

## Terms of Service

**MASTER SERVICES AGREEMENT** between OmegaCOR Technologies ("we" or "**OmegaCOR**") and the customer who signs an Order for OmegaCOR services ("you" or "**Customer**").

**1. HOW THIS AGREEMENT WORKS:** You will be asked to sign an Order that describes the services you have chosen and the related fees. The Order will incorporate this Master Services Agreement and an Acceptable Use Policy. It may also incorporate one or more addenda to this Master Services Agreement if you are purchasing services for which we have special legal terms. When we use the term "Agreement" in any of these documents, we are referring collectively to all of them.

## 2. SOME DEFINED TERMS

Some words used in the Agreement have particular meanings:

"**Acceptable Use Policy**" or "**AUP**" means the OmegaCOR Mail Services Acceptable Use Policy posted at <http://www.omegacorit.com/main.cfm?do=ManagedServices:AcceptableUsePolicy> as of the date you sign the Order.

"**Bulk Mail**" means email messages of similar content that are sent to more than 250 recipients.

"**Business Day**" means 8:30 a.m. — 5:30 p.m. Monday through Friday, United States eastern time, excluding federal public holidays in the United States.

"**Confidential Information**" means all information disclosed by one of us to the other, whether before or after the Effective Date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) for you, the content of email and other information transmitted via OmegaCOR Mail Services, (ii) for OmegaCOR, unpublished prices and other terms of service, audit and security reports, and proprietary technology, and (iii) for both of us, information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

"**Effective Date**" means the date on which you have submitted a signed Order for Mail Services and we have received your payment for the first month's services.

"**Junk Mail**" means email that is captured by our mail filter and other email that is reported by you to OmegaCOR as undesirable.

"**Mail Services**" means the OmegaCOR Email, Microsoft Exchange and/or other hosted email service or email marketing service described in your Order, plus Support.

"**Order**" means the OmegaCOR Service Order or other written order for services that details the Mail Services and/or Supplemental Services you have selected, and that is signed by you.

"**Service**" or "**Services**" means the Mail Services and any Supplemental Services we may provide to you, collectively.

"**Supplemental Service**" means the services described in Section 5 below, and any other services we provide to you other than the Mail Services.

"**Support**" means (i) management of your Mail Services by a customer care team that includes individuals trained in the mail system you select, and (ii) availability of support twenty four (24) hours per day, seven days per week, year round.

## 3. MAIL SERVICES

Contingent on your satisfaction of OmegaCOR credit approval criteria, OmegaCOR will provide the Mail Services you select as follows:

**3.1 Administration.** OmegaCOR will provision the initial environment. You will otherwise be responsible for administering your Mail Service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters.

**3.2 Support.** OmegaCOR will provide Support to your designated administrator(s) or technical contacts on the account. OmegaCOR will not provide Support directly to your end users unless specifically agreed in an Order.

**3.3 Uptime Guarantee.** Your Mail Service will be available 100% of the time in a given calendar month, excluding downtime due to scheduled maintenance. Downtime exists when you are unable to send and receive mail as a result of a failure of the OmegaCOR network, or are unable to use a material feature of your Mail Service. Downtime does not exist if you are unable to use your Mail Service as a result of a failure outside of the OmegaCOR network, such as your connection to the Internet or your systems. OmegaCOR Email maintenance is currently scheduled for Saturday and Sunday from 12:00 a.m. — 4:00 a.m. central time, and Microsoft Exchange maintenance is currently

scheduled for the third Friday of each month from 9:00 p.m. — 2:00 a.m. central time, although OmegaCOR does not expect to use each maintenance window. OmegaCOR will announce any maintenance that is expected to result in downtime at least seven days in advance. In the event of downtime exceeding the availability guarantee by five consecutive hours or more, you may request a credit equal to the monthly recurring fee for the affected Mail Service multiplied by the percentage of your mailboxes affected (the "Maximum Credit"). If the downtime continues for less than five consecutive hours, then you are eligible for a prorated portion of the Maximum Credit equal to the number of minutes of downtime divided by five hours (300 minutes). To request a credit you must submit a request through your control panel that describes the downtime and how it affected your use of the Mail Service. The request must be submitted within seven days of the downtime. OmegaCOR will apply any credit that is due against your next invoice for Mail Services.

