

Terms and Conditions – Partner Programme

These Terms and Conditions of Service (**Terms and Conditions**), together with the Order Page, the Acceptable Use Policy, the SLA and the TSS Guidelines constitute the agreement (the **Agreement**) between **BPM** and the **Customer**.

By submitting an Order Form and gaining access to the Services (including through a Partner and/or through a reseller), the Customer accepts and agrees to be bound to the Agreement effective from the date of such acceptance (the **Effective Date**).

If you, the person submitting an Order Form, are accepting this Agreement on behalf of the Customer (for example the Customer is your employer or you are acting as an agent of the Customer), you represent and warrant that: (i) you have full legal authority to bind the Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree on behalf of the Customer to the terms and conditions contained within this Agreement.

This Agreement governs the Customer's access to and use of the Services.

1 Services

- 1.1 **Provision of Services.** BPM grants to the Customer in respect of each End User a non-transferable, revocable, non-sub-licensable, non-exclusive and limited licence to use the Services during the Term of this Agreement, subject to the terms and conditions of this Agreement.
- 1.2 **Renewal.** Each End User licence to use the Services is granted on a month to month basis and renews automatically unless terminated in accordance with this Agreement.
- 1.3 **Facilities and Data Transfer.** All facilities used to store and process Customer Data will adhere to reasonable security standards. BPM has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data and protect against unauthorized access to or use of Customer Data. As part of providing the Services BPM may transfer, store and process Customer Data in any country in which BPM or its agents maintain facilities. By using the Services the Customer consents to this transfer, processing and storage of Customer Data.
- 1.4 **Customer Domain Name Ownership.** The Services are provided to the Customer based on the Customer Domain Name(s) specified by the Customer to BPM which the Customer warrants are owned by the Customer or the Customer is otherwise licensed to use. BPM may, but is not obligated to, at any time verify that the Customer owns or is licensed to use the Customer Domain Name(s). If the Customer does not own or control the specified Customer Domain Name(s), then BPM will have no obligation to provide the Customer with the Services. BPM does not control the availability of any domain name the Customer seeks to register or renew and will have no liability relating to Customer's use of any Customer Domain Name. The Customer shall remain liable for any infringement of a third party's rights or violations of any applicable laws with respect to any specified Customer Domain Name. The Customer acknowledges and agrees that BPM will only provide the Services to organisations with their own domain name (www.examplecompany.com) and email address (user@examplecompany.com). BPM will not have any obligation to provide the Services to the Customer if the Customer is using a personal email address (example@gmail.com, example@hotmail.com etc.).

2 Modifications

- 2.1 **To the Services.** BPM may make commercially reasonable changes to the Services from time to time. If BPM makes a material change to the Services BPM will inform the Customer by sending an email to the Notification Email Address and updating the Services on the Website. BPM will inform the Customer of any minor changes by sending an email to the Notification

Email Address provided that the Customer has elected to BPM to be informed about such changes.

- 2.2 **To the Terms and Conditions.** BPM may amend the Terms and Conditions at any time and at its sole discretion. BPM will notify the Customer of any amendments to the Terms and Conditions by either sending an email to the Notification Email Address, providing notice through the Website or updating the date at the top of these terms and conditions. The Customer's continued use of the Services shall constitute acceptance of such amendments.

- 2.3 **To the URL Terms.** BPM may make commercially reasonable changes to the URL Terms from time to time. If BPM makes a material change to the URL Terms, BPM will inform the Customer by giving a calendar months prior written notice by either sending an email to the Notification Email Address or alerting Customer via the Admin Console.

