

# Terms of Service



Date last modified: 19 Jan 2024

The following Terms of Service ("Agreement") constitute a legal agreement between the entity ("Customer") executing an Order for the Services (as such terms are defined herein) and Bootstrap Software Partners LLC d/b/a PoliteMail Software ("PoliteMail"), which governs Customer's use of the Services.

CUSTOMER'S RIGHT TO USE THE SERVICES IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THESE TERMS. BY EXECUTING AN ORDER FOR THE SERVICES, CUSTOMER UNCONDITIONALLY CONSENTS TO BE BOUND BY AND BECOMES A PARTY TO THIS AGREEMENT.

1. **Definitions.** The following definitions apply to this Agreement (in addition to the other defined terms specified elsewhere in this Agreement):
  - 1.1 **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
  - 1.2 **"Customer Data"** means all Customer electronic data submitted by or collected, generated and stored for the Customer through use of the Services.
  - 1.3 **"Documentation"** means the digital documents and online user instructions made available by PoliteMail as part of the Services, as may be updated from time to time by PoliteMail.
  - 1.4 **"Effective Date"** means the date of last signature by the parties of an Order referencing this Agreement.
  - 1.5 **"Including,"** whether or not capitalized, means "including, but not limited to."
  - 1.6 **"Order"** means an executed order form for Services purchased from PoliteMail.
  - 1.7 **"Personal Data"** means any information relating to an identified or identifiable natural person, any other data protected by Privacy Laws; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
  - 1.8 **"Privacy Laws"** means laws, in multiple jurisdictions worldwide when such jurisdictions pertain to the Customer, PoliteMail or Services, that relate to (i) the confidentiality, processing, privacy, security, protection, transfer or trans-border data flow of personal data, personally-identifiable information, or (ii) electronic data privacy; whether such laws are in place as of the effective date of this Agreement or come into effect during the Term. Privacy Laws include but are not limited to EU General Data Protection Regulation 2016/679 (GDPR) and the California Consumer Privacy Act, Cal. Civ. Code 1798.100 et seq., and regulations promulgated thereunder (CCPA).

- 1.9 **"Services"** means the online, cloud-based application, related Software, updates, documentation and applicable integration(s) provided by PoliteMail, its licensors, and service providers, and any related recurring support services.
- 1.10 **"Software"** means add-in software to Customer's Microsoft 365 Office, which will provide access to the PoliteMail Services, including any updates or upgrades made generally available during the Subscription Term.
- 1.11 **"Subscription Term"** means the period of the Customer's subscription rights to use the Services and Software beginning on the start date specified in the Order(s) and continuing thereafter as set forth therein.
- 1.12 **"Systems Data"** means data produced by the Services or derived from processing the Customer Data which may be utilized by PoliteMail to provide, monitor, enhance or improve the Services. Such data includes provisioning, licensing, security monitoring, systems logging, statistical performance benchmarking and machine learning and training.
- 1.13 **"Term"** means the term of this Agreement commencing on the Effective Date and terminating on the earlier of termination of the Subscription Term or the termination of this Agreement.
- 1.14 **"Users"** means the Customer's and its Affiliates' individual employees, consultants, contractors, agents, and/or Affiliates who are authorized by Customer to access and use the Services in accordance with this Agreement and applicable Order(s).

2. **Provision of Services.** PoliteMail shall make the Services and Software available to Customer pursuant to this Agreement and the Order(s) during the Subscription Term specified in the Order(s). Customer acknowledges that its purchase of Services and Software is not contingent on the delivery of any future functionality or features or dependent on any oral or written public comments made by PoliteMail regarding future functionality or features. Customer's use of the Services includes the right to access the functionality available for the specific type of Services purchased as specified in the Order(s).

Subsequent updates and enhancements to the Services made generally available to all subscribing customers will be made available to Customer at no additional charge. Notwithstanding the foregoing, and at PoliteMail's sole discretion, additional features, functionality, modules or enhancements to the Services may be marketed separately by PoliteMail and may require the payment of additional fees, provided the Services subscribed to are not materially diminished.

Unless otherwise set forth in an Order, this Agreement will apply to any updates, upgrades, and new modules or product offerings subsequently provided by PoliteMail to Customer as part of any Services.

3. **Support Services and Service Level Agreement.** PoliteMail's Service Level Agreement for the SaaS cloud Services is available at <http://docs.politemail.com/PoliteMailMasterCloudServicesSLA.pdf>. PoliteMail's Service Level Agreement for the support services packages purchased with an Order are available at <http://docs.politemail.com/PoliteMailMasterSupportSLA.pdf>.

