



Terms and Conditions Of Service

Mail Prove Limited

Version 4.0

TERMS AND CONDITIONS

DEFINITIONS

1. **“Agreement”** means this Agreement between MailProve and Customer and establishes the terms and conditions under which MailProve will provide Services to Customer pursuant to an accepted Customer Order.
2. **“Customer”** means the company, corporation or other legal entity which MailProve will provide Services under this Agreement.
3. **“Customer Order”** means a written request by Customer for specific MailProve’s Services.
4. **“MailProve”** means Mail Prove Limited, a HKSAR Corporation, primarily located at Room 806, Cyberport 1, 100 Cyberport Road, Telegraph Bay, Pokfulam, Hong Kong.
5. **“Party”** means either MailProve or Customer and **“Parties”** means both MailProve and Customer.

AGREEMENT

1. Services

- 1.1 MailProve will provide Customer services set forth in Schedule 1(**“Services”**) with the terms and conditions of this Agreement and special terms and conditions as set forth in Schedule 2, both of which are subject to change from time to time by MailProve.
- 1.2 MailProve may modify, alter or change one or more Services provided under this Agreement where MailProve is required to implement such modification, alteration or change in order to comply with any change to the regulatory regime governing the provision of the Services, provided, however, that MailProve will provide Customer with at least thirty (30) days prior written notice of its intention to do so.
- 1.3 The Parties acknowledge and agree that MailProve does not guarantee the results or effectiveness of any Service rendered by MailProve. MailProve will use its best endeavour to conduct its service in a professional manner and in accordance with good industry practise. MailProve shall not be held responsible and shall be held harmless for any consequences resulting therefrom in connection with Customer's use of the Service.

2. Term

This Agreement will begin on the date it is signed by both Parties, or if signed on different dates, on the last date of signature by a Party (**“Effective Date”**). Thereafter this Agreement will continue for one year (**“Initial Term”**), unless terminated pursuant to Section 6 below. After the Initial Term, this Agreement may be extended by mutual agreement of the Parties in writing for additional 1-year terms (**“Extended Term”**). In no event will this Agreement automatically renew for any Extended Term; rather any extension of this Agreement must be by written agreement of the Parties.

3. Customer Obligations

- 3.1 Neither Customer, its employees, subcontractors, or agents shall offer warranties or representations for the Services which would obligate or otherwise bind MailProve beyond any warranty or representation expressly set forth in this Agreement, or make any other warranties, promises or representations with respect to the Services, or any other person or entity beyond any warranty or representation expressly set forth in this Agreement.
- 3.2 Customer shall agree that MailProve can use its name, trademark or any identity symbol in any press release, advertisement, website or any trade publication regarding this Agreement.

4. Restriction of the Use of the Services

- 4.1 The Customer may not resell the Services covered by this Agreement in any manner, including, but not limited to, as a wholesaler.
- 4.2 MailProve may deny the Customer's request for Services if the Customer is engaged in any business in direct competition with MailProve.

5. Charges and Payment

- 5.1 Customer will pay MailProve the full service fee for the Services ("**Customer Service Amount**") within seven (7) days of execution of this Agreement and thereafter within seven (7) days in the first month of each quarter if quarterly payment is selected.
- 5.2 Customer may withhold part or all of a payment for a Customer Service Amount due to a claimed existing service interruption caused by failure of the Services. Any such withheld amounts will be paid in full upon resolution of the issue.
- 5.3 If Customer fails to pay MailProve for the Customer Service Amount, the Parties agree MailProve will have the following remedies against Customer:
 - (i) recovery from Customer for the full amount due;
 - (ii) terminate this Agreement;
 - (iii) right to offset or deduct from Customer any settlement payments that MailProve may owe Customer for other services.

6. Termination

- 6.1 Either Party may terminate this Agreement immediately if the other Party has
 - (a) committed a breach of any material obligation under this Agreement; or
 - (b) the making by either Party of an assignment of the rights and obligations of this Agreement for the benefit of its creditors; or
 - (c) the filing of a voluntary petition in bankruptcy or the filing of a petition in bankruptcy or other insolvency protection against either Party that is not dismissed within ninety (90) days thereafter; or
 - (d) if the other Party ceases its business.
- 6.2 Customer may terminate this Agreement immediately on written notice to MailProve without cost or penalty in the event that:
 - (a) MailProve's Service fails to block unsolicited emails for more than 95% of the time during any period of seven consecutive days; or
 - (b) if any license to provide the Services to Customer is for any reason revoked or terminated or expires without immediately being replaced.
- 6.3 MailProve may terminate this Agreement immediately, with written notice to Customer, without cost or penalty, upon
 - (a) any wilful breach of duty or habitual neglect of duty by Customer; or
 - (b) any material breach by Customer of its obligations under this Agreement.