3 Customer Obligations

- 3.1 **Compliance.** The Customer agrees that it will at all times access and use the Services in accordance with the Acceptable Use Policy. BPM may make new applications, features or functionality for the Services available from time to time the use of which may be contingent upon Customer's agreement to additional terms.
- 3.2 **Aliases.** The Customer is solely responsible for monitoring, responding to and otherwise processing emails sent to the "abuse" and "postmaster" aliases for Customer Domain Names but BPM may monitor emails sent to these aliases to allow BPM to identify Services abuse.
- 3.3 **Customer Administration of the Services.** The Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. The Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); (c) ensuring that contact information for the Customer's designated Administrators is accurate and kept up-to-date in the Admin Console and (d) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. The Customer agrees that BPM's responsibilities do not extend to the internal management or administration of the Services for the Customer and that BPM is merely a data-processor.
- 3.4 **End User Consent.** The Customer's Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. The Customer will obtain and maintain all required consents from End Users to allow: (i) the Customer's access, monitoring, use and disclosure of this data and BPM providing the Customer with the ability to do so and (ii) BPM to provide the Services.
- 3.5 **Unauthorized Use.** The Customer will use commercially reasonable efforts to prevent unauthorized use of the Services by any End User and to end the End User's access to the Services to terminate any unauthorized use. The Customer will promptly notify BPM of any unauthorized use of, or access to, the Services of which it becomes aware. Unauthorized use is defined in the Acceptable Use Policy and includes, but is not limited to, using the Services for bulk email broadcasting, spamming and campaign emails.
- 3.6 **Restrictions on Use.** Unless BPM specifically agrees in writing, the Customer will not, and will use commercially reasonable efforts to ensure that no End Users nor any third parties: (a) sell, resell, licence or the functional equivalent, the Services to any third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component of the Services; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for or in connection with High Risk Activities; or (e) use the Services to store or transfer any Customer Data that is controlled for export under any applicable export control laws. The Customer is solely responsible for any applicable compliance with HIPAA or any equivalent legislation applicable in any jurisdiction in which the Customer and BPM operate.

- 3.7 **Third Party Requests.** The Customer is responsible for responding to Third Party Requests. BPM will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify the Customer of its receipt of a Third Party Request; (b) comply with the Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide the Customer with the information or tools required for the Customer to respond to the Third Party Request. The Customer will first seek to obtain the information required to respond to the Third Party Request on its own, and will contact BPM only if it cannot reasonably obtain such information.

4 **Billing and Payment**

- 4.1 **Billing.** The Customer will pay for End User licences in accordance with the terms and conditions of supply that it has in place with its reseller.
- 4.2 **End User Disclosure and Audit.** When subscribing to the Services the Customer must accurately nominate the number of End Users that will use the Services. The Customer must keep End User numbers up-to-date via the Admin Console. BPM may periodically audit the amount of Customer End-Users. If the amount disclosed by the Customer varies from the actual amount of End-Users then at BPM's option BPM may update the Customer records to indicate this.
- 4.3 **Notification of Update.** If BPM makes a change to the Customer usage numbers, BPM will inform the Customer by either sending an email to the Notification Email Address or alerting the Customer via the Admin Console. If the Customer does not agree to the change, the Customer must so notify BPM via the Help Center within thirty days after receiving notice of the change.
- 4.4 **Refunds.** To the extent permitted by law, BPM is not required to refund any Fees it receives in advance. If the Services are cancelled part way through a month, Fees will be calculated based on the entire month. Any Remedy in relation to service performance issues is covered in the SLA.

5 **Technical Support Services**

- 5.1 **By Customer.** Prior to submitting a ticket to the BPM Customer Support Team, Customer will use reasonable efforts to find answers to product questions, fix any error, bug, malfunction or network connectivity defect. Customer Administrator will use the BPM Admin Support Help Center (<https://admin-support.blackpearlmail.com>) to try to find answers to their issues and product questions.
- 5.2 **By BPM.** If the Customer cannot resolve a support issue consistent with the above, then the Customer may contact the BPM Customer Support Team via the BPM Admin Support Help Center (<https://admin-support.blackpearlmail.com>) in accordance with the TSS Guidelines (<https://admin-support.blackpearlmail.com/portal/kb/articles/technical-support-service-guidelines-tss-guidelines>). BPM will provide support to the Customer in accordance with the TSS Guidelines.

6 **Suspension**

- 6.1 **Of End User Accounts by BPM.** If BPM becomes aware of an End User's violation of the Agreement, then BPM may specifically request that the Customer Suspend the applicable End User Account. If the Customer fails to comply with BPM's request to Suspend an End User Account, then BPM may do so. The duration of any Suspension by BPM will be until the applicable End User has cured the breach which caused the Suspension.
- 6.2 **Emergency Security Issues.** Notwithstanding the foregoing, if there is an Emergency Security Issue, then BPM may automatically Suspend the offending End User Account. The Suspension will be to the minimum extent and of the minimum duration required to prevent or

terminate the Emergency Security Issue. If BPM Suspends an End User Account for any reason without prior notice to the Customer, at the Customer's request, BPM will provide the Customer the reason for the Suspension as soon as is reasonably possible.

