

FORFRONT LTD

Terms and Conditions of Service for e-shot™

Revision 9.0 February 2022

Table of contents

1.	Introduction.....	2
2.	Interpretation and Definitions.....	2
3.	Acceptance of Terms	3
4.	Security.....	4
5.	The Services.....	4
6.	Obligations of the Client.....	4
7.	Prohibited Use	6
8.	Price.....	7
9.	Payment.....	7
10.	Intellectual Property.....	8
11.	Data, Data Protection, GDPR.....	8
12.	Indemnity	9
13.	Disclaimer and limitation of liability.....	9
14.	Privacy and Confidentiality.....	10
15.	Termination of Contract.....	11
16.	Account Termination.....	11
17.	Foreign Countries and English Jurisdiction.....	12
18.	Assignment	12
19.	General	12
	APPENDIX 1 - e-shot™ Annual Plan	14
	APPENDIX 2 – e-shot™ Annual Plan (paid monthly).....	15
	APPENDIX 3 – e-shot™ One Month Rolling Plan	16
	APPENDIX 4 – e-shot™ Hybrid plan (Credits)	17
	APPENDIX 5 - Definitions of terms and services:.....	18
	APPENDIX 6 – GDPR at a glance:	20
	APPENDIX 7 - Acceptable Use Policy (AUP):.....	21

1. Introduction

- 1.1. Forfront Ltd provides software as a service (SaaS) used by its clients over the internet. e-shot™ is a SaaS solution which enables its clients to create messages, manage their subscribers (contact lists) and send personalised messages to their subscribers through an online platform.

Contracts for provision of the Services (as defined in paragraph 2 below) can be by way of an Annual Plan, by way of Monthly Plan, or by way of the Hybrid Plan (as defined in Appendices 1 to 2). The duration and periods of notice for termination of the Plans are set out in Appendices 1 to 2.

2. Interpretation and Definitions

- 2.1. In these terms and conditions, unless the context requires otherwise, the following words shall have the following meanings:

"**Client**" or "**You**" means the person, firm, company, or organisation that has requested any Services and purchased these Services from Us.

"**Conditions**" means the standard terms and conditions of service set out herein.

"**Contract**" means any contract for the provision of the Services and includes these Conditions.

"**We**", "**Our**" or "**Us**" means Forfront Limited, a company registered in England and Wales with company number 3643637 whose registered office is situate at Paternoster House, 65 St Paul's Churchyard, London EC4M 8AB, and whose trading address is Global House, Ashley Avenue, Epsom KT18 5AD.

"**Data**" means the personal data provided to Us and updated from time to time by You (which may include sensitive personal data).

"**IPR**" means any and all Intellectual Property Rights including without limit any and all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Netiquette**" means generally accepted standards for use of the Internet such as, but not limited to, sending bulk unsolicited email, mail bombing, misrepresenting that You have third party authorisation and impersonating another person.

"**Parties**" is a reference to both Us and You.

"**Fair Usage Policy**" means that any e-shot™ contract which has "Unlimited" send limit is subject to a fair usage policy to protect other customers and ensure a fair and sustainable service to all clients. The Fair Usage Policy acceptable limit unless otherwise specified is restricted to 20 times the number of contacts paid for.

"**Passcodes**" means those words notified to You by Us which control your access to some of the Services including without limit your usernames, passwords, and API keys.

"**Index**" means four percent (4%).

"**RPI**" means Retail Price Index over 12 months from January to December of the previous year.

"**Quote**" means the quote submitted by Us to You, and accepted by You, in relation to the relevant

Contract.

"**Servers**" means the computer servers used to provide the Services.

"**Services**" means any services supplied or to be supplied by Forfront (which may include without limit Subscription service, hosting, email delivery, consultancy) as described in the Quote issued by Us or as may be agreed from time to time; and

"**Site**" means any Internet website operated by Us (including without limit www.forfront.com, www.forfront.net, www.e-shot.net, console.e-shot.net, etc.).

