire Agreement. These Terms contain the entire agreement of the parties with respect to the subject matter of these Terms and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of these Terms.