7 Confidential Information

- 7.1 **Obligations.** Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates' employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates' employees and agents in violation of this Section.
- 7.2 **Exceptions.** Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
- 7.3 **Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

8 Intellectual Property Rights; Brand Features

- 8.1 **BPM Intellectual Property Rights.** Except as expressly set forth herein the Customer acknowledges that BPM (and/or BPM suppliers) are the owner/s of all Intellectual Property Rights contained within or otherwise relating to any of the Services, including patents, trademarks, trade names, inventions, discoveries, improvements, processes, formulae, technology, data, copyrights, database rights, design rights, domain names, Confidential Information, know-how or trade secrets and any other intellectual property rights owned or used or enjoyed by BPM or any of its affiliated companies existing, whether registered or unregistered, relating to the design, manufacture, programming, operation or support of any of the Services.
- 8.2 **Protection of BPM Intellectual Property Rights.** The Customer shall not, nor permit any other person to copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance any of the Services; alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Services without our prior written consent; or do any act that would or might invalidate or be inconsistent with BPM Intellectual Property Rights as defined in Section 8.1.
- 8.3 **Customer Intellectual Property Rights.** BPM acknowledges that the Customer owns all Intellectual Property Rights in relation to Customer Data and the Customer's Brand Features.
- 8.4 **Contributions.** The Customer may from time to time provide BPM with feedback, comments and suggestions in relation to the Services ("**Contributions**"). In such instances the Customer agrees that the Contributions are not confidential and grants to BPM a non-exclusive, perpetual, sub-licensable, irrevocable, transferable and worldwide license to freely use, copy, modify, distribute, create derivative works of, license and sub-license (including through multiple tiers of distribution and licenses), communicate and otherwise exploit those Contributions (and all Intellectual Property Rights in and to them) in any way for any purpose without restriction or any acknowledgement or compensation to the Customer.
- 8.5 **Display of Brand Features.** BPM may display those Customer Brand Features authorized by the Customer (such authorization is provided by the Customer uploading its Brand Features into the Service) within designated areas of the Admin Console and/or Website. The Customer

may request for Customer Brand Features not to be used via the Support site. Through using the Services, the Customer authorizes BPM to display BPM Brand Features on the Service Pages and End Users' branding templates to indicate that the Services are provided by BPM. Neither party may display or use the other party's Brand Features beyond what is allowed in this Agreement without the other party's prior written consent.

- 8.6 **Brand Features Limitation.** Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to this Agreement with written notice to the other and a reasonable period to stop the use.

9 Publicity.

- 9.1 **Publicity.** The Customer agrees that BPM may include the Customer's name or Brand Features in a list of BPM customers, online or in promotional materials. The Customer also agrees that BPM may verbally reference the Customer as a customer of the BPM products or services that are the subject of this Agreement. This section is subject to Section 8.6 (Brand Features Limitation).

10 Representations, Warranties and Disclaimers

- 10.1 **Representations and Warranties.** Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Services (including applicable security breach notification law). BPM warrants that it will provide the Services in accordance with the applicable SLA.
- 10.2 **Disclaimers.** To the fullest extent permitted by applicable law, except as expressly provided for in this Agreement, neither party makes any other warranty of any kind, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular use and non-infringement. BPM makes no representations about any content or information made accessible by or through the Services. The Customer acknowledges that the Services are not a telephony service and that the Services are not capable of placing or receiving any calls, including emergency services calls, over publicly switched telephone networks.

11 Term

- 11.1 **Agreement Term.** This Agreement commences on the Effective Date and will remain in effect for the Term.
- 11.2 **Revising Rates.** BPM may revise its monthly rate for End User licenses by providing the Customer with 60 days prior written notice (which may be by email).

12 Termination

- 12.1 **Termination by Notice.** Either Customer or BPM may, without cause, terminate this Agreement with immediate effect at any time by giving written notice to the other party.
- 12.2 **Effects of Termination.** If this Agreement is terminated, then: (a) the rights granted by one party to the other will cease immediately (except as set forth in this Section 12.2 and Section 15.12); (b) BPM will provide the Customer access to the Customer Data for a commercially reasonable period of time at BPM's then-current rates for the applicable Services; (c) after a commercially reasonable period of time, BPM will delete Customer Data by removing pointers to it on BPM's active servers and overwriting it over time; (d) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party; and (e) the Customer will promptly pay all unpaid Fees accrued up to the date of the termination and further fees incurred under (b). BPM will only be obliged to return Customer Data under this Section by using the prevailing processes and file formats available in the Admin Console.

