

# POLIMORPHIC SYSTEMS

## TERMS OF SERVICE

These Terms of Service (the “**Terms**”) form a binding agreement between you (“**you**” or “**Subscriber**”) and Polimorphic, Inc. (“**Polimorphic**”, “**We**”, or “**Company**”). Please carefully read the Terms before registering an account or using the Services (defined below). By signing a service order, statement of work, or other ordering document (each an “**Order Form**”) or using the Polimorphic Service you agree to be bound by these Terms and our Privacy Policy found at [www.polimorphic.com/privacy-policy](http://www.polimorphic.com/privacy-policy) (the “**Privacy Policy**”), which is incorporated into these Terms and forms a legally binding agreement between you and Polimorphic (collectively, the “**Agreement**”).

In order to use the Polimorphic Service, you must first agree to these Terms. If you are registering for or using the Polimorphic Service on behalf of an organization or government entity, you are agreeing to these Terms for that entity and promising that you have the authority to bind that entity to these Terms. In that case, “Subscriber”, “you” and “your” will also refer to that entity, wherever possible. Your use of the Polimorphic Service shall be deemed to constitute your consent to be bound by these Terms and shall be enforceable in the same way as if you had signed an agreement. If you do not agree to be bound by these Terms, please do not place an order and do not use any of the Polimorphic Services.

These Terms may be updated by us from time to time without notice. You can review the most current version of the Terms at any time at [www.polimorphic.ai/terms-of-use](http://www.polimorphic.ai/terms-of-use). The Terms govern your access to and use of any Polimorphic website, platform, integration tool, mobile application, any order you place, and you use or attempted use of the Polimorphic Service.

These Terms are effective as of the date you first click “Agree” (or similar button or checkbox), sign an applicable Order Form, or use or access the Polimorphic Service, whichever is earlier (the “**Effective Date**”). These Terms do not have to be signed in order to be binding.

### 1. DEFINITIONS. As used in these Terms:

**1.1. “Connected Account”** means any third-party platform connected to, or integrated with, the Polimorphic Service by or on behalf of Subscriber.

**1.2. “Connected Account Data”** means any data collected from, or provided by, any Connected Account.

**1.3. “Constituent”** means any non-governmental natural person or entity that resides within or interacts with the municipality, city, township or village that Subscriber represents.

**1.4. “Constituent Data”** means any information uploaded or transmitted to the Polimorphic Service by a Constituent.

**1.5. “Documentation”** means any user manuals, handbooks, and online materials provided by Polimorphic to Subscriber that describe the features, functionality, or operation of the Polimorphic Platform.

**1.6. “Integration Tools”** means any coding, programming or design techniques, architecture, methodology, APIs, functions, software code, applications, scripts, templates, knowledge, experience, and know how developed by Polimorphic in the performance of any Professional Services related to the integration, implementation, connection and/or onboarding of any Connected Account. For clarity, Integration Tools do not include Connected Accounts or any confidential information of Subscriber.

**1.7. “Order Form”** means any order form for Polimorphic Service executed by both parties that references these Terms.

**1.8. “Performance Data”** means any log files, metadata, telemetry data and other technical performance data automatically generated by the Service relating to the use, performance, efficacy, reliability and/or accuracy of the Polimorphic Service, which does not contain any personally identifiable information or Subscriber Data or Constituent Data.

**1.9. “Professional Services”** means any integration, onboarding or other professional services that may be performed by Polimorphic hereunder.

**1.10. “Polimorphic Platform”** means the technology, including AI and machine learning algorithms, used by Polimorphic to deliver the Polimorphic Service to Subscriber.

**1.11. “Polimorphic Service”** means the on-line service delivered by Polimorphic to Subscriber using the Polimorphic Platform as described in an applicable Order Form.

**1.12. “Statement of Work”** means any mutually agreed upon work order or statement of work that specifies the Professional Services to be made available by Polimorphic hereunder.

