

Terms and Conditions

1. Contract Terms

- 1.0. Opal agrees to supply the Service to you on the following terms and conditions. Any other terms and conditions contained in any other document are excluded unless their inclusion is expressly agreed in writing.
- 2.0. Opal catalogues, brochures, leaflets or correspondence are not binding and unless specifically provided to the contrary in writing, all specifications, descriptions, photographs, measurements or capacities are approximate only and shall not be treated as constituting any warranty, representation or condition in relation to the Service.
- 3.0. The following words or expressions have the following meanings:
- "E-mail" means any electronic message generated by an End-User scanned by the Service generally in a business to business environment over the world wide web generally understood as the "Internet";
- "End-Users" means the ultimate end-user of the Service as permitted under a contract for the provision of the Service between Opal and the specific Customer responsible for those End-Users;
- "Minimum Period" means, in relation to the Service, the period of twelve months beginning on the date of the Agreement and ending on the first anniversary of such date;
- "Pricing Structure" means the pricing structure relating to the Service set out in the form overleaf;
- "Service" means the MailController service as operated by Opal from time to time;
- "Software" means the anti-virus software licensed to and used by Opal in connection with the Service from time to time;
- "Virus" means a piece of code usually (but not necessarily) disguised as something else that causes some unexpected and, for the victim, usually undesirable event and which is designed so that it may automatically spread to other computer users; the term "virus" shall also be deemed to include reference to worms, trojan horses and other nuisance causing or otherwise harmful applets.

2. Service

- 1.0. In consideration of you paying Opals charges, Opal agree to supply the Service to you. No anti-virus or anti-spam software can guarantee a 100% detection rate and, therefore, Opal cannot accept any responsibility whatsoever for any viruses or spam sent or received by you. Please refer to Clause 7 below and Opals exclusion/limitation of liability in this regard.
- 2.0. Opal will use reasonable endeavours to maintain and update the Software as soon as its licensors make any appropriate upgrades or enhancements to the Software.
- 3.0. You are responsible for the content of all E-mails including attachments Opal scan on your behalf and you will indemnify Opal against all actions, claims, expenses and liabilities of every description arising either directly or indirectly from the provision of the Service to you including, without limitation, all such losses, costs, charges and expenses suffered or incurred by Opal in disputing any claim, action, liability, demand or proceedings which may arise directly or indirectly in relation to the Service.
- 4.0. Opal recognise and confirm that the content of all E-mails scanned on your behalf by the Software is confidential and Opal will use reasonable endeavours to keep confidential information received by it from you or for you in connection with the Service. However, Opal reserve the right to disclose such information (to the extent Opal consider reasonably necessary) for the purposes of:
- 1.0.0. maintaining and improving the performance and the integrity of the Software and Opals systems;
 - 2.0.0. observing, studying and/or testing the functioning of the Service;
 - 3.0.0. complying with all regulatory, legislative or contractual requirements; and
 - 4.0.0. making available to Opals licensors of the Software any information passing through Opals systems which may be of interest to Opals licensors solely for the purpose of further developing and enhancing the Software
- and Opal reserve the right to retain copies of information entering Opals systems as may be necessary from time to time for such purposes.
- 5.0. Virus-infected and spam E-mails, which are stored on Opals quarantine servers, will be deleted after a period of 30 days. Should you deliver or forward a virus infected or spam E-mail to you from the quarantine, this will be done at your risk and Opal will take no responsibility whatsoever for any loss, corruption or failure of any data or systems. Opal will under no circumstances transmit virus infected or spam E-mails from quarantine to third parties on your behalf.
- 6.0. It is the inherent nature of viruses and spam that they are developed faster than the software developed to curb them. Therefore, Opal do not warrant, represent or guarantee in any way whatsoever that the Software will ensure that no viruses or spam are contained in E-mails sent by or to you or that the Service will be uninterrupted or error-free.