13 Indemnification

13.1 **By the Customer.** The Customer will indemnify, defend, and hold harmless BPM and each of its Affiliates from and against all losses, liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) suffered or incurred by BPM or any of its Affiliates: (a) arising out of a third party claim: (i) regarding Customer Data or Customer Domain Names; or (ii) that Customer Brand Features infringe or misappropriate any patent, copyright, trade secret or trademark of a third party; or (b) arising out of or in connection with the Customer's or the End Users' use of the Services in violation of the Acceptable Use Policy or any other breach by the Customer or any of its End Users of the terms and conditions contained within this Agreement.

13.2 **By BPM.** BPM will indemnify, defend, and hold harmless the Customer from and against all losses, liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) suffered or incurred by the Customer arising out of a third party claim that BPM's technology used to provide the Services or any BPM Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall BPM have any obligations or liability under this Section arising from: (a) use of any Services or BPM Brand Features in a modified form or in combination with materials not furnished by BPM, and (b) any content, information or data provided by the Customer, End Users or other third parties (c) any advice the Customer may receive from BPM, in its best practice efforts, to configure, set up, provision and resolve, any mail flow, DNS and user set up for its Services (d) any general technology or design advice and opinions the Customer may receive from BPM.

13.3 Possible Infringement

13.3.1 **Repair, Replace, or Modify.** If BPM reasonably believes the Services infringe a third party's Intellectual Property Rights, then BPM will: (a) obtain the right for the Customer, at BPM's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

13.3.2 **Suspension or Termination.** If BPM does not believe the foregoing options are commercially reasonable, then BPM may suspend or terminate the Customer's use of the impacted Services. If BPM terminates the impacted Services, then BPM will provide a pro-rata refund of the unearned Fees actually paid by the Customer applicable to the period following termination of such Services.

13.3.3 **General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defence, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defence with its own counsel at its own expense. The indemnities above are a party's only remedy under this agreement for violation by the other party of a third party's intellectual property rights.

14 Limitation of Liability

14.1 **Limitation on Indirect Liability.** No party will be liable under this Agreement for lost revenues or lost profits or indirect, special, incidental, consequential, exemplary, or punitive damages, even if the party knew or should have known that such damages were possible.

14.2 **Limitation on Amount of Liability.** Subject to Section 14.3, neither party may be held liable under this Agreement for more than the amount paid by the Customer to BPM hereunder during the month prior to the event giving rise to liability.

- 14.3 **Exceptions to Limitations.** The limitations of liability referred to in Section 14.1 and 14.2 apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or either party's indemnification obligations under this Agreement.

15 Miscellaneous

- 15.1 **Notices.** Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 15.2 **Assignment.** The Customer will not assign or transfer any part of this Agreement without the written consent of BPM, except to an Affiliate. Written consent will not be unreasonably withheld if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.
- 15.3 **Change of Control.** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control.
- 15.4 **Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 15.5 **No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- 15.6 **Severability.** If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.
- 15.7 **No Agency.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 15.8 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 15.9 **Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 15.10 **Governing Law.** This Agreement will be governed by and construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand Courts in respect of all matters relating to this agreement.
- 15.11 **Amendments.** Any amendment to this Agreement must be in writing and expressly state that it is amending this Agreement, expect that BPM may amend these Terms and Conditions, the Services or the URL Terms from time to time by notice in writing to the Customer in accordance with Section 2.
- 15.12 **Survival.** The following sections will survive expiration or termination of this Agreement: Section 7, 8, 13 and 14.
- 15.13 **Entire Agreement.** This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.
- 15.14 **Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Order Page, the

Agreement, and the terms located at any URL. If the Customer signs a physical agreement with BPM to receive the Services, the physical agreement will override this online Agreement.

- 15.15 **Product Notifications.** By using the request sample notification function, the Customer agrees that BPM may contact the Customer in regards to BPM products and services from time to time.

