

CONTRACT FOR PROVISION OF ECOMAIL SERVICE AND TERMS AND CONDITIONS FOR USE OF ECOMAIL SERVICE

(hereinafter referred to as “**Contract**”)

issued by **ECOMAIL.CZ, s.r.o.**, Company ID No.: 027 62 943, with its registered office at Na Zderaze 1275/15, 120 00 Prague 2, represented by Jakub Stupka, Executive, incorporated in the Companies Register kept by the Municipal Court in Prague, Section C, Insert 223183 (hereinafter referred to as “**Provider**” or “**Ecomail**”),

These Terms and Conditions for Use of Ecomail Service, including URL links, represent the complete agreement between you and Ecomail with respect to the provision of the Ecomail Service.

TERMS AND DEFINITIONS

Unless indicated otherwise in the Contract or unless the context clearly dictates otherwise, capitalized terms used in this Contract (including annexes) both in singular and plural shall have the following meaning:

@userdomain.com	the domain in whose name the User carries out mass distribution of Emails via the Application
Admin Access	privileged access to the Application which allows for keeping records of accounts and their management, including an overview of the number of emails sent by individual Users;
Agency Account	a User’s account for the Application, set up by the User in accordance with the conditions of this Contract for the purposes of using the Ecomail Service which allows the User to keep records of and manage individual User Accounts;
Application	the software service which is available electronically on the website https://ecomail.app and run by the Provider for the purposes of providing the Ecomail Services; the Application is solely owned by the Provider;
Sensitive Data	information on national, racial or ethnic origin, political opinions, membership in trade union, religion and philosophical beliefs, criminal conviction, health and sex life of data subjects, or any biometric data which enable direct identification or authentication of data subjects;
Pricelist	specifies the amount of the Fee for the Ecomail Service provided to the User under the Contract; it forms part of the Contract and is published on the Provider’s website https://ecomail.app/price ;
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council;
User’s Database	a list or lists of Personal Data relating to User’s Subscribers, in particular electronic contact details for electronic mail (email addresses);

Email	a text, voice, audio or video message sent via a public electronic communications network, which may be stored in the network or in the terminal equipment until collected by the recipient;
Billing Period	is a time period chosen by the User for payment of the Fee; the choice of Billing Period affects the due date of the Fee;
Required Maintenance	means regular maintenance required to maintain the features of the Service, it is carried out at the initiative of the Provider, it is not a response to any Defect and it represents a period of time for which the Service is not available, in whole or in part;
Personal Data	any information on a data subject on the basis of which the data subject can be directly or indirectly identified;
Civil Code	Act No. 89/2012 Sb., the Civil Code, as amended;
User Content	means in particular all materials, information and works (including copyright works) used by the User in connection with the use of the Ecomail Service, such as texts, pictures, videos, fonts etc.; it may also include works of third parties;
Provider Content	means in particular all materials, information and works (including copyright works) which are presented by the Provider as part of the Ecomail Service and create a functional framework of the Ecomail Service, including its material content;
Subscriber	a customer of the User or an entity which granted the relevant consent and is addressed via the Application within the framework of the User's marketing strategy;
Fee	a collective term for the fee paid by the User to the Provider for provision of the Ecomail Service as well as the fee for services of the basic Service Support, all in the amount determined in accordance with the valid Price List;
Subscription Scheme	the Ecomail Service is provided as a subscription model, with the possibility of Business or Ecommerce tariff. The price of the Subscription varies not only according to the package selected but also according to the scope of the Tariff Option which depends on the number of active unique Subscribers registered by the User in its database. The price for each Tariff Option of the Subscription Scheme is indicated for one month or for 12 consecutive months;

Service Support	means the services of the Provider which are part of the right to use the Application and are provided on business days, at the level of basic user support for the Application;
Ecomail Service	also referred to as the Service, consists in the provision (for consideration) of electronic tools for creating, conducting, sending and managing marketing campaigns, in particular, but not exclusively, for mass dissemination of newsletters via email and SMS by which the User addresses its Subscribers as part of its marketing strategy, and for monitoring and recording the marketing campaign results in electronic form on the Internet;
Spam	any unsolicited communication sent by Email to a recipient without the recipient's prior consent or to a recipient with whom they have never had a contractual relationship before. Spam shall include any communication directly or indirectly promoting goods or services which is not clearly and distinctly marked as newsletter, disguises or conceals the identity of the sender, or is sent without a valid address to which the addressee can effectively and directly send information that it does not wish to receive any further newsletter from the sender; or concerns the sale or promotion of prescription drugs, sale of alcohol and tobacco products, drugs, firearms, online gambling (online games of chance), pedophilia and similar medically recognized deviations and disorders;
Consumer	any natural person who enters into this Contract (for the provision of the Ecomail Service) with us outside that person's business or self-employment profession;
Controller	determines the purpose, methods and means of the processing of Personal Data; in the case of Annex 1 to this Contract (Processing Agreement), it shall mean the User;
Data Subjects	natural persons to whom the Personal Data relate; most often they are the Subscribers, Users or potential Users who are still considering the use of the Ecomail Service;
Tariff Option	the number of email addresses in the User's Database; the dividing line between Tariff Options is the number of email addresses in the User's Database according to the Price List published on https://ecomail.app/price ;
User Account	an account for the Application set up under the terms of this Contract solely for the purpose of using the Ecomail Service;
User	a registered customer of Ecomail for whom a User Account for the Application has been set up upon successful registration (also referred to as " you ");

