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# 1 Copyright Notice

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## 2 PerfectMail™ License Agreement

### PerfectMail™ License Terms and Conditions

PerfectMail™ IS WILLING TO LICENSE THE SOFTWARE YOU ARE ABOUT TO USE ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT AND SUPPLEMENTAL LICENSE TERMS (COLLECTIVELY "AGREEMENT"). PLEASE READ THE AGREEMENT CAREFULLY. THIS IS A BINDING AGREEMENT BETWEEN YOU (THE "CUSTOMER") AND PerfectMail™. YOU MUST AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT IN ORDER TO USE THE SOFTWARE OR SUBSCRIBE (EITHER AS A PURCHASER OR FOR A TRIAL PERIOD) TO PerfectMail™ SERVICES. BY PROCEEDING TO RUN THIS SOFTWARE, YOU ACCEPT THE TERMS OF THE AGREEMENT. INDICATE ACCEPTANCE BY SELECTING THE "I AGREE" LINK AT THE BOTTOM OF THE AGREEMENT OR BY SIMPLY USING THE PRODUCT. IF YOU ARE NOT WILLING TO BE BOUND BY ALL THE TERMS, RETURN THE PRODUCT TO THE PLACE OF PURCHASE.

### 1. DEFINITIONS

In this Agreement,

1.1. *Company* means PerfectMail™, the developer of Product. A legal entity officially known as 789852 Ontario Inc. incorporated in the Province of Ontario, Canada.

1.2. *Software* means the object code version of the computer software licensed by Customer under this Agreement.

1.3. *Documentation* means such manuals, documentation and any other supporting materials relating to the Licensed Software as are currently maintained by PerfectMail™ and generally provided to its licensee.

1.4. *Product(s)* means hardware, Software, documentation, accessories, supplies, parts and upgrades that are determined by PerfectMail™ to be available from PerfectMail™ upon receipt of Customer's order.

1.5. *Reseller* means a dealer Licensed by PerfectMail™ to sell its products.

1.6. *Customer* Any licensee of PerfectMail™ products including, but not limited to, PerfectMail™. This term will also be used for organizations who wish to or are currently evaluating Product regardless of their ultimate decision to acquire a License or purchase Product.

1.7. *Access* Any direct or indirect computer/electronic access to any physical appliance, virtual appliance, customer server or managed service running Product. This includes, but is not limited to secure command line, web, graphics user interface, e-mail or other direct or indirect access.

1.8. *Customer Agreement* means the agreement between the Customer and the Reseller and/or PerfectMail™ setting out the type of License and License Fee for the products and/or services provided.

1.9. *License* means the Software and Support License or Evaluation License granted for the appropriate number of Terminals, License Fee and Term of Validity as set out in any accompanying Customer Agreement

1.10. *License Fee* means the fee or fees designated by PerfectMail™ or the Reseller for Software and Support. Different License Fees apply depending on the type of License, the duration of the License, and the nature of the support.

1.11. *Term of Validity* means the period set out in the accompanying Customer Agreement throughout which Customer may use the software either on the basis of an Evaluation License or a Software and Support License.

## 2. LICENSE TERMS

2.1. Software is owned and copyrighted by PerfectMail™ and/or by third party suppliers. Customer's Software and Support License confers no title or ownership and is not a sale of any rights in the Software. Third party suppliers shall have the rights to protect its own proprietary rights to the Software in the event of any infringement.

2.2. Unless otherwise permitted by PerfectMail™, Customer may only make copies of the Software for archival purposes or when copying is an essential step in the authorized use of the Software on a backup device, provided that copies are used in no other manner and provided that the use on the backup device is discontinued when the original or replacement device becomes operable.

2.3. Customer may not use more appliances than stipulated in the License, nor may the software be used if it is not within the Term of Validity of the most recent License or Support Agreement with the Customer.

2.4. Customer will not modify, disassemble or decompile the Software without PerfectMail's prior written consent. Where Customer has other rights under statute, Customer will provide PerfectMail™ with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software. In addition Customer will take all reasonable steps to ensure that users of PerfectMail's software in Customer's possession do none of the aforementioned.

2.5. Customer will not remove any product identification, copyright notices, or other notices or proprietary restrictions from the Software unless this option is provided as a configuration option by the Software.

