

Monotype.

Agency Pitch EULA - Clickthrough

We recommend that you print this Agency Pitch End User License Agreement (the “Agency Pitch EULA” or the “Agreement”) for further reference.

This Agency Pitch EULA becomes a binding contract between you and Monotype when you click on the area marked “ACCEPT LICENSE AGREEMENT” or similar language. Please read this entire Agreement before you agree to be bound by its terms and conditions.

This is an agency pitch license with limited distribution rights solely for the purpose of sharing samples of work created using the Software (for example, printed materials) or embedding the Software (for example, an application) with clients by whom you have been engaged with respect to the design process, but no one else. This is not a distribution license. If you or your client wish to publicly distribute any materials created through Use of the Software, or materials that embed any portion of the Software, you or your client must obtain a separate distribution license from Monotype. You agree to use reasonable efforts to promote the Software to your clients and to cooperate with Monotype, in good faith, if your clients require a license to the Software. This includes making your clients aware that the Software is available for licensing by Monotype, providing clients with Monotype’s contact information or other materials that Monotype may provide to you from time to time, and providing Monotype with non-confidential information about clients who inquire about the Software, including information about such client’s licensing needs.

1. DEFINITIONS.

Account	Your administrative account located at Monotype Fonts, if applicable.
Agreement	The Agency Pitch End User License Agreement.
Commercial Electronic Document	An Electronic Document which is designed to be distributed to the general public (or to some subset of the general public) as a commercial product for a fee or other consideration.
Critical Patch Release	Updates to any of the Software that Monotype determines, at its sole discretion, will be made available on a general basis to all of its customers. Critical Patch Releases may or may not include certain changes that are included in an update and may be released before or after any such update is provided to eligible customers. A Critical Patch Release may, at Monotype’s sole discretion, be released prior to completion of Monotype’s complete quality assurance testing process.
Derivative Work	A work, including but not limited to software or data, based upon or derived from any of the Software or the Desktop Application (or any portion thereof) in any form in which such software or data may be recast, transformed, or adapted including, but not limited to, binary data in any format into which the Software may be converted.
Desktop Application	The Monotype Desktop Application for Mac and Windows that allows Licensed Users to upload and download the Software and other font software to the Monotype Fonts service.
Digital Marketing Communication	A piece of promotional or marketing content delivered via the internet. A Digital Marketing Communication includes, but is not limited to, email advertisements, banner ads and display advertisements shown on websites, advertisements in web applications and advertisements in mobile applications.
Electronic Document	An electronic document or data file, for example an e-book, which is created by Use of the Software.
Font Software	The font software set forth in this Agreement that is identified as Font Software and, when used on an appropriate device or devices, generates typeface and typographic designs and ornaments. Font Software shall include all subsets and bitmap representations of typeface and typographic designs and ornaments created by or derived from the Font Software. Not all Font Software is available in all formats.
Impression	Either (i) a response, in which the Font Software, Web Font Software or Subset(s) of either is incorporated, from a digital advertisement delivery system to a request from a web or mobile browser or other application, or (ii) an opened e-mail where the Font Software, Web Font Software or Subset(s) of either is delivered to the email client.

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Internal or Internally	With respect to Use, a Licensed User. With respect to distribution, Internal, in addition to your employees, includes any client by whom you have been engaged with respect to the design process, but no one else.
Internally Accessed Server	A server that is maintained on your premises or is under your exclusive control, and through which or on which the Font Software may be accessed only by a Licensed User.
Licensed User	Any user who <u>may</u> exercise the license grants to the Software and access Monotype Fonts under this Agreement, as indicated in this Agreement, whether or not such user <u>does</u> actually exercise such rights. Licensed Users must be your employees or independent contractors, or an employee of your client by whom you have been engaged to Use the Software or access Monotype Fonts as set forth in this Agreement. You shall be responsible for compliance with the terms of this Agreement by any such agency and its employee(s), client and its employees or independent contractor. The number of Licensed Users shall be counted regardless of whether and when actual Use or access occurs and thus equal the total of all individuals who are authorized and can potentially Use the Software or access Monotype Fonts during the Term (non-concurrent use).
Monotype	Collectively, Monotype Imaging Inc. or any other Monotype entity identified in connection with the clickthrough process, its successors and assigns, and its parent and affiliated corporations.
Monotype Fonts	Monotype's platform, made available to Licensed Users from which Licensed Users may access the Software, the Subsetter Application and the Desktop Application and use the functionality made available to them on Monotype Fonts.
Non-Commercial Electronic Document	An Electronic Document that you use for your internal purposes only or for distribution in a manner that is incidental to your business, for example an instruction manual that explains your product, but which does not mean a Digital Marketing Communication.
Page View	A single instance of access to a particular web page.
Primary Licensed Monotype Fonts User	The individual identified during the clickthrough process.
Publicly Available Software	(a) Any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models; and (b) any software that requires as a condition of use, modification and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (i) be disclosed or distributed in source code form, (ii) be Licensed for the purpose of making Derivative Works, or (iii) be redistributable at no charge.
Software	The Font Software, Web Font Software and other software provided by Monotype under this Agreement and any documentation, related files, updates or upgrades that may be provided to you, permitted modifications, and any Derivative Works thereof. Software specifically excludes any font software uploaded to Monotype Fonts by you or by Monotype on your behalf.
Software Product	A product that is distributed as software only and (i) is not embedded into hardware of any kind, (ii) is not a platform or operating system that can run other software programs, (iii) which runs on a mobile platform, (iv) which is not Publicly Available Software or integrated in such software and (v) is made available by Customer to end users either directly or through a distributor.
Subset	A Derivative Work of the Software, created by removing certain glyphs and/or characters therefrom.
Subset Application	Monotype's proprietary application used to create a Subset of the Font Software or Web Font Software.
Term	One (1) year after the acceptance of this agreement.
Trademarks	The trademark as set forth at www.monotype.com/legal/trademarks for each piece of Software licensed under this Agreement or under which Monotype markets the Software.
Use	With respect to the Font Software or Web Font Software when an individual is able to give commands (whether by keyboard or otherwise) that are followed by the Font Software or