"**Data Protection Legislation**" means:

- i) All data protection legislation and regulations applicable to Your processing of Data under the Agreement in jurisdictions where You operate or where the Data is used, including, where applicable, UK Data Protection Legislation, EU Data Protection Legislation and Non-EU Data Protection Legislation; and
 - ii) UK Data Protection Legislation means The Data Protection Act 2018 (DPA) and The Privacy and Electronic Communications Regulations 2003 (PECR) and any other applicable legislation within the relevant jurisdiction; and
 - iii) EU Data Protection Legislation means The General Data Protection Regulation 2018 (GDPR) and any other applicable legislation within the relevant jurisdiction; and
 - iv) Non-EU Data Protection Legislation means the California Consumer Privacy Act ("CCPA"); the Canadian Personal Information Protection and Electronic Documents Act ("PIPEDA"); and the Brazilian General Data Protection Law ("LGPD"), Federal Law no. 13,709/2018 and any other applicable legislation within the relevant jurisdiction.
- 2.2. Clause, Appendix, and paragraph headings shall not affect the interpretation of this agreement.
- 2.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4. A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established.
- 2.5. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.
- 2.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7. A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time.
- 2.8. A reference to writing or written includes faxes and e-mail.
- 2.9. References to clauses and Appendices are to the clauses and Appendices of this agreement and references to paragraphs are to paragraphs of the relevant Appendix.

3. Acceptance of Terms

- 3.1. The Conditions set out the terms on which We provide You with the Services. The Conditions shall apply to, and be integrated into, all Contracts and by using the Services You accept the Conditions.

- 3.2. All other terms and conditions (other than those which are agreed in writing between us) are excluded to the fullest extent permitted by law.
- 3.3. We reserve the right to review and revise the Conditions from time to time without prior notice.
- 3.4. Subject to clause 3.3, continued use of the Services following any revision of the Conditions is deemed to be acceptance of the modifications or amendments to the Conditions and You agree to be bound by such changes.

4. Security

- 4.1. You are responsible for the security and proper use of any and all Passcodes and must take all necessary steps to ensure that they are kept confidential, used properly and not disclosed to unauthorised people. You must inform Us immediately if You have any reason to believe that any Passcode has become compromised or known to someone not authorised to use it or if any Passcode is being or is likely to be used in an unauthorised way or of any other breach of security. We are not liable for any loss of confidentiality or for any damages arising from your failure to comply with these Conditions. You will be entirely liable for all activities conducted and charges incurred under your Passcodes whether authorised by You or not. If You forget any Passcode, You should contact Us and subject to You satisfying certain security checks, You will be given a new Passcode to enable You to use the Services. You may change your Passcode and registration details at any time by contacting Us.

5. The Services

- 5.1. The Services shall be as described in the Quote and in such other material as We provide to You from time to time. We reserve the right at any time and from time to time to amend, improve, correct, discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice and You agree that We shall not be liable to You or to any third party for any such modification, suspension, or discontinuance. We will restore the Service as soon as reasonably practicable after temporary suspension.
- 5.2. We shall use Our reasonable endeavours to ensure that the Servers and the Data contained therein are safeguarded from damage, accident, fire, theft, and unauthorised use

6. Obligations of the Client

The Client agrees that it shall:

- 6.1. Immediately notify Us if it becomes aware of any unauthorised use of all or any of the Services and/or Servers.
- 6.2. Not use the Services and/or Servers for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (which shall include without limit any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, threatening, harassing, tortious, indecent, libellous, menacing, or defamatory or which breaches the rights (including without limit IPR) of any third party or which is or encourages a criminal act or contains any virus, worm, Trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Client's country or any other place where the results of such purpose or such material can be accessed;
- 6.3. Not use the Services and/or Servers in breach of the rights (including without limit IPR) of images and photos. You should only upload photos You took, a picture You painted, images You created,

or your business's logo etc. and you are comfortable that your recipients will not find your image offensive.