2.6. Customer will not disclose results of any benchmark tests of the Software to any third party without PerfectMail's prior written approval;

2.7. Customer will not install or use demo, demonstration or evaluation licenses for any purpose other than for evaluation purposes;

2.8. Customer will not sell, transfer, lease or otherwise assign free licenses to any other party.

2.9. If Customer does not renew a license agreement with PerfectMail™ by the termination date, customer agrees that the Product will no longer be supported, that updates will not be provided, that signature files will not be updated and that customer will not be entitled to bug fixes, defect repairs, feature enhancements or other benefits.

2.10. PerfectMail™ may terminate Customer's License upon notice for failure to comply with any applicable License terms.

## 3. LICENSE GRANT

3.1. Subject to timely payment of the products and/or License Fees and the terms and conditions of this Agreement, PerfectMail™ grants Customer a non-exclusive and non-transferable license to use the Software embedded within our products during the Term of Validity of the License in conformance with:

3.1.1. The terms set forth herein;

3.1.2. Use restrictions and authorizations for the Software specified in the Customer Agreement;

3.2. Some of the Software Programs included in PerfectMail's software are distributed under the terms of agreements with Third Parties ("Third Party Agreements") that may expand or limit Customer's rights to use certain Software Programs as set forth in Section 2. Certain Software Programs may be licensed (or sub-licensed) to Customer under the GNU General Public License and other similar open source license agreements ("OSLAs") which, among other

rights, permit Customer to copy, modify and redistribute certain Software Programs, or portions thereof, and have access to the source code of certain Software Programs, or portions thereof. In addition, certain Software Programs, or portions thereof, may be licensed (or sub-licensed) to Customer under terms stricter than those set forth in Section 2.

3.3. Unless the Customer is a PerfectMail™ authorized reseller, Customer may not sub-license the Software unless otherwise agreed to by PerfectMail™ in writing.

#### **4. LIMITED WARRANTY**

4.1. PerfectMail™ warrants that the Software will perform substantially in accordance with administrator manual or readme file of the Licensed Product during the Term of Validity of the most recent License.

4.2. PerfectMail's and its licensor's' entire liability and Customer's exclusive remedy shall be, at PerfectMail's option, either:

4.2.1. Return the prorated License Fees for the current period, or

4.2.2. Replacement of Software that does not meet PerfectMail's Limited Warranty. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, or misapplications.

4.3. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PerfectMail™ AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, WITH REGARD TO THE SOFTWARE AND THE ACCOMPANYING ITEMS.

#### **5. FEES AND TAXES**

5.1. All fees payable to PerfectMail™ are due at the commencement of the License Period. Customer agrees to pay any sales, value-added or similar taxes imposed by applicable law that PerfectMail™ must pay based on the services that Customer ordered.

#### **6. INDEMNIFICATION**

6.1. PerfectMail™ shall defend, at its sole discretion, or settle any action, claim or demand brought against Customer on the basis of infringement of any copyright, trademark, trade secret or patent (the "Intellectual property Rights") by the Software or use thereof. PerfectMail™ shall pay any final judgment entered into against Customer in such action provided that PerfectMail™ has the sole control of the defense and/or settlement and Customer promptly notifies in writing of such claim and provides all information known to the Customer relating thereto, and Customer cooperates with PerfectMail™ in the defense and/or settlement. Should the Software become or in PerfectMail's opinion may become the subject of infringement of any Intellectual Property Rights, PerfectMail™ may, at its expense do one of the following:

6.1.1. Replace the Software or affected part with non-infringing programs;

6.1.2. Modify the Software or affected part to make it non-infringing;

6.1.3. Procure for Customer the right to use the Software; or

6.1.4. If none of the alternatives are commercially reasonable, PerfectMail™ may refund the prorated License Fees received from Customer for the current Term of Validity.

6.2. PerfectMail™ shall have no indemnification obligation to the extent a claim is based upon:

6.2.1. The combination, operation or use of the Software with any products or services not provided by PerfectMail™;  
or

6.2.2. The use of the Software in a manner not authorized by this Agreement.

6.3. THIS SECTION PROVIDES THE ENTIRE OBLIGATION OF PerfectMail™ AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

## 7. Indemnification by Customer

7.1. Customer agrees that it shall fully indemnify and completely save harmless PerfectMail™ and any of its directors, officers, employees, agents, representatives of and from any and all liabilities, claims, expenses, damages including reasonable legal fees and disbursements arising out of any claims or suits for damage or injury to person in connection with, directly or indirectly, in whole or in part, (i) any negligent act or omission of the Customer's employees, agents, contractors, directors, officers or any person for whom it has a legal responsibility or (ii) the failure of Customer to comply with any municipal, provincial or federal law or (iii) any act or omission which is, or can be determined to be, a breach of any term or condition of this Agreement.

