



Terms and Conditions / Service Agreement for Imerjamil Virus and Spam Filtering Services

Customer Agreement

SERVICES CONTRACT

1 **Services**

Imerja Limited will provide to the Customer the services (the "Services") specified in Schedule 1 - Imerja Services Schedule (the "Services"). Within three (3) business days of the date on which this Contract is signed by both parties, the Customer will receive an email that will specify the process for activating the Customer's account and access to the Services through an activation key ("Provisioning").

2 **Fees and Billing**

Imerja Limited will bill the Customer for the Services as specified in Schedule 1 - Imerja Services Schedule.

3 **Contract Term and Renewal**

The initial term of this Contract shall be twelve (12) months. At the end of the initial term, this Contract shall be renewed automatically for consecutive renewal terms of twelve (12) months, unless terminated by either party by providing the other party written notice fifteen (15) days prior to the end of the applicable term delivered in accordance with Section 18, "Notices". Imerja Limited may revise its rates (including, but not limited to, the fee per mailbox) with thirty (30) days prior written notice to the Customer, effective for the following term.

4 **Contract Termination**

Either party may terminate this Contract for cause upon written notice if the other party fails to cure any material breach of this Contract within thirty (30) days after receiving written notice of such breach; provided however that the period to cure a breach with respect to payment shall be ten (10) days. If the Customer terminates this Contract for cause in accordance with this Section, Imerja Limited shall refund to the Customer any prepaid amounts applicable to the period following the effective date of termination. Other than as may be provided elsewhere in this Contract, such termination shall be customer's sole and exclusive remedy in case of a material breach of this Contract by Imerja Limited.

5 **Customer Obligations**

During the term of this Contract, the Customer shall have the following obligations, in addition to those set forth elsewhere in this Contract.

- 5.1 The Customer is and will remain solely responsible for complying with all laws, rules and regulations regarding the management and administration of its email system, including but not limited to, obtaining any consent and/or acknowledgement from its employees and service providers (if applicable) in managing its email system. The Customer acknowledges and agrees that Imerja Limited's responsibilities and liability



do not extend to the internal management of the Customer's email system and that Imerja Limited is merely a data-processor and does not control and is not responsible for the management or administration of the Customer's email and/or its data.

- 5.2 The Customer agrees that it shall not resell the Services or create or offer derivative versions of the Services either directly or through a third party.
- 5.3 For each mailbox for which the Customer will be routing email through the Services, the Customer shall establish an email account in the Imerjamaail Message Centre. The Customer shall not allow more than five (5) alternative addresses/aliases for each email account established in the Imerjamaail Message Centre.
- 5.4 If the customer fails to comply with the obligations set forth in section 5.2 and/or section 5.3, Imerja Limited shall inform customer thereof and reserves the right to suspend the services until such failure is remedied. Notwithstanding the foregoing, the failure of customer to comply with the obligations set forth in this section 5 may be deemed a material breach of this agreement.

6 Warranty

- 6.1 Imerja Limited warrants that the Services will meet the requirements set forth in the Service Level Agreement attached hereto as Schedule 2. In the event of a breach of the foregoing warranty, as the Customer's sole and exclusive remedy, Imerja Limited will provide the remedy set forth in the SLA.
- 6.2 Except as expressly provided in this section (6), Imerja Limited makes no warranties of any kind, including, but not limited to, any express or implied warranties of merchantability, fitness for a particular purpose, accuracy or non-infringement. The Customer understands and acknowledges that there is no guarantee that all spam and all viruses will be eliminated and that legitimate email will not be occasionally quarantined as spam, and that the above warranty does not include any such promises. Further, Disaster Recovery services are provided only up to the spooling level selected by the Customer, and if such spooling level is exceeded, messages may bounce back to the sender.

7 Ownership

The Services and all intellectual property rights relating to the Services are and shall remain the exclusive property of Imerja Limited.

8 Confidentiality

- 8.1 Imerja Limited and the Customer both acknowledge that in the course of this Contract, each party may have access to the other's Confidential Information. "Confidential Information," as used in this Contract, means information not generally known to the public, in written, oral or any other form that a party designates as being confidential or that, under the circumstances surrounding disclosure, should be clear that it is confidential. For clarity, the Customer's Confidential Information shall also include the Customer's emails that are subject to the Services.
- 8.2 The obligations of this Section 8 shall not apply to Confidential Information that
 - (i) was in the possession of, or was rightfully known by a receiving party, without an obligation to maintain its confidentiality, prior to the time of disclosure;
 - (ii) is or becomes generally known to the public without violation of this Contract; or
 - (iii) is obtained by a receiving party in good faith from a third party having the right to disclose it without an obligation of confidentiality.
- 8.3 Each party hereby agrees that during the term of this Contract and for a period of two (2) years after the expiration of this Contract, it will not make any such Confidential Information available to any third party and will not use the other's Confidential Information for any purposes other than to exercise its rights and perform its obligations under this Contract. Each party shall take all reasonable steps to ensure

