

# Return Path Certification™ Program through JangoMail

## END CUSTOMER LICENSE AGREEMENT



### Terms of Use

The Return Path Certification Program, owned by Return Path, Inc. ("Return Path"), is an e-mail certification program and helps ensure delivery of legitimate commercial e-mail by requiring that end customers adhere to certain standards in sending e-mail. Through its agreement with Return Path, JangoMail is able to offer the Return Path Certification Program as a certified reseller to eligible JangoMail customers.

The following are the terms of enrollment and participation in the Return Path Certification Program through JangoMail (the "Program"). As used in these Terms of Use, the terms "you" and "your" refer to the JangoMail Customer agreeing to abide by these Terms of Use. By your signature below, you hereby acknowledge each of these Terms of Use and agree to abide by them in all respects.

#### **1. Acknowledgements**

Subject in each case to the terms listed in the remainder of these Terms of Use, you hereby acknowledge and agree that:

- to be eligible to apply to participate in the Program, you must be, at a minimum, a current JangoMail Customer in good standing with a sufficient mailing history from which JangoMail can evaluate the complaint history for your account; generally this means that you should have conducted 3 or more mailing campaigns in the last 3 months to the majority of your list which you plan to use in the Program;
- when you submit your application to JangoMail to participate in the Program, you are agreeing to pay a one-time non-refundable \$50 application fee to JangoMail;
- the decision whether you will be accepted to participate in the Program is wholly within the discretion of JangoMail and paying the application fee and submitting your application to participate in the Program does not guarantee inclusion in the Program;
- if your application is not approved, your application fee is NOT refundable;
- if your application is approved, you will also be required to pay an annual license fee based upon your monthly mailing volume;
- you will be eligible to continue to participate in the Program after the first year so long as the complaints made against you are within the program limits (as determined by JangoMail at its sole discretion) and you have paid, when due, the debit amounts; for each year that you choose to continue to participate in the Program, you will be required to pay an annual license fee;
- your participation in the Program is neither a guarantee of 100% e-mail delivery or a successful e-mail campaign, nor is it expected to result in 100% e-mail delivery or a successful e-mail campaign; and
- if your participation in the Program terminates for any reason, NONE of the fees you have paid will be refundable.

## **2. Participation in The Program**

**2.1 Terms Governing Participation.** The Program is provided subject to these Terms of Use and the separate JangoMail Terms of Use ([www.jangomail.com/terms.asp](http://www.jangomail.com/terms.asp)) to which you are a party. Any use of the Service, including in connection with participation in the Program, shall be subject in all respects to the JangoMail Terms of Use. You can view an electronic copy of the current version of this Terms of Use at JangoMail's website ([www.jangomail.com/terms.asp](http://www.jangomail.com/terms.asp)). In the event of a conflict between the Return Path Certification Terms of Use and the JangoMail Terms of Use as to your participation in the Program, these Return Path Certification Terms of Use shall control, but nothing in this Agreement shall amend, alter, supercede or otherwise modify the terms of the JangoMail Terms of Use as it applies in any respect to use of the Service.

**2.2 Minimum Eligibility Requirements.** To apply to participate in the Program, you must (a) be a current JangoMail customer with a current, valid and fully paid-up subscription to use the JangoMail service (the "Service"), (b) be a party to the JangoMail Terms of Use, and (c) have sufficient mailing history to enable JangoMail Administrators to evaluate the complaint history of your account; generally this means that you should have conducted 3 or more mailing campaigns in the last 3 months to the majority of your list which you plan to use in the Program.

## **3. Application; Fees and Debit Amounts**

**3.1 Application; Fee Not Refundable.** To participate in the Program, you must meet the minimum eligibility requirements, apply for enrollment and be accepted into the Program by JangoMail. You will be charged a \$50 application fee. Applying to participate in the Program does not guarantee that you will be accepted into the Program. JangoMail will determine in its sole discretion whether you will be accepted into the Program once you have made a formal application. JangoMail will evaluate your application in a timely fashion and notify you if it determines to accept you into the Program. The application fee will not be refunded if you are not accepted into the Program.