## 8. NON-DISCLOSURE OF PERFECTMAIL INFORMATION

8.1. The Software and other proprietary information provided by PerfectMail™ hereunder contain and constitute trade secrets, information and data proprietary to copyright by PerfectMail™. Customer shall use a reasonable degree of care to protect the confidentiality of the Software and shall not cause or permit such confidential information or data to be disclosed to third parties or duplicated except as permitted in this Agreement. Customer acknowledges and agrees that unauthorized disclosure, use or copying of the Software may cause PerfectMail™ irreparable injury. Accordingly, in the event of any unauthorized disclosure, use or copying of the Software, Customer agrees that PerfectMail™ shall have the right to seek injunctive or other equitable relief. Each party will not disclose or use any business and/or technical information of the other designated in writing or orally (and promptly confirmed in writing) as *Confidential* ("Confidential Information") without the prior written consent of the other party. Such restrictions do not extend to any item of information which:

8.1.1. Is or becomes available in the public domain without the fault of the receiving party;

8.1.2. Is disclosed or made available to the receiving party by a third party without restriction and without breach of any relationship of confidentiality;

8.1.3. Is independently developed by the receiving party without access to the disclosing party's Confidential Information,

8.1.4. Is known to the recipient at the time of disclosure, or

8.1.5. Is produced in compliance with applicable law or court order, provided that the disclosing party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

## 9. NON-DISCLOSURE OF CUSTOMER INFORMATION

PerfectMail™ acknowledges that the information retained on Product or otherwise received or generated, directly or indirectly, while working with Customer is highly confidential in nature and must be treated with the utmost discretion. As such, the following conditions are reasonable. Therefore, PerfectMail™ hereby agrees as follows:

9.1. PerfectMail™ will ensure that all officers, employees, contractors or associates who have direct or indirect access to Customer Product, data or information will be covered under individual Non-Disclosure Agreements.

9.2. PerfectMail™ will access Customer Product only while providing support and/or updating Product. Company will seek from Customer prior consent for any access outside of support and update.

9.3. Customer shall have the option to provide Company with blanket consent or consent on an incident by incident basis. Customer shall retain the option of changing consent at any time. PerfectMail™ must be provided notice before changes to consent take effect.

9.4. PerfectMail™, its officers, employees, contractors or associates will hold any information viewed while working on Customer Product in the strictest confidence. This includes, but is not limited to Product configuration information, the contents of any log or archive information viewed while working on Product or any other information that could be reasonably deemed to not be in the Public Domain.

9.5. For back up and recovery purposes or to improve Customer experience with Product, PerfectMail™ may retain copies of Customer Product configuration information on PerfectMail's servers.

9.6. PerfectMail™ will not duplicate, transfer, retain or otherwise copy Customer Product e-mail archive or e-mail contents from Product without prior consent of Customer.

9.7. PerfectMail™ normally receives aggregate performance data from Customer Product as part of our Product health and performance monitoring capabilities. No personal information is included in this performance data.

9.8. To ensure compliance with purchased license limits or to ensure accurate billing, PerfectMail™ may, from time to time, review reported resources from Product.

9.9. PerfectMail™ will not provide confidential Customer information to third parties without prior written consent from Customer, unless compelled by law.

9.10. PerfectMail™ will not use Customer information for any purpose other than as indicated in this agreement without first seeking Customer's prior written consent.

9.11. At the end of any contracts or agreements, and when Customer's obligations to PerfectMail™ are fully discharged, Customer may request that PerfectMail™ destroy all technical records relating to the support of Product. Alternatively, PerfectMail™ may destroy all Customer data at the end of contract or agreement covering such data. PerfectMail™ is under no obligation to maintain backups or archives of Customer configuration information.

9.12. PerfectMail™ is governed by and will comply with all Privacy and Confidentiality laws for Canada and the Province of Ontario.