that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Contract, and in any event each party shall exercise the same prudent practice in preserving this information as it does to preserve its own Confidential Information. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Contract pursuant to the order or requirement of a court or other governmental body, provided that the party required to make such disclosure gives prompt notice to the other party to enable it to contest such order or requirement.

9 Indemnity

Imerja Limited at its expense, shall indemnify, defend and hold harmless the Customer against any losses, costs and damages arising from a claim by a third party against the Customer that the Services, or any part thereof, infringe any UK intellectual property or proprietary rights of such third party or misappropriates any protected trade secret of such third party. Imerja Limited's obligations under this Section 9 are subject to the Customer providing Imerja Limited with

- (i) prompt written notice of the claim
- (ii) sole control over the defence or settlement (subject, in the case of settlement, to the Customer's consent, which consent shall not be unreasonably withheld or delayed), and
- (iii) reasonable support and cooperation with regard to the defence. In the event that Imerja Limited's right to provide the Services is enjoined or in Imerja Limited's reasonable opinion is likely to be enjoined, Imerja Limited may, at its expense, obtain the right to continue providing the Services, replace or modify the Services so that they become non-infringing but remain functionally equivalent, or if such remedies are not reasonably available, terminate this Contract without liability to the Customer.

10 Limitation of Liability

Except regarding the confidentiality obligations under section 8, in no event will either party be liable to the other for any special, incidental, punitive or consequential damages (including, without limitation, lost profits, loss of use, loss of data or loss of goodwill), arising out of or in connection with this contract or the performance or operation of the services, whether such liability arises from any claim based upon breach of contract, breach of warranty, tort (including negligence), product liability or otherwise, and whether or not such party has been advised of the possibility of such damages. Except regarding the indemnity obligations under Section 9, "Indemnity," in no event shall either party's liability for any damages hereunder exceed the amounts paid by the Customer to Imerja Limited during the twelve (12) month period preceding the causation of the damages.

11 Assignment

Either party may assign this Contract in its entirety, but not in parts, to its parent company, affiliate or subsidiary, or in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets. Any other assignment shall be null and void, except with the other party's prior written consent. This Contract and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.

12 Governing Law and Dispute Resolution

This Contract and any controversies arising out of or in relation with this Contract shall be governed by and construed in accordance with the laws of England and Wales, without giving effect to its principles of conflicts of law.

13 Severability

If for any reason a court of competent jurisdiction finds any provision of this Contract invalid or unenforceable, that provision of the Contract will be enforced to the

maximum extent permissible and the other provisions of this Contract will remain in full force and effect.

14 Survival

The rights and obligations of Imerja Limited and the Customer contained in this Section and in Section 8, "Confidentiality," Section 9, "Indemnity," and Section 10, "Limitation of Liability," shall survive any expiration or termination of this Contract.

15 Waiver

The waiver by either party of any default or breach of this Contract shall not constitute a waiver of any other or subsequent default or breach.

16 Amendments

Modifications and amendments to this Contract shall be invalid, unless made in writing that is signed by duly authorised officers of each party hereto.

17 Force Majeure

Imerja Limited shall not be liable for any failure or delay in its performance under this Contract due to causes beyond its reasonable control including, without limitation, Domain Name Server ("DNS") issues outside the direct control of Imerja Limited, labour strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labour conditions, earthquakes and material shortages.

18 Notices

All notices required to be sent under this Contract must be in writing and shall be delivered in person or shall be sent to the Customer at the address specified on the Imerja Service Schedule and to Imerja Limited at the address below.

Imerja Limited
Paragon House
Paragon Business Park
Chorley New Road
Horwich
Bolton BL6 6HG

Notices shall be deemed to have been given upon (i) the date actually delivered in person, (ii) the date transmitted via fax with confirmation of receipt thereof (iii) the day after the date sent by overnight courier or (iv) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.

19 Counterparts

This Contract may be executed in one or more counterparts including facsimile copies, which when and taken together upon proper delivery shall constitute a single instrument.