**1.13. “Subscriber Data”** means Connected Account Data, and any other data uploaded or transmitted to the Polimorphic Service by Subscriber. Subscriber Data does not include Constituent Data.

**1.14. “Users”** means Subscriber’s employees, representatives, consultants, contractors, or agents authorized by Subscriber to access the Polimorphic Service for which applicable fees have been paid.

## **2. POLIMORPHIC SERVICE.**

**2.1. Subscription to the Polimorphic Service.** Subject to your compliance with these Terms, commencing as of the Effective Date, Polimorphic hereby grants to Subscriber a non-sublicensable, non-transferable (except as provided in Section 12), non-exclusive subscription to access and use the Polimorphic Service solely for Subscriber’s internal business purposes.

**2.2 Support.** Subject to your compliance with these Terms, Polimorphic shall use commercially reasonable efforts to (a) maintain the security of the Polimorphic Service; and (b) provide 9am – 5pm (EST) email support, excluding federal holidays.

## **3. ONBOARDING AND CONNECTED ACCOUNTS.**

**3.1. Connected Accounts.** In order to access many of the features and functions of the Polimorphic, Service, Subscriber will need to link its Connected Accounts to the Polimorphic Service. By granting Polimorphic access to any Connected Account, (i) Subscriber represents and warrants that it is entitled to disclose any log-in information provided by Subscriber in connection therewith and/or to grant Polimorphic access to such Connected Accounts, (ii) Subscriber represents and warrants that it is in good standing with respect to such Connected Accounts, and (iii) Subscriber acknowledges that Polimorphic may access Connected Account Data so that it may be used in accordance with these Terms. Subscriber further acknowledges and agrees that each Connected Account, including access to and use thereof and uptimes related thereto, is solely determined by the applicable provider of the relevant Connected Account. Polimorphic will have no liability for any unavailability of any Connected Account, or any third party provider’s decision to discontinue, suspend or terminate any Connected Account.

**3.2. Integrating Connected Accounts.** Subscriber acknowledges and agrees that in order to properly onboard to the Polimorphic Service and make full use of features and functions of the Polimorphic Service, Subscriber will need to integrate or connect to Connected Accounts with the Polimorphic Service. The Polimorphic Platform has certain prebuilt integrations readily available. In the event any integrations are required to be developed, Polimorphic may create such integrations in accordance with a mutually agreed upon Statement of Work. In the event of any conflict between these Terms and any Statement of Work, these Terms will control, unless the terms of the Statement of Work specifically identify those section(s) of the Terms to be superseded by the Statement of Work, in which case the Statement of Work will control solely with respect to such section(s).

## **4. SUBSCRIBER’S USE OF THE POLIMORPHIC SERVICE.**

**4.1. Access and Security Guidelines.** Each User will be provided access to and use of the Polimorphic Service through confidential account credentials. Subscriber will be responsible for all uses of its account. Subscriber will promptly notify Polimorphic of any unauthorized use or access to its account. User seats may not be shared amongst other Users.

**4.2. Restrictions.** Subscriber will not, and will not permit any User or other party to: (a) reverse

engineer, disassemble or decompile any component of the Polimorphic Platform; (b) interfere in any manner with the operation of the Polimorphic Service, or the Polimorphic Platform or the hardware and network used to operate the Polimorphic Service; (c) sublicense any of Subscriber's rights under these Terms, or otherwise use the Polimorphic Service for the benefit of a third party or to operate a service bureau; (d) modify, copy or make derivative works based on any part of the Polimorphic Platform; or (e) otherwise use the Polimorphic Service in any manner that exceeds the scope of use permitted under **Section 2.1**.