16 Definitions

“Acceptable Use Policy” means the acceptable use policy for the Services available in the BPM Admin Support Help Center (<https://admin-support.blackpearlmail.com>) at <https://admin-support.blackpearlmail.com/portal/kb/articles/acceptable-use-policy-aup> or such other URL as BPM may provide.

“Account Manager” means the BPM business person working with the Customer regarding the Customer’s purchase of the Services.

“Admin Account(s)” means the administrative account(s) provided to the Customer by BPM for the purpose of administering the Services. The use of the Admin Account(s) requires login details which could be provided by a third party (for example google ID), or will be chosen by the Customer.

“Admin Console” means the online tool provided by BPM to the Customer for use in managing, reporting and certain other administration functions.

“Administrators” mean the Customer-designated technical personnel who administer the Services to End Users on the Customer’s behalf.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

“BPM” means Black Pearl Mail Inc, a USA Company, with offices at 13430 N Scottsdale Road, Scottsdale, AZ 85254, USA.

“Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

“Confidential Information” means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is the Customer’s Confidential Information.

“Customer” means the organisation utilising the Services by purchasing End User licenses on the terms of this Agreement.

“Customer Data” means information and data, including email, provided, generated, transmitted or displayed via the Services by End Users.

“Customer Domain Names” mean the domain names owned or controlled by the Customer which will be used in connection with the Services and specified in the Order Page.

“Emergency Security Issue” means either: (a) the Customer’s use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customer’s use of the Services; or (iii) the BPM network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

“End Users” means the individuals within the Customer’s organisation who are licensed to use the Services on the terms and conditions of this Agreement.

“End User Account” means a BPM-hosted account established by Customer through the Services for an End User.

“Fees” means the amounts payable by the Customer to BPM to receive the Services, as described in the Order Page and as invoiced to the Customer by BPM during the Term.

“High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.

“Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

“Notification Email Address” means the email address designated by the Customer to receive email notifications from BPM. The Customer may change this email address through the Admin Console.

“Order Page” means the online order page the Customer (or its agent) completes in signing up for the Services or attached to this Agreement, and which contains: (a) Customer name; (b) Amount of End Users; (c) Product SKU, as applicable.

“Partner” means BPM’s authorised re-seller of the Services pursuant to separate contractual arrangements with BPM.

“Service Commencement Date” is the date upon which BPM makes the Services available to the Customer, and will be within one week of BPM’s receipt of the completed Order Page, unless otherwise agreed by the parties.

“Service Pages” mean the web pages displaying the Services to End Users.

“Services” means the products and services provided by BPM at any given time, as subscribed for and used by the Customer on the terms and conditions set out in this Agreement.

“SLA” means the Service Level Agreement available in the BPM Admin Support Help Center (<https://admin-support.blackpearlmail.com>) at <https://admin-support.blackpearlmail.com/portal/kb/articles/service-level-agreements-slals>, or such other URL as BPM may provide.

“Spamming” means sending unsolicited e-mail indiscriminately to multiple mailing lists, individuals, or newsgroups.

“Support site” is the BPM website available at <http://support.blackpearlmail.com> for providing assistance with setup and troubleshooting any problems with the Service.

“Suspend” means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services and **“Suspension”** shall have a corresponding meaning.

“Taxes” means any duties, customs fees, or taxes (other than BPM’s income tax) associated with the supply of the Services, including any related penalties or interest.

“Term” means the term of the Agreement, which will begin on the Effective Date and continue until the Agreement is terminated as set forth herein.

“Third Party Request” means a request from a third party for records relating to an End User’s use of the Services. Third Party Requests can be a lawful search warrant, court order,

subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

“**TSS**” means the technical support services provided by BPM to the Administrators during the Term pursuant to the TSS Guidelines.

“**TSS Guidelines**” means BPM’s Technical Support Services Guidelines then in effect for the Services. TSS Guidelines are available in the BPM Admin Support Help Center (<https://admin-support.blackpearlmail.com>) at <https://admin-support.blackpearlmail.com/portal/kb/articles/technical-support-service-guidelines-tss-guidelines> or such other URL as BPM may provide.

“**URL Terms**” means the “**Acceptable Use Policy**,” the “**SLA**,” and the “**TSS Guidelines**.”

“**Website**” means <https://www.blackpearlmail.com/>