- 6.4. Not use the Services and/or Servers for the publication, linking to, issue or display of any material which in the absolute discretion of Us may harm Us or any of Our clients or bring Us into disrepute or may call into question any action taken by Us on the Client's behalf.
- 6.5. Not use the Services and/or Servers in breach of good Netiquette practices.
- 6.6. Ensure that it has all necessary consents, permissions, and licences to make use of the Services including without limit registration under the Data Protection Legislation.
- 6.7. Not provide any technical or other information obtained from Us and/or relating to the Services or the Contract to any person, company, firm, or government which the Client knows or ought reasonably to be aware may directly or indirectly lead to a breach of any English law or regulation.
- 6.8. Not, in breach of good Netiquette practices, use any service provided by any third party (including without limit an Internet website and/or email) for the publication, linking to, issue or display of any material which refers to an Internet website maintained by Us or any other services offered by Us from time to time.
- 6.9. We monitor the content of emails created by the Client and may at Our discretion immediately and without notice to the Client suspend the Service if it considers in its reasonable opinion that the Client is in breach of any clause in these terms and conditions and no refund of the Charges to the Client will be made. We accept no responsibility or liability to the Client for any direct or indirect loss or damage that may arise under this clause.
- 6.10. Ensure that all material or data uploaded to Our Servers by the Client is checked for viruses, Trojans, worms, logic bombs or other material which contains harmful code.
- 6.11. Keep backups of all Data hosted by Us on any list operated by the Client.
- 6.12. Keep its password and other access details for use with the Services confidential and restricted to those members of staff who need to know such details and shall ensure all such staff are aware of the confidential nature of such information and treat it accordingly. The Client shall notify Us immediately if it believes that such information is no longer secret. The Client is solely responsible for all activities that occur under the Client's password or account. The Client will not permit any person to access the Services for any unauthorised purpose that would constitute a breach of these Terms.
- 6.13. Promptly notify Us of any change to its communication address and the Client acknowledges that We shall not be liable for any costs, damages, or loss which the Client may suffer or incur as a result of failure to notify such changes to Us; and
- 6.14. Not reverse engineer, de-code or in any way disassemble any software provided by Us in relation to the provision of the Services. The Client acknowledges that in order to make proper use of the Services it has a basic knowledge of how the Internet functions and what types of use are and are not acceptable. The Client acknowledges that We shall have no obligation to: a) manipulate any material which the Client wishes and/or does post on any website it operates or any communication which it issues or sends in connection with any of the Services; or b) validate or vet such material for usability, legality, content, or correctness.

7. Prohibited Use

- 7.1. You shall not send email with an invalid "From:" or "Reply-to:" address. All messages sent to Your list must contain valid email addresses and You must be responsive to all replies from members of Your list, including unsubscribe requests. All list messages must include opt out (unsubscribe) instructions in order that members can opt themselves out from such list. You may not refuse or ignore opt out requests from members of Your list. List owners should respond to member requests for manual removal from the list with courtesy and timeliness. You may not use the Services for one-time mailings to a list of members after which You substantially delete the membership and create a new list. Your membership must be a static, permanent list to which You add or delete new members and/or members opt in (subscribe) or opt out themselves in the ordinary course.
- 7.2. You may not use the Services to send unsolicited email ("spam"), commercial or non-commercial. Your email will be considered unsolicited if your membership addresses are not based on consent or other lawful bases as described in [APPENDIX 6 – GDPR at a glance](#): or [The ICO lawful-basis-for-processing](#). If your email addresses came from harvesting or were compiled by any other method contravening [The ICO lawful-basis-for-processing](#) or other laws relevant in the legal jurisdiction you are sending to, for the purposes of this Agreement, those emails will be considered unsolicited email ("spam"). If We receive complaints that You are sending unsolicited commercial or non-commercial email ("spamming"), in addition to other rights that We may have under these Conditions or under applicable law, We may, at Our sole discretion, suspend Your Service pending a reconfirmation of Your entire email list membership. There is no reduction or refund of fees during any period of suspension. This reconfirmation may be carried out by Us in any reasonable manner We determine, in Our sole discretion, including without limit, sending an email to all Your list members requiring confirmation of their wish to continue their subscription to such list.
- 7.3. If We determine in Our sole discretion that You have been spamming, in addition to any other rights under these Conditions or under applicable law, (i) We may bring an action in any court of competent jurisdiction to stop such activity, it being understood that such activity may cause irreparable harm to Us which may not be fully compensated by monetary damages and (ii) We may recover from the Client monetary losses caused to Us by such activity in an amount equal to (a) £500 for each such item of unsolicited email which the Client has sent to each separate and identifiable email address in violation of this Rule, which amount the parties agree is a fair and reasonable estimate of Our losses which would be occasioned by such violation; or (b) if We can establish a greater amount of monetary loss, the amount of such actual monetary loss suffered by Us as a result of such violation including, but not limited to, any damage or loss (including legal fees) resulting from any claim made against Us as a result of Client's conduct in violation of this Rule. In addition to the foregoing, the Client shall be responsible for costs incurred by Us in bringing such actions, including legal fees.
- 7.4. We monitor the content of emails created by the Client and may at Our discretion immediately and without notice to the Client suspend the Services if We consider in Our reasonable opinion that the Client is in breach of any of the provisions of the above paragraph 7 and no refund of payments to Us will be made. We accept no responsibility or liability to the Client for any direct or indirect loss or damage that may arise under this paragraph 7.4.
- 7.5. If We receive a direct complaint by letter or by email to our abuse@ or postmaster@ or complaints@ mailboxes against email campaign originating from the Client account, We may immediately suspend and/or terminate the Client's service for violation of any provision of this agreement, upon verbal or written notice, which notice may be provided by voicemail or E-mail. Prior to suspension or termination, We will attempt to work with our clients to cure violations of any prohibited use and ensure that there is no re-occurrence; however, We reserve the right to