4. **Orders.** This Agreement does not by itself subscribe to or order any Services. Upon receipt of an executed Order that references this Agreement, PoliteMail shall provide Customer with the Services in accordance with the terms and conditions of this Agreement and as specified in the Order(s). Upon execution, each Order will be incorporated into and become a part of this Agreement.
5. **License.** Subject to the terms and conditions of this Agreement, and in consideration for the payment of fees set forth in the Order(s), PoliteMail hereby grants Customer and its Affiliates (a) a non-exclusive, revocable, limited, royalty free, internal use license to access and use the Services and provide its Users with access to the Services during the Subscription Term; and (b) a limited, non-exclusive, worldwide, royalty-free, non-transferable license to use the Software and access, use, reproduce, display the Documentation for the Customer's internal business purposes during the Subscription Term; and (c) access, use, reproduce, display the Documentation as necessary for such internal use of the Services during the Subscription Term. PoliteMail shall host the Services and may update the functionality and user interface of the Services from time to time in its sole discretion as part of its ongoing efforts to improve the Services.
6. **Use and Protection of Customer Data.** Subject to this Agreement, including PoliteMail's confidentiality obligations, Customer hereby grants PoliteMail a limited, non-exclusive, royalty-free, worldwide license to process Customer Data to the extent necessary for PoliteMail to provide the Services to Customer. As between PoliteMail and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, and appropriateness of all Customer Data. Any Personal Data provided by Customer as a component of the Customer Data will be processed by PoliteMail in accordance with the data processing agreement (the "DPA") available at <http://docs.politemail.com/PoliteMail-DPA.pdf>. Customer data shall be retained for the Term of the Agreement, unless otherwise terminated. Data protection for Customers with employees in the European Union and/or United Kingdom is provided under the Standard Contractual Clauses available at <http://docs.politemail.com/PoliteMail EU-StandardContractualClauses-Form.pdf>
7. **Restrictions.** Customer and its Users shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, or otherwise commercially exploit the Services or Software or make the Services or Software available to any third party, other than to Users or as otherwise authorized under this Agreement; (ii) use the Services to send, store, publish, post, upload, or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any systems, data, personal information, or property of another; (iii) interfere with or disrupt the integrity or performance of the Services; (iv) attempt to gain unauthorized access to the Services or its related systems or networks; (v) use or knowingly permit others to use any security testing tools in order to probe, scan, or attempt to penetrate or ascertain the security of the Services, except where agreed between the parties (such consent by PoliteMail not to be unreasonably withheld, conditioned or delayed); (vi) access the Services for the purpose of building a similar or competitive product; or (vii) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Services or Software or any part thereof or otherwise attempt to discover any source code or modify the Services or Software.
8. **Customer and Users.** Customer shall not permit access to or use of the Services or Software by anyone other than Users. Customer is responsible and liable for its Users' compliance with the terms of this Agreement, for its Users' use of the Services and Software, and for ensuring that Users maintain the confidentiality of all access credentials for the Services and the Software.

9. **Internet Access.** Customer shall provide for its own access to the Internet, arrange for secure Internet access therefore, and pay any service fees and all related expenses associated with such access. CUSTOMER ACKNOWLEDGES IT IS SOLELY AND EXCLUSIVELY RESPONSIBLE FOR THE CONTROL, OPERATION, AND SECURITY OF ANY INTERNET TRANSACTIONS OR COMMUNICATIONS INITIATED USING THE SERVICES. CUSTOMER FURTHER ACKNOWLEDGES THAT POLITEMAIL HAS EXPLICITLY INFORMED CUSTOMER THAT THE INTERNET IS NOT A SECURE MEDIUM AND MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND INADVERTENT OR DELIBERATE SECURITY BREACHES.

10. **Fees and Payment Terms.**

- 10.1 **Fees.** Customer shall pay all fees specified in the Order(s) and in the manner specified in the Order(s). Except as otherwise specified in an Order: (i) fees are quoted and payable in United States Dollars; (ii) fees are based on Services purchased, regardless of whether Customer uses the Services; (iii) except as otherwise set forth herein or in an applicable Order, payment obligations are non-cancelable and fees paid are non-refundable; and (iv) the Services purchased cannot be decreased during the Subscription Term except as mutually agreed by the Parties in writing. Unless as otherwise set forth in an Order, fees are due and payable within thirty (30) days after Customer's receipt of the applicable PoliteMail invoice. Customer shall pay all undisputed amounts under this Agreement without setoff or counterclaim, and without any deduction or withholding.