Defects error conditions which prevent the proper provision and use of the Ecomail Service;

(the Provider and the User hereinafter jointly referred to as "**Parties**" and individually as "**Party**")

1. REPRESENTATIONS, SUBJECT MATTER OF THE CONTRACT, CONTENT OF THE SERVICE

1.1. Representations of the User. The User represents and warrants that

- 1.1.1. it has full legal capacity,
- 1.1.2. all data which the User provides about itself are true, complete, accurate and correct,
- 1.1.3. it will not use the Ecomail Service in a manner contrary to the applicable Czech legislation,
- 1.1.4. it will use the Ecomail Service only for the purpose for which it is intended, in particular for Email editing, mass distribution of Emails or SMS messages and evaluation of campaigns,
- 1.1.5. before starting to use the Ecomail Service, it carefully studied the terms of this Contract, unconditionally agrees to those terms and will not use the Ecomail Service in a manner contrary to the applicable terms of the Contract.

1.2. **Obligations of the Parties.** The Provider shall provide the Ecomail Service to the User under the terms specified in this Contract. The User shall accept the Ecomail Service under the terms specified in this Contract and the Provider the Fee for the use of the Ecomail Service according to the Price List.

1.3. Content of the Service. Provision of the Ecomail Service shall mean in particular:

- 1.3.1. the right of the User to use the Ecomail Service;
- 1.3.2. the right of the User to have a User Account set up for the Application and to use the User Account;
- 1.3.3. the right of some Users to have an Agency Account set up for the Application if approved by the Provider in advance;
- 1.3.4. the obligation of the User to pay the agreed Fee according to the current Price List.

1.4. **Age of the User.** The Provider declares that the Ecomail Service is not intended for persons under 16 years of age.

1.5. **Consumers.** The Provider declares that the Ecomail Service is not primarily intended for Consumers but for entrepreneurs or self-employed persons. Where the User is a Consumer, it shall inform the Provider before registration so that the Provider can advise the Consumer of its rights.

2. INTELLECTUAL PROPERTY

- 2.1. **Application.** The Application as well as any related software are the intellectual property of the Provider.
- 2.2. **Content.** When using the Service, the User shall respect the rights of the Provider and third parties, in particular in the handling of copyright works and other objects of intellectual property rights. This applies to the Application, Provider Content as well as User Content.
- 2.3. **Responsibility for User Content.** The User shall be fully responsible for the User Content, which can be uploaded to the Application only if it complies with the legislation in force and this Contract and, in particular, does not interfere with third party rights. It shall not be a breach of the Contract if the Service is not provided properly due to poor, incomplete or even illegal User Content.
- 2.4. **Terms of using the Service thanks to individual Application solutions.** No provision of this Contract can be interpreted as an assignment or granting of a license, sublicense or other right of use within the meaning of Act No. 121/2000 Sb., the Copyright Act, to those parts of the Application solutions which the Provider provides to the User as a service. The User is entitled to use the Ecomail Service which is provided thanks to those parts of the Application solutions. However, the User does not have the right to make copies of those software solutions, download, install or disseminate them in any way. The User is not entitled to incorporate the Application into any other software without the written consent (provision of the API key) of the Provider.
- 2.5. **Infringement of intellectual property rights by the User.** If the User violates the obligations laid down in this Article, the Provider is entitled to withdraw from this Contract and claim compensation for damage from the User.
- 2.6. **Responsibility for User Content.** The Provider is on principle not responsible for the User Content in accordance with Sections 3, 4 and 5 of Act No. 480/2004 Sb., on Certain Information Society Services (Act on Certain Information Services).

3. USER REGISTRATION

- 3.1. **User registration as a condition for using the Service.** Registration is a precondition for proper use of the Service; the User takes this precondition into account and undertakes to complete a proper registration.
- 3.2. **User registration method.** Registration shall be carried out by filling in the form on the website <https://ecomail.app>, which contains confirmation of the fact that the User has studied the terms of use of the Ecomail Service arising from this Contract and agrees to them.
- 3.3. **Data accuracy and completeness, updates.** The User hereby undertakes to enter correct and complete Personal Data about itself in the registration form as well as in the Application. The User shall update those data according to the current situation. The User is also entitled to amend and supplement the registration data in the course of using the Service.
- 3.4. **Obligation to report any misuse of access credentials.** The User shall without delay report to the Provider any misuse or attempted misuse of access credentials and, at the same time, it shall without delay choose new access credentials for the User Account. The User shall choose a safe password.

- 3.5. **Inviting a new User.** The User has the right to invite other Users to the User Account. In that case the User shall provide correct identification details of the new User.

4. **FEE FOR THE SERVICE AND METHOD OF PAYMENT**

- 4.1. **Consideration for the Service.** The Service is provided for consideration. The User hereby undertakes to pay the Provider the Fee for provision of the Service.
- 4.2. **When the Service is provided free of charge.** An exception is made for provision of the service under a Tariff Option specified in the Price List, which may determine when the Service is provided free of charge to the User. As soon as the conditions for provision of the Service free of charge are exceeded, the User is informed and, at the same time, the User Account is blocked.
- 4.3. **Amount of the Fee.** The amount of the Fee is determined in accordance with the valid Price List which is published on our website <https://ecomail.app/price>. All prices in the Price List are indicated net of VAT which will be charged in addition to the indicated price of the Service at the statutory rate.
- 4.4. **Changes to the Price List.** The Price List may be unilaterally changed by the Provider. Information on any planned changes to the Price List will be always available on our website. Any planned change to the Price List shall be notified at least 15 days prior to the effective date of such change in the form of a notification in the User Account. Where the User disagrees with the change to the Price List, it has the right to withdraw from the Contract.