**3.2 Annual Maintenance Fees; Fees Not Refundable.** On acceptance into the Program, you must pay the annual maintenance fee for the first year of your participation in the Program before your participation in the program will commence. The annual maintenance fee is based on your monthly e-mail volume. JangoMail reserves the right to increase your annual maintenance fee pro rata should you request an increase in your permitted monthly mail volume. You are responsible for reviewing the Fee Schedule from time to time and remaining aware of the annual maintenance fees charged by JangoMail. JangoMail, in its discretion, may change the Fee Schedule at any time. JangoMail will attempt to notify you via e-mail prior to the effectiveness of any change to the Fee Schedule. On each anniversary of your acceptance into the Program, you must pay the applicable annual maintenance fee to continue your participation in the Program for the coming year. The annual maintenance fees are not refundable even if your participation in the Program terminates at any time during a given year for any reason.

**3.3 Abuse Complaints; Debit Amounts.** E-mails that you send as part of the Program may from time to time generate "Abuse Complaints" from recipients of your e-mails. Typically an Abuse Complaint is generated when the recipient of your e-mail believes that you have not received his or her permission to send the recipient e-mail messages and that your message is spam. As part of the Agreement, JangoMail reserves the right to terminate your participation in the Program should your complaint rate exceed acceptable Program thresholds.

**3.4 Fees Non Refundable.** ALL FEES PAID BY YOU TO JANGOMAIL ARE NON-REFUNDABLE.

**3.5 Payment of Fees.** Fees are payable in US dollars. If you have a credit card on file with JangoMail, you hereby authorize JangoMail to charge your credit card for all applicable Fees, when assessed. If you do not have a credit card on file with JangoMail, JangoMail will invoice you under the terms of "Due Upon Receipt". If JangoMail is for any reason unable to collect payment for fees, JangoMail will attempt to notify you via e-mail and your participation in the Program will be suspended until payment is received.

**4. Program Complaint Limits; Calculation of Number of Abuse Complaints.** The Program Complaint Limits defines the maximum aggregate number of Abuse Complaints that may be assigned to you during any seven day, thirty day, six month, or year period before JangoMail, in the exercise of its sole discretion, may terminate your participation in the Program under paragraph 5.1(a). You agree and acknowledge that JangoMail has sole discretion to determine the Program Complaint Limits to which your continued use of the Program is subject. The number of Abuse Complaints relating to JangoMail Customers participating in the Program is calculated by the Return Path Certification Program based on information received from available data sources and then provided to JangoMail. Return Path Certification has reserved the right to add or delete available data sources from time to time. If the Return Path Certification Program identifies your JangoMail account in connection with an Abuse Complaint, JangoMail will include the Abuse Complaint in determining whether the number of complaints assigned to you exceeds the Program Complaint Limits. You agree that you will accept as final JangoMail's determination, at its sole discretion, that an Abuse Complaint relates to your account. JangoMail will monitor all Abuse Complaints and the corresponding number of Abuse Complaints relating to your account to ensure that you are not in violation of the Program Complaint Limits. JangoMail will notify you (a) if you are in violation of the Program Complaint Limits and (b) may request that you modify your JangoMail Usage as necessary.

## **5. Termination; Reapplication.**

**5.1 Termination.** JangoMail may terminate your participation in the Program immediately and without notice if (a) JangoMail determines, in its sole discretion, that the Abuse Complaints assigned to you exceed the Program Complaint Limits, (b) you fail to timely pay the annual maintenance fee or any amount owing on your JangoMail account, (c) your use of the Service is terminated for any reason by you or by JangoMail, or (d) you use the Service or the Program in violation of the JangoMail Terms of Use, the and/or these Terms of Use. You may terminate your participation in the Program at any time immediately upon written notice to JangoMail. You understand and agree that you shall not be entitled to a refund of any Fees which you have paid as a participant in the Program in the event that you or JangoMail shall terminate your participation in the Program.

**5.2 Reapplication.** In the event that JangoMail terminates your participation in the Program pursuant to paragraph 5.1, you may reapply for participation in the Program after 180 days so long as you otherwise meet the Minimum Eligibility Requirements.

**6. Representations.** By entering into this Agreement, you hereby represent, acknowledge and agree (b) that while participation in the Program is expected to increase the percentage of e-mail messages you send through JangoMail that received by recipients, JangoMail cannot guarantee this or any other result, (c) that the fees paid to JangoMail in connection with the Program are not refundable, (d) that the Return Path Certification Program may, at any time in its discretion, suspend your participation in the Program or JangoMail's participation in the Return Path Certification Program, and (e) that you have no right to, and will not, use any trademarks or service marks of Return Path's or the Return Path Certification Program.