3. Customer's Obligations

- 1.0. In consideration of Opal supplying the Service to you, you agree to pay Opals charges in accordance with Clause 4 below.
- 2.0. You will supply Opal with all technical data and all other information Opal may reasonably request from time to time to allow Opal to supply the Service to you. All information you supply will be complete, accurate and given in good faith. You hereby authorise Opal to make all necessary changes to your DNS records for the purpose of making the Service available to you.
- 3.0. You recognise that information sent to and from you will pass through Opals systems and accordingly you agree that you will:
- 1.0.0. comply with all relevant legislation applicable to your use of the Internet;
 - 2.0.0. conform to the protocols and standards published on the Internet from time to time and adopted by the majority of Internet users; and
 - 3.0.0. indemnify Opal against any liability to third parties resulting from information passing through Opals systems to or from you.
- 4.0. You agree that you will not use the Internet for any unlawful purpose or in breach of English law or any other law applicable to your use of the Internet. These prohibited uses include, but are not limited to:
- 1.0.0. civil and criminal offences of copyright and trademark infringement; or
 - 2.0.0. transmission or display or posting to a bulletin board of obscene, indecent or pornographic material; or
 - 3.0.0. committing any criminal offence (including deliberate transmission of computer viruses) under the Computer Misuse Act 1990 or similar legislation in any country; or
 - 4.0.0. any transmission or display or posting to a bulletin board of any material which is of a defamatory, offensive, abusive, or menacing character or which causes annoyance, inconvenience or needless anxiety to any other person; or
 - 5.0.0. transmission or display or posting to a bulletin board of any material in breach of the Data Protection Act 1998 (or any replacing statute) dealing with data protection or similar legislation in any other country or of any material which is confidential or is a trade secret; or
 - 6.0.0. use of the Internet in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere.
- 5.0. You agree to indemnify Opal against all and any losses, costs and expenses Opal may incur as a result of any breach by you of Clause 3.4 above.
- 6.0. In addition to Opals termination rights set out in Clause 5 below, Opal may, at any time and at Opals sole option, suspend the Service until you give suitable undertakings and provide security in terms satisfactory to Opal to comply with your obligations hereunder or terminate the Service if you are in breach of any of your obligations set out above. On any termination under this Clause, the provisions of Clause 5.4 will apply in respect of the charges payable for the Service.

4. Charges and Payment

- 1.0. You must pay the charges for the Service which appear or are calculated according to the rates which appear in the MailController order form overleaf or which are subsequently notified to you in accordance with Clause 4.2 below. Where these are recurring charges, they will be fixed for any specified Minimum Period.
- 2.0. Unless otherwise agreed and stated in this Agreement, Opal may vary the charges for the Service and you will pay such charges as appear in the published Price List from time to time. When Opal make a change to those charges or rates Opal will publish details

(including the operative date) in Opals Price List as soon as possible and, in any event, at least 2 weeks before the change is to take effect. Where charges are specific to you, Opal will always give you at least 2 weeks' written notice of any change. No increase in charges will take place after you have given notice to terminate this Agreement in accordance with its terms.

Unless Opals Price List provides otherwise, all charges for the Service are exclusive of any applicable value added or other tax, which will be added to Opals invoices sent to you.

5. Termination

- 1.0. Either party can terminate the Service or this Agreement after any applicable Minimum Period at any time by giving three months' written notice to the other. You must pay to Opal all charges due for the period up to the end of the notice period and any unpaid amounts you owe Opal.
- 2.0. If you do not comply with your obligations under this Agreement Opal can suspend the provision of the Service in whole or in part or terminate this Agreement immediately by giving you written notice.
- 3.0. Opal can also terminate this Agreement by notice in writing if you are the subject of a bankruptcy order (or the equivalent in any other jurisdiction) or if you become insolvent or make any arrangement or composition with, or an assignment for the benefit of, your creditors or if any of your assets are the subject of any form of seizure. If you are a company, Opal can terminate this Agreement forthwith if you go into liquidation, either voluntary or compulsory, or if a receiver, administrator or administrative receiver is appointed in respect of you.
- 4.0. In the event of termination under Clauses 5.2 or 5.3, in addition to any other unpaid amounts you owe Opal, you will continue to pay Opal the outstanding balance of Opals charges for the Minimum Period (where the Minimum Period has not expired) and you will also remain liable for Opals charges for a period of 3 months after Opal serve notice under the relevant clause being a period equivalent to the notice provision set out in Clause 5.1.
- 5.0. Interest shall be chargeable on any amounts overdue at the rate of 3% above the base rate of the Barclays Bank PLC as applying from time to time to run from the due date for payment until receipt by Opal in full of the outstanding amount whether or not after judgement and without prejudice to any other right or remedy of Opal.
- 6.0. Any waiver by Opal of any breach by you of this Agreement or delay or forbearance in exercising Opals rights under this Agreement will not prevent Opal from taking action against you if the breach continues or if you are in breach of contract again at a later date.

