

## Terms of Service

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### 1. General provisions

GetResponse Malaysia Sdn. Bhd. (Company Number: 1187327-A) incorporated under the laws of Malaysia, with its registered and correspondence address: Unit No. 17-2, Level 17, Wisma UOA II, No. 21, Jalan Pinang, 50450 Kuala Lumpur, Wilayah Persekutuan, Malaysia (“GetResponse”, “we”, “us”) is the provider of certain online marketing and related services known as the GetResponse Enterprise Service (“Service”). The Service is a business-to-business service only. We conclude agreements only with customers who subscribe to the Service for purposes relating directly to their trade, business or profession (“Customers”). These terms of service (“Terms of Service”) set the rules for the use of the Service by our Customers.

### 2. Service

#### General

Under the Service we provide you with:

1. access to and use of our web-based, SaaS (Software-as-a-Service) model platform (“Software”) as made generally available to other Customers, that allows you to create, send, manage your marketing campaigns and host mailing lists on GetResponse platform by using tools such as: Newsletter Creator, Landing Page Builder, Marketing Automation Software, and many others;
2. configuring the Software, pursuant to arrangements made between GetResponse and the Customer prior to providing full access to the Software; and
3. providing the Customer with consulting services relating to the effective use of the Software.

The Software shall include the following:

1. one main Account containing a unique sending identity and a database capable of storing and managing email lists and sending email campaigns (“Account”);
2. the capability of automatic communication between GetResponse and the Customer’s system to run the Customer’s Contacts database through API;
3. IP address(es) allocated for Customer’s sole use within the Account.

You may use the Service to send emails only to those recipients who have given you permission to add them to your mailing list and have not subsequently withdrawn such permission (“Contacts”), unless you have another valid legal basis to process your Contacts’ personal data within the Service.

#### Account

The Account may be accessed only with the use of your login credentials. You are responsible for keeping your login credentials confidential.

Within the Account, you may create additional accounts (the “Subaccounts”) and render them available to other users of your Account (the “Users”). Creating Subaccounts for Users does not create any legal relationship between us and such Users. You are solely responsible for all Users’ activities, acts and omissions in connection with the Account and Subaccounts, as

well as for your own acts and omissions. You are not entitled to sell Subaccounts to third parties, especially as an unassisted service, without our prior consent.

You acknowledge and accept that:

1. You are solely responsible for the conduct of users of Account and Subaccounts, including but not limited to: (i) ensuring that Users use the Service in accordance with Agreement, these Terms of Service and applicable law, (ii) the consequences of granting access and authorizations to the Account and Subaccounts and the data associated therewith, and (iii) payment of any and all fees accrued in connection with the use of the Account and Subaccounts, whether by you or any of the Users;
2. You are solely responsible for creating, suspending and terminating Subaccounts, except as otherwise provided herein;
3. You are solely responsible for assuring technical support to Users;
4. any and all claims of Users related to the use or non-use of the Subaccounts and the Service, as well as for their suspension and/or Agreement termination, shall be resolved solely by you; you shall indemnify and hold harmless GetResponse from any and all losses, damages, costs and expenses resulting from such claims.

Please remember that we assure technical support of a dedicated Account Manager to you, not the Users.

### **Free Trial**

GetResponse may offer you a free trial version of the Service ("Free Trial"). We may render the Service for 14 days. It may also be limited in other ways. You may create only one Free Trial Account. You may upgrade the Free Trial to a paid version at any point. However, Accounts which have not been upgraded to a paid version within the trial period or within 30 days after the trial period ends, will be permanently disabled.

### **Upgrade and Downgrade**

You may upgrade your Service or order an add-on at any time. If you upgrade the Service, the remuneration applicable to new Service Details will take effect immediately, with such increased remuneration calculated on a pro-rated basis, taking into account the number of days remaining in the then-current Settlement period (as defined below).

If you purchase an add-on during the current Settlement period, we will align your add-on billing cycle with your payment cycle, so that the payment dates for all services under your Agreement are in line. The initial add-on will therefore be calculated in proportion to the number of days remaining until the end of the then current Settlement period.

In case of downgrade, no adjustment will be made during the current Settlement period.

### **Domains**

In connection with the provision of the Landing Pages Builder add-on, we enable you to integrate your landing page(s) either with sub-domains provided by us or with your own domains. You are solely responsible for verification whether any selected domain or sub-domain name infringes any third party rights, as we cannot and do not perform such verification and we expressly disclaim any and all liability arising directly or indirectly in connection with any such domain or sub-domain names. We reserve the right to block any domain or sub-domain, cancel or change the name of any domain or sub-domain that you select, including but not limited to, if we are ordered to do so by a court or other governmental

authority or reasonably believe that we must do so in order to avoid infringement or violation of any third party or GetResponse right.