suspend or terminate based on a first offense. There is no reduction or refund of fees during any period of suspension. We reserve the right to charge fees arising from management or handling of complaints related to alleged violations of prohibited use.

8. Price

- 8.1. The current price payable for the Services shall be confirmed at the time You request Us to provide any of the Services. Refunds will be given at Our discretion. We shall be entitled to vary Our prices from time to time. However, We shall give You at least [five weeks] notice of such variation (except for annual index related variations) and if You are not satisfied with such variation then You will be entitled to terminate the Contract by giving Us at least 4 weeks written notice within one week of the date of the variation notice falling which You shall be deemed to have agreed to the variation.

All prices quoted to the Client for the provision of Services by Us are exclusive of any value added tax for which the Client may be additionally liable at the applicable rate.

Subscription services are mostly based on an advanced monthly payment; however, some additional services may be charged separately and, in some cases, may have to be paid in advance.

The Price for Subscription services shall on each April increase by the greater of (1) the Index; (2) RPI plus 1%.

If, for any reason, there is contention relating to payment for the Services, We reserve the right, in any case, to charge an administration fee of £40 to cover costs. In the event of erroneous payment, We reserve the right, in any case, to charge an administration fee of £25 to cover costs.

9. Payment

- 9.1. The price and all other amounts due under the Contract shall be paid by the Client by the due date and in the GBP. Clear funds must be received by Us by the renewal date of the Service regardless of the subscription frequency.

Payment shall only be deemed received by Us upon receipt of cleared funds. Payment shall be made in full without any abatement, set off or deduction. It is of the essence of the Contract that the Contract price and all other amounts due from the Client under the Contract are paid on time.

Any payments made through foreign bank and or in foreign currency must be made in full in GBP. Any shortfall due to bank charges will be deemed as underpayment.

You shall be responsible for any and all expenses incurred by Us in recovering overdue amounts and shall pay interest on them (before and after judgment) at annual rate of 4% above the Bank of England base rate accruing on a daily basis and being compounded monthly until payment is made in full.

Failure to settle all amounts by the due date may result in withholding of further Services and/or suspension of existing Services until payment has been received in full.

In the event of early termination, no compensation or refund will be paid for any advanced payments made.

Monthly payments must be paid by Direct Debit or Continuous Card Authority.

If, for any reason, the Direct Debit mandate is cancelled by You without notice to Us at least 12 days before the next payment is due, We reserve the right, in any case, to charge an administration fee of £25 to cover unpaid Direct Debit costs.

10. Intellectual Property

- 10.1. All IPR relating to the Services provided by Us are and shall remain the property of Us. All rights in the design and arrangement of the Site, text and graphics and all software compilations, underlying source code, and all other material on the Site are reserved to Us or Our licensors. Except as expressly provided below, nothing contained in these Conditions or on the Site relating to use shall be construed as conferring any licence or right, by implication, estoppel or otherwise, under copyright or other IPR. Forfront and all other names, images, pictures, logos, and icons identifying Forfront or its services are the property of Forfront in the UK and other countries. Other product and company names mentioned in these Conditions or the Quote may be trademarks of their respective owners.
- 10.2. The Client will not make any representation or do any act which may be taken to indicate it has any right, title, or interest in or to the ownership or use of any of the IPR except under the terms of the Contract.
- 10.3. If the Client becomes aware that any other person, firm, or company alleges that any IPR is invalid or that use thereof infringes any rights of any other party or is otherwise attacked the Client shall immediately give Us full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof. We shall have the conduct of all proceedings relating to the IPR and shall in its sole discretion decide what action if any to take in respect of any infringement or alleged infringement of the IPR or passing off or any other claim or counterclaim brought or threatened in respect of the use or registration of the IPR. The Client shall not be entitled to bring any action relating to the IPR in its own name but shall assist Us in any such actions if requested.
- 10.4. The above obligations as to the IPR shall remain in full force and effect notwithstanding any termination of the Contract.