5. **SUBSCRIPTION SCHEMES**

- 5.1. **Lump-sum payment.** The User shall pay the Provider a lump-sum payment in the amount determined according to the Tariff Option selected by the User.
- 5.2. **Exceeding the original Tariff Option.** When the number of contacts in the User's Database exceeds the limit of the Tariff Option, the Provider is entitled to prevent further distribution by blocking the User Account until the User tops up the Tariff Option.
- 5.3. **Minimum term of the Subscription Scheme.** The minimum term of the subscription scheme is
- 5.3.1. 12 consecutive calendar months; in this case, the Fee shall be payable once a calendar year;
 - 5.3.2. 3 consecutive calendar months; in this case, the Fee shall be payable once a calendar month.
- 5.4. **Suspension of the Subscription Scheme.** The Subscription Scheme can be suspended once a year for a maximum of 6 calendar months.
- 5.5. **Fee payment methods.** The User is entitled to choose the method of payment of the Fee for the Ecomail Service and settle the payment exclusively:

- 5.5.1. by electronic payment instruments which are available to the User via the User Account provided that that User chooses the payment method called “online card payment”;
 - 5.5.2. and, at the express request of the User (if the User chooses the “by transfer” method in the Application), by transfer to the Provider’s bank account in accordance with the advance invoice payable within 14 days of the date of issue. The invoice shall be sent to the User by Email on the date of issue and shall be considered delivered upon sending.
- 5.6. **Due date of the Fee.** The User shall pay for the provision of the Ecomail Service for each commenced Billing Period:
- 5.6.1. In the case of online card payment, the Provider has the right to automatic payment of the Fee via an online card on the first day of the next Billing Period and the User shall pay the Fee;
 - 5.6.2. In the case of payment “by transfer”, the User shall pay the Fee no later than on the first day of the Billing Period.
- 5.7. **Time of payment of the Fee and activation of the Service.** The Fee shall be considered paid and the Service shall be activated for the User once the funds in the agreed amount credit the Provider’s bank account.
- 5.8. **Default of the User and temporary blocking of the User Account.** In the event of any delay in payment of the Fee or any part thereof for more than 5 days of the due date of the Fee, the Provider is entitled to deny the User the right to use the Application (User Account blocking) in accordance with this Contract and restore the right only once the due Fee has been settled.
- 5.9. **Overview of payments and invoices.** If the Provider is obliged to issue an invoice, the invoice shall be issued by the Provider in electronic form in PDF format to which the User will have access in its User Account. An overview of payments is available to the User in its User Account.

6. RIGHTS AND OBLIGATIONS OF THE USER

- 6.1. **Commitments of the User relating to the use of the Application and the Ecomail Service.** The User undertakes:
- 6.1.1. not to perform any action which might disrupt or damage the Application and jeopardize the provision of the Ecomail Service or make it impossible;
 - 6.1.2. not to use or attempt to use for access to the Ecomail Service any interface other than the interface provided for this purpose by the Provider;
 - 6.1.3. not to disclose any identification details and passwords required for User’s access to the Ecomail Service to any third party and to immediately report to the Provider any misuse of User’s identification details and passwords by a third party of which the User becomes aware;
 - 6.1.4. to select a password for the Application which corresponds to a high level of security of the User Account.
- 6.2. **Domain verification.** The User undertakes to verify the domain that will be used for mass distribution of Emails; the User shall in particular apply settings of DNS records in accordance with the Provider’s instructions.
- 6.3. **Content of Emails and SMS messages.** The User further undertakes that the content of Emails or SMS messages which the User will distribute via the

Application will comply with the legislation and this Contract; the User shall in particular ensure that:

- 6.3.1. they do not contain any parts encouraging or aiming for non-compliance with an obligation imposed by or on the basis of law or a criminal offence, or condoning a criminal offence or publicly praising the perpetrator for a criminal offence,
 - 6.3.2. they do not contain any parts inciting abuse of addictive or life-threatening substances or promoting or encouraging the abuse of such substances,
 - 6.3.3. they do not contain any parts threatening other people or population groups with death, bodily harm or damage,
 - 6.3.4. they do not contain any parts denigrating any nation, its language, any ethnic group or race or population group because of their political beliefs, religion or because they are non-religious,
 - 6.3.5. they do not contain any parts inciting hatred of any nation, ethnic group, race, religion, class or other group of persons, or curtailment of rights and freedoms of their members,
 - 6.3.6. they do not contain any pornographic performances, especially those depicting children or showing violence or disrespect for humans,
 - 6.3.7. they do not allow persons under the age of eighteen to access any pornographic performances,
 - 6.3.8. they do not contain any false or misleading information about others which is capable of considerably jeopardizing the person's respect with fellow citizens, in particular to cause harm to the person at work, disrupt the person's family relations or cause other serious harm,
 - 6.3.9. they do not support movements which clearly aim to suppress rights and freedoms of human beings or propagate national, racial, religious or class hatred or hatred of other groups of persons, or which publicly sympathize with such movements,
 - 6.3.10. no intellectual property rights (copyrights, rights related to copyright, industrial property rights etc.) of other persons, in particular the Provider, are violated,
 - 6.3.11. no trademarks, trade names and protected designations of origin the exclusive right to which is vested in a third party or any designations capable of being confused with them are used without authorization,
 - 6.3.12. illegal products and services are not promoting;
 - 6.3.13. escort services and dating sites are not promoting,
 - 6.3.14. would not be contrary to accepted principles of morality in any other respect.
- 6.4. **Breach of the Contract by the User.** It shall not be a breach of the Contract if the Service is not properly provided because the User violated any of the terms hereof. Where the User breaches his obligations under Section 7.3 of the Contract and/or where the User Content is contrary to the rules laid down in this Contract, the Provider is entitled, without prior notice, to immediately discontinue the provision of the Service, refuse access to the Application and withdraw from this Contract.