### **Webinars**

The Webinar feature allows you to organize on-line conferences (“Webinars”) for a certain number of participants (“Participants”). You may use this feature for conferences in which you take part as an active Participant.

When organizing a Webinar, you are solely responsible for notifying all Participants that personal data and information disclosed during the conference can be transmitted to other Participants and third parties. You are also obliged to inform Participants that the use of the Webinar feature is subject to these Terms of Service and the GetResponse Privacy Policy, including but not limited to, applicable restrictions regarding prohibited practices and technical requirements.

You are not allowed to run more than one Webinar at a time within one Account. Please bear in mind that Webinars may be unavailable in any particular location.

### **Transactional Emails**

The Transactional Emails feature allows you to send transactional emails to your contacts’ email addresses and check statistics of your transactional messages. You may use the feature to send transactional emails only and only to recipients who have concluded a transaction with you or have given their permission to send them those emails in any other way and have not subsequently withdrawn such permission.

### **Third Party Services**

You may integrate certain third party services with the Service. These third party services are not provided by GetResponse. Your ability to use such third party services may be limited pursuant to the third party’s terms and conditions. When you integrate a third party service with the Service, you authorize us to exchange any of your data, whether confidential or not, with the third party service in order to enable such integration. Any links to a third party service or website that you find in the Service or on [getresponse.com](https://www.getresponse.com) or any other website or web page owned or controlled by GetResponse (collectively “GetResponse Websites”) are provided for convenience only and we do not control or endorse any material or information found on those third party services sites.

For Transactional Emails feature third party services are essential to generate transactional emails. GetResponse only facilitates transmission of your messages. GetResponse can’t interfere with the content of your messages.

### **Beta-test Versions**

From time to time GetResponse may offer a beta-test version of new features. This allows Customers to try new solutions we come up with and helps us better understand your needs and develop the Service accordingly. If you decide to use a feature available in beta-test version, you agree that:

1. The feature is available only for a limited period of time and can be deactivated at any time and at our sole discretion;
2. The feature is available only to a limited extent and may be modified at any time and at our sole discretion;

3. GetResponse does not warrant that any feature made available in a beta-test version will be included in the Service, we are not obliged to maintain or support any such feature, and we may cease development of any such feature at any time and at our sole discretion;
4. You are solely responsible for consequences of using the beta-test version, including but not limited to, any impact such use may have on your Account settings, set or planned campaigns, collected data and other information, or otherwise. Please remember that once we deactivate a beta-test version of a feature, certain processes that took place with respect to your Account, set or planned campaigns, collected data and other information cannot be reversed, and GetResponse shall bear no responsibility or liability for any consequence resulting therefrom;
5. At the end of a beta-test version period, one or more beta-tested features may be made available for a separate fee (e.g. as a paid add-on), or as a component of the Service.

### **3. Technical Requirements**

The Service will operate with the latest official version of Internet Explorer, Mozilla Firefox, Google Chrome and Safari web browsers. In order to use the Service it is necessary that you have a device that allows you access to the Internet, have an email and a website browser installed with plugins that allow Flash technology and with "cookies" and JavaScript enabled, as well as email. In order for the Webinar feature to work properly, a camera and/or microphone and a headset or loudspeaker must be on and not used by another application. You expressly acknowledge and agree that GetResponse is not responsible for satisfying the foregoing requirements, and that the quality of files sent, posted, streamed, published or otherwise transmitted using the Service may differ from the uploaded stream or file, in order to conform and adapt to standards of transferring data, connecting networks, devices or requirements of the Service.

### **4. Use of the Service**

Upon signing Agreement, you agree to:

1. observe these Terms of Service, [Privacy Policy](#), [AntiSpam Policy](#) and all other policies developed, published or adopted by GetResponse in connection with the Service (each as amended and in effect from time to time);
2. use the Service for purposes directly related to your trade, business or profession;
3. maintain and promptly update your contact details so that they are as current, complete and accurate as possible;
4. upload personal data of your Contacts to mailing lists hosted at the GetResponse platform only if you have obtained their prior explicit consent to process and transfer such data;
5. send or stream through the Service only such materials that you have full rights to use and publish on the Internet;
6. conform to all applicable laws, regulations, rules and requirements ("Legal Requirements") relating to the transmission of emails (including but not limited to, commercial emails), the processing and transmission of personal data, including but not limited to the Legal Requirements in force in your country of residence;
7. keep all login credentials provided to you secret and confidential.