**5. FEES, PAYMENT AND SUSPENSION OF SERVICES.** Subscriber will pay Polimorphic all applicable fees for use of the Polimorphic Service ("**Fees**"). All Fees are exclusive of, and Subscriber shall pay, all sales, use, excise and other taxes and applicable export and import fees, customs duties and similar charges that may be levied upon Subscriber. Polimorphic reserves the right (in addition to any other rights or remedies Polimorphic may have) to discontinue the Polimorphic Service and suspend Subscriber's access to the Polimorphic Service if any Fees are overdue until such amounts are paid in full. Subscriber is responsible for providing complete, accurate and up to-date billing and contact information.

## **6. CONFIDENTIAL INFORMATION.**

**6.1. "Confidential Information"** means all information regarding a party's business, including, without limitation, technical, marketing, financial, employee, planning, and other confidential or proprietary information, disclosed to a party, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Subscriber Data is the Confidential Information of Subscriber. Confidential Information of Polimorphic includes information derived from or concerning the Polimorphic Service, the Polimorphic Platform, and the Documentation.

**6.2.** The receiving party agrees that it will not use or disclose to any third party any Confidential Information of the disclosing party, except as expressly permitted under these Terms. The receiving party will limit access to the Confidential Information to those who have a need to know such information to use or provide the Polimorphic Service. The receiving party will protect the disclosing party's Confidential Information from unauthorized use, access, or disclosure in a reasonable manner. The restrictions on use and disclosure of Confidential Information set forth above will not apply to any Confidential Information which (a) is or becomes a part of the public domain through no act or omission of the receiving party, (b) was in the receiving party's lawful possession prior to the disclosure, as shown by the receiving party's competent written records, or (c) is independently developed by the receiving party. The receiving party may disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body.

## **7. OWNERSHIP AND DATA.**

**7.1. Polimorphic Platform and Technology.** Subscriber acknowledges that Polimorphic retains all right, title and interest in and to the Polimorphic Platform, Integration Tools and all software and all Polimorphic proprietary information and technology used by Polimorphic or provided to Subscriber in connection with the Polimorphic Service (the "**Polimorphic Technology**"), and that the Polimorphic Technology is protected by intellectual property rights owned by or licensed to Polimorphic. Other than as expressly set forth in these Terms, no license or other rights in the Polimorphic Technology are granted to the Subscriber. Subscriber hereby grants Polimorphic a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Polimorphic Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber, including Users, relating to the Polimorphic Service. Polimorphic shall not identify Subscriber as the source of any such feedback.

**7.2. Subscriber Data.** Subscriber retains all right, title and interest in and to the Subscriber Data. Subscriber hereby grants to Polimorphic a non-exclusive, worldwide, royalty-free and fully paid-up license to: (a) access and use Subscriber Data to provide the Polimorphic Services to Subscriber; and (b) use Subscriber Data on an aggregated and anonymized basis to improve the Polimorphic Services; *provided, that*, the license grant in subpart (b) shall be perpetual and irrevocable. Subscriber represents and warrants that it has all necessary rights to grant Polimorphic

the foregoing licenses.

**7.3. Constituent Data.** Subscriber acknowledges that Polimorphic's collection, use and disclosure of Constituent Data is and shall be governed by Polimorphic's privacy policy available at: <https://www.polimorphic.com/privacy-policy>, as may be updated by Polimorphic from time to time.

**7.4. Data Security.** In the event Polimorphic becomes aware of any loss or unauthorized access, disclosure or use of any Subscriber Data ("**Security Breach**"), Polimorphic will (i) promptly notify Subscriber in writing of such Security Breach, and (ii) take reasonable steps to identify the cause of such Security Breach, minimize the harm associated therewith and prevent reoccurrence thereof. Any notification of any Security Breach will describe, to the extent known, details of the Security Breach, including steps taken to mitigate the potential risks.

**7.5. Performance Data.** Polimorphic retains all right, title and interest in and to the Performance Data, and may use Performance Data for any lawful purpose.