- 6.5. **Compensation for damage incurred by the Provider as a result of breach of User's obligations.** Where the User breaches its obligations under the Contract, it shall reimburse the Provider for any costs and expenses incurred as a result of third-party claims made against the Provider on the ground of breach of any of the aforementioned obligations of the User. This shall be without prejudice to the right of the Provider and third parties to compensation for any loss (damage as well as non-material loss) incurred as a result of breach of the aforementioned obligation; the User undertakes to pay such damages to the Provider and/or third parties.
- 6.6. **Compensation for damage incurred by the Provider in connection with Subscriber complaints.** Where the Provider incurs any damage or loss in connection with Subscriber complaints (Spam or removal from the User's Database) about the User, the User shall compensate the damage.
- 6.7. **Technical equipment of the User.** The User shall ensure appropriate technical equipment which will allow the User to use the features of the Service under this Contract.

7. RIGHTS AND OBLIGATIONS OF THE PROVIDER

- 7.1. **Use of @userdomain.com.** The Provider has the right to use the domain @userdomain.com solely for the purpose of performing this Contract, i.e. distributing newsletters in the form of Emails.
- 7.2. **Service outages and liability of the Provider.** The Provider shall not be liable for any accidental outage of the Service but it shall make every effort to ensure that the Service is brought back into operation in the shortest possible time.
- 7.3. **User Account control.** The Provider may check the User Account and suspend the Service via the Admin Access if it finds that that the terms of this Contract have been violated; the Provider shall immediately notify the User thereof.
- 7.4. **Procedure in the event of failures for which the Provider is not responsible.** The Provider reserves the right to limit or temporarily suspend the provision of the Service in justified cases of technical failures for which the User is responsible or technical failures of the Internet network, and the Provider shall inform the User about such limitation or suspension without undue delay. The failures shall include, in particular, Internet disruptions or circumstances which require cooperation from third parties.
- 7.5. **Temporary loss of access to the User Content.** It shall not be a breach of the Contract if the User temporarily loses access to the User Content as a result of limitation or suspension of the Service.
- 7.6. **Access via API.** The Provider may give the User access to the User's data, including Personal Data of Subscribers, via the so-called API. In such a case, the User shall ensure that only authorized persons have access to the API. The Provider shall not be liable for any loss of data or security breaches compromising Personal Data in cases where this access to the API is abused or where those data are misused after they have been made available via the API.
- 7.7. **Ensuring the distribution of Emails.** The Provider shall ensure distribution of Emails and/or SMS messages by means of the Service but it shall incur no liability for their delivery to Subscribers. The Provider shall not be held liable for delivery of a damaged or incomplete Email or SMS message.
- 7.8. **User's Database.** The User shall be the sole maker of the User's Database. The Users grants the Provider its consent to the use of the User's Database

containing data in accordance with the provision of Section 90(2) of Act No. 121/2000 Sb., the Copyright Act, as amended, but only for the purpose of performing this Contract.

8. LIMITATION OF THE PROVIDER'S LIABILITY

- 8.1. **Failure to deliver an Email or incomplete delivery of an Email.** The Provider shall not be liable for any damage or loss incurred by the User and/or Subscribers in relation to the use of the Service, especially in the case of a failure to deliver an Email or SMS message or incomplete delivery of an Email or SMS message.
- 8.2. **Exclusion of Provider's liability.** The Provider shall not be liable for completeness and correctness of the data delivered to the Provider by the User in the context of the provision of the Service. In addition, the Provider shall not be liable for any loss, breach or destruction of the delivered data. It shall be solely up to the User to ensure sufficient backup of all data and systems prior to their delivery to the Provider for processing in the context of the provision of the Service so that no harm is caused to anyone.
- 8.3. **Software integration.** The Provider shall not be liable for any features, functions or flawlessness of individual software which the Provider integrates or configures for the User so that the software is compatible with the Service. This liability shall be borne by the suppliers of other software and the User shall enter into a contract with them.
- 8.4. **Exclusion of Provider's liability for damage caused as a result of Required Maintenance.** The User acknowledges and agrees that the Provider is not liable for any financial loss of the User caused by suspension of the Service for the purposes of its updating or Required Maintenance.
- 8.5. **Limitation of the Service or rendering the provision of the Service impossible beyond the control of the Provider.** The Provider shall not be liable for rendering the provision of the Service to the User impossible or for limitation of the Service due to any circumstances of technical nature which are beyond the control of the Provider or the addressing of which requires cooperation from third parties.
- 8.6. **Limitation of damages.** Where the Provider is obliged to pay compensation for any damage or any loss which might be caused in connection with the damage, it shall be liable up to a maximum amount equal to the Fee paid by the User for the last 6 months. Any damage incurred after termination of this Contract shall be counted towards the limitation of damages.