**3.4 Security.** The OmegaCOR servers used to provide the Mail Services will be located in a controlled access data center operated by Rackspace US, Inc. or a Rackspace affiliate. Access to the datacenter will be restricted to Rackspace employees or its agents who need access for the purpose of providing the services, except that Rackspace may provide access to third parties for audit purposes, provided that the third parties are escorted at all times by a Rackspace employee. The data center will be staffed 24/7/365 and will be monitored by video surveillance. Entrance to the data center will be authorized by proximity-based access cards and biometric hand scanners or other approved security substitute.

#### 4. LIMITATIONS ON SERVICES

**4.1 Filtering.** OmegaCOR provides certain services designed to filter unwanted email, such as spam, phishing scams, and email infected with viruses. **You acknowledge that the technological limitations of the filtering service will likely result in the capture of some legitimate email, and the failure to capture some unwanted email, including email infected with viruses.** OmegaCOR recommends that you employ additional security measures, such as a desktop virus scanner and firewall, on computers that are connected to the Internet. Email that is quarantined by the filtering system is excluded from the Uptime Guaranty.

**4.2 Delivery Failures.** OmegaCOR will use commercially reasonable efforts to deliver your email messages. Third party filtering services may from time to time prevent successful delivery of your messages.

**4.3 Memory Limitations.** Mail that exceeds the storage limit when received may be permanently lost. You may adjust the storage capacity of your individual mailboxes via the control panel, and it is your obligation to monitor and adjust the storage capacity of individual mailboxes as needed. An individual email message that exceeds the per-message size limit may also be permanently lost. As of November 2008 the per message size limit per message is 50MB.

**4.4 Backups.** OmegaCOR performs data backups on a "snap shot" basis at a specific moment. Therefore OmegaCOR may not create a backup of every item that is sent, received or stored. The backup will only capture those items (including mailboxes and public folders) that are present during the time of the backup. Data on back ups may be retrieved only for a limited number of days. See information in Section 5.3 below regarding Records Retrieval services.

#### 5. SUPPLEMENTAL SERVICES

The following additional terms will apply if you elect to purchase one of the supplemental services described below.

**5.1 Migration Services.** At your request, we will provide an advance estimate of fees based on the information you provide to us. However, you acknowledge that our fee will be calculated on the basis of the actual number of mailboxes and amount of data migrated and may exceed the estimate. You acknowledge that after we begin the migration services we may discover technical limitations related to the configuration of your data that prevent us from successfully completing the migration. We will not charge you a fee if we are unable to successfully migrate your data. You acknowledge that there is **special risk** that data will be lost during a migration. You agree that you will create a reliable back up of all data to be migrated prior to the time that we begin the migration. You agree that we are not liable to you for damages resulting from the loss or corruption of your information as part of the migration

**5.2 Domain Name Services.** If you register, renew or transfer a domain name through OmegaCOR, OmegaCOR will submit the request to domain name services provider (the "Registrar") on your behalf. OmegaCOR's sole responsibility is to submit the request to the Registrar. OmegaCOR is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the applicable legal terms of the Registrar. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar.

**5.3 Records Retrieval.** You will be able to recover deleted messages via the OmegaCOR Email administrative control panel for up to fourteen (14) days from the day deleted. OmegaCOR will be able to recover your deleted Microsoft Exchange messages for up to fourteen (14) days from the date deleted on your request. Records retrieval services will be performed on a fee basis and will take up to two (2) hours for a deleted item, and up to six (6) hours for an entire mailbox. At your written request made at or prior to the termination of your Mail Service, OmegaCOR will provide a complete copy of your mail data then in its possession on a fee basis no later than ten (10) days following the date of the request, provided that all payments on your account must be made prior to OmegaCOR's release of the copy of the data to you. Unless you have made such a request, OmegaCOR's obligation to store email messages and other items terminates at the effective date of termination of the Mail Services.

**5.4 Archiving Services.** OmegaCOR will not archive your email or other items unless you purchase archiving services. If you elect to purchase archiving services the archiving services will capture only the email that you send or receive after the date that the archiving services are implemented. Upon termination of your account for Mail Services, or your archiving service, **OmegaCOR will destroy your archived data** unless you have made other arrangements with OmegaCOR.

OmegaCOR's archiving services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for using your archiving service in a manner that complies with the applicable requirements.

