



## Terms and Conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions.

### 1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

**"Account"** means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**"Agreement"** means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

**"Business Day"** means any weekday other than a bank or public holiday in England;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the following amounts:

- (a) such amounts as may be agreed in writing by the parties from time to time; and
- (b) amounts calculated by multiplying the Provider's service-based charging rates (as notified by the Provider to the Customer before the date of the Agreement)

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

**"Customer"** means the person or entity identified as such in Section 1 of the Services Order Form;

**"Customer Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked as "confidential"; or
  - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on

the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

**"Customer Indemnity Event"** has the meaning given to it in Clause 17.3;

**"Customer Personal Data"** means Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

**"Documentation"** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

**"Effective Date"** means the date upon which the parties execute a hard-copy Services Order Form; or, following the Customer completing and submitting the online Services Order Form published by the Provider on the Provider's website, the date upon which the Provider sends to the Customer an order confirmation;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Services"** means Email Verify Limited web-based platforms, which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

**"Hosted Services Defect"** means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

**"Hosted Services Specification"** means the specification for the Platform and Hosted Services;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Maintenance Services"** means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

**"Minimum Term"** means, in respect of the Agreement, the period of 1 month beginning on the Effective Date;

**"Mobile App"** means the mobile application that is made available by the Provider through the Google Play Store and the Apple App Store;

**"Permitted Purpose"** means the defined services offered;

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998;

**"Platform"** means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

**"Provider"** means Email Verify Limited, a company incorporated in England and Wales (registration number 09649762) having its registered office at 131-135 Temple Chambers, 3-7 Temple Avenue, London, EC4Y 0HP, United Kingdom;

**"Provider Indemnity Event"** has the meaning given to it in Clause 17.1;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

**"Services Order Form"** means an online order form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

**"Set Up Services"** means the configuration, implementation and integration of the Hosted Services in accordance with Section 2 of the Services Order Form;

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

**"Supported Web Browser"** means the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

**"Term"** means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Terms and Conditions"** means all the documentation containing the provisions of the Agreement, namely the Services Order Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

**"Update"** means a hotfix, patch or minor version update to any Platform software; and

**"Upgrade"** means a major version upgrade of any Platform software.

## **2. Term**

- 2.1 The Agreement shall come into force upon the Effective Date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 20.
- 2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

## **3. Set Up Services**

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Provider shall use all reasonable endeavours to ensure that the Set Up Services are provided upon or promptly following the Effective Date.
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 18.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
- 3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.
- 3.5 For self-service batch services, results are usually delivered within 24 hours. This can be longer if there is particularly busy load on the servers.

We will send your access details (i.e. login username and password) to the email address that you nominated during the sign-up process.

For API access, we will send your API key within 48 hours of payment (excluding weekends and UK Bank Holidays).

We offer online services only. There are no physical products to ship or software to download.

## **4. Hosted Services**

- 4.1 The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account upon the completion of the Set Up Services.
- 4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser or applicable client program for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:
  - (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;

- 4.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Hosted Services;
  - (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;
  - (c) the Customer must not use the Hosted Services to provide services to third parties;
  - (d) the Customer must not republish or redistribute any content or material from the Hosted Services; and
  - (e) the Customer must not make any alteration to the Platform, except as and if permitted by the Documentation.
- 4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 4.6 The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.
- 4.7 The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 1 (Acceptable Use Policy).
- 4.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.9 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.11 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

## **5. Maintenance Services**

- 5.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 5.2 The Provider shall provide the Maintenance Services with reasonable skill and care.

- 5.3 The Provider shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).
- 5.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

## **6. Support Services**

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.
- 6.2 The Provider shall provide the Support Services with reasonable skill and care.
- 6.3 The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).
- 6.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

## **7. Customer obligations**

- 7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
- (a) co-operation, support and advice;
  - (b) information and documentation; and
  - (c) governmental, legal and regulatory licences, consents and permits,
- as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.
- 7.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Agreement.

## **8. Customer Data**

- 8.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 8.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with the Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

- 8.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and may at its discretion retain and securely store each such copy for a minimum period of 30 days.
- 8.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 8.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **9. Mobile App**

- 9.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly these Terms and Conditions shall not govern any such use, rights, obligations or liabilities.

## **10. No assignment of Intellectual Property Rights**

- 10.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **11. Charges**

- 11.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 11.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 11.2.
- 11.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 11.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

## **12. Payments**

- 12.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term.
- 12.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 12.

- 12.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or PayPal (using such payment details as are notified by the Provider to the Customer from time to time).
- 12.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may charge the Customer interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month). The Provider acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 12.4 constitute a substantial remedy within the meaning of that Act.

**12a. Seven Day Money Back Guarantee Period**

The Email Verify money back period is for 7 days and is for self-service batch services only. Our money back guarantee does not apply to the API service nor to managed batch services. If you do not wish to continue with the service, you must cancel within the 7 day period by cancelling your subscription in your Email Address Checker account and contacting Email Verify requesting a refund. Please supply your email address and (optional) reason for cancellation for our customer service records.