**7. Indemnification.** Each party hereto shall indemnify and defend the other party, and its officers, directors and employees, against any third party action arising from the gross

negligence or intentional misconduct of such party, and such indemnifying party shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such other party in connection with such action. You also agree to indemnify and defend Return Path, and its officers, directors and employees, against any third party action arising from your gross negligence or intentional conduct, and to pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against Return Path in connection with such action. Indemnity hereunder is granted only upon the conditions that (i) the party to be indemnified ("Indemnitee") provides prompt written or electronic notice of any such claim, action or demand, (ii) the Indemnitee allow the party to provide indemnity ("Indemnitor") to control the defense and related settlement negotiations, provided, however, that Indemnitee shall have the right to participate in such defense with counsel of its own choosing at its own expense, (iii) the Indemnitee provides the Indemnitor, upon request, with reasonable assistance in the defense of such claim, action or demand, so long as the Indemnitor reimburses the Indemnitee for the Indemnitee's reasonable out-of-pocket expenses associated therewith, and (iv) the Indemnitor may not settle a claim in a manner that causes the Indemnitee to incur unidentified liability, take legal action, or suffer other injury, without Indemnitee's written or electronic consent, which consent shall not unreasonably be withheld.

**8. Limited Warranty.** PARTICIPATION IN THE PROGRAM AND ANY RELIANCE BY YOU UPON SUCH PARTICIPATION, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. THE PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER JANGOMAIL NOR RETURN PATH GUARANTEES THE EFFECTIVENESS OR RESULTS OF THE PROGRAM OR THE RETURN PATH CERTIFICATION™ PROGRAM OR ANY OTHER SERVICE, OR PRODUCT PROVIDED BY JANGOMAIL OR RETURN PATH UNDER THIS AGREEMENT. JANGOMAIL MAKES NO WARRANTY, EXPRESS OR IMPLIED UNDER THIS AGREEMENT TO ANY PERSON OR ENTITY, AND END CUSTOMER SHALL DEFEND AND INDEMNIFY JANGOMAIL AND RETURN PATH FROM AND AGAINST ANY CLAIMS MADE ARISING FROM, OR BASED ON, ANY WARRANTY OR REPRESENTATION ALLEGEDLY MADE BY END CUSTOMER TO ANY THIRD PARTY REGARDING THE PROGRAM, RETURN PATH'S RETURN PATH CERTIFICATION™ PROGRAM, PRODUCTS, OR SERVICES, OR END CUSTOMER'S RELIANCE THEREON. ANY AND ALL WARRANTIES, IMPLIED OR OTHERWISE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED EXCEPT TO THE EXTENT THAT SUCH WARRANTIES ARE SPECIFICALLY AND EXPRESSLY PROVIDED FOR UNDER THIS AGREEMENT.

**9. Limitation on Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (TORT, CONTRACT, OR OTHERWISE) SHALL JANGOMAIL OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS (INCLUDING, WITHOUT LIMITATION, RETURN PATH, INC.), INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "JANGOMAIL") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF JANGOMAIL HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, JANGOMAIL IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF JANGOMAIL TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID TO PARTICIPATE IN THE PROGRAM FOR THE MOST RECENT ONE-YEAR PERIOD. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU. THIS PARAGRAPH 9 DOES NOT APPLY TO THE INDEMNIFICATION OBLIGATIONS IN PARAGRAPHS 7 AND 8.

10. **Amendment.** JangoMail may at any time in its discretion change these Terms of Use, effective immediately and without your having received notice of such change. JangoMail will keep a current version of these Terms of Use (reflecting the most current terms, which may differ from those described herein) on its website at (<http://www.jangomail.com>). In addition, JangoMail may notify you by electronic mail in the event that it changes any of these Terms of Use. By signing below, you acknowledge and agree to the Terms of Use described above.

*For Individuals:*

ACKNOWLEDGED AND AGREED:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
E-mail:

*For Partnerships, Corporations, Etc.*

ACKNOWLEDGED AND AGREED:

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Print Name:

*By* \_\_\_\_\_  
Signature:

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Date

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