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	Web Font Software, regardless of the location in which the Font Software or Web Font resides. With respect to the Subsetter Application and the Desktop Application, when the software or instructions are executed.
Web Font Software	The font software set forth in this Agreement that is identified as Web Font Software and which, when used on an appropriate device or devices, generates typeface and typographic designs and ornaments. Web Font Software shall include all copies of the Web Font Software Used or accessed in conjunction with the rendering of web pages, including copies of web pages that may be temporarily cached, and all subsets and bitmap representations of typeface and typographic designs and ornaments created by or derived from the Web Font Software.
Workstation	A hardware component in which Software or the Desktop Application is installed and from which an individual is able to give commands (whether by keyboard or otherwise) that are followed by the Software or Desktop Application, as applicable.

2. LICENSE GRANTS.

You are licensing Software and access to Monotype Fonts from Monotype. You agree that you have the rights expressly set forth in this Agreement and no other. All rights not expressly granted in this Agreement are reserved to Monotype.

The rights set forth in this Section 2 may be exercised on your behalf by Licensed Users and you are responsible for compliance with the terms of this Agreement by all such users as well as any other parties who access the Software. You are hereby granted, during the Term and subject to all terms and conditions set forth herein, a worldwide (subject to Section 7.A), non-exclusive, non-assignable, non-transferable license to:

A. MONOTYPE FONTS SERVICE.

Allow Licensed Users to access Monotype Fonts and access and use any of the functionality made available to you by Monotype on Monotype Fonts.

B. FONT SOFTWARE AND WEB FONT SOFTWARE.

Desktop:

- Install the Font Software on up to two (2) Workstations per Licensed User.
- Install the Font Software onto any Internally Accessed Server to allow Licensed Users only to access and Use the Font Software.
- Use the Font Software on such Workstations or via such Internally Accessed Server to (i) create, edit, view and print materials and Internally distribute printed materials and Non-Commercial Electronic Documents from which the Font Software cannot be fully or partially extracted, (ii) create, use and Internally distribute static graphic images with a representation of a typeface and typographic design or ornament (as long as such images do not correspond to individual glyphs of the Font Software and may not be individually addressed by the Font Software to render such designs and ornaments), and, (iii) exercise your rights to the Font Software as permitted by this Agreement.
- Distribute a copy of the Font Software to a commercial printer solely to view, edit and print documents on your behalf, provided that you shall be liable for any misuse of the Font Software by such commercial printer.
- Make backup copies of the Font Software, provided that such copies are for your internal back up purposes only and remain in your exclusive control.

Software Products:

- Incorporate the Font Software into a Software Product in a manner in which the Font Software cannot be fully or partially extracted, provided (i) that the Software Product does not provide office functionality to End

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Users (such as word processing or presentation design) and/or (ii) its primary purpose is not to replace the Font Software.

- Duplicate the Font Software as an integral part of any such Software Product.
- Internally distribute the Font Software as an integrated component of any such Software Product.

Electronic Documents:

- Embed the Font Software into Non-Commercial Electronic Documents and Commercial Electronic Documents, in a manner in which the Font Software cannot be fully or partially extracted, provided that an End User cannot edit the Electronic Document with the Font Software.
- Duplicate the Font Software as an integral part of any such Electronic Document.
- Internally distribute the Font Software as an integrated component of any such Electronic Document.