## **10. DATA COLLECTION AND NOTIFICATION**

10.1. PerfectMail™ may collect statistical and status information from your server for support and analysis purposes. At no time is e-mail message content sent from the Software Product to PerfectMail™, except for any messages the Customer has reported as spam for analysis.

10.2. By default, data reporting options are enabled. It is Customer's responsibility to review the Data Disclosure document and Product Documentation for more information on data reporting, disclosure and privacy.

10.3. PerfectMail™ has provided options in the Product for the Customer to disable data collection functionality. It is the Customer's responsibility to disable any data collection or reporting functions.

10.4. PerfectMail™ maintains a list of e-mail addresses reported by the Customer for support and notification purposes. These e-mail addresses are used for sending server and product status notifications and product update messages. If Customer does not wish to receive notification messages they must contact PerfectMail™ staff and request removal from the mailing list for their PerfectMail™ server.

10.5. PerfectMail™ may from time to time, request that Customer provide PerfectMail™ with access to Product. Normally, we require access as part of its support and update obligations outlined in PerfectMail's current Support agreements. Other circumstances may also arise whereby PerfectMail™ may desire access to Product. All access is at Customer's discretion.

10.6. PerfectMail™ makes reasonable efforts to secure and keep private all Customer data including content, e-mail addresses, status and statistic information. Customer data, including e-mail addresses, will not be shared with any third party unless required by law.

## **11. LIMITATION OF LIABILITY**

11.1. IN NO EVENT SHALL PerfectMail™ OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE EVEN IF THE COMPANY OR ANY OF ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2. IN NO EVENT SHALL PerfectMail™ OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PERSONAL PROFITS, BUSINESS OR PERSONAL INTERRUPTION, BUSINESS OR PERSONAL INVESTIGATION, LOSS OF BUSINESS OR PERSONAL INFORMATION, OR LOSS OF EMPLOYMENT) ARISING OUT OF THE ACCESS, DOWNLOADING, EXAMINATION, PROCESSING, LOGGING, FILTERING OR FAILURE TO FILTER ANY CONTENT (INCLUDING BUT NOT LIMITED TO E-MAIL AND WEB CONTENT) BY PerfectMail™.

11.3. Customer understands and agrees that E-mail may contain content that is offensive or illegal. Further, Customer understands and agrees that anti-spam functions may transfer content from remote sites to your PerfectMail™ server for analysis; this content may also be offensive or illegal. PerfectMail™ accepts no responsibility or liability for content from any source that may be encountered during anti-spam processes. Any action taken by Customer with respect to content accessed, downloaded, examined, logged, filtered or not filtered by PerfectMail™ is the customers total responsibility and liability.

11.4. Customer understands that PerfectMail™ may take actions in the process of analyzing e-mail from spam that may appear to processes and software that analyze network traffic to be the actions of user's e-mail addresses. PerfectMail™ takes reasonable steps to minimize such traffic, however Customer is responsible for differentiating between PerfectMail automated anti-spam processes and the actions of other systems and users on their network. PerfectMail™ accepts no responsibility or liability for any interpretation, misinterpretation or actions which may or not be taken based on network traffic, content analysis or logging or any other computer or business process or system.

11.5. Any action against PerfectMail™ must be brought within twelve (12) months after the cause of action arises. For purposes of this Section, "PerfectMail™" includes its directors, officers, employees, subcontractors, agents and suppliers.

## **12. TERM AND TERMINATION**

12.1. The Software and Support License is subject to renewal at the end of the License Period. Unless renewed under an extension of the Customer Agreement, the License to use the Software will terminate.



12.2. This Agreement may be terminated if either party fails to perform any of its duties or obligations hereunder and fails to substantially cure such default within ten (10) days after written notice is given to the defaulting party. Upon an event of default, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party, reserving unto the non-defaulting party all other rights and remedies it may have under this Agreement. If Customer is in default, PerfectMail™ reserves the right, in addition to all other rights and remedies it may have, to withhold further performance of its obligations under this Agreement and may repossess the Software and Documentation.

12.3. Upon termination of any license granted hereunder, Customer will promptly remove all Software from all memory locations, and destroy or return all copies of the Software and Documentation to PerfectMail™.

### **13. GENERAL**

13.1. Customer may not assign any rights or obligations hereunder without prior written consent of PerfectMail™, which consent can be unreasonably withheld.