7. Limitation of Liability

Neither Party shall be liable to the other for any loss, damage, liability, claim or expense ("**Claims**") arising out of or in relation to this Agreement. Except for the parties' respective indemnification obligations, in no event shall either Party be liable for any indirect, incidental,

special, punitive or other consequential damages whether or not foreseeable (including, without limitation, damages for the loss of data, goodwill or profits) arising out of or in relation to this Agreement even if advised beforehand of the possibility of such liability.

8. Indemnity Provisions

- 8.1 MailProve will defend, indemnify and hold Customer harmless from and against all claims, complaints, losses, liabilities, costs and expenses asserted by third parties (i) that the provision of any of the Services infringe any patent, copyright, trade mark, trade secret or other intellectual property right of a third party and (ii) that arise out of or in connection with the gross negligence or wilful misconduct of MailProve.
- 8.2 Customer will defend, indemnify and hold MailProve harmless from and against all claims, complaints, losses, liabilities, costs and expenses asserted by third parties to the extent they arise out of or in connection with (i) Customer's infringement or alleged infringement of a patent, copyright, trademark, trade secret, or other intellectual property right of a third Party, or (ii) the gross negligence or wilful misconduct of Customer.
- 8.3 The indemnifying Party under Section 8.1 or 8.2 above shall assume the defense of any claim qualifying for indemnification with counsel reasonably satisfactory to the other Party, and the other Party shall cooperate to the extent reasonably requested by the indemnifying Party. The other Party may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. The indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the other Party to take or refrain from taking any action or purports to obligate the other Party, then the indemnifying Party shall not settle such claim without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

9. Confidentiality

Customer acknowledges that it has and will have access to confidential information of MailProve. Customer will not at any time, during the term of this Agreement, or at any time before or after, disclose, or provide access to, without the written consent or authorization of MailProve, any such information to any person, for any reason or purpose whatsoever. Customer agrees that such information or consent to disclose may be granted, subject to MailProve's sole discretion and conditioned upon the disclosure being made pursuant to a secrecy agreement, protective order, or procedure under which the confidentiality of the information is maintained in the hands of the person to whom the information is to be disclosed. Customer agrees to notify MailProve in writing of all such requests, orders and/or agreements in a timely fashion.

10. Proprietary Rights

MailProve shall at all times retain full and exclusive right, title, and ownership interest in, all its names, logos, trade names, trademarks, copyrights, service marks and any and all other intellectual property or trade secret rights related thereto.

11. Dispute Resolution

Any disagreement or dispute between the Parties arising out of or in connection with this Agreement shall, if not promptly resolved by mutual agreement, be reduced to writing and submitted to the executive officers of each Party designated to handle such disputes. Within 30 days of the submittal, the executive officers shall, upon mutual agreement, meet to resolve the dispute and to hear any arguments that a Party wishes to make in connection therewith. If the executive officers reach agreement on the resolution of the dispute, they shall promptly issue their joint written decision resolving the dispute. Any dispute so dealt with shall be considered conclusively and finally decided and shall not be the subject of any litigation. Any dispute which

such executive officers are unable to promptly decide may be taken by the aggrieved Party to litigation in the appropriate forum.

12. Conflict of Interest

Nothing in this Agreement shall be construed to prohibit MailProve from listing Customer, or Customer's partners, affiliates or agents, in the Services.

13. General Terms

13.1 Independent Contractors

The Parties hereto are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as otherwise expressly provided in this Agreement, this Agreement does not constitute either Party as the agent or legal representative of the other Party and does not create a partnership or joint venture between the Parties. Except as otherwise expressly provided in this Agreement, neither Party shall have any authority to act for the other Party in any agency or other capacity, to make commitments of any kind for the account of, or on behalf of, the other Party or to contract for or bind the other Party in any manner whatsoever. This Agreement confers no rights of any kind upon any third Party.