In the event Customer's use of Services exceeds the license volumes as specified in the Order(s), then PoliteMail will have the right to invoice Customer at the rates specified in the applicable Order, and Customer shall pay, the additional prorated fees associated with any such overages.

- 10.2 **Suspension of Service.** If any undisputed amounts owed by Customer for the Services are overdue and customer fails to pay such overdue amounts within ten (10) days of notice thereof, PoliteMail may, without limiting PoliteMail's other rights and remedies, suspend Customer's and its Users' access to the Services and license to the Software until such amounts are paid in full.
- 10.3 **Taxes.** Fees do not include sales, use, or other taxes and Customer shall pay all applicable foreign, federal, state, provincial, and local taxes pertaining to Customer's access to, use, or receipt of the Services, including any withholding taxes imposed by a jurisdiction other than the United States. Customer is not obligated to pay any taxes from any jurisdiction related to PoliteMail's net income, capital, or assets.
- 10.4 **Customer Purchase Orders.** If Customer issues a purchase order in respect of this Agreement and any Order(s), Customer acknowledges that any such purchase order(s), including, but not limited to, any terms and conditions and other documents, is solely for the convenience of Customer's purchasing system and does not in any way modify or add to this Agreement and any Order(s) or the rights or obligations of PoliteMail or Customer.

11. **Proprietary Rights.**

- 11.1 **Services and Software.** PoliteMail, its licensors, and its service providers own all right, title, and interest in and to the Services and Software, including all related intellectual property rights. PoliteMail reserves all rights not expressly granted to Customer under this Agreement. This

Agreement and the Order(s) create no implied rights. Customer and Users shall not delete or in any manner alter the copyright, trademark, and other proprietary notices of PoliteMail appearing on the Services, Software or any portion thereof.

11.2 **Customer Data.** As between PoliteMail and Customer, Customer exclusively owns all right, title, and interest in and to all Customer Data.

11.3 **Systems Data.** As between PoliteMail and Customer, PoliteMail exclusively owns all right, title, and interest in and to all Systems Data.

## 12. Confidentiality.

12.1 **Confidential Information.** "**Confidential Information**" means all confidential or proprietary information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the Customer Data, Services access credentials, the Services, Software, Documentation, the terms and conditions of this Agreement, pricing and other terms set forth in all Orders hereunder, as well as marketing plans, budgets, financial information, technology, technical information, methods, processes, techniques, designs, computer programs, and other business information disclosed by the Disclosing Party.

12.2 **Confidentiality Obligations.** Recipient shall: (i) use the same degree of care to protect the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own Confidential Information, but in no event less than reasonable care; and (ii) not use or disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

12.3 **Exceptions to Confidentiality Obligations.** The restrictions and confidentiality obligations set forth in this Agreement do not apply to Confidential Information which: (i) is, or hereafter becomes, generally available to the public other than as a result of disclosure by Recipient in breach of this Agreement; (ii) was already in Recipient's possession prior to the entering into of this Agreement and such Confidential Information was obtained by Recipient without a breach or violation of any express or implied confidentiality duty or obligation; (iii) becomes available to Recipient on a non-confidential basis from a third party, provided that the third party providing such information is not prohibited from disclosing such information by a contractual, legal, or fiduciary obligation of confidentiality; (iv) is independently developed by Recipient without the use or benefit of Confidential Information provided to the Recipient pursuant to this Agreement and such independent development can be shown by documentary evidence; or (v) Recipient becomes compelled to disclose by way of statute, government regulation, or judicial order, provided, however, that Recipient shall provide the Disclosing Party with prompt notice of any such obligation to disclose so that the Disclosing Party may seek a protective order of the court or other appropriate remedy, and if requested by the Disclosing Party, Recipient shall exercise reasonable commercial efforts to assist Disclosing Party in obtaining a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information prior to being disclosed, at the expense of the Disclosing Party. In any event, Recipient shall furnish only that portion of the Confidential Information which is legally required to be disclosed.