11. Data, Data Protection, GDPR

- 11.1. The Client is the Data controller in respect of any personal data that We process in the course of providing Services. The personal data is derived from Data provided by the Client and is not checked or monitored by Us and, accordingly, We have no liability or responsibility whatsoever howsoever arising directly or indirectly to the Client for the accuracy, contents or use of such personal data under this paragraph 11.1;
- 11.2. We warrant that We will not disclose any personal data to any business, organisation or individual without the Client's prior written consent, unless required by law.
- 11.3. We have no responsibility or liability for the storage or back up of Client Data and although backups shall be carried out at regular intervals, the Client shall remain entirely responsible for making its own back-up of such Data if required. We shall incur no direct or indirect liability to the Client for any loss or damage, however caused, arising from any loss of Data arising under this clause.
- 11.4. We shall not use any Client Data except in connection with the provision of Services to the Client as set out in these Conditions or as required by law, regulation or regulatory body or any court of competent jurisdiction. The Client shall always comply with its obligations under all applicable Data Protection Legislation.

12. Indemnity

- 12.1. The Client agrees to indemnify and keep Us, Our subsidiaries, affiliates, officers, partners, and employees indemnified from and against all actions, demands, costs, losses, penalties, damages, liability, claims and expenses (including but not limited to reasonable legal fees) whatsoever arising from the Client's breach of the Contract, the Client's use or misuse of the Services, any claims by third parties as to ownership or other rights arising in any way by the Client infringing (whether innocently or knowingly) third party rights (including without limit IPR).

13. Disclaimer and limitation of liability

(The client's attention is particularly drawn to the provisions of this condition)

- 13.1. Nothing in the Contract or these Conditions shall exclude or limit the Our liability for death or personal injury resulting from its negligence or fraudulent misrepresentation nor affect the statutory rights of consumers.
- 13.2. To the fullest extent permitted by law the Site and its contents are provided by Us on an "as is" and "as available" basis and no representations or warranties (expressed or implied) of any kind are made (and they are expressly disclaimed) with respect to the Services, the Site or its contents including, without limit, warranties of merchantability and fitness for a particular purpose. Further, We do not represent or warrant that: (i) the Services will meet Your requirements; (ii) the Services will be uninterrupted, timely, secure, or error-free; (iii) any results obtained from using the Services will be accurate, complete, or current.
- 13.3. You acknowledge that the allocation of risk in the Contract reflects the price paid for the Services and that it is not within Our control how or for what purposes the Services are used. If any exclusion in this paragraph 14 is held to be invalid and We become liable for loss or damage that may lawfully be limited, then such liability shall be limited to the amount paid by You for the Services.
- 13.4. We shall have no liability to the Client for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the Client or on its behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by the Client or on its behalf.
- 13.5. We are not responsible for any delay, malfunction, non-performance and/or other degradation of performance of any of the Services caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by the Client whether or not beyond the Services already supplied. We reserve the right to raise additional charges for any work so arising.
- 13.6. If any Services are or become unavailable, then We will use reasonable endeavours to repair and reinstate the Service within 24 hours of detection depending on the severity of the failure. If failure is caused by the Client or any agent of the Client to whom access to Servers was given, then the Client shall pay all costs to reinstate and/or repair the Server. Where such unavailability is due to the negligent failure of Us to deal with circumstances within Our control and is for more than a total of 24 hours in any 30-day period or for any 6 consecutive hour period then We will at Our discretion either pay to You compensation limited to a refund of the fee paid by You for the unavailable Services or provide You with a credit up to the same amount.
- 13.7. In no event shall either party nor anyone else who has been involved in the creation, production or supply of the Services be liable to the other party or any other person for any loss in contract,

tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof by reason of or in connection with the Contract or the Services for any:

- 13.7.1. economic loss of any kind whatsoever, or
 - 13.7.2. loss of profit, business contracts, revenues, or anticipated savings, or
 - 13.7.3. damage to reputation or goodwill, or (iv) loss resulting from any claim made by any third party, or
 - 13.7.4. special, indirect, or consequential loss or damage of any nature whatsoever, some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for consequential or incidental damages and therefore the above may not apply to You.
- 13.8. If We are prevented or delayed in or from performing any of Our obligations under the Conditions or the Contract due to circumstances beyond Our control such as but not limited to governmental acts, war, riots, strikes or trade disputes (including by and with Our own employees), technical failure, general availability of the Internet, power failure, communications failure, weather, flood, fire, or explosion, natural or local emergency We shall not be liable for this.