9. FORCE MAJEURE

- 9.1. **Conditions for relying on force majeure.** Unless the Contract provides otherwise, the Parties shall not be liable for any breach of obligations arising from this Contract which was caused by force majeure. Force majeure shall mean any obstacle beyond the control of the obliged Party which prevents the Party from complying with its obligation provided that the obliged Party cannot be reasonably expected to avert or overcome the obstacle or its consequences and to have foreseen the obstacle at the time when the obligation arose. The liability shall not be excluded by obstacles which arose only at the time when the obliged Party was in default in fulfilment of its obligation, or which arose from the economic situation of the obliged Party. The effects of exclusion of liability shall be limited only to the period of time for which the obstacle involving those effects lasts.

10. REQUIRED MAINTENANCE

- 10.1. **Required Maintenance.** It shall not be a breach of this Contract if the Service is not provided as a result of Required Maintenance. Required Maintenance shall be usually notified in advance via the User Account.
- 10.2. **Notification of Required Maintenance.** The User shall tolerate short-term shutdowns of the Service in the form of limitation or suspension of the Service. The User shall be usually notified thereof by a notification in the Application interface or via an Email at least 12 hours in advance. In the notification, the Provider shall specify the type of maintenance to be performed and the estimated time of commencement and completion of works.
- 10.3. **Updates.** In addition to the Required Maintenance, the Provider shall carry out free updates of the Application. Those updates aim to improve the provision of the Service and make the operation of the Service in the User Account easier. The Provider is entitled to limit or suspend the provision of the Service for the time necessary to carry out an update. The Provider shall usually inform the User about the updates via the User Account interface or by Email.
- 10.4. **Accidental Service outages.** The Provider shall not be liable for any accidental Service outages. The Provider shall, however, make every effort to ensure that the Service is brought back into operation in the shortest possible time.

11. DEFECTS OF THE SERVICE

- 11.1. **Right arising from Defects.** Where the Service is provided with defects or where it is not provided to the User in accordance with this Contract, the User has the right to complain about the defect in the provision of the Service.
- 11.2. **Deadline for filing a complaint.** Complaints about Defects shall be made in writing to the email address support@ecomail.app no later than within two (2) days of the moment when the User becomes aware of the deficiency of the Service but within 24 hours from bringing the Service back into operation at the latest. No complaint made later will be accepted by the Provider and the User will lose the right to any compensation.
- 11.3. **Complaint requirements.** In its complaint, the User shall specify its identification details, detailed description of the complaint grounds and the date of occurrence of those grounds or, where appropriate, the date when the Service was brought back into operation.
- 11.4. **Complaint handling.** The Provider shall handle User's complaints no later than within thirty (30) days of the receipt thereof. Where the complaint is justified, the User is entitled to compensation for the Service provided with defects. No complaints filed shall affect the due date of the Fee.

12. LIMITATION OR SUSPENSION OF THE PROVISION OF THE SERVICE

- 12.1. **Limitation or suspension of the Service.** The Provider reserves the right to limit or suspend the provision of the Service to the User if the Provider considers that a breach of the terms of this Contract or legal conditions has occurred. Such a decision shall be sent to the User when the limitation or suspension of the Service takes effect at the latest in the form of an email

attachment or it shall be delivered on any type of durable medium (usually 15 days in advance). The Provider is not obliged to give any reasons for its decision, in particular where it is able to prove that the User has repeatedly breached this Contract and this fact has resulted in termination of the provision of the Service.

- 12.2. **Exceptions from the notification obligation.** The User acknowledges that the Provider is not obliged to inform the User about the Provider's decision to limit or suspend the provision of the Service at least fifteen (15) days in advance provided that:
- 12.2.1. the Provider is subject to a legal or regulatory obligation which requires the Provider to terminate the provision of the Service to a User who is a business operator in a way which prevents the Provider from complying with the deadline for serving the notification;
 - 12.2.2. the Provider exercises the right to terminate the provision of services for reasons of urgency under Czech law which complies with EU law; or
 - 12.2.3. the Provider is able to prove that the User who is a business operator has repeatedly breached the applicable conditions for the provision of the Service which has resulted into discontinuation of the provision of the Service.
- 12.3. **Termination of the provision of the Service.** The Provider reserves the right to make the Service definitively inaccessible at any time. In such a case, the Provider shall give reasons for its decision at least thirty (30) days before the decision takes effect. The reasons shall be sent as an email attachment or delivered on any type of durable medium. At the same time, the Provider shall allow access to any data of the User or Personal Data which were created in the context of the provision of the Service.