## **8. TERM AND TERMINATION.**

**8.1. Term.** These Terms are binding as of the Effective Date and shall continue until all Order Forms have expired, unless terminated earlier in accordance with these Terms. Unless otherwise set forth in an Order Form, each Order Form will have an initial term of one (1) year (the "**Initial Order Term**") and will automatically renew for successive one (1) year periods (each, a "**Renewal Order Term**") and collectively with the Initial Order Term, the "**Order Term**"), unless either party provides no less than sixty (60) days' written notice of its intent to terminate as of the end of the then-current Order Term. Unless otherwise stated in the Order Form, the pricing for the Initial Order Term and each subsequent Renewal Order Term, will be based on the total number of Constituents who are natural persons within Subscriber's municipality, city, township or village at the commencement of the then-current Order Term. The number of Constituents will be determined by Polimorphic, and Polimorphic will provide notice to Subscriber thereof, no less than sixty (60) days prior to the commencement of any Renewal Order Term using publicly available U.S. Census Bureau data available at <http://census.gov/data.html>.

**8.2. Termination.** Either party may terminate these Terms upon written notice if the other party materially breaches these Terms and does not cure such breach (if curable) within thirty (30) days after written notice of such breach. Upon the expiration or termination of these Terms for any reason, (a) any amounts owed to Polimorphic will become immediately due and payable; and (b) each party will return to the other all property (including any Confidential Information) of the other party. Polimorphic agrees that upon expiration or termination of these Terms, Polimorphic will remove all Subscriber Data from the Polimorphic Platform and all Subscriber access to the Polimorphic Service will cease. Provisions that by their nature are intended to survive termination, including without limitation **Sections 1, 5, 6, 7, 8.2, 9.2, 9.3, 10-12** will survive the termination of these Terms.

## **9. WARRANTY; DISCLAIMER.**

**9.1. Limited Warranty.** During the Term, Polimorphic warrants that the Polimorphic Service, when used as permitted by Polimorphic and in accordance with the Documentation, will operate as described in the Documentation in all material respects. If Subscriber notifies Polimorphic of any breach of the foregoing warranty, as Subscriber's sole and exclusive remedy, Polimorphic shall use commercially reasonable efforts to repair and fix the non-conforming functionality.

**9.2. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) THE POLIMORPHIC SERVICE, POLIMORPHIC PLATFORM AND DOCUMENTATION ARE PROVIDED "*AS IS*" AND "*AS AVAILABLE*" AND (B) POLIMORPHIC AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**9.3. CONNECTED ACCOUNTS.** Subscriber acknowledges that Polimorphic has no control over, or other ability or obligation with respect to the maintenance, upkeep, status or support of any Connected Accounts or other component thereof, including the accuracy, timeliness, reliability, or completeness of any Connected Account Data. Subscriber further acknowledges that, as a result,

Polimorphic will not be liable for any inaccuracies, losses or other claims arising from or related to any notifications, results, records or other outputs created or provided by the Polimorphic Service (collectively, “**Outputs**”) that are based on the Connected Account Data. Accordingly, Polimorphic makes no representations or warranties with respect to the accuracy, timeliness, reliability or completeness of any Outputs. Polimorphic will have no liability with respect to any Outputs, any acts, omissions, reliance, delays, errors or other liabilities arising from or related to any Outputs, or any downtime, unavailability, inaccuracies or failures of any Connected Accounts. Subscriber represents and warrants that it has all necessary rights and authority to disclose any account credentials and passwords provided by Subscriber to Polimorphic related to any Connected Accounts, and that Polimorphic’s access to and use of any Connected Accounts will not require Polimorphic to pay any amounts to any third party.