14. Privacy and Confidentiality

- 14.1. For quality control purposes your telephone conversations with Our staff may be recorded from time to time. The information You provide to Us will be stored on computer. We are committed to protecting Your privacy. We and any of Our associated companies may use the information You provide Us to provide a more personalised service and to tell You about changes in Our and their service or any new services which We think You will find valuable. If You object to any of these uses at any time, then please inform Us by writing to Us at the address set out in the "Contact Us" section at the Site. We may also use such information where and to the extent of any requirement to comply with any applicable law, legal process or to enforce any of these Conditions. We will not monitor, edit, or disclose the contents of any private communications transmitted via the Servers unless required to do so by law or in the good faith belief that such action is necessary to conform or comply with applicable law, to protect and defend the rights and/or property of Forfront or to protect the personal safety of any of Our clients or the public.
- 14.2. Subject to paragraphs 15.1 and 15.3, neither party shall disclose at any time during the term of the Contract or for a period of ten (10) years after termination, to any third party any information relating to the other party including information relating to: (a) IPR, software, materials, products, systems, operations, processes, Plans or intentions, product information, know-how and market opportunities; and (b) business, identity and affairs and the business, identity and affairs of its directors, officers, employees, clients and potential clients or personal data relating to clients, suppliers, agents, or subcontractors and the like, which comes into the possession of the other party as a result of or in connection with the performance of the Contract.
- 14.3. The provisions of paragraph 15.1 shall not apply to any information which (a) is in or enters the public domain other than by a breach of paragraph 15.1; or (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of its receipt in connection with the Contract; or (c) is obtained from a third party who is lawfully authorised to disclose such information and is provided to the receiving party without any obligation of confidentiality; or (d) is authorised in advance for release by the disclosing party.

15. Termination of Contract

15.1. The Contract may be terminated:

- 15.1.1. immediately by written notice from Us if the Client fails to pay any sums due hereunder within 14 days of their due date.
- 15.1.2. immediately by written notice by either party to the other if the other commits any material breach of the Contract and which (in the case of a breach capable of being remedied) has not been remedied within a reasonable time period as may be specified in a formal request in writing or by electronic email to remedy the same.
- 15.1.3. immediately by written notice from Us if the Client commits any material breach of the Contract which may impact the Services or Servers of Forfront or Our ability to provide the Services. For the avoidance of doubt, any spam complaints which result in blocklisting of one or more of Forfront's IP range will be considered as a material breach of contract and no refund of the Charges to the Client will be made. We accept no responsibility or liability to the Client for any direct or indirect loss or damage that may arise under this clause.
- 15.1.4. immediately by written notice by either party to the other if the other shall convene a meeting with its creditors or if a proposal shall be made for a voluntary arrangement within part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme of arrangement with (or the assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver or administrative receiver or similar officer is appointed in respect of all or any of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or any other steps are taken for the winding up or the making of an administrative order (otherwise than for the purposes of a solvent amalgamation or reconstruction).
- 15.2. In the event that We are entitled to terminate the Contract for any reason then We shall in the alternative at Our sole discretion be entitled to suspend the Services for such period as We shall determine. Upon termination or expiry of the Contract all amounts payable by the Client to Us for the full duration of the Contract, shall become immediately due and We shall be entitled to immediately cease the provision of the Services.
- 15.3. The Client is responsible for cancelling all direct debits in favour of Us upon the termination of the Contract.

16. Account Termination

- 16.1. Upon cancellation by You or expiry of the Contract for the Services, your account with Us will be deactivated and Your database will be removed from Our production Servers. It will be archived and stored safely for a limited time before being securely deleted in line with our data protection policies. For Clients who used a Custom Domain, the domain will be de-registered and will no longer be available.
- 16.2. If You change Your mind in the future and wish to use Our Services again, You can sign up for a new account or recover Your expired/cancelled account by paying the appropriate fees.
- 16.3. In the case that You wish to recover Your data, subject to it being available pre deletion, upon payment of a reactivation fee and the subscription fees due from the date You stopped paying till the current date, We can de-archive and restore Your database. Please be advised that Your

Sending Domain may not be available to use again, and it will be subject to availability from the domain registrar as well as a setup fee.