13. TERM AND TERMINATION OF THE CONTRACT

- 13.1. **Term of the Contract.** This Contract is concluded for an indefinite period of time upon registration of the User for the Service.
- 13.2. **Termination of the Contract.** The Provider and the User are entitled to unilaterally terminate this Contract without giving any reason. The Contract shall be considered terminated on the last day of the Billing Period in which the notice of termination was served on the other Party.
- 13.3. **Fiction of termination of the Contract.** The Contract shall be considered terminated upon the expiry of two (2) years from the last login to the User Account. In such a case, the Provider is entitled to delete the User Account, including its Content and Database.
- 13.4. **Loss of capacity to provide the Service.** The User agrees that where the Provider, through no fault of its own, loses its capacity to provide the Service, i.e. due to any changes to legislation, the Contract shall be considered terminated at that moment, and this shall not be considered a breach of the Contract.
- 13.5. **Serious breach of the Contract.** The Provider has the right to limit or not to provide the Service or to block the User Account, including the User Content, and withdraw from the Contract with immediate effect when the Provider ascertains a serious breach of the Contract. Especially the following shall be considered a serious breach of the Contract:

- 13.5.1. any action of the User which is capable of endangering in any way the software necessary for the provision of the Service;
 - 13.5.2. any action of the User by which the User tries to circumvent the Price List (e.g. divide the Database so that more User Accounts are set up free of charge, or divide the Database so as to lower the Tariff Option);
 - 13.5.3. the User has imported a Database which contains more than 5% of non-existing electronic contacts;
 - 13.5.4. the User has used any Personal Data of Subscribers for the processing of which it has no legal ground;
 - 13.5.5. more than 0.05% of the newsletters disseminated by the User are described as Spam by Subscribers;
 - 13.5.6. the User has set up a User Account which might cause offense to others or is otherwise contrary to moral or ethical rules laid down in the Provider's Code of Conduct;
 - 13.5.7. the User fails to comply with this Contract;
 - 13.5.8. the User has used the Service in such a way that it may cause damage to the Provider, or has made an attempt to misuse, block, modify or otherwise change any part of the Service being provided;
 - 13.5.9. the User has made an attempt to obtain usernames and/or passwords of other Users of the Service;
 - 13.5.10. the User has made an attempt to use the Service or the User Account to share or exchange data via a Peer To Mail technology (e.g. peer2mail, OpenP2M etc.);
 - 13.5.11. in the course of the provision of the Service, the User makes an attempt to use a User's Database for which the User has no legal ground for the processing of Personal Data of Subscribers.
- 13.6. **Fee already paid and a serious breach of the Contract.** Where this Contract is terminated in accordance with Section 14.5 hereof, the User is not entitled to proportional reimbursement of the Fee already paid for the use of the Service.

14. PROTECTION OF PERSONAL DATA

- 14.1. **Processing Agreement.** Protection of Personal Data is provided for in the Processing Agreement which forms **Annex 1** and an integral part of this Contract.
- 14.2. **Principles Relating to Processing of Personal Data.** Protection of Personal Data by the Provider is further described in the Principles Relating to the Processing of Personal Data.

15. FINAL PROVISIONS

- 15.1. **Representations of the Parties.** Neither Party is the weaker party in relation to the other Party, the Parties fully understand the content of this Contract and fully agree with all risks, including the risk of changed circumstances, changes to the price level, exchange rate and interest rate changes, accept the obligations agreed herein, do not consider their mutual rights and obligations unreasonably unbalanced and assume the risk of changed circumstances.

- 15.2. **Severability clause.** Should any provision hereof be invalid, ineffective or void, the Parties shall take every action necessary to replace the invalid, ineffective or void provision with a provision that will be valid, effective and enforceable and that will correspond to the purpose of the provision being replaced and the Contract as a whole.
- 15.3. **Governing law.** Any issues not specifically provided for in this Contract shall be governed by general binding legislation. The Contract shall be governed by and interpreted in accordance with the laws of the Czech Republic, in particular Act No. 89/2012 Sb., the Civil Code, as amended. The Parties agree that no usage of trade shall take precedence over legal provisions, including those legal provisions which have no coercive effect.
- 15.4. **Settlement negotiations.** The Parties undertake to resolve any dispute which may arise between them from the performance or interpretation of this Contract by negotiations aimed at reaching a mutual agreement.
- 15.5. **Requirements for amendments to the Contract.** This Contract may be amended or cancelled only in writing unless otherwise provided herein.
- 15.6. **Legal succession.** The Parties declare and agree that if the Parties cease to exist or if any other event resulting in transfer of rights and obligations occurs, their rights and obligations arising from this Contract shall pass to their legal successors.
- 15.7. **Force and effect.** The Contract shall come into force and take effect on the date on which it is concluded. The Contract is entered into via the Internet network, upon submitting the User registration or clicking the "I agree" button in the User Account.

Annex 1 to the Contract for Provision of Ecomail Service and Terms and Conditions for Use of Ecomail Service

THIS AGREEMENT ON THE RIGHTS AND OBLIGATIONS OF PERSONAL DATA PROCESSOR (hereinafter referred to as “**Processing Agreement**”) is entered into on the date specified below in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, General Data Protection Regulation (hereinafter referred to as “**Agreement**”) by and between

ECOMAIL.CZ, s.r.o., Company ID No.: 027 62 943, with its registered office at Na Zderaze 1274/15, 120 00 Prague 2, represented by Ing. Jakub Stupka, Executive, incorporated in the Companies Register kept by the Municipal Court in Prague, Section C, Insert 223183,

(hereinafter referred to as “**Processor**”), of the one part, and

User

(hereinafter referred to as “**Controller**”), of the other part,

(the Controller and the Processor hereinafter jointly referred to as “**Parties**” and individually as “**Party**”).