## 6. WIRELESS

If you elect to use a wireless component of your Mail Service your use of the wireless component shall be governed by the following additional terms, as applicable:

### Additional Terms and Conditions for Wireless Components

(Goodlink™ Blackberry®)

These additional terms and conditions apply to your use of the wireless components of the Mail Services:

1. The wireless components are provided "AS IS" without any warranty or representation whatsoever.
2. You may not use the wireless components for any purpose other than your internal business or personal use.
3. You may not use or attempt to use the wireless components for the purposes of developing, or having developed any products competitive with any products or services of Research in Motion Corporation or Research in Motion, Ltd. (collectively "RIM") or Good Technology, Inc. ("Good").
4. You represent and warrant to OmegaCOR that neither you nor your subsidiaries, parent companies or other affiliates are competitors of RIM, including, without limitation, Air2Web, Inc.; Audiovox Corporation; BenQ Corporation; Casio Computer Co., Inc.; Certicom, Inc.; Commtag Ltd.; Communication Network Interface, Inc.; CommonTime Ltd.; Consilient Technologies Corporation; Danger, Inc.; Defywire, Inc.; Dell, Inc.; Extended Systems Incorporated; Facio Software, Inc.; Fujitsu Ltd.; Funambol, Inc.; Giga-Byte Technology Co., Ltd.; Good Technologies Inc.; HandEra, Inc.; Hewlett Packard Company; Hitachi, Ltd.; HTC Corporation; Hunetec Co. Ltd.; iAnywhere Solutions, Inc.; i-mate plc; Infowave Software Inc.; Intellisync Inc.; Intermec, Inc.; Intermec Technologies Corporation; Itronix Corporation; IXI Mobile, Inc.; Jarna, Inc.; JP Mobile, Inc.; Kyocera Corporation; Legend Holdings Ltd.; Lenovo Group Limited; LG Electronics Inc.; LRW Digital, Inc.; Messaging Architects; Metricom Inc.; Microsoft Corporation; Mightyphone ?FusionOne, Inc.; Mitsubishi Corporation; Motorola, Inc.; NEC Corporation; New Technology Developer, Inc.; Nokia Corporation; Notify Technology Corporation; NTP, Inc.; NTT DoCoMo, Inc.; Omnisky Corporation; Openhand Software Ltd.; Openwave Systems Inc.; Oracle Corporation; Palm, Inc.; PalmSource, Inc.; Psion Teklogix, Inc.; Qualcomm Incorporated; Sagem Communication; Samsung Electronics Co., Ltd.; Sanyo Electric Co., Ltd.; Sendo Ltd.; Seven Networks, Inc.; Sharp Electronics Corporation; Siemens AG; Sierra Wireless Inc.; Smartner Information Systems Ltd.; Smartner Limited; Sony Corporation; Sony Ericsson Mobile Communications AB; Space2Go.com GmbH and Co.KG; Spring Things; Sproqit Technologies, Inc.; Sybase, Inc.; Symbian Co., Ltd.; Symbol Technologies, Inc.; Synchrologic, Inc.; Telefonaktiebolaget LM Ericsson; ThinAir Networks, Inc.; Toshiba Corporation; Trium; ViAir, Inc.; Visto Corporation; Wavcom, Inc.; WorldLink, Inc.; Xircom, Inc.; or any affiliates or successors to any of these entities.
5. Research in Motion Corporation shall be a third party beneficiary of the Master Services Agreement and this Addendum with respect to your use of the Blackberry wireless component.
6. RIM and Good retain all right, title and interest in and to any software or other intellectual property provided to you for your use as part of the wireless component of the Hosted Exchange service, and you are licensed to use such software and other intellectual property on a nonexclusive, non-transferable basis. **You agree that the disclaimers of warranties and limitations of damages provisions in the MSA shall also apply to RIM and Good.**

(collectively, the "Wireless License Terms"); **provided, however** that any provisions regarding Goodlink's customer support shall **not** be applicable, and you acknowledge that you shall look solely to OmegaCOR for customer support in connection with the wireless components of the Mail Service. You may use the wireless components only with the types of handhelds specified in the "Wireless License Terms." You acknowledge that OmegaCOR does not have expertise or specialized training with respect to the wireless components, and agree that OmegaCOR's support obligation with respect to these components is limited to such efforts as may be reasonably expected of technicians having generalized knowledge and training in information technology systems.

**The wireless components of the Mail Service contain "strong encryption" that is controlled for export by U.S. laws and the laws of other countries.**

## 7. YOUR OBLIGATIONS

- 7.1 You must comply with OmegaCOR's Acceptable Use Policy, including the affirmative opt in requirement for bulk mail.