6. Intellectual Property Rights

- 1.0. The intellectual property rights in the Software and any other software Opal use in connection with the Service is and will at all times remain Opals property or that of Opals licensors.

7. Limitation Of Liability

- 1.0. Opal do not limit Opals liability (if any) in respect to following:
- 1.0.0. fraud,
 - 2.0.0. the death of, or personal injury to, any person caused by negligence,
 - 3.0.0. the intellectual property rights indemnity specified in Clause 6 above.
- 2.0. Opal shall indemnify you for loss or damage to your tangible property, caused either by:
- 1.0.0. defects in the Service resulting from Opals negligence, or
 - 2.0.0. the negligence of Opals employees, up to a maximum of the lesser of £500,000 (five hundred thousand pounds) or the amount actually paid by you to Opal hereunder for the Service during the six (6) months immediately prior to the event causing such loss. Such limit shall apply to each event or series of connected events. For the avoidance of doubt data does not constitute tangible property.
- 3.0. Opal shall indemnify you for actual loss by you caused either by:
- 1.0.0. defects in the Service resulting from Opals negligence, or
 - 2.0.0. the negligence of Opal employees, up to a maximum of the actual amount paid by you to Opal for the Service provided to you suffering such loss during the six (6) months immediately prior to the event causing such loss. Such limit shall apply to each event or series of connected events.
- 4.0. Subject to Clause 7.1 Opal do not accept any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:
- a) loss of profits;
 - b) loss of sales or turnover;
 - c) loss of or damage to reputation;
 - d) loss of contracts;
 - e) loss of Customers or End-Users;
 - f) loss of, or loss of use of, any:
 - software;
 - data;
 - E-mails;
 - g) loss of use of any computer or other equipment or plant;
 - h) wasted management or other staff time;
 - i) losses or liabilities under or in relation to any other contract;
 - j) indirect loss or damage;
 - k) consequential loss or damage;
 - l) loss(es) directly or indirectly due to network access by third parties; or
 - m) special loss or damage.

and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

- 5.0. Excluding Clause 7.1 and subject to Clauses 7.2 and 7.3 above, Opals liability whether in contract, tort or otherwise, howsoever arising out of or in connection with this Agreement shall be limited to one hundred and twenty percent (120%) of the total price paid by you for the Service for the six (6) months immediately prior to the event causing such loss per event or series of connected events.

8. Variation and Assignment

- 1.0. Opal may at any time, other than during the Minimum Period relating to a Service, vary the terms of this Agreement by giving not less than three months notice in writing.
- 2.0. For operational and/or regulatory reasons Opal may vary the technical specifications of parts of the Service from time to time.
- 3.0. You are not entitled to transfer or assign this Agreement without Opals prior written consent. Opal may assign, sub-contract or sub-let this Agreement or any part.

9. Force Majeure

- 1.0. Opal are not liable for any breach of this Agreement caused by matters beyond Opals reasonable control, including, but not limited to, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Opals employees), failures or interruptions of electricity supplies, failures by other suppliers of any part of the Service, weather of exceptional severity or acts of local or central Government or other authorities.

10. General

- 1.0. Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing addressed to that other party at its address given in this Agreement or its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 2.0. If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provisions in question shall be unaffected.
- 3.0. This Agreement excludes and/or supersedes any previous statements or agreements between Opal whether written or oral relating to the provision of the Service.
- 1.1. This Agreement shall be governed by the laws of England and both parties agree to submit to the non-exclusive jurisdiction of the English Courts.