WHEREAS

- i. The Processor provides services via its web application available on the website www.ecomail.app under the Contract for Provision of Ecomail Service concluded between the Parties;
- ii. the Controller is a registered User of the services provided via the Ecomail application and uses the Ecomail Services for the purposes of mass dissemination of newsletters;
- iii. in the exercise of the rights and obligations arising from the Contract for Provision of Ecomail Service, Personal Data are processed;
- iv. the Controller is obliged to enter into a written agreement on personal data processing with the Processor in accordance with the general binding legislation governing the protection of Personal Data, i.e. in particular Act No. 101/2000 Sb., on the Protection of Personal Data, as amended, Regulation (EU) 2016/679 of the European Parliament and of the Council (“GDPR”);
- v. the Parties have decided to enter into this Agreement in order to ensure protection of Personal Data when they are processed in the performance of the Contract for Provision of Ecomail Service in accordance with Article 28(3) GDPR in conjunction with the Act on the Processing of Personal Data.

1. Subject matter of the Agreement

- 1.1. This Agreement provides for the responsibility of the Parties for complying with their obligations in the processing of Personal Data which the Parties obtain in the context of fulfilment of their obligations under the Contract for Provision of Ecomail Service, as well as for the related mutual rights and obligations of the Parties.
- 1.2. The purpose of this Agreement is to ensure protection of Personal Data when they are processed in the performance of the Contract for Provision of Ecomail Service.
- 1.3. The Processor will provide the Controller with the services under the Contract for Provision of Ecomail Service which involve processing of

Personal Data; in particular the Database and the User Content will be entrusted to the Processor.

2. Type of personal data and categories of data subjects

- 2.1. A Database containing the following categories of personal data (pre-set fields in the Application) can be uploaded by the Controller to the Application for the Ecomail Service.

Email address, name, surname, mobile phone, mailing address, academic degree, name day according to the first name, date of birth

- 2.2. The Controller may add its own fields to the Application and start processing its own categories of Personal Data which the Controller considers necessary for the fulfilment of the purpose of the Agreement.
- 2.3. The Controller may subsequently process in the Application any other data which can be attributed to data subjects.

IP address, sex, purchase history, activity of the Subscriber on the User's website (web tracking, click rate, open rate, emails delivered, deregistered users, spam complaints, browser type, mailbox type)

3. Nature and purpose of processing

- 3.1. The purpose of the processing of the aforementioned categories of Personal Data is to send Emails (including transaction ones) to the Subscriber's mailbox, send SMS messages, collect and keep records of Personal Data, including the Subscriber's purchase transaction history or its conduct and reactions to the newsletters sent, statistics and their evaluation.

4. Rights and obligations of the Controller

- 4.1. The Controller undertakes to comply with all legal obligations arising from GDPR and other legislation with respect to the User Content.
- 4.2. In the Ecomail Application, the Controller shall store and work only with up-to-date and correct Personal Data for which it shall have, at all times and in all circumstances, a valid legal basis (e.g. consent or legitimate interest).
- 4.3. The Controller represents and warrants that it complies with the information obligation towards data subjects and keeps proper records of the processing activities under Article 30 GDPR.
- 4.4. The Controller represents that it has taken all organizational measures for complaint handling and exercise of the rights of data subjects.
- 4.5. The Controller shall not upload any Sensitive Data to the Application unless the Controller and the Processor agree thereon.
- 4.6. The Controller represents that it has carefully considered the selected categories of Personal Data and processes only those categories which are essential to achieve the purpose of the processing.
- 4.7. The Controller may use the web tracking function in the Application to monitor the movement of the Subscriber across the Controller's website. Where the Controller uses this function of the Ecomail Application, it shall ensure that it has the relevant legal ground for the processing of the Subscriber and/or comply with the relevant information obligation.
- 4.8. The Controller shall be responsible for ensuring the appropriate legal ground for processing for each relevant purpose of the processing available

in the Application and/or for ensuring proper compliance with the information obligation.

- 4.9. Should it become necessary during the performance of this Agreement to amend the agreed rules for any reason (e.g. legislative changes, decisions of public authorities etc.), the Controller undertakes to inform the Processor without delay. In such a case, the Parties shall start negotiations on an amendment to this Agreement.

5. Duration of the processing

- 5.1. This Processing Agreement is concluded for the term of the Contract for Provision of Ecomail Services.
- 5.2. Where the Contract for Provision of Ecomail Services terminates, the Controller is entitled to delete the User Content from the Application. The Processor is entitled to delete the User Content no earlier than 60 days after the date of termination of the Contract for Provision of Ecomail Service.
- 5.3. The Processor shall delete the entire User Account, including its Content, upon the expiry of 4 years after the termination of the Contract for Provision of Ecomail Service unless further processing is necessary or unless the deletion is prevented by a legitimate interest or other legal ground.