7.2 You may not use the Mail Services to send Bulk Mail.

7.3 You must use reasonable security precautions in light of your use of the Mail Services.

7.4 You must cooperate with OmegaCOR's reasonable investigation of outages, security problems, and any suspected breach of the Agreement.

7.5 You must provide OmegaCOR with accurate information to help OmegaCOR determine if any tax is due with respect to the provision of the Mail Services.

7.6 You are responsible for keeping your billing contact and other account information up to date.

7.7 You must pay when due the fees for the Mail Services.

## 8. PROMISES WE DO NOT MAKE

**8.1 We do not promise that the Mail Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information, and property. OmegaCOR has no obligation to provide security other than as stated in this Agreement.**

**8.2 We disclaim any and all warranties not expressly stated in the Agreement including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You are solely responsible for the suitability of the service chosen. Unless otherwise agreed, all Supplemental Services are performed on an "AS IS, AS AVAILABLE" basis.**

## 9. UNAUTHORIZED ACCESS TO YOUR DATA OR USE OF THE SERVICES

OmegaCOR is not responsible to you for unauthorized access to your data or the unauthorized use of the Mail Services unless the unauthorized access or use results from OmegaCOR's failure to meet its security obligations stated in this Agreement. You are responsible for the use of the Mail Services by any employee of yours, any person to whom you have given access to the Mail Services, and any person who gains access to your data or the Mail Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

## 10. TERM

The initial term begins on the Effective Date and continues for the period stated in the Order. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one month each until terminated as provided in Section 11, 12 or 13 below.

## 11. TERMINATION FOR CONVENIENCE

You may terminate the Agreement for convenience at any time on thirty (30) days advance written notice. OmegaCOR may terminate for convenience at any time on one hundred and twenty (120) days advance written notice. If you terminate for convenience you will receive a refund of any prepaid amount, prorated for any partial month.

## 12. YOUR RIGHT TO TERMINATE WITHOUT NOTICE

You may terminate the Agreement without providing thirty (30) days notice as required in Section 11 above if: (i) we materially fail to provide the Mail Services as agreed and do not remedy that failure within two days of your written notice describing the failure, (ii) we fail to meet the The Promise described in Section 3.4 above, or (iii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within ten (10) days of your written notice describing the failure.

## 13. OUR RIGHT TO TERMINATE FOR BREACH

We may terminate the Agreement for breach on written notice if: (i) we discover that the information you provided to us for the purpose of establishing the Mail Services is materially inaccurate or incomplete, (ii) the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice, (iv) you have made payment arrangements via a credit card or other third party and the third party refuses to honor our charges; (v) a credit report indicates you no longer meet our reasonable credit criteria, (vi) you use your Mail Service in violation of the AUP, or (vii) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure.

## 14. FEES

**14.1** The fees for the Services will be as stated in the Order (or a url referenced in the Order). We may increase our fees at any time on forty five (45) days advance written notice to you. Recurring fees will be billed in advance, either monthly, quarterly, or annually, as agreed in an Order. Non-recurring fees, such as migration services and records retrieval, will be billed monthly in arrears.

**14.2** Fees are due on receipt of invoices. OmegaCOR may suspend all Services (including Services provided pursuant to any unrelated Order or other agreement we may have with you) if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Service is reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee not to exceed \$250.00. OmegaCOR may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days and OmegaCOR brings a legal action to collect, you must also pay OmegaCOR's reasonable costs of collection, including attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. You authorize OmegaCOR to obtain a credit report at any time during the term of the Agreement.

**14.3** If OmegaCOR is required by law to pay taxes on the provision of the Service, you must pay OmegaCOR the amount of the tax that is due or provide OmegaCOR with satisfactory evidence of your exemption from the tax. Fees must be paid in U.S. Dollars. Invoices that are not disputed within one hundred and eighty (180) days of invoice date are conclusively deemed accurate.

## 15. EXPORT MATTERS

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom OmegaCOR is legally prohibited to provide the Services. You may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor may you provide administrative access to the Service to any person (including any natural person or government or private entity ) that is located in or is a national of Cuba, Iran, Libya, Sudan, North Korea or Syria or any country that is embargoed or highly restricted under United States export regulations.