Internally Accessed Servers: Install the Font Software, or a web server application into which the Font Software has been incorporated, on an Internally Accessed Server and allow Licensed Users to do only the following:

- Use the Font Software installed on such Internally Accessed Server or within such web server application to view, edit and print documents and Internally distribute such document, provided that such distributed document can only be further edited by a Licensed User.
- Use the Font Software to generate content on websites owned by you or under your control (for example, form fields, comments, search bars, etc).

Web Page Content: Use the Web Font Software, either as hosted on Monotype Fonts, on a server you own or control, or through a third party web font hosting service with which you have a written agreement regarding the Use and protection of the Web Font Software, to generate content on websites owned or under your control for Internal distribution and Use only or to generate a Digital Marketing Communication as provided in the next paragraph. This license grant does not allow viewers of a website to generate content on that website through Use of the Web Font Software (for example, form fields, comments, search bars, etc.).

Digital Marketing Communications: Embed the Font Software into a Digital Marketing Communication in a manner in which the Font Software cannot be fully or partially extracted or create a Digital Marketing Communication that is generated as described in the previous paragraph through use of the Web Font Software, in each case for Internal distribution and Use only.

C. SUBSETTER APPLICATION.

Allow Licensed Users to access and Use the Subsetter Application on Monotype Fonts to create Subset(s) of the Font Software or Web Font Software provided that any such Subset continues to be owned by Monotype and shall constitute Font Software or Web Font Software, as applicable, under this Agreement.

D. DESKTOP APPLICATION.

Allow Licensed Users to

- Install and access the Desktop Application on up to two (2) Workstations per Licensed User.
- Use the Desktop Application in connection with the Software.
- Use the Desktop Application in connection with font software that you have not licensed from Monotype, so long as the agreement between you and the party who licensed you such font software allows your use of the Desktop Application with such font software.
- Make backup copies of the Desktop Application, provided that such copies are for your internal back up purposes only and remain in your exclusive control.

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3. DELIVERY AND ACCESS.

The Software, Desktop Application and Subsetter Application will be made accessible to you via an invitation to Monotype Fonts subject to proper information provided by you enabling Monotype to set up your Account. Any Software available through Monotype Fonts may be downloaded or accessed by a Licensed User at any time during the Term. Monotype shall have no obligation to provide you with any updates or upgrades of the Software. Monotype will make available access to Monotype Fonts and the Account via delivery of access credentials to the Primary Licensed Monotype Fonts User identified during the clickthrough process. Through the Account, the Primary Licensed Monotype Fonts User can invite users up to the number of Licensed Users licensed by you under this Agreement to access and use Monotype Fonts in conformance with the terms of this Agreement. Your Licensed Users may be presented with additional terms of use that must be agreed to when creating an Account or when downloading certain Software, but any such terms of use will not restrict the license rights granted in this Agreement. Monotype's delivery obligations for access to the Software and the Desktop Application shall be complete upon sending access credentials to Monotype Fonts to your Primary Licensed Monotype Fonts User. Monotype Fonts requires each Licensed User to create a password and a user name. The confidentiality of passwords and Account information is your responsibility. Any activities that occur under the Accounts are your responsibility. You agree to notify Monotype immediately of any unauthorized use of any Account or any other breach of security which could affect Monotype Fonts or use of your Account.

4. RESTRICTIONS.

You may not:

- Transfer your license rights in Monotype Fonts, the Software, or the Desktop Application.
- Modify the Software in any way, including to create, directly or indirectly, Derivative Works from the Software, the Desktop Application or any portion thereof (except as otherwise specifically set forth herein).
- Embed the Software or the Desktop Application in Open Source software which may have the direct or indirect effect of causing the Software or the Desktop Application to become Publicly Available Software or otherwise be subject to a Publicly Available Software agreement.

5. TERMINATION.

The parties shall have the right to terminate the Agreement only as set forth in this Section 5.

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party if the non-notifying party has breached this Agreement, and such breach has not been cured within that thirty (30) day period. Any such notice shall set forth the breach or breaches and the actions necessary to cure them, if a cure is possible.

The termination of this Agreement shall not preclude either party from suing the other party for damages of any breach of the Agreement.

6. WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY.

A. WARRANTIES.

- The Software will effect a faithful reproduction of the underlying typeface design which is of a quality consistent with industry standards.
- The Software has no defect nor is deficient in title;
- The Software does not infringe any intellectual property rights of any third parties, including but not limited to copyrights, design rights, trademarks and patents;
- The Software upon download or delivery does not contain viruses, time or logic bombs, Trojan horses, worms, timers, clocks, trap doors, or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a computer system or any component of such

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computer system, including, without limitation, its security or user data, or otherwise cause the Font Software to become inoperable or incapable of being used in accordance with this Agreement; and

- The Software is not Publicly Available Software.