6. Rights and obligations of the Processor

- 6.1. The Processor shall process Personal Data only on documented instructions from the Controller for the term of the Contract for Provision of Ecomail Service.
- 6.2. In the processing of Personal Data, the Processor shall comply with all legal obligations, in particular GDPR and other legislation relating to the protection of Personal Data.
- 6.3. In relation to the defined data subjects, the Processor shall process Personal Data only to the extent and for the purpose necessary for the performance of the Contract for Provision of Ecomail Service.
- 6.4. Following the termination of the Contract for Provision of Ecomail Service, the Processor shall, at the choice of the Controller, either delete all Personal Data or otherwise technically remove all Personal Data from its information systems or databases, or return all Personal Data to the Controller. This shall not apply if the Processor has other legal grounds for the processing of some categories of Personal Data.
- 6.5. The Processor undertakes to prevent or, where appropriate, take all possible steps to prevent unauthorized access to, copying, amendment, storage, reproduction, publication or distribution of Personal Data.
- 6.6. The Processor has the right to delete from the User Database those Subscribers who directly contact the Processor and request deletion from the Database, or who consider the newsletters to be spam. No prior approval by the Controller is required for the deletion.
- 6.7. The Processor has the right to process Personal Data of Users in the position of the controller of the Personal Data on the basis of its legitimate interest in developing new functions of the application, providing the Service Support as well as managing User Accounts and promoting the Processor's services and the Application.

7. Guarantees relating to technical measures to secure Personal Data

- 7.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing of Personal Data as

well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risks.

- 7.2. The Processor shall take account of the risks that are presented by the processing of Personal Data, in particular accidental or unlawful destruction, loss, alteration, copying, theft, unauthorized disclosure of or access to Personal Data transmitted, stored or otherwise processed.
- 7.3. The Processor acknowledges that the processing of Personal Data under this Agreement may be carried out solely on the territory of the European Union or in a country which, according to the decision of the European Commission, ensures an adequate level of protection.

8. Employees of the Processor and other persons

- 8.1. The Processor shall ensure that persons authorized to process Personal Data are bound to secrecy or are subject to a legal obligation of secrecy.
- 8.2. The Processor may engage another processor and the Controller grants its express consent to this. Where the Processor engages another processor for carrying out specific activities in the processing of Personal Data on behalf of the Controller, the same Data Protection obligations as agreed between the Controller and the Processor shall be imposed on that other processor by way of a contract or other legal act, in particular the obligation to provide sufficient guarantees with respect to implementation of appropriate technical and organizational measures in such a manner that the processing of Personal Data will meet the legal requirements and the rules and terms of handling the Personal Data which the Parties have committed to comply with. Where that other processor fails to fulfill its Data Protection obligations, the initial Processor shall remain fully liable to the Controller for the performance of that other processor's obligations.
- 8.3. The processors listed in the Principles Relating to Processing of Personal Data are engaged in the provision of Ecomail services. The Processor has entered into a written agreement with all those processors. Where the Processor engages other processors, it shall inform the Controller before the change is implemented. Where the User disagrees with the engagement of a new processor, it may submit an objection no later than within 5 days of the receipt of the notice from the Processor.

9. Assistance of the Processor

- 9.1. The Processor shall assist the Controller by appropriate technical and organizational measures, insofar as this is possible, in the fulfilment of the Controller's obligation to respond to requests for exercise of data subjects' rights. The Processor shall respond within a period of 14 days at the latest.
- 9.2. The Processor shall provide such tools in the Application which enable dealing with data subjects' requests. Where the Application does not allow dealing with data subjects' requests, the Processor shall assist the Controller in dealing with the request.
- 9.3. The Processor shall assist the Controller in ensuring compliance with the obligation to secure Personal Data (e.g. notification of a personal data breach to the supervisory authority or notification to data subjects), taking into account the nature of the processing and the information available to the Processor.
- 9.4. Upon written request, the Processor shall make available to the Controller all information necessary to demonstrate compliance of the Processor with

all obligations imposed on the Processor by this Agreement or legislation, and it shall allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller.

- 9.5. The Processor shall without delay inform the Controller if, in the Processor's opinion, an instruction from the Controller infringes the legislation relating to Personal Data protection.
- 9.6. The Processor shall without delay inform the Controller about all circumstances relating to a breach of obligations in the processing and protection of Personal Data. In such a case, the Processor shall implement as soon as possible all necessary measures to ensure protection of Personal Data and then follow the instructions received from the Controller, if any.
- 9.7. Where a public authority initiates any proceedings in respect of the processing of Personal Data, the Processor shall assist the Controller in those proceedings as necessary.
- 9.8. The Processor shall regularly check the functioning and adequacy of its internal control and risk management systems, including management of the risk of emergency situations which could have a significant adverse effect on the proper processing of Personal Data.
- 9.9. At the request of the Controller, the Processor shall make available and provide to the Controller all information on the processing of Personal Data and allow administrative authorities to supervise the Controller.

10. Final provisions

- 10.1. Any issues not specifically provided for in this Agreement shall be governed by general binding legislation. The Agreement shall be governed by and interpreted in accordance with the laws of the Czech Republic, in particular Act No. 89/2012 Sb., the Civil Code, as amended. The Parties agree that no usage of trade shall take precedence over legal provisions, including those legal provisions which have no coercive effect.
- 10.2. The Parties undertake to resolve any dispute which may arise between them from the performance or interpretation of this Agreement by negotiations and mutual agreement.
- 10.3. This Processing Agreement is executed in writing and it is concluded as Annex 1 to the General Terms and Conditions for Provision of Ecomail Services upon completion of the User Account registration process or clicking the "I agree" button in the User Account.