**12b. Month to Month Term for Subscription Accounts**

After the service setup is complete, your account will be automatically renewed on a month to month basis at the then current monthly subscription rate. There is a 2 month minimum term of service (3 month where indicated on our signup pages). You may cancel the service at any time after the minimum term of service by contacting support within your Email Checker account. Service is billed each service month (based on the day of the month you signed up for service) for the following month and we cannot give any refunds for partial month's service.

**13. Provider's confidentiality obligations**

13.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.



- 13.2 Notwithstanding Clause 13.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 13.3 This Clause 13 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
  - (b) is or becomes publicly known through no act or default of the Provider; or
  - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 13.4 The restrictions in this Clause 13 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 13.5 The provisions of this Clause 13 shall continue in force for a period of 5 years following the termination of the Agreement, at the end of which period they will cease to have effect.

#### **14. Data protection**

- 14.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with these Terms and Conditions, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with these Terms and Conditions will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).
- 14.2 The Provider warrants to the Customer that:
- (a) it will act only on instructions from the Customer in relation to the processing of Customer Personal Data;
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Customer Personal Data and against loss or corruption of Customer Personal Data;
  - (c) it will only process the Customer Personal Data for the purposes of performing its obligations and exercising its rights under the Agreement;
  - (d) it will process the Customer Personal Data in compliance with all applicable laws; and
- 14.3 The Provider shall notify the Customer as soon as practicable if:

- (a) any of the Customer Personal Data is lost or destroyed, or becomes damaged, corrupted or unusable;
- (b) the Provider receives any complaint or regulatory notice which relates to the processing of any of the Customer Personal Data; or
- (c) the Provider receives a request from a data subject for access to any of the Customer Personal Data.

14.4 The Provider shall co-operate with the Customer in relation to:

- (a) any request from the Customer to amend or delete any of the Customer Personal Data;
- (b) any complaint or regulatory notification relating to the processing of any of the Customer Personal Data; and
- (c) any request from a data subject for access to any of the Customer Personal Data, at the Provider's own cost and expense.

14.5 The Provider shall ensure that access to the Customer Personal Data is limited to those Provider personnel who have a reasonable need to access the Customer Personal Data to enable the Provider to perform its duties under the Agreement; any access to the Customer Personal Data must be limited to such part or parts of the Customer Personal Data as are strictly necessary.

14.6 The Provider shall take reasonable steps to ensure the reliability of any Provider personnel who have access to the Customer Personal Data. Without prejudice to this general obligation, the Provider shall ensure that all relevant Provider personnel are informed of the confidential nature of the Customer Personal Data, have undertaken training in the laws relating to handling Personal Data, and are aware of the Provider's duties in respect of that Personal Data.

## **15. Warranties**

15.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

15.2 The Provider warrants to the Customer that:

- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- (b) the Hosted Services will be free from Hosted Services Defects;

- (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (e) the Platform will incorporate security features reflecting the requirements of good industry practice.

- 15.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.
- 15.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 15.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
  - (b) procure for the Customer the right to use the Hosted Services in accordance with these Terms and Conditions.
- 15.6 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.
- 15.7 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **16. Acknowledgements and warranty limitations**

- 16.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 16.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 16.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

16.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## 17. Indemnities

17.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions (a "**Provider Indemnity Event**").

17.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 17.1 shall not apply unless the Customer complies with the requirements of this Clause 17.2.

17.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

17.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 17.3 shall not apply unless the Provider complies with the requirements of this Clause 17.4.

17.5 The indemnity protection set out in this Clause 17 shall be subject to the limitations and exclusions of liability set out in the Agreement.

**18. Limitations and exclusions of liability**

18.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

18.2 The limitations and exclusions of liability set out in this Clause 18 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 18.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

18.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

18.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

18.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.

18.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.

18.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

18.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 18.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 8.3 and Clause 8.4.

18.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

18.10 The liability of the Customer to the Provider under the Agreement in respect of any event or series of related events shall not exceed:

- (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.

18.11 The aggregate liability of the Customer to the Provider under the Agreement shall not exceed the greater of:

- (b) the total amount paid and payable by the Customer to the Provider under the Agreement.

## **19. Force Majeure Event**

19.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

19.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

19.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **20. Termination**

20.1 Either party may terminate the Agreement by giving to the other party not less than 30 days' written notice of termination.

20.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of the Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).

20.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;

- (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
- (d) if that other party is an individual:
- (i) that other party dies;
  - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
  - (iii) that other party is the subject of a bankruptcy petition or order.

20.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 20.4.

## **21. Effects of termination**

21.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.10, 9, 12.2, 12.4, 13, 17, 18, 21, 24, 25, 26, 27, 28.1, 28.2, 29, 30 and 31.

21.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

21.3 Within 30 days following the termination of the Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and

- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

## **22. Notices**

22.1 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in Section 5 of the Services Order Form and Clause 22.2):

- (a) in which case the notice shall be deemed to be received; or
- (b) in which case the notice shall be deemed to be received,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

22.2 The Provider's contact details for notices under this Clause 22 are as follows: Email Verify Ltd, 131-135 Temple Chambers, 3-7 Temple Avenue, London, United Kingdom, EC4Y 0HP.