### **5. Remuneration**

You are obliged to timely pay all applicable fees for your use of the Service. Access to the Service is provided to you after we have received the applicable fee.

Remuneration for the use of Service is based on subscription purchased and not on an actual usage. Not using the Service, irrespective of cause, does not entitle you to reduce remuneration. Similarly, you are not entitled to reduce remuneration if late access to the Service or lack of ability to use the Service is caused by you.

All payments are non-refundable. The unused Service limits, like Email Volume Allowance, or Contacts List Size are not transferred to subsequent Settlement periods.

If you exceed limits of your Account set forth in your Agreement, you will have to pay Additional Fee. Remuneration for exceeded Users and Subaccounts Limit in a given Settlement period is calculated based on the peak number of accounts - Account and Subaccounts and their individual Users who were active (*i.e.* the User's status was set in position "ON" in the Account or Subaccounts) in any moment during the given Settlement period.

If we determine remuneration basing on number of Contacts' email addresses, we will monitor for the peak number of your Contacts' e-mail addresses accumulated in all your campaigns, Account and Subaccounts in a given Settlement period, which means that Contacts are unique within each campaign, but not within the entire Account and Subaccounts. To determine remuneration due in a given Settlement period, the highest number of the Contacts' email addresses is taken into account. Downgrade of the number of email addresses within a given Settlement period does not change remuneration for the use of the Service.

You shall be in default if we don't receive payment by the due date. If you are in default of payment we will be entitled to charge interest and exercise other rights as defined herein.

## **6. Payment Terms**

All fees due to GetResponse shall be paid by bank wire transfer or PayPal, subject to restrictions on certain payment methods depending on your country, by the applicable due date, based on a payment note issued by GetResponse. We will indicate the bank account to which the payment shall be transmitted. We are not responsible for any fees charged by payment services providers.

All fees are exclusive of taxes. Where appropriate, value added tax (VAT), goods and services tax (GST) or any other tax on sales (irrespective of designation of the tax adopted in various jurisdictions) will be added to the payment price in accordance with currently effective rates. You agree to pay any taxes applicable to your use of the Service. You represent that you are registered for VAT or GST purposes in your country. At our request, you will provide us with the VAT or GST registration number under which you are registered. If you are required to deduct or withhold any tax, you must pay the amount deducted or withheld as required by law and pay us an additional amount so that we receive payment in full as if there were no deduction or withholding.

Please note that some taxes depend on the region, province, state, town or district where you are located. You need to provide us with your correct address at all times, as we do not bear any responsibility resulting from wrong calculation of taxes due to inaccurate or wrong indication of address by you.

When you pay on the basis of payment note via wire transfer or PayPal the term "Settlement period" shall mean a monthly period, and the first Settlement period shall begin upon receiving the first payment note.

## **7. Prohibited practices, content and industries**

You are not allowed to use the Service, or use, post or transmit any Content (defined below) to or within the Service in a manner that, either intentionally or unintentionally, violates any applicable local, state, national or international law, good industry practice, these Terms of Service, our Privacy Policy, our Anti-Spam Policy or any copyright or other right of a third party. Without limiting the foregoing, each of the practices specified below is considered a violation of these Terms of Service and grounds for termination of your Agreement.