## 16. SUSPENSION OF SERVICES

You agree that we may suspend Services without liability if: (i) we reasonably believe that the Services are being used in violation of the Agreement; (ii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) your Mail Services are accessed or manipulated by a third party without your consent, or (iv) as required by law. We will give you reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, if such grounds are capable of cure.

## 17. PRIVACY/CONFIDENTIAL INFORMATION

**17.1 Content/Message Routing Data.** Your email messages and other items sent or received via the Mail Service will include: (i) the content of the communication ("**content**"), and (ii) certain information that is created by the systems and networks that are used to create and transmit the message (the "**message routing data**"). The content includes things like the text of email messages and attached media files, and is generally the information that could be communicated using some media other than email (like a letter, telephone call, CD, DVD, etc.) The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email.

**17.2 Content Privacy.** We respect your privacy. The content of your items is your Confidential Information and is subject to the restrictions on use and disclosure described below. In addition to those restrictions, we agree that our personnel will not view the content of your items except in the specific ways defined below. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

**17.3 Our Limited Rights to View and Use Your Content.** You agree that our personnel may view the content of your email and other items for the following purposes:

- i. as necessary to respond to your specific support request;
- ii. to ensure that back-ups are being performed properly;
- iii. for Bulk Mail, to ensure compliance with our requirements for Bulk Mail stated in the Agreement, including the Acceptable Use Policy;
- iv. as appropriate to the exercise of our rights to use and disclose your Confidential Information as described below in this Section; and
- v. for Junk Mail, to improve our email filter.

If we use third party vendors to help us provide Services to you, we may permit those vendors to view and use your email content for the same purposes described above, provided that the vendors are subject to confidentiality and privacy restrictions at least as stringent as those stated in this Master Services Agreement. In addition, we may share the content of your Junk Mail with independent third party abuse agencies and trade groups for the purpose of assisting in industry initiatives to control undesirable email.

You acknowledge that OmegaCOR is required to establish an abuse@[yourdomain].com and postmaster@[yourdomain].com address for each of your domains. OmegaCOR personnel will review the content of all mail received at these addresses. You may configure your Mail Service such that mail is not received at these addresses but is instead forwarded to someone within your organization.

**WE WILL NOT EMPLOY TECHNOLOGY TO READ YOUR EMAIL MESSAGES IN ORDER TO TARGET, DISPLAY OR SEND MARKETING ADS BASED ON THE CONTENT OF THOSE EMAIL MESSAGES.**

**17.4 Usage Data.** We collect and store information related to your use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. You agree that we may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

#### **17.5 Confidential Information.**

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- (i) to our respective service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this Master Services Agreement,
- (ii) to law enforcement or government agency if required by a subpoena or other compulsory legal process, or if either of us believes, in good faith, that the Confidential Information reflects conduct that may violate applicable law;
- (iii) as required by law; or
- (iv) in response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

### **18. LIMITATION ON DAMAGES**

**18.1** We are not liable to you for failing to provide the Mail Services unless such failure results from a breach of the Uptime Guarantee, or results from our gross negligence, willful misconduct, or intentional breach of the Agreement. The dollar credits stated in the Uptime Guarantee are your **sole and exclusive** remedy for our failure to meet the Uptime Guaranty.

**18.2** Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

**18.3** You hereby release OmegaCOR and its employees, agents, affiliates and third party suppliers from any liability for damages arising from the failure of OmegaCOR's filtering services to capture unwanted email or from the capture of legitimate email, or from a failure of your email to reach its intended recipient as a result of a filtering service used by the recipient or the recipient's email service provider.

**18.4** Notwithstanding anything in the Agreement to the contrary, except for claims based on our willful misconduct, the maximum aggregate monetary liability of OmegaCOR and any of its employees, agent, suppliers, or affiliates, under any theory of law (including breach of contract, tort, strict liability, and infringement) shall not exceed three times the monthly recurring fee payable under the Order(s) in effect for the Mail Service at the time of the occurrence of the event(s) giving rise to the claim.

### **19. INDEMNIFICATION**

**19.1** If you, your affiliates, or any of your or their respective employees, agents, or suppliers (the "Customer Indemnitees"), is faced with a legal claim by a third party alleging that the Mail Services infringes on the United States patent or copyright of a third person, then, subject to the limitations stated in Section 18 above, OmegaCOR will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the Customer Indemnitees as a result of the claim.