17. Foreign Countries and English Jurisdiction

- 17.1. The Site may contain references or cross references to services that are not available in every country. We do not represent that all Services and content, materials and services on the Site are appropriate or available for use in all geographic locations and accessing such from certain locations may be illegal and prohibited. Your access to the content, materials, and services on the Site from such locations is at Your own initiative and We are not responsible for Your compliance with local laws or other applicable laws. You will not access the foregoing if prohibited by law. Any translation of these Conditions into a language other than English is for the convenience of the Client only and it is agreed that the English language version of these Conditions shall be relied on by the parties and shall prevail in the event of any differences.
- 17.2. Your use of the Site and the Contract will be governed by, and construed in accordance with, English Law and will be deemed to have occurred and be made in England. Any disputes arising out of or in connection with the Contract or any aspect of the Site will be exclusively resolved in the courts of England and Wales which shall have exclusive jurisdiction.

18. Assignment

- 18.1. The Client shall not share, re-sell or attempt to share or re-sell the Services, transfer, or attempt to assign or transfer the Contract or permit any third party to use and/or access any of the Services for any purpose, without Our prior written consent.
- 18.2. We may at any time assign, transfer, charge, sub-contract, or deal in any other matter with all or any of its rights or obligations under the Contract.

19. General

- 19.1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.2. Any notice or other communication to be given by a party under the Contract must be in writing and must be given by delivery at or sending by first class post or by email or facsimile transmission to the last known postal, email address or relevant telecommunications number of the other party. A Notice shall be deemed to have been received when in the ordinary course of the means of transmission it would be received by the addressee. To prove the giving of a notice it shall be sufficient to show it was despatched. A notice shall take effect from the sooner of its actual or deemed receipt by the addressee.
- 19.3. Any termination of this Agreement shall be without prejudice to any other rights or remedies which a party may be entitled to hereunder or at law and shall not affect any previous rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into continue in force upon or after such termination.
- 19.4. If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be

deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

- 19.5. Nothing in the Contract is intended to, or shall operate to, create a partnership, or joint venture between the parties, or to authorise any party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19.6. Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.
- 19.7. We may transfer Our rights and obligations under these Conditions to another organisation, and We will always notify You in writing if this happens, but this will not affect Your rights or Our obligations under these Conditions.
- 19.8. These Conditions are between You and Us. A person who is not a party to these Conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.
- 19.9. Each of the clauses and paragraphs of these Conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

APPENDIX 1 - e-shot™ Annual Plan

I. DEFINITIONS

- a. "In-Term Charge" means the annual fee charge for the term of the Contract.

II. DESCRIPTION OF PLAN

- a. The e-shot™ Annual Plan is an annual subscription plan which is defined by the number of subscribers (Your contact list) allowance and a monthly send limit.

III. TERM

- a. Annual - The minimum period for the provision of the Services is 12 months from the date the Services are first made available to the Client (the 'Initial Term'). The contract shall continue thereafter for another term of 12 months (being a 'Renewed Term') unless a written termination notice was served a minimum of one month prior to the expiry date.
- b. At any time during the Term, either party can serve a written notice on the other party terminating the Contract for the Service at the end of the Term. For the avoidance of doubt, any payment made prior to or during the Term will not be refundable to the Client.

IV. PAYMENT

- a. This Plan must be paid annually in advance.

V. PAYMENT METHOD

- a. Payments can be made by Direct Debit, Continuous Card Authority, Bank Transfer (BACS), Corporate Credit Card or Debit card. Payment by Corporate Credit Card may incur a surcharge.

VI. UPGRADE and MID-TERM CHANGES to PLAN

- a. Any variation of the Contract will automatically extend the Contract for a further 12 months from the date of variation and the new annual fee, minus the pro-rated amount pre-paid at the outset of the contract.

APPENDIX 2 – e-shot™ Annual Plan (paid monthly)

I. DEFINITIONS

- a. "In-Term Charge" means the annual fee charge for the term of the Contract.

II. DESCRIPTION OF PLAN

- a. The e-shot™ Annual Plan is an annual subscription plan which is defined by the number of subscribers (Your contact list) allowance and a monthly send limit.

III. TERM

- a. Annual - The minimum period for the provision of the Services is 12 months from the date the Services are first made available to the Client (the 'Initial Term'). The contract shall continue thereafter for another term of 12 months (being a 'Renewed Term') unless a written termination notice was served a minimum of one month prior to the expiry date.
- b. At any time during the Term, either party can serve a written notice on the other party terminating the Contract for the Service at the end of the Term. For the avoidance of doubt, any payment made prior to or during the Term will not be refundable to the Client.