*Practices that are strictly prohibited:*

1. *sending spam or otherwise unsolicited messages in violation of applicable laws;*
2. *using Transactional Emails feature for sending marketing campaigns, bulk messages and all other emails which are of marketing, not transactional character;*
3. *sending messages to any purchased or rented email lists, or any third party lists whatsoever;*
4. *uploading, posting, emailing, storing, linking to, transmitting or otherwise making available any Content that:*
  - a. *infringes into third party's copyright and/or rights related to copyright, trademark, patents, trade secret or other proprietary right of any third party;*
  - b. *is obscene, threatening, abusive, harassing, defamatory, libellous, slanderous, deceptive, fraudulent, invasive of another person's privacy, tortuous, or otherwise violate applicable law or GetResponse's rules or policies;*
  - c. *is associated with pornography, adult-related material, child pornography, bigotry, racism, hatred, profanity, mail fraud;*
  - d. *contains harmful content, including, without limitation, software viruses, Trojan horses, worms, time bombs, cancel bots, spy-ware, or any other files, software, or technology that is designed or intended to disrupt, damage, surreptitiously intercept or expropriate services or any system, program, data or personal information, or limit the functioning of any software, hardware, or equipment or to damage or obtain unauthorized access to any data or other information of any third party;*
5. *making use of materials that we render available to you (in particular, but not limited to through the Multimedia Studio) to endorse a political party, candidate, elected official, or opinion or present person suffering from, medicating for, a physical or mental ailment;*
6. *using the Service to call on minors directly to purchase products or services;*
7. *adding, removing or modifying the identifying header information, in an attempt to deceive or mislead the recipient;*
8. *impersonating or attempting to impersonate any person or entity (including any of our employees or representatives) or the Service by using forged headers or other identifying information such as name, nickname, domain name, or email address. The use of anonymous re-mailers or nicknames does not constitute impersonation;*
9. *modifying, reproducing, duplicating, copying, displaying, sublicensing, selling, creating derivative works from, exploiting or otherwise using any portion of the Service, especially the source code or the materials provided in Multimedia Studio, whether rendered by us for free, within fee calculated on the basis of the Service details you have chosen or paid separately, except as specifically provided and allowed by us. In particular you may not*

*use the Service, any portion of it or any content provided to you by GetResponse or created within the Service (notwithstanding whether such content is paid or free, customized or standard) outside of the Service;*

- 10. using the Service contrary to its primary purpose, especially for hacking or to solicit passwords, personal identifying information or credit card data for unlawful or phishing purposes, especially by making automated use of the system, such as using scripts, bots, spiders or scrapers;*
- 11. creating (sub)domain name for landing page(s) using vulgar, offending words or brand names to which you are not entitled or which in any other manner may infringe third party's rights;*
- 12. using the Landing Pages Builder add-on to design websites or landing pages for third parties;*
- 13. using the tools and materials provided in the Landing Pages Builder add-on and Multimedia Studio to design landing pages which are placed in the Internet with the use of other service than the Landing Pages Builder add-on;*
- 14. use the Service, especially landing page(s) created with the use of the Landing Pages Builder add-on to promote GetResponse's competitors and/or their services or products;*
- 15. using insulting, obscene, threatening, abusive, harassing, defamatory, libellous, slanderous, deceptive, privacy infringing or other improper language, messages or other means of communication while contacting our employees or representatives;*
- 16. undertaking any other activity that in our opinion interferes with or is (or may be) harmful to our employees, officers, representatives, our business, reputation, goodwill or the ability of other Customers to effectively use our Service.*

Certain Content may be illegal or result in higher than normal bounce rates and abuse complaints, which may affect the deliverability of GetResponse's platform to you and others. You acknowledge the foregoing and agree that you will not use the Service to stream, disclose, engage in, offer to sell, and promote, either directly or indirectly, any goods or services identified below and that doing so is considered a violation of these Terms of Service and grounds for termination of your Agreement.

*Our Customers are not allowed to use the Service to stream, disclose, engage, offer to sell, and promote, either directly or indirectly, any goods or services that:*

- 1. victimize, harass, degrade, or intimidate an individual or a group of individuals on the basis of religion, political option, gender, sexual orientation, race, ethnicity, age, or disability;*
- 2. violate any law, statute, ordinance, or regulation including, without limitation, those governing consumer protection, Internet tobacco sales, unfair competition, anti-discrimination or false advertising;*
- 3. offer or disseminate fraudulent goods, services, schemes, or promotions (e.g. make-money-fast schemes, chain letters, pyramid schemes), payday loans or engage in any unfair deceptive act or practice;*
- 4. are associated with any form of gambling, betting or bingo- or lottery-type services;*
- 5. are associated with financial products and services that are frequently associated with misleading or deceptive promotional practices (for example, Initial Coin Offerings ICO or binary options); cryptocurrency-related products and services may not be promoted without our prior written permission;*