13.2 Force Majeure

Neither Party shall be liable for failure to fulfil its obligations hereunder if such failure is due to causes beyond its reasonable control, including, without limitation, actions or failures to act of the other Party, acts of God, fire, catastrophe, governmental prohibitions or regulations, national emergencies, insurrections, riots or wars, or strikes, lockouts, work stoppages or other labour difficulties, or viruses which did not result from the acts or omissions of such Party, its employees or agents (each an "Event of Force Majeure"). The time for any performance required hereunder shall be extended by the delay incurred as a result of such Event of Force Majeure, and such delayed Party shall act with diligence to correct such Event of Force Majeure or minimize the delay resulting from such Event of Force Majeure.

13.3 Waiver of Breach

Any waiver of either Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach by any Party.

13.4 Binding Agreement

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns as permitted hereunder. No person or entity other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the Parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto or their respective successors and assigns as permitted hereunder.

13.5 Notices

All notices and other communications required or permitted hereunder shall be sufficient in writing and sent by registered mail or personally delivered to the principal office of the receiving Party.

13.6 Compliance with Law

Both Parties are responsible for complying with all applicable rules, regulations, statutes, codes, ordinances and other requirements, whether federal, state, local, foreign, or international, in connection with the matters contemplated by this Agreement.

13.7 Assignment

Neither Party may assign this Agreement or any of its rights and obligations, or delegate its duties hereunder in whole or in part, without the prior written consent of the other Party, except that either Party may, without the consent of the other, assign the Agreement to a controlled subsidiary or affiliate of that Party or a purchaser of all or substantially all of the shares of

MailProve. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the Parties.

13.8 No Third Party Beneficiaries

No provision of this Agreement is intended, nor shall any be interpreted, to provide or create any third Party beneficiary rights or any other rights of any kind in any affiliate, shareholder, partner of any Party hereto or any other third party; unless specifically provided otherwise herein, and except as so provided, all provisions hereof, shall be personal solely between the Parties to this Agreement.

13.9 Severability

In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be construed so as to render it enforceable and effective to the maximum extent possible in order to effectuate the intention of this Agreement; and the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected, impaired or invalidated thereby.

13.10 Order of Precedence

In the event of any conflict or inconsistency between this Agreement and any attachments, schedules, or exhibits, the provisions of this Agreement shall take precedence.

13.11 Titles and Subtitles

The titles of any sections or provisions of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

13.12 Governing Law

This Agreement and any issues arising out of or in relation thereto shall be governed by the law of Hong Kong. The Parties agree to the exclusive jurisdiction of the courts in Hong Kong for any action or proceeding arising out of or in relation to this Agreement.

13.13 Entire Agreement / Amendments.

This Agreement and the attachments, schedules and exhibits incorporated herein by reference constitute the entire understanding and agreement between the Parties with regard to the subjects hereof and supersede all prior oral and written agreements, commitments and understandings with respect to such matters. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

SCHEDULE 1

Services

Services to be sold by MailProve under this Agreement will include those listed below:

1. Super Blacklist is a database containing IP addresses from which spam has originated or has been relayed and which have been reported to and verified by MailProve in accordance with MailProve policies.

Zone Transfer is available as an additionally charged option with which one or more DNS servers owned and operated by Customer will be given access to transfer the entire Super Blacklist database as a DNS zone to Customer's DNS server(s).

SCHEDULE 2

Special Terms and Conditions

1. Prices for Charity Organization is waived.
2. Customer can select to pay the annual fee upon execution of this Agreement or quarterly upfront. If quarterly payment is selected, the annual fee will be divided into equal installments.
3. Customer who wants to renew the contract shall submit a new order form thirty days prior to the expiration of the existing contract.
4. If Customer terminates this Agreement prior to the end of the contract period, there shall be no refund of any fees. MailProve may, in its sole discretion, refund a prorata share of the fees for termination pursuant to clause 6.2 and in such case MailProve will retain an administration fee equal to three month's prorata share of the annual fee.
5. The number of mail boxes shall be provided by Customer and shall be based on good faith estimation by Customer. Upon request by MailProve, Customer shall provide relevant documentation such as annual report, indicating the number of users of Customer's email services, sufficient to evidence a reasonable estimate of the number of users of Customer's email system.
6. If MailProve determines through any legal means that the number of mail boxes provided by Customer is inaccurate, MailProve will adjust the level of pricing accordingly, including historical adjustments and/or MailProve will terminate this Agreement at its discretion without prejudice to MailProve's right to recover any historical fees due to MailProve.
7. If Customer uses the zone transfer option Customer will configure its DNS server(s) such that third parties cannot transfer the Super Blacklist database from Customer's DNS server(s). Failure to restrict access, whether willful or negligent, shall constitute a breach of this Agreement and may result in termination of service and further legal remedies.