In case of a defect or deficiency in title, promptly after you let us know of the problem (in text form, which could include via an email to warranty@monotype.com), Monotype will do everything that is commercially reasonable to correct the problem within fourteen (14) calendar days.

B. INDEMNIFICATION.

Monotype shall, at its expense and at your request:

- defend you from any claim or action brought by an unaffiliated third party against you to the extent it is based on a claim that Monotype has breached a warranty contained in Section 6.A or any other obligation under this Agreement; and
- indemnify you against any damages, liability, costs or expenses incurred by you (including, without limitation, reasonable attorneys' fees) resulting from such a claim or a breach of a warranty contained in Section 6.A.

You must notify Monotype promptly in writing of a claim, permit Monotype to control the defense or settlement, and cooperate fully with Monotype in such defense and settlement as reasonably requested and at Monotype's expense.

C. LIMITATION OF LIABILITY.

Except in the event of gross negligence or willful misconduct, neither party will be responsible for:

- Incidental, indirect, consequential or punitive damages, including without limitation, lost profits, business interruption, loss of use or lost data, regardless of the form of the action whether in contract, tort (including negligence), strict product liability or otherwise, even if such party has been advised of the possibility of such damages, in each case to the extent permitted by law; or
- Any damages caused by the other party's failure to perform its obligations.

7. MISCELLANEOUS.

- A. EXPORT.** You agree that you will not ship, transfer or export the Software or the Desktop Application into any country or use the Software or the Desktop Application in any manner prohibited by the United States Export Administration or any applicable export laws, restrictions or regulations.

If delivery to you as set forth in this Agreement is prohibited by the United States Export Administration or any applicable export laws, restrictions or regulations, this Agreement shall be deemed void.

B. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS.

- You agree that Monotype Fonts, the Software and the Desktop Application are protected by the copyright law or other intellectual and industrial property rights of the United States and its various States, by the copyright law and other intellectual and industrial property rights of other nations, and by international treaties.
- You agree that Monotype and or/its licensors own all right, title and interest in and to Monotype Fonts, the Software and the Desktop Application, their structure, organization, code, and related files, including all intellectual and industrial property rights therein such as copyright, design and trademarks rights.
- You agree that Monotype Fonts, the Software and the Desktop Application, their structure, organization, code, and related files are valuable property of Monotype and/or its licensors and that any intentional or negligent Use of Monotype Fonts, the Software or the Desktop Application not expressly permitted by the Agreement constitutes an infringement of intellectual and industrial property rights.

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- All rights in and to Monotype Fonts, the Software and the Desktop Application, including unpublished rights, are reserved under the copyright laws of the United States and other jurisdictions.
- C. PRIVACY.** All personal data contained in this Agreement or in your Account will be collected and held in compliance with applicable privacy laws and our privacy statements “Font Portal and Desktop Applications Privacy Policy” and “Contractual Privacy Statement”, which can be found at <http://www.monotype.com/legal/privacy-policy/>.
- D. ENTIRE AGREEMENT; PARTIAL NULLITY; GOOD FAITH OBLIGATIONS.** This Agreement constitutes the entire agreement between the parties hereto with respect to license of Monotype Fonts, the Software and the Desktop Application. In the event that any provision of this Agreement is unenforceable or invalid, such unenforceability or invalidity shall not render the Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or court decisions. You and Monotype each owe a duty to co-operate in order to give full effect to this Agreement.
- E. ASSIGNMENT.** Your obligations under this Agreement may not be sublicensed or assigned to any third party (with a change in control of you constituting an assignment). This Agreement shall be binding on your and Monotype’s successors and assigns.
- F. GOVERNING LAW; JURISDICTION.**
- Unless you enter into this Agreement through the Monotype affiliate Monotype K.K., Monotype Ltd. or Monotype GmbH, this Agreement is governed by the laws of the Commonwealth of Massachusetts applicable to contracts wholly entered and performable within such Commonwealth (without regard to applicable conflict of laws provisions). The United States District Court for the District of Massachusetts or, if federal subject matter jurisdiction is lacking, the Superior Court of the Commonwealth of Massachusetts in Middlesex County, shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
 - If you enter into this Agreement through the Monotype affiliate Monotype K.K., this Agreement is governed by the laws of Japan (without regard to applicable conflict of laws provisions). The courts of Tokyo, Japan shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
 - If you enter into this Agreement through the Monotype affiliate Monotype Ltd., this Agreement is governed by the laws of England and Wales (without regard to applicable conflict of laws provisions). The courts of London, England, shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
 - If you enter into this Agreement through the Monotype affiliate Monotype GmbH, this Agreement is governed by the laws of Germany (without regard to applicable conflict of laws provisions). The courts of Frankfurt/Main, Germany, shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
 - This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.