**19.2** If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "OmegaCOR Indemnitees") is faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, or violation of Section 15 (Export Matters) of this Master Services Agreement, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the OmegaCOR Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees, any other person to whom you have given access to the Mail Services, and any person who gains access to the Mail Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers or end users arising out of your resale of the Services.

**19.3** You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with us.

**19.4** If either of us receives notice of a claim that is covered by this Section, the notice must be promptly forwarded to the financially responsible party (the "**Indemnifying Party**"). The Indemnifying Party will be allowed to conduct the defense of the matter, provided that it uses due care and diligence, and provided that its decisions regarding the defense of the matter are reasonable and are promptly communicated to the party against whom the claim is made (the "**Indemnified Party**"). The Indemnifying Party's choice of counsel to defend the claim shall be subject to the approval of the Indemnified Party, not to be unreasonably withheld. The Indemnifying Party may not settle the claim without the consent of the Indemnified Party, not be unreasonably withheld. The Indemnified Party shall provide such information and assistance as the Indemnifying Party may reasonably request, at the expense of the Indemnifying Party. The Indemnified Party may, at its own expense, participate in the defense of the matter with counsel of its choosing.

## **20. MICROSOFT SOFTWARE**

In addition to the terms of our Agreement, your use of any Microsoft® software is governed by Microsoft's license terms:

### **Terms and Conditions Regarding Use of Microsoft Software**

This document concerns the use of Microsoft software, which includes computer software provided to you by OmegaCOR as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "SOFTWARE PRODUCTS"). OmegaCOR does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations which OmegaCOR needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with OmegaCOR, and to your understanding of, compliance with and consent to the following terms and conditions, which OmegaCOR does not have the authority to vary, alter or amend.

### **Definitions**

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Redistribution Software" the software described in Paragraph 4 (Use of Redistribution Software") below.

### **Ownership of Software Products**

The SOFTWARE PRODUCTS are licensed to OmegaCOR from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to images, photographs, animations, video, audio, music, text and "applets" incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The international copyright treaties as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.

### **Use of Client Software**

You may use the Client Software installed on your Devices by OmegaCOR only in accordance with the instructions, and only in connection with the services, provided to you by OmegaCOR.

### **Use of Redistribution Software**

In connection with the services provided to you by OmegaCOR, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively called "Redistribution Software"). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO OmegaCOR, WHICH TERMS MUST BE PROVIDED TO YOU BY OmegaCOR. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by OmegaCOR.

### **Copies**

You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your device as expressly authorized by OmegaCOR; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with OmegaCOR or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

### **Limitations on Reverse Engineering, Decompilation and Disassembly**

You may not reverse, engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable by law, notwithstanding this limitation expressly permits such activity.

**No Rental**

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.

**Termination**

Without prejudice to any other rights, OmegaCOR may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.

**No Warranties, Liabilities or Remedies by Microsoft**

ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY OmegaCOR AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

**Product Support**

Any product support for the SOFTWARE PRODUCTS is provided to you by OmegaCOR and is not provided by Microsoft or its affiliates or subsidiaries.

**Not Fault Tolerant**

THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

**Export Restrictions**

The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the SOFTWARE PRODUCTS, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information see <http://www.microsoft.com/exporting/>.

**Liability for Breach**

In addition to any liability you may have to OmegaCOR, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

Microsoft Services Provider Agreement (MSLI) v2.0 11/01/01

If you resell any part of the Mail Services that includes Microsoft software then you must include these Microsoft terms in a written agreement with your customers.

**21. OTHER PEOPLE'S PRODUCTS AND SERVICES**

We may from time to time recommend or arrange for you to purchase or license third party software, services or other products that are not included as part of the Mail Services. OMEGACOR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING SUCH THIRD PARTY PRODUCTS AND RELATED SUPPORT SERVICES AND AS BETWEEN YOU AND OmegaCOR, SUCH SERVICES ARE PROVIDED "AS IS." Your use of any third party software, services, and other products is governed by the terms of your agreement with the third party.

**22. WHO MAY USE THE SERVICE**

You may permit your subsidiaries and affiliated companies to use the Services if you wish, but you are responsible for use of the Services by any third party to the same extent as if you were using the Services yourself. OmegaCOR will provide support only to you, not to any other person you authorize to use the Services. There are no third party beneficiaries to the Agreement, meaning that third parties do not have any rights against either of us under the Agreement.