- 12.4 **Injunctive Relief.** The Parties acknowledge that irreparable harm may result to the Disclosing Party if the Recipient breaches its obligations under this Agreement and that such a breach may not be properly compensable by an award of money damages. Accordingly, the remedies for any such breach or a threatened breach may include, in addition to other remedies and damages available in law or equity or under this Agreement, injunctive relief or other equitable relief enjoining such breach or threatened breach at the earliest possible date, and such remedies may be exercised without the necessity on the part of the Disclosing Party to: (i) prove that such damages would not be adequately compensated by monetary award; or (ii) post any bond or security.
- 12.5 **Precedence.** Any Confidential Information disclosed between the Parties under this Agreement will be governed by the confidentiality provisions herein.

### 13. **Warranties And Disclaimers.**

- 13.1 **Warranties.** PoliteMail warrants, for the sole benefit of Customer, that the Services will conform in all material respects to the Service Level Agreement for the Term, and that the Software and Services will conform in all material respects to the Documentation for the Term, provided the Customer has installed the latest updates of the Software within ninety (90) days of the date of availability of such update. PoliteMail does not warranty compatibility with future updates or upgrades made to third party products or to Customer's systems or configurations.
- 13.2 **Disclaimers.** Except as set forth in this Agreement, PoliteMail provides no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

### 14. **Indemnification.**

#### 14.1 Defense.

(a) PoliteMail will defend (and pay all attorney's fees and court costs of such defense) Customer against any claims made by an unaffiliated third party resulting from (i) the Services, Software or Documentation infringing that third party's patent, copyright or trademark or misappropriation its trade secret and (ii) a disclosure of Customer or Personal Data in violation of the DPA. Further, PoliteMail will indemnify and hold Customer harmless against any adjudicated or settled damages in connection with such third party claims.

(b) Customer will defend (and pay all attorney's fees and court costs of such defense) PoliteMail against any claims made by an unaffiliated third party resulting from any Customer Data infringing the third party's patent, copyright, or trademark or misappropriation of its trade secret. Further, Customer will indemnify and hold PoliteMail harmless against any adjudicated or settled damages in connection with such third party claim.

- 14.2 **Limitations.** PoliteMail's obligations in Section 14.1(a)(i) will not apply to a claim or award to the extent it is based on: any Customer Data, modifications Customer makes to the Services or Software without the prior written consent of PoliteMail or Customer's combination of the Services or Software with non-PoliteMail provided products, services or software, excepting the products, services or software the Documentation states it is intended to be combined with;

provided that such infringement or misappropriation would not have occurred but for such modification or combination.

14.3 Remedies. If PoliteMail reasonably believe that a claim under Section 14.1(a)(i) may bar Customer's use of the Services or Software, PoliteMail will seek to: (i) obtain the right for Customer to keep using it; or (ii) modify or replace it with a functional equivalent of substantially similar quality. If these options are not commercially reasonable, PoliteMail may terminate Customer's rights to use the Services and Software and then refund any advance payments for unused Subscription Term.

14.4 Obligations. Each party must notify the other promptly of a claim under this Section; provided that the failure to provide such notice will not relieve the party providing the protection of its obligations unless such failure prejudices the ability of the party providing the protection to defend the claim. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help. Neither party may settle any claim resulting in the admission of liability or the payment of moneys by the party seeking protection, without the prior written consent of such party.

14.5 The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 14 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

## 15. **Limitation of Liability.**

15.1 In no event shall either Party's aggregate liability arising out of or related to this Agreement, whether in contract tort or under any other theory of liability, exceed an amount equal to the total fees paid or payable by Customer to PoliteMail for the Software and Services provided to Customer hereunder during the then preceding twelve (12) month period; provided, however, that liability arising under Section 14(a)(i) and 14(b), misappropriation of PoliteMail's intellectual property, or damages due to gross negligence, bad faith, fraud or intentional misconduct shall be without limit. Notwithstanding the foregoing, liability arising under Section 12 (Confidentiality) and Section 14(a)(i) hereof shall be limited in the aggregate to two million United States Dollars (\$2,000,000).

15.2 Neither Party will be liable to the other for any consequential, special, exemplary, indirect, incidental, or punitive damages (including damages for loss of data, revenue, and/or profits), whether foreseeable or unforeseeable, arising out of this Agreement.

## 16. **Term and Termination.**

16.1 **Term.** The Term of this Agreement shall commence on the Effective Date and terminate on the date of termination of the Subscription Term or as otherwise provided herein. If the Subscription Term is renewed, then the Term of this Agreement is automatically renewed for the term of the Subscription Term.