6. *are associated with any form of adult, sexually oriented, or obscene materials or services, including without limitation, any material clearly designed to sexually arouse the viewer/reader (e.g. books, text, photos, videos, X-rated movies, pornographic materials, etc.), any materials which require individuals to be eighteen (18) years of age or older to view or purchase those materials, escort services, and adult websites;*
7. *are associated with the sale of:*
  - a. *any controlled drug that requires a prescription from a licensed practitioner; or*
  - b. *any over-the-counter drug, or*
  - c. *non-prescription drugs;*
8. *are associated with illegal telecommunications or cable television equipment, such as access cards, access card programmers and unloopers, cable descramblers or filters;*
9. *are associated with weapons of any kind and related items, including firearms, firearm parts and magazines, ammunition, BB and pellet guns, tear gas, stun guns, switchblade knives and martial arts weapons;*
10. *market for:*
  - a. *nicotine, nicotine products, products imitating nicotine products, symbols related to smoking or nicotine;*
  - b. *alcohol of any kind;*
  - c. *drugs of any kind, products related to drugs, symbols related to drugs, the use of drugs of any kind;*
  - d. *medical services, medical aid, medical assistance, medicines;*
  - e. *video lotteries, cylindrical games, card games, dicing, and automated game;*
11. *encourage minors to influence their parents or other persons with an aim of impelling them to buy products or services marketed through the Service;*
12. *take advantage of minors' inexperience and credulity; exploit the special trust minors have in their parents, teachers or other persons;*
13. *unreasonably show minors in dangerous situations.*

You may not use any hardware or software intended to damage or interfere with the proper and timely functioning of the Service, or to surreptitiously intercept any system, data or personal information from the Service or any GetResponse Website. You further agree not to take any action that imposes unreasonable or disproportionately large load on the Service, any GetResponse Website, or any network or other Service infrastructure.

We do not pre-screen or control Customer's activity related to the use of the Service. However, we reserve the right (irrespective of other rights under these Terms of Service) to refuse, remove or delete any Content, suspend email campaigns, block Customer's landing page, stop Webinars, suspend access to the Service or any part thereof, with or without notice, at our sole discretion if we reasonably determine that Customer's, User's or Participant's activity or the Content violates any applicable provision of the law, our policies, these Terms of Service, any third party right or is otherwise objectionable. In the aforementioned situations, without in any way limiting the disclaimer and limitations in Section 15, under no circumstance shall we be liable for the consequences of any measures taken pursuant to this paragraph.

### **Fair Usage Policy**

In order to help ensure the quality and accessibility of the Service to our Customers, you agree not to use the Service or features thereof in a manner that is excessive or unreasonable relative to other Customers. Please note that we monitor various parameters on a case by

case basis to identify and prevent excessive or unreasonable use that may adversely affect other Customers or performance of their campaigns. Should our Compliance Team determine in its sole discretion that your use of the Service or any feature thereof is excessive or unreasonable, overloads our systems and as a result, detrimentally affects other Customers, we will promptly advise you on how to reduce your usage. If you do not follow that advice, and your usage continues to affect other Customers, you agree that we may immediately suspend or terminate your access to the Service in whole or in part and that you will not be entitled to a refund of any amounts previously paid. In the aforementioned situations, without in any way limiting the disclaimers and limitations in Section 15, under no circumstances shall we be liable for the consequences of any measures taken pursuant to this paragraph.

### **NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT OR INTELLECTUAL PROPERTY INFRINGEMENT**

We respect the intellectual property of others, and we ask our Customers to do the same. We may, in appropriate circumstances and at our discretion, disable and/or terminate Accounts of Customers who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide our Compliance Manager with the following information:

1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. a description of the copyrighted work or other intellectual property that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on the Service;
4. your address, telephone number, and email address;
5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Our Compliance Manager who acts as an Agent for Notice of claims of copyright or other intellectual property infringement can be reached at: [dmca@cs.getresponse.com](mailto:dmca@cs.getresponse.com)

### **8. Content**

Any and all information, data, texts, graphics, logos, video, music or other materials that you post, upload, send, stream or otherwise make available using the Service, including but not limited to on your landing page(s) or during Webinars, or that your landing page visitors or Participants upload, post or stream on your landing page(s) or during Webinars ("Content"), are solely your responsibility. Content also includes any links to other websites or resources or other third party services that you use. We do not claim ownership of the Content and you (or your landing page visitor/Participant, as applicable) retain all right, title, and interest in and to the Content. Notwithstanding the forgoing, the term "Content" does not include any materials that you take from our resources, including but not limited to Multimedia Studio and our collection of predesigned templates. You agree that we can present your landing page in our marketing materials, in particular case studies.

You are entitled to use materials that we render available to you solely to use the Service for its intended purpose, notwithstanding whether such materials are paid or free, customized or standard. Please note that our resources (in particular the Multimedia Studio) may include

materials that are subject to third party copyright. You acknowledge and agree that we have the right at any time and at our sole discretion to remove such materials from our resources, disable access to such materials or demand that you immediately stop using them, in particular in email campaigns and on your landing page(s) or Webinars. If you do not satisfy any such demand, we will be entitled to delete such materials at our sole discretion. In the aforementioned situations, without in any way limiting the disclaimers and limitations in Section 15, under no circumstance shall we be liable for the consequences of any measures taken pursuant to this paragraph.