## **10. INDEMNITY.**

**10.1. By Polimorphic.** If any action is instituted by a third party against Subscriber based upon a claim that the Polimorphic Service or Polimorphic Platform, as delivered, infringes any third party’s intellectual property rights, Polimorphic shall defend such action at its own expense on behalf of Subscriber and shall pay all damages attributable to such claim which are finally awarded against Subscriber or paid in settlement. If the Polimorphic Service or Polimorphic Platform is enjoined or, in Polimorphic’s determination is likely to be enjoined, Polimorphic shall, at its option and expense (a) procure for Subscriber the right to continue using the Polimorphic Service, (b) replace or modify the Polimorphic Platform or Polimorphic Service so that it is no longer infringing but continues to provide comparable functionality, or (c) terminate these Terms and Subscriber’s access to the Polimorphic Service and refund any amounts previously paid for the Polimorphic Service attributable to the remainder of the then-current term. This Section sets forth the entire obligation of Polimorphic and the exclusive remedy of Subscriber against Polimorphic for any claim that the Polimorphic Service infringes a third party’s intellectual property rights.

**10.2. By Subscriber.** To the extent permitted under applicable State law of the Subscriber, if any action is instituted by a third party against Polimorphic relating to (a) any claims or disputes between Subscriber and any provider of any Connected Account or any Constituent, (b) Subscriber’s breach or alleged breach of Section 2.1, or (c) Subscriber’s breach of these Terms or use of the Polimorphic Services in violation of any applicable laws, rules or regulations, Subscriber will defend such action at its own expense on behalf of Polimorphic and shall pay all damages attributable to such claim which are finally awarded against Polimorphic or paid in settlement of such claim.

**10.3. Procedure.** Any party that is seeking to be indemnified under the provision of this **Section 10** must (a) promptly notify the other party (the “**Indemnifying Party**”) of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a “**Claim**”), and (b) give the Indemnifying Party the sole control over the defense of such Claim.

**11. LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL POLIMORPHIC OR SUBSCRIBER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS IN ANY WAY RELATING TO THESE TERMS. IN NO EVENT SHALL POLIMORPHIC’S AGGREGATE, CUMULATIVE LIABILITY IN ANY WAY RELATING TO THESE TERMS EXCEED THE AMOUNT OF FEES ACTUALLY RECEIVED BY POLIMORPHIC FROM SUBSCRIBER PURSUANT TO THE APPLICABLE ORDER FORM OR STATEMENT OF WORK DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO SUBSCRIBER’S PAYMENT AND INDEMNITY OBLIGATIONS. THE PARTIES WOULD NOT HAVE ENTERED INTO THESE TERMS BUT FOR SUCH LIMITATIONS.

## **12. GENERAL PROVISIONS.**

Polimorphic may use Subscriber’s name and logo on Polimorphic’s website and identify Subscriber as a Subscriber of Polimorphic. Neither party may assign any rights or obligations arising under these Terms, without the prior written consent of the other; *except* that Polimorphic may assign these Terms without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subscriber agrees that Polimorphic may subcontract certain aspects of the Polimorphic Service to qualified third parties, *provided that* any such subcontracting arrangement will not relieve Polimorphic of any of its obligations hereunder. These Terms will be governed by and construed in accordance with the laws

of the State of New York without regard to its conflicts of laws principles. If a lawsuit or court proceeding is permitted under this Agreement, the parties will be subject to the exclusive jurisdiction of the state and federal courts located in the City of New York. Any notice under these Terms must be given in writing to the other party at the address set forth above. Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (a) delivered personally, (b) sent by recognized courier service, or (c) sent by electronic mail to the addresses indicated on the Order Form. These Terms (as modified by Polimorphic from time to time) together with any executed Order Forms or Statements of Work represent the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings. Except as set forth in these Terms, only a writing signed by both parties may modify these Terms. In the event that any provision of these Terms is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of these Terms will remain in full force and effect. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. The parties to these Terms are independent contractors, and no agency, partnership, franchise, joint venture or employee employer relationship is intended or created by these Terms. Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under these Terms due to any cause beyond its reasonable control, including without limitation an act of war, terrorism, act of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, epidemic, pandemic, or failure or degradation of the Internet. Polimorphic is not responsible or liable for any delay or failure of performance caused in whole or in part by Subscriber's delay in performing, or failure to perform any of its obligations under these Terms.