16.2 **Termination for Cause.** In addition to termination rights granted in the Order(s), this Agreement and any applicable Order(s) may be terminated by either Party for cause as follows: (i) upon thirty 30 days' prior written notice if the other Party breaches or defaults under any material

provision of this Agreement and does not cure such breach prior to the end of such 30-day period; or (ii) effective immediately and without notice if the other Party ceases to do business, or otherwise terminates its business operations, except as a result of a permitted assignment hereunder. In the event of any termination of this Agreement for cause (other than a material breach by Customer), PoliteMail shall refund to Customer, on a pro rata basis, any unearned fees prepaid by Customer.

### **16.3 Termination for Convenience.**

Customer may terminate any monthly subscription Order in its sole discretion and without fee or penalty effective any time during the applicable Subscription Term by giving PoliteMail at least 30 days' prior written notice. Customer may terminate any annual subscription Order without fee or penalty any time during the applicable Subscription Term and will not be entitled to a refund of any prepaid service fees. Customer may terminate any three-year subscription Order any time after the first fifteen months of the applicable Subscription Term by giving PoliteMail at least 60 days prior written notice and a fee equal to the repayment of any discounts provided for the three year term prorated from the start of the Term through the effective termination date.

Customer may terminate any Professional Services SOW in its sole discretion and without fee or penalty at any time, provided Customer pays for any and all Professional Services rendered up to the effective date of termination.

**16.4 Destruction of Customer Data.** In the event of termination or expiration of a Subscription Term, Customer may download data at any time prior to termination date, and may request a copy in a standard format (CSV, XLS, SQL). PoliteMail shall permanently destroy the Customer Data within 30 days of such termination or expiration, unless Customer renews such Subscription.

**16.5 After Termination.** Upon any termination or expiration of this Agreement: (i) all licenses and rights granted hereunder will terminate and PoliteMail will no longer provide access to the Services to Customer; and (ii) Customer shall cease and cause its Users to cease using the Services and Software.

**17. Professional Services.** PoliteMail may make available to Customer project management, consulting, software customization, training and implementation services (collectively, "Professional Services") as indicated in a mutually executed Statement of Work (SOW) or Order. Such Professional Services are available to assist Customer in the implementation of the Services and Software or in various post-implementation projects or tasks that may occur from time to time. Professional Services shall be made available at the rates set out in a Statement of Work or Order duly signed by both parties.

### **18. General.**

**18.1 Notices.** Each Party giving or making any notice, request, demand, or other communication pursuant to this Agreement shall give such notice in writing and use one of the following methods of delivery: (i) personal delivery; (ii) registered or certified mail (in each case, return receipt requested and postage prepaid); or (iii) nationally or internationally recognized overnight courier service (with all fees prepaid), and such notices will be delivered to the address set forth in the Order(s) or to such other address as either Party may from time to time specify in writing to the other Party. All notices will be deemed to have been duly given: (i) when delivered in person; (ii) upon receipt after dispatch by registered or certified mail, postage prepaid; or (iii) on



the next business day if transmitted by national or international overnight courier (with confirmation of delivery). Notwithstanding the foregoing, PoliteMail may provide Customer notice via email communication, and such notice will satisfy the notice requirements herein, with respect to any past due fees owed by Customer pursuant to any Order(s) provided such notice for past due fees is sent to the email address listed in the Order Form or notified by Customer to PoliteMail from time to time.

**18.2 Independent Parties.** Nothing in this Agreement is intended to create a joint venture, partnership, agency, or employment relationship between the Parties. Neither Party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party. Furthermore, other than the express obligations contained in this Agreement, nothing in this Agreement obligates either Party to enter into any additional contractual relationship with the other Party.

**18.3 Compliance with Laws.** Both Parties shall comply with all applicable laws and regulations in their conduct under this Agreement, including import and export restrictions.

**18.4 Force Majeure.** Neither Party will be liable for any failure or delay in performance under this Agreement (other than for a delay in the payment of money due and payable hereunder) to the extent such failure or delay is caused by conditions beyond the reasonable control of and not the fault of the nonperforming Party, including Acts of God, earthquakes, floods, fire, hurricanes, unusually extreme or severe weather, wars, insurrections, terrorism, riots, labor stoppage, denial of service attacks, or criminal acts of third parties (collectively, a "**Force Majeure Event**"), provided that the nonperforming Party gives the other Party prompt notice, with full details following the occurrence of the cause relied upon. A Force Majeure Event will not include lack of funds.