13.2. Customer who exports, re-exports or imports PerfectMail™ Hardware and Licensed Software, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. PerfectMail™ may suspend performance if Customer is in violation of any applicable laws or regulations.

13.3. If any term or provision herein is determined to be illegal or unenforceable, the validity or enforceability of the remainder of the terms or provisions herein will remain in full force and effect.

13.4. Except as specifically provided in Section 3.1.2, these PerfectMail™ Software and Support License Terms supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. These PerfectMail™ Software and Support License Terms may not be changed except by an amendment signed by an authorized representative of each party.

13.5 This license does not obligate PerfectMail™ to provide support for products licensed under free or trial licenses.

### **14. GOVERNING LAW**

14.1. This Agreement shall be governed by and interpreted in accordance with the laws of Ontario, Canada, without reference to conflict of law principles. Customer and PerfectMail™ agree to the exclusive jurisdiction of the courts located in Brampton, Ontario, Canada.

### **15. PARTIAL INVALIDITY.**

15.1. Both parties to this Agreement hereby acknowledge that neither of them intends to violate any public policy, statutory or common laws, rules, regulations, treaties, or decisions of any government agency or executive body of any country or community or association of countries.

## 3 Data Collection Disclosure

### Introduction

Following is a full disclosure of all data reported to PerfectMail™ from a PerfectMail™ product. PerfectMail™ is a *high touch* product giving the following benefits:

- *Statistical Reporting* gives us clear & early warning of developing spam trends.
- *Server Monitoring* ensures early notification of problems.
- *Quick & Effective* customer support.
- *Off-site Backups* provide additional peace of mind. If needed we can quickly provide assistance or build a *fully configured* replacement machine.

### Automatic Server Updates

The following updates occur automatically. To disable automatic updates, update the related settings on the *Security Settings* page.

- *Anti-virus Update*: Virus update checks are performed every 10 minutes. If an update is available, it will be installed automatically.
- *Anti-spam Update*: Anti-spam update checks are performed once a day. If an update is available, it will be installed automatically.
- *Software Update*: Software updates are performed by PerfectMail™ staff, when available; and only if access is granted.

### Server Support Data

The following data elements are normally reported back to PerfectMail™ for support and analysis purposes. To disable any of these reporting features update the *Server Admin=>Server Settings* page on the *Web Interface*. If support & reporting features are disabled your PerfectMail™ product will still send notification that these features are disabled. **No e-mail message content is ever sent to PerfectMail™; except for those messages the client wishes to have examined for spam content.**

- Statistical Reporting: This hourly report consists of statistical information regarding the effectiveness of the anti-spam software. E.g. number of rejects, tags, accepts, RBL's, mining attempts, spam traps, etc.
- Report Spam: The client user or administrator forwards a spam e-mail to PerfectMail™ for review. Included with the reported spam e-mail are the PerfectMail™ server name and the name of the submitting user.
- Server Monitoring: Hourly health reports allow us to see if there are any issues with the product as a whole, and databases in particular. These messages describe the state of the databases, but do not include any elements of their content. If there is an issue with a database, a notification message containing the machine name and data table name is sent to PerfectMail™ for further attention. (PerfectMail™ is able to self-fix its databases. Administrator intervention is rarely required.) Additionally, in the event of a process crash, a core file (describing what the program was doing the issue occurred) may be sent for analysis.
- False Positive Investigation: For each false positive release, a message is sent to PerfectMail™. If the client has requested *false positive investigation*, we may examine the message to determine what the problem may be. In practice PerfectMail™ will contact the client for permission to perform such actions.

## 4 Contact Information

PerfectMail™ is developed and distributed by **PerfectMail** (789852 Ontario Inc.).

If you have any questions please don't hesitate to contact us. You can reach us between 9:00am and 6:00pm EST, Monday to Friday.

**Mailing Address:**

PerfectMail;  
20 Regan Road, Unit 1  
Brampton, Ontario  
Canada L7A 1C3

**Web Site:**

<http://www.PerfectMail.com>

**E-mail Addresses:**

Sales: [sales@PerfectMail.com](mailto:sales@PerfectMail.com)

Support: [support@PerfectMail.com](mailto:support@PerfectMail.com)

**Phone Numbers:**

Office: +1 905 451 9488

Toll Free: +1 888 451 3131

Facsimile: +1 905 451 7823