IV. PAYMENT

- a. This Plan must be paid monthly in advance.
- b. Failure to pay by the due date may result in termination of the Contract. Upon termination or expiry of the Contract all amounts payable by the Client to Us to the end of the Term shall become immediately due.

V. PAYMENT METHOD

- a. Payments can be made by Direct Debit or Continuous Card Authority. Payment by Corporate Credit Card may incur a surcharge.

VI. UPGRADE and MID-TERM CHANGES to PLAN

- a. Any variation of the Contract will automatically extend the Contract for a further 12 months from the date of variation and the new annual fee, minus the pro-rated amount pre-paid at the outset of the contract.

APPENDIX 3 – e-shot™ One Month Rolling Plan

I. DEFINITIONS

- a. "In-Term Charge" means the monthly fee charge during the term of the Contract.

II. DESCRIPTION OF PLAN

- a. The e-shot™ One Month Rolling Plan is a monthly subscription plan which is defined by the number of subscribers (Your contact list) allowance and a monthly send limit.

III. TERM

- a. One Month Rolling Plan – The minimum period for the provision of the Services is one month from the date the Services are first made available to the Client (the 'Initial Month Term') and shall continue thereafter for further monthly periods (each being a 'Renewed Month Term') unless and until either party serves at least one month's written notice of termination on the other party prior to the expiry of the Renewed Month Term, such notice to expire at the end of the following Renewed Month Term.
- b. At any time during the Initial Month Term, either party can serve a written notice on the other party terminating the Contract for the Service at the end of the Initial Month Term. For the avoidance of doubt, any payment made prior to or during the Initial Month Term will not be refundable to the Client.

IV. PAYMENT

- a. In respect of the One Month Rolling Plan, payment is due monthly in advance.

V. PAYMENT METHOD

- a. Payments can be made by Direct Debit or Continuous Card Authority. Payment by Corporate Credit Card may incur a surcharge.

APPENDIX 4 – e-shot™ Hybrid plan (Credits)

I. DEFINITIONS

- a. "In-Term Charge" means the annual or monthly fee charge during the term of the Contract.

II. DESCRIPTION OF PLAN

- a. The e-shot™ Hybrid Plan is an annual subscription plan which is defined by the number of subscribers (Your contact list) allowance and the number of credits You purchase.

III. TERM

- a. Annual - The minimum period for the provision of the Services is 12 months from the date the Services are first made available to the Client (the 'Initial Term'). The contract shall continue thereafter for another term of 12 months (being a 'Renewed Term') unless a written termination notice was served a minimum of one month prior to the expiry date.
- b. At any time during the Term, either party can serve a written notice on the other party terminating the Contract for the Service at the end of the Term. For the avoidance of doubt, any payment made prior to or during the Term will not be refundable to the Client.
- c. All credits available at Your account will automatically expire unless the monthly rolling fee is paid as per payment terms.

IV. PAYMENT

- a. This Plan must be paid annually in advance.
- b. Credits can be purchased at any time.

V. PAYMENT

- a. Payments can be made by Direct Debit, Continuous Card Authority, Bank Transfer (BACS), Corporate Credit Card or Debit card. Payment by Corporate Credit Card may incur a surcharge.

VI. UPGRADE and MID-TERM CHANGES to PLAN

- a. Any variation of the Contract will automatically extend the Contract for a further 12 months from the date of variation and the new annual fee, minus the pro-rated amount pre-paid at the outset of the contract, must be paid in advance by BACS, Cheque, Corporate Credit Card or Debit card. Payment by Corporate Credit Card may incur a surcharge.

APPENDIX 5 - Definitions of terms and services:

e-shot™ versions – *e-shot email, e-shot auto and e-shot ultimate.*

Contacts - The unique contact records, sometimes referred to as subscribers, You can hold in your account. Contacts can have several identifying fields such as first name last name, etc. but each contact must have a valid email address which is unique. A contact can be a member of more than one group but will always be counted as one.

Container size - Contacts Limit - The limit of the number of unique Contacts in your account, sometimes referred to as Subscribers.

Monthly send limit - The limit on the number of emails You can send that is included in your monthly allowance. The emails You send up to your monthly allowance have been included in the fixed monthly cost outlined within your Quote, any emails sent in addition to this number will be charged separately at the end of the month at the rate of