SCHEDULE 1 - Imerja SERVICES SCHEDULE

Imerjamaail encompasses all of Imerja Limited's content security, connection management, and delivery control features designed to protect the Customers email systems from junk email (spam), viruses and threatening intrusions from attackers.

Key features of Imerjamaail:

Powerful Spam Filtering

- Heuristic-based content analysis
- Customisable by organisation and user groups
- End-user flexibility: users can customize own filters
- Quarantined messages are accessible via a web-based Message Centre for review and disposition.

Real-Time Virus Protection

- All message parts are scanned for infected viruses, and infected messages are quarantined in the user's Imerjamaail Message Centre for review and disposition
- Built-in protection from new techniques, including message fragments
- Dual virus filtering providing connection to virus definition servers, protecting customers from new viruses on a continuous basis.

Proactive SMTP Connection Security

- Monitors SMTP traffic on port 25 of the corporate firewall and blocks invalid connection attempts.
- Immediate detection and automated response of Directory Harvest Attacks (DHAs) and other threats.

Email Delivery Management

- Regulates the delivery of messages across destination servers regardless of system platform or server location.
- Throttling maximizes operating efficiency and throughput of each server.
- Message delivery automatically redirects email flow to fail-over resources.

Disaster Recovery Management

- Automatically detects server and network outages.
- Supports regulated un-spooling once target server is back online.

Event-Based Alerts

- Generates notifications immediately during attacks and system outages.
- Monitors status and notifies administrative team.

Real-Time Monitoring and Graphic Reports

- System conditions monitored and reported via detailed reports hourly, daily, or weekly.
- Detailed usage reports available hourly, daily, or weekly.
- Includes usage audit record for policy enforcement and capacity planning.
- Available via web user interface or download for further analysis and distribution.

SCHEDULE 2– SERVICE LEVEL AGREEMENT

1 Service Availability Commitment

The Services shall be operational at least 99.999% of the time in any given month during the term of the Contract, meaning that the Outage Percentage (as defined below) in such given month shall be not more than 0.001%.

An outage ("Outage") means that Imerja Limited fails to apply filtering in accordance with the Customer's configuration selection. Outage does not include service suspension (i) for reasons outside of Imerja Limited's sphere of control (as described in Section 4 of this SLA) or (ii) during times of scheduled maintenance (as described in Section 5 of this SLA). If a dispute arises about whether or not an Outage occurred, Imerja Limited shall make a determination in good faith based on its system logs, monitoring reports and configuration records, which Imerja Limited shall make available for auditing by the Customer at the Customer's request. If one or more Outages occur in a given month, the total duration of such Outages during such month, expressed as a percentage of the total time during such month, shall be the outage percentage (the "Outage Percentage").

2 Outage Reporting Process

the Customer must inform Imerja Limited's the Customer Support in writing or by email within fourteen (14) days of the time it first notices an Outage or first believes that there has been an Outage. Failure to comply with this requirement will forfeit the Customer's right to receive a remedy for the Outage as described in Section 3 of this SLA.

3 Remedy

If an Outage occurs, and if the Customer has fulfilled all of its obligations under the Contract and none of the exceptions in Section 4 of this SLA applies, the Customer shall have the following sole and exclusive remedy: Imerja Limited will provide the Customer with a pro-rata credit on the Customer's fee for the month in which the Outage occurred. The pro-rata credit shall be calculated by multiplying the Outage Percentage with the Customer's total monthly fee in the month during which the Outage occurred. Furthermore, if the Customer experiences one (1) or more Outage in each of three (3) consecutive calendar months and/or three (3) or more Outages in any period of thirty (30) consecutive days, the Customer can terminate the Contract for cause upon thirty (30) days prior written notice.

4 Exceptions

The Customer shall not have any remedies under the Contract, including this SLA, in connection with any circumstance addressed in Section 17, "Force Majeure" of the Services Contract.

5 Scheduled Maintenance

From time to time, Imerja Limited performs scheduled maintenance, including maintenance at the third party data centres at which the Services are hosted and maintenance on Imerja Limited's servers and software. Imerja Limited's architecture is designed to enable Imerja Limited to provide scheduled maintenance in a manner designed not to interrupt the Customer's receipt of the Services. In all cases where maintenance will be performed, the Customer will be informed at least 48 hours in advance. Imerja Limited will make all reasonable attempts to ensure that scheduled maintenance that affect the availability of the Services for more than thirty (30) minutes is performed between 12:00 a.m. and 5:00 a.m. GMT Monday through Friday (excluding U.K. Public and Bank holidays), or between 12:00 p.m. and 5 a.m. GMT on Saturday, Sunday and U.K. Public and Bank holidays.