**23. CHANGES TO THE ACCEPTABLE USE POLICY and PRIVACY TERMS**

We may change our Acceptable Use Policy and [Section 17.3](#) (Our Limited Right to View and Use Your Content), provided that any changes are reasonable and consistent with applicable law and industry norms. Any such changes made during the term of your Agreement will become effective as to you upon the first to occur of: (i) renewal, (ii) your execution of a new/additional Order for your account that incorporates the revised AUP or MSA by reference, or (iii) thirty (30) days following our notice to you describing the change. If the change materially and adversely affects you, you may terminate the Agreement by giving us written notice of termination on such grounds no later than thirty (30) days following the date the change became effective as to you and we will not enforce the change as to you for thirty (30) days following the date of your notice. If you terminate your Service because the change adversely affects you, we may decide to waive that change as to you and keep your Agreement in place for the remainder of the term.

## 24. NOTICES

Your routine communications regarding the Services should be sent to your OmegaCOR support team. If you want to give us a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class United States mail to:

[support@omegacorit.com](mailto:support@omegacorit.com)  
OmegaCOR Technologies  
500 McCormick Drive Suite F  
Glen Burnie, MD. 21061

OmegaCOR's routine communications regarding the Services and legal notices will be sent to the individual(s) you designate as your contact(s) on your account either by electronic mail, United States mail, or overnight courier, except that OmegaCOR may give notice of an amendment to the AUP or Section 17.3 (Our Limited Right to View and Use Your Content) by posting the notice on your OmegaCOR control panel. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time delivered, except that notices of AUP and Section 17.3 amendments are deemed delivered as of the first time that you log on to your OmegaCOR management console after the time that the notice is posted. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

## 25. OWNERSHIP OF INTELLECTUAL PROPERTY

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by OmegaCOR during the performance of the Services shall belong to OmegaCOR unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

## 26. IP ADDRESSES

Upon expiration or termination of the Agreement, you must discontinue use of the Mail Services and relinquish use of the IP addresses and server names assigned to you by OmegaCOR in connection with Services, including pointing the DNS for your domain name(s) away from OmegaCOR Services.

## 27. ASSIGNMENT/SUBCONTRACTORS

You may not assign the Agreement without OmegaCOR's prior written consent. We may assign the Agreement in whole or in part as part of a corporate reorganization or a sale of our business, and we may transfer your Confidential Information as part of any such transaction. OmegaCOR may use third party service providers to perform all or any part of the Services, but OmegaCOR remains responsible to you under this Agreement for work performed by its third party service providers to the same extent as if OmegaCOR performed the Services itself.

## 28. FORCE MAJEURE

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

## 29. GOVERNING LAW, LAWSUITS

The Agreement is governed by the laws of the State of Texas, exclusive of its choice of law principles, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. **Exclusive venue for all disputes arising out of the Agreement shall be in the state or federal courts in Bexar County, Texas, and we each agree not to bring an action in any other venue.** You waive all objections to this venue and agree not to dispute personal jurisdiction or venue in these courts. You agree that you will not bring or participate in any class action lawsuit against OmegaCOR or any of its employees or affiliates. Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued.

## 30. SOME AGREEMENT MECHANICS

If you sign multiple Orders for a single Mail Service account — for example, to add additional services, then the Master Services Agreement and Acceptable Use Policy referenced in the last signed Order will govern the entire account.

Except for amendment to the AUP and [Section 17.1](#) (Content Privacy) as described above, the Master Services Agreement and Acceptable Use Policy may be amended only by a formal written agreement signed by both parties.

An Order may be amended by a formal written agreement signed by both parties, or by an exchange of correspondence, including electronic mail, that includes the express consent of an authorized individual for each of us. Any such correspondence that adds or modifies Services in connection

with an account established by an Order shall be deemed to be an amendment to that Order, notwithstanding the fact that the correspondence does not expressly refer to the Order.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: Order, any addendum to the Master Services Agreement, the Master Services Agreement, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court or other tribunal, the rest of the Agreement will nonetheless continue in effect and we agree that the tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this Agreement. Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. Our relationship is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean "including without limitation." Sections 17, 18, 19, 25 and 30, and all other provisions that by their nature are intended to survive expiration or termination of the Agreement shall survive expiration or termination of the Agreement.

If you have made any change to the Agreement documents that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

**The Agreement is the complete and exclusive agreement between you and OmegaCOR regarding its subject matter and supersedes and replaces any prior agreement, understanding or communication, written or oral.**