**18.5 Choice of Law – Designation of Forum.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the United States of America, State of Delaware, without reference to its choice of law principles to the contrary. The parties will attempt to resolve all conflicts arising from this Agreement in good faith and in an amicable way. In such event, any aggrieved party shall provide written notice to the other party and the parties shall expeditiously appoint executives to attempt to resolve such matter. If the executives are unable to resolve such matter within thirty (30) days of the date of such notice, then the matter shall be finally settled by arbitration by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. The place of arbitration shall be a neutral location as agreed by the parties and the language to be used in such arbitral proceeding shall be English. Any award resulting therefrom will be final and binding on the Parties. Judgment upon the award may be entered in any court having jurisdiction thereof. The arbitration agreement set forth in this Section shall be without prejudice to the right of each Party to seek any interim or conservatory measure as it deems appropriate, as set forth herein. THE PARTIES SPECIFICALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS, OR STATUTORY CLAIM, COUNTERCLAIM, OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR CONNECTED IN ANY WAY TO THIS AGREEMENT, BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE.

- 18.6 **Assignment and Delegation.** Neither Party may assign any of its rights nor delegate any of its obligations under this Agreement, except with the prior written consent of the other Party, provided, however, that either Party may, without the written consent of the other Party assign this Agreement and its rights and delegate its obligations (i) to an Affiliate or (ii) in connection with the transfer or sale of all or substantially all of its business or in the event of its solvent merger, consolidation, change in control, or similar transaction; provided such assignee is in good financial condition and not a competitor of the non-assigning party. Any purported assignment of this Agreement and rights herein or delegation of obligations in violation of this Section will be null and void and of no effect.
- 18.7 **Successors and Assigns.** This Agreement binds and benefits the Parties and, as the case may be, the Parties' respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.
- 18.8 **Authority to Contract.** Each Party represents and warrants to the other that it has the authority to enter into this Agreement, that the entity or individual name which it has provided on its own behalf for this Agreement is a true and accurate representation of its legal identity, and that the execution and performance of this Agreement has been duly authorized by all requisite formalities.
- 18.9 **Drafting.** This Agreement will be construed without regard to the drafter and will be construed as though each Party to this Agreement participated equally in the preparation and drafting of this Agreement.
- 18.10 **Amendments.** PoliteMail reserves the right to change this Agreement at any time, but if PoliteMail makes such changes, PoliteMail will bring it to Customer's attention by placing a notice on the PoliteMail website, by sending Customer an email, and/or by some other means. PoliteMail will also change the date at the top of this Agreement. If Customer does not agree with the new terms, Customer is free to reject them; unfortunately, that means Customer will no longer be able to use the Services. If Customer uses the Services in any way after a change is effective, that means Customer agrees to all of the changes. Except for changes by PoliteMail as described herein, no other amendment or modification of this Agreement will be effective unless in writing and signed by both Customer and PoliteMail.
- 18.11 **Rights and Remedies Cumulative.** The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist in law or in equity or by statute or otherwise.
- 18.12 **Trademark Information.** The Parties shall not use the trademarks and services marks of the other Party without that Party's prior written consent. Notwithstanding the foregoing, PoliteMail has the right to name Customer as a user of the Services. The PoliteMail name, the PoliteMail logo, and the product names associated with the Services are trademarks of PoliteMail or third parties, and no right or license is granted to use them. Customer shall not remove any PoliteMail trademark or logo from the Services.
- 18.13 **Severability.** If it is held by a court or other lawful authority of competent jurisdiction that any term, provision, covenant, or condition of this Agreement is illegal, invalid, or unenforceable, in whole or in part, such provision will be ineffective to the extent of such illegality, invalidity, or

unenforceability without invalidating the remainder of such provision or the remainder of this Agreement; such remaining provisions will continue in full force and effect, provided the effectiveness of the remaining portions of this Agreement will not defeat the overall intent of the Parties.

- 18.14 **No Waiver.** No provision, right, power, or privilege in this Agreement may be waived, except pursuant to a written waiver executed by the Party against whom the waiver is sought to be enforced. Failure of a Party to enforce its rights on one occasion will not result in a waiver of such rights on any other occasion.
- 18.15 **Survival.** In addition, Sections 10.1-10.3, 11, 12, 13.2, 14, 15, 16.2-16.5, and 18 will survive the termination or expiration of this Agreement.
- 18.16 **Headings.** The headings and subheadings in this Agreement are inserted for convenience of reference only and will not be used in interpreting or construing the provisions of this Agreement.
- 18.17 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all other previous correspondence, promises, representations, proposals, and agreements, written or oral, express or implied, between the Parties relating to the subject matter contained herein.