

**IMPORTANT: PLEASE READ THESE TERMS OF SERVICE AND THE ACCEPTABLE USE AND SECURITY POLICY CAREFULLY BEFORE CLICKING THE BOXES TO THE RIGHT OR USING THE CERTIFIEDEMAIL SERVICE. BY ACCESSING THE CERTIFIEDEMAIL SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS OF SERVICE AND THE ACCEPTABLE USE AND SECURITY POLICY, THAT YOU UNDERSTAND THEM, AND THAT YOU OR THE COMPANY YOU REPRESENT SHALL BE BOUND BY THE TERMS OF SERVICE AND THE POLICY. BY CLICKING THE "I ACCEPT" BUTTON, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY YOU REPRESENT (HEREINAFTER, "YOU" OR "SENDER") WITH RESPECT THE MATTERS HEREIN. IF YOU DO NOT AGREE TO AND ACCEPT ALL OF THESE TERMS, DO NOT CLICK ANY OF THE BUTTONS TO THE RIGHT OR BELOW OR ATTEMPT TO ACCESS THE CERTIFIEDEMAIL SERVICE.**

**TERMS OF SERVICE  
V12.08**

**1. DEFINITIONS**

- 1.1. "**AUP**" means Goodmail's Acceptable Use and Security Policy as published on Goodmail's website and as updated from time to time with prior notice to Sender.
  - 1.2. "**Confidential Information**" with respect to a party refers to (i) such party's technology; (ii) the business or technical information of such party; (iii) the identities of or any other information relating to customers of such party; (iv) the terms and conditions of this Agreement and (v) any other information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential.
  - 1.3. "**Distribution Partner**" means Internet service providers and mailbox providers.
  - 1.4. "**Pricing Agreement**" means an agreement manually executed by the Parties setting forth the pricing for Tokens purchased by Sender hereunder.
  - 1.5. A "**Token**" is a digital tag that is printed on an email by a Goodmail CertifiedEmail imprinter that indicates the associated email is authorized to be processed by Distribution Partners pursuant to the the CertifiedEmail Service.
  - 1.6. "**Token Classes**" are the Token classifications published by Goodmail that designate the purpose of the email containing a Token and determines the unique set of features and functions that will be available with respect to an email containing that Token.
2. **SENDER PRICING.** The pricing applicable to Tokens purchased by Sender pursuant to this Agreement is set forth in the Pricing Agreement or, if no pricing is set forth in the Pricing Agreement or in the absence of a Pricing Agreement with respect to a time period or Token Class, at the rates on Goodmail's then-current rate card for Tokens in such Token Class.

**3. CERTIFIEDEMAIL SERVICE**

- 3.1. Delivery of Messages. Subject to the limitations set forth in the AUP, the CertifiedEmail Service will provide a means for Sender's email messages bearing valid Tokens to bypass Distribution Partners' email filters (including content filters and volume filters) and be delivered to recipients' email inboxes. Because the CertifiedEmail Service is designed to honor recipient preferences, recipients may change their default preferences to redirect a particular CertifiedEmail message, in which case a particular message may not be delivered to a recipient's inbox. Under certain circumstances in which an Internet service provider determines that delivery of a sender's email through its system would not be in its commercial best interest, the Internet service provider may not deliver the email.

- 3.2. Tokens. Tokens are valid for a single email message and an email message bearing a Token may have only one recipient. Messages with multiple recipients will not be processed. Use of Tokens is governed by the AUP.
- 3.3. Certification Icon. A certification icon will be displayed in the user interface framing each CertifiedEmail message and in the message list view.
- 3.4. Accreditation. Sender must successfully complete Goodmail's accreditation process before commencing the transmission of emails bearing Tokens.
4. **COVENANTS**. Sender's email messages that bear Tokens (i) shall comply in all respects with any law applicable to the transmission of email including, without limitation, the US CAN-SPAM Act of 2003, (ii) shall comply in all material respects with the AUP, (iii) shall not contain any false or misleading message headers, (iv) shall not include any viruses or other programs or executables which could reasonably be expected to destroy data, limit the functionality of a computer or introduce software to a computer without the user's permission (a "**Virus**"), and (v) shall not contain links to any website that contains or downloads a Virus, spyware or other malware. Sender's data collection and email practices shall conform to the terms of service of any Distribution Partner into whose domains Sender transmits email and Sender's own privacy policy.
5. **TERMINATION**. Either party may terminate this Agreement at any time by providing the other party thirty (30) days' prior written notice. Nothing in this Agreement shall require Sender to purchase Tokens in the future. Goodmail may suspend Sender's privileges or terminate this Agreement as described in the AUP including, without limitation, maintaining a reputation score that exceeds the maximum allowable reputation score set forth in the AUP.