If you post, upload, send, stream or otherwise make available Content through third parties or which belongs to a third party, you are obliged to adhere to such third party terms and conditions of service or license, irrespective of your obligations resulting from these Terms of Service.

You acknowledge and accept that we may preserve the Content and disclose it if we are required to do so by law or if it is necessary to enforce these Terms of Service, a court order or a decision of a competent public authority, respond to claims that any Content or the activity of your landing page visitor or Participants violates the law or the third party rights.

## **9. Customer Service**

We offer you assistance of our Account Managers as described below.

*Account Management Rules:*

1. *Account Management includes:*
  - a. *assistance in set-up (Domains, Account), data imports and segmentation,*
  - b. *monthly performance reports (CTR, deliverability, open rates) upon request,*
  - c. *product tour and training.*
2. *Account Management services are provided by our Account Managers;*
3. *Account Managers are available on working days between 9:00 AM to 6:00 PM GMT + 8; response time – 24 hours;*
4. *Account Managers can be reached via a dedicated email and phone number provided in the Welcome Email.*

## **10. Termination**

We reserve the right to block sending emails, suspend the Account (or part thereof – including each Subaccount or add-on) and terminate Agreement (which means shutting down the Account) with immediate effect and without notice if we reasonably believe that you are in breach of the provisions of these Terms of Service, Agreement or any other policy developed, published or adopted by GetResponse. Without limiting the foregoing, the activities specified below each constitute a violation of our Terms of Service and grounds for blockade, immediate termination or suspension of your Account or part thereof.

*Examples of activities regarded as violation of our Terms of Service:*

1. *failing to make payment when due;*
2. *using the Service for abusive or prohibited practices referred to in Section 7 of these Terms of Service;*
3. *sending emails which we consider SPAM (determined on the basis of GetResponse algorithms and compliance procedures), in particular if:*
  - a. *the Customer's name or domain (which the Subscribers can access by clicking links contained in emails sent by the Customer) is listed on the SpamHaus Registry Of Known*

*Spam Organizations (ROKSO, <http://www.spamhaus.org/rokso/>) or such domain is listed on at least one of the following blacklists: URIBL (<http://uribl.com/>), SURBL (<http://www.surbl.org/>), SpamHaus DBL (<http://www.spamhaus.org/dbl/>) or ivmURI (<http://dnsbl.invaluement.com/>);*

- b. Customer is found spamming by SpamCop or any other anti-spam organization that reports to GetResponse spam trap hits thru Unsolicited Commercial Email reports;*
- 4. Customer breaches the rules of use of our trademarks and other intellectual property;*
- 5. Creating more than one Free Trial Account by the Customer;*
- 6. Providing inaccurate, unreliable or false contact details, or failing to keep such contact details up to date;*
- 7. Assigning rights and obligations resulting from Agreement to a third party without prior consent of GetResponse.*

The Customer is entitled to terminate Agreement if GetResponse breaches the material provisions of Agreement. The Customer undertakes to call GetResponse to change the way of performing Agreement within 14 (fourteen) day timeframe, upon ineffective expiration of which the Customer will be entitled to terminate the Agreement.

Termination and suspension as well as downgrade of the Service or any of its parts or features may affect your Account, set or planned campaigns, collected data and other information, or related matters. Once the Service or any of its parts or features are terminated, suspended or downgraded, certain processes that took place with respect to your Account, set or planned campaigns, collected data and other information, cannot be reversed. In the aforementioned situations, without in any way limiting the disclaimers and limitations in Section 15, under no circumstance shall we be liable for the consequences of any measures taken pursuant to this paragraph.

Sending email's blockade and the suspension of the Account (or part thereof) does not release you from the obligation to pay remuneration for the blockade/suspension period. GetResponse ensures however, that the blockade or suspension period won't take longer than 7 working days. After that period GetResponse shall bring the possibility of sending emails or the Account back or terminate the Agreement.

## **11. Refund Policy**

Please note that termination of your Agreement by GetResponse for cause does not release you from the obligation to pay the whole remuneration due under the Agreement.

## **12. Privacy**

Our data protection practices are set forth in our [Privacy Policy](#), which forms the integral part of these Terms of Service. By using the Services, you consent to the collection, use and process of the personal data provided to GetResponse and acknowledge that we may periodically change, modify, add or rectify or otherwise update the Privacy Policy at our discretion. For any queries or concerns in relation to the Privacy Policy or for access to, or correction of the personal data or limit the processing of the personal data, please contact <https://app.getresponse.com/feedback.html>.