22.3 The addressee and contact details set out in Section 5 of the Services Order Form and Clause 22.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 22.

## **23. Subcontracting**

23.1 The Provider may subcontract any of its obligations under the Agreement.

23.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

23.3 Notwithstanding any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **24. Assignment**

24.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under these Terms and Conditions.

## **29. Entire agreement**

29.1 The Services Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

29.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.



29.3 The provisions of this Clause 29 are subject to Clause 18.1.

**30. Law and jurisdiction**

30.1 These Terms and Conditions shall be governed by and construed in accordance with English law.

30.2 Any disputes relating to the Agreement shall be subject to the non-exclusive jurisdiction of the courts of England.

**31. Interpretation**

31.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

31.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

31.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

31.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **Schedule 1 (Acceptable Use Policy)**

### **1. Introduction**

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of the website at *www.emailchecker.com*, any successor website, and the services available on that website or any successor website (the "**Services**"); and
  - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to *Email Verify Limited* (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

### **2. General usage rules**

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

### **3. Unlawful Content**

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- (a) be libellous or maliciously false;
  - (b) be obscene or indecent;
  - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
  - (d) infringe any right of confidence, right of privacy or right under data protection legislation;

- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
- (g) be in contempt of any court, or in breach of any court order;
- (h) constitute a breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) constitute a breach of official secrets legislation; or
- (k) constitute a breach of any contractual obligation owed to any person.

3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

#### **4. Graphic material**

4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question, and in particular for children over 12 years of age.

4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.

4.3 Content must not be pornographic or sexually explicit.

#### **5. Factual accuracy**

5.1 Content must not be untrue, false, inaccurate or misleading.

5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

#### **6. Negligent advice**

6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.

6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

#### **7. Etiquette**

7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.

7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.

7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.

- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content does not duplicate other content available through the Services.
- 7.8 You must ensure that Content is appropriately categorised.
- 7.9 You should use appropriate and informative titles for all Content.
- 7.10 You must at all times be courteous and polite to other users of the Services.

## **8. Marketing and spam**

- 8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.
- 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 8.3 You must not send any spam to any person using any email address or other contact details made available through the Services or that you find using the Services.
- 8.4 You must not use the Services to promote or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar letters, schemes or programs.

## **9. Monitoring**

- 9.1 You acknowledge that we may actively monitor the Content and the use of the Services.

## **10. Hyperlinks**

- 10.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

## **11. Harmful software**

11.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

12.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

## **Schedule 2 (Availability SLA)**

### **1. Introduction to availability SLA**

- 1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

### **2. Availability**

- 2.1 The Provider shall use all reasonable endeavours to ensure that the uptime for the Hosted Services is at least 99.9% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.
- 2.3 The Provider shall report uptime measurements to the Customer.

### **3. Service credits**

- 3.1 The Provider does not offer Service credits to the Customer.

### **Schedule 3 (Maintenance SLA)**

#### **1. Introduction**

1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

#### **2. Scheduled Maintenance Services**

2.1 The Provider shall where practicable give to the Customer prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

2.2 The Provider shall provide all scheduled Maintenance Services outside Business Hours.

#### **3. Updates**

3.1 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and prior written notice of the application of any non-security Update to the Platform.

3.2 The Provider shall apply Updates to the Platform as follows:

- (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
- (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
- (c) other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Customer or agreed by the parties from time to time.

#### **4. Upgrades**

4.1 The Provider shall produce Upgrades during the Term.

4.2 The Provider shall give to the Customer prior written notice of the application of an Upgrade to the Platform.

4.3 The Provider shall apply each Upgrade to the Platform within any period notified by the Provider to the Customer or agreed by the parties in writing.

## **Schedule 4 (Support SLA)**

### **1. Introduction**

1.1 This Schedule 4 sets out the service levels applicable to the Support Services.

### **2. Helpdesk**

2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 4.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and using the Provider's web-based ticketing system.

2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term. In addition, the Provider shall provide a special telephone number for the Customer to report critical issues outside of Business Hours.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

### **3. Response and resolution**

3.1 Issues raised through the Support Services shall be categorised as follows:

- (a) urgent: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
- (b) high: a core function of the Hosted Services is significantly impaired;
- (c) medium: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
- (d) low: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Provider shall use all reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) urgent: 2 Business Hours;
- (b) high: 4 Business Hours;
- (c) medium: 1 Business Day; and
- (d) low: 5 Business Days.



- 3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.
- 3.5 The Provider shall use all reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:
- (a) urgent: 4 Business Hours;
  - (b) high: 8 Business Hours;
  - (c) medium: 4 Business Days; and
  - (d) low: 10 Business Days.

#### **4. Provision of Support Services**

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

#### **5. Limitations on Support Services**

- 5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed 5 hours then:
- (a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
  - (b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges of GBP50 or USD40 per full or incomplete hour.
- 5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:
- (a) the improper use of the Hosted Services by the Customer; or
  - (b) any alteration to the Hosted Services made without the prior consent of the Provider.