## 6. WARRANTIES AND INDEMNIFICATION

- 6.1. Warranty. Each party represents and warrants that it shall comply with all applicable local, state and federal laws and regulations.
- 6.2. DISCLAIMER. EXCEPT AS OTHERWISE PROVIDED HEREIN, GOODMAIL DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER NOT OTHERWISE SPECIFIED HEREIN, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GOODMAIL OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF GOODMAIL'S OBLIGATIONS.
- 6.3. Indemnification. Each party shall indemnify and hold the other party harmless from and against any third party loss, cost, claim, liability, or expense (including without limitation reasonable attorneys' fees) arising out of or resulting from any breach or claimed breach of the covenants, warranties and representations set forth herein or the infringement or alleged infringement of any third party intellectual property rights. The obligation to indemnify is conditioned upon the indemnified party (i) providing the indemnifying party prompt written notice of any such loss, cost, claim, liability, or expense or the threat of any such loss, cost, claim, liability or expense, (ii) providing the indemnifying party reasonable cooperation and assistance in the defense or settlement of such claim, and (iii) tendering to the indemnifying party the sole control over the defense or settlement of any such claim.
7. **LIMITATION OF LIABILITY**. TO THE FULLEST EXTENT ALLOWED BY LAW, GOODMAIL SHALL NOT BE LIABLE TO SENDER UNDER ANY CIRCUMSTANCE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA OR ANY DAMAGES OR SUMS PAID TO THIRD PARTIES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER SUCH CLAIM IS BASED UPON BREACH OF CONTRACT, WARRANTY OR ANY STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. EXCEPT WITH RESPECT TO ANY LIABILITIES INDEMNIFIED HEREUNDER, IN NO EVENT SHALL GOODMAIL'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF THIS AGREEMENT EXCEED THE

AMOUNT PAID BY SENDER TO GOODMAIL HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIMS. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN. THE PARTIES AGREE THAT (I) THE MUTUAL AGREEMENTS MADE IN THIS SECTION 7 REFLECT A REASONABLE ALLOCATION OF RISK, AND (II) THAT EACH PARTY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY. GOODMAIL SHALL NOT BEAR ANY LIABILITY FOR ANY DISTRIBUTION PARTNER'S ELECTION NOT TO DELIVER SENDER'S EMAILS UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 3.1 OF THIS AGREEMENT.

8. **CONFIDENTIALITY.** Each Party will during the term of this Agreement and after termination or expiration thereof refrain from using the other Party's Confidential Information except as contemplated herein, and from disclosing such Confidential Information to any third party except to employees as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees). However, either Party may disclose Confidential Information of the other Party: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that such Party gives reasonable notice to the other Party to contest such order or requirement; and (ii) on a confidential basis to legal or financial advisors.
9. **MISCELLANEOUS.** This Agreement shall be construed, enforced, performed and in all respects governed by and in accordance with the laws in the State of California. Each party irrevocably consents to the jurisdiction and venue of the federal and state courts located in the State of California, County of Santa Clara. In any action or suit to enforce any right or remedy under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs. This Agreement may not be assigned by either party without prior written consent of the other party, except that either party may assign this Agreement in the event of a merger, reorganization or sale of all or substantially all of the business related to the subject matter of this Agreement. Neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this Section. This Agreement, together with any document referenced herein, constitutes the entire agreement between the parties relating to subject matter hereof and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. Goodmail reserves the right to modify the terms and conditions of Sender's use of the CertifiedEmail Service upon two weeks' prior notice (unless Goodmail is required by law to modify such terms and conditions in less than two weeks), and Sender shall be required to re-accept this Agreement or the AUP (as modified) within such two-week period in order to continue its use of the CertifiedEmail Service. Sender's delay in providing such assent may result in the temporary suspension of CertifiedEmail Service privileges. If any such modification is not acceptable to Sender, Sender's only recourse is to cease using the CertifiedEmail Service. By continuing to use the CertifiedEmail Service following receipt of a notice regarding a change, Sender accepts and agrees to be bound by such new terms.