With respect to personal data of your Contacts, Users, employees, officers, servants, agents, third party service providers and advisors, you confirm that you have obtained these persons'

consent to entrust GetResponse processing such data and that processing such data in accordance with this Agreement will not cause GetResponse to breach any applicable data protection legislation. You shall indemnify and hold GetResponse harmless from and against any consequences, losses, damages, costs and/or expenses (including all legal costs on an indemnity basis) whatsoever and howsoever resulting from your non-compliance to the obligations herein provided.

Where GetResponse provides you with the personal data of GetResponse's employees, officers, servants, agents and advisors, you agree to keep it confidential and in accordance with any applicable data protection legislation.

You agree that GetResponse may process and transfer the personal data you provided to affiliates of GetResponse and/or relevant subcontractors (who may be located in other territories) for the purposes of (i) the Services, (ii) maintaining GetResponse's operations or administration or management systems, (iii) quality and risk management reviews, or (iv) provision of information about GetResponse and GetResponse range of Services.

### **13. Copyright, Trademarks and Confidentiality**

The Service, all GetResponse software, and the content included on the GetResponse Websites (such as text, graphics, logos, button icons, images, audio clips and software) (collectively "GetResponse Property"), are the property of GetResponse or its content suppliers and protected by Malaysian, European, United States and international copyright laws. No part of the GetResponse Property may be reproduced or transmitted in any form or by any means without express written consent of the authors, except as specifically provided and allowed by us.

"GetResponse" is a registered trademark of GetResponse in Malaysia, the United States, the European Union, as well as in other countries. Without our express consent, our trademarks, service marks, logos and other indicia of source may not be used in conjunction with other entities' products or services in any manner whatsoever, including but not limited to in any way that may cause confusion among customers and potential customers, or in any manner that discredits GetResponse, its products and services.

*Confidential Information shall mean:*

- 1. any information regarding Software and services rendered by GetResponse which are of confidential or proprietary nature, including terms of Agreement;*
- 2. Contacts' email addresses and personal data entrusted by the Customer to GetResponse for the provision of the Service;*
- 3. business, financial, organizational, technical information, as well as other circumstances regarding factual and legal situation of any Party;*
- 4. any information received under Agreement due to provision of Services or derived by the receiving Party from such information which is of confidential or proprietary nature.*

Receiving party shall exercise no less care to safeguard Confidential Information acquired from disclosing party than receiving party exercises in safeguarding its own confidential or proprietary information.

Neither party will use, copy, adapt, alter or part with possession of any Confidential Information. This obligation will not apply to information which:

- a. receiving party can prove was in its possession at the date it was received or obtained, or
- b. receiving party obtains from a third party with good legal title to such information, or
- c. is in or comes into the public domain otherwise than through the default or negligence of receiving party, or
- d. is independently and lawfully developed by or for the receiving party.

Notwithstanding the foregoing, party receiving Confidential Information may disclose the same to the extent required in order to comply with any applicable law, regulation, court order or other legal, regulatory or administrative requirement; provided that receiving party will only disclose that portion of the Confidential Information as is ultimately legally required to be disclosed.

The information shall remain confidential during the term of Agreement and for 5 years as of expiry or termination of an Agreement, irrespective of the basis of such expiry or termination.

#### **14. Modifications**

We may, at our sole discretion and without liability, change or modify the features of the Service or modify or replace any provided equipment, or software used to deliver the Service, provided that this does not have a material adverse effect on the Service.

We also reserve the right to modify, add or delete any documents, information, graphics or other content appearing on or in connection with the Service or any of the GetResponse Websites, at any time without prior notice.

#### **15. Disclaimer of Warranties. Limitation of Liability**

You acknowledge and agree that GetResponse provides the Service and GetResponse Websites on an "AS IS" basis and disclaims all warranties of any kind, either express or implied, including without limitation any warranty of title, merchantability, non-infringement or fitness for a particular purpose.

You are solely responsible for your use of the Service, any of the GetResponse Websites and any and all Content, Webinars and email campaigns that you develop, operate or send using the GetResponse platform. It is your duty and responsibility (and not ours) to back up all your files and data stored on our servers and under no circumstances will we be liable for any loss or damages due to loss of such files or data stored on our servers.

Without limiting the foregoing, GetResponse is not responsible or liable to you for any:

1. actions or omissions of any third party, including but not limited to Users or Participants, and other third parties using your Account with login credentials, passwords or details obtained from you or in other circumstances beyond GetResponse's reasonable control;
2. failure of external conditions, networks or telecommunications devices or equipment necessary to use the Service that are provided by third parties or otherwise beyond GetResponse's reasonable control;
3. problems of any kind with features used within test versions, including but not limited to beta-test versions;
4. insufficient or fluctuations of the bandwidth used by Customer, User or Participant which may affect Content quality.

To the maximum extent permitted by law, you agree that in connection with these Terms of Service, the Service and use thereof: (i) GetResponse, its employees, directors, officers or representatives shall not be liable for any indirect, incidental, punitive, special or consequential damage or loss (even if advised of the possibility of such damage), however caused and irrespective of the nature of the cause of action, demand or claim and (ii) GetResponse's entire

liability to you for any and all claims, actions, proceedings, losses, liabilities, damages, costs, expenses, judgements, and awards arising under or in connection therewith (each a "Claim"), in the aggregate, regardless of the form and cause of action, shall not in any event exceed the equivalent of amount payable for the Service for one Settlement period immediately preceding the date when the event causing the Claim occurred, with the exclusion of any amounts representing Setup Fees, Additional Fees, paid add-ons, or any other extra charges. The Customer hereby releases GetResponse, its employees, directors, officers and representatives from any and all Claims in excess of the aforementioned limitation.

Neither party shall be responsible for any delay or failure in performance of their obligations under these Terms of Service due to Force Majeure or other occurrences that are beyond reasonable control of the party in default or failing to fulfil their respective obligations. For purposes of the foregoing, "Force Majeure" means any exceptional occurrence, caused by an external factor which cannot reasonably be foreseen or prevented, including but not limited to war, natural disasters, strikes, breakdowns, DDoS attacks or other disruptions in telecommunication networks or data communication infrastructure, emergency government action and administrative measures, and activities of third party entities that affect the provision of the Service, and whose activity is independent of the parties hereto.

You agree to indemnify and hold GetResponse, its employees, directors, officers, co-operators and representatives harmless from any and all claims, losses (either direct or indirect), damages and expenses, including but not limited to attorney fees, based upon or arising from (i) any failure by you or any individual using your login credentials to comply with your obligations under these Terms of Service, (ii) violation of any law, or of the rights of any third party by you, your Users, or any of your landing page visitors or Participants, (iii) your use of any third party service or integration of the Service with any third party service, or (iv) any User's or Participant's Content or activity. We will notify you as soon as reasonably practical of any such claim, demand or cause of action for which we will require indemnification from you.

## **16. Final Provisions**

The GetResponse Anti-Spam Policy and Privacy Policy are each hereby incorporated into and constitute an integral part of these Terms of Service. You and GetResponse are each intended to be independent contractors, and not employees, partners or joint ventures of one another, and neither shall have any authority to bind or incur any obligation or liability on the other's behalf. If any provision of these Terms of Service or of any supporting document is invalid or unenforceable under the law of any government having jurisdiction, it shall not affect the legality, validity and enforceability of any other provisions hereof and such invalid or unenforceable provision will be modified to the extent necessary to render it valid and enforceable without altering its intent. GetResponse reserves the right to change any of the provision of these Terms of Service as well as any supporting documents at any time by posting the revised document on GetResponse's website and/or by sending an email to the last email address you have given to GetResponse. These Terms of Service and supporting documents shall be effective immediately upon posting on GetResponse's website with respect to any continued or new use of the Service, unless you terminate these Terms of Service within 10 (ten) days of such posting. Your continued use of the Service after 10 (ten) days following the posting a revised version of the Terms of Service or any supporting or related documents constitutes your acceptance of such revised Terms of Service and/or

supporting or related documents. We may assign rights and obligations arising from the agreement to any company controlled by or under common Control with GetResponse without your prior consent. "Control" for purposes of these Terms of Service means direct or indirect ownership or control of more than 50% of the share capital or voting interests of the subject entity. You may not assign any rights or obligations arising under the Agreement to a third party without our prior written consent. These Terms of Service shall be interpreted and construed according to and governed by the laws of Malaysia, without regard to its conflict of laws provisions. You expressly consent to submit disputes arising out of or in connection with the Agreement to Malaysian courts with jurisdiction over the registered office of GetResponse and waive any objection to venue in said courts.

These Terms of Service are valid as of the earlier of the date provided to you or posted on the GetResponse Website (April, 23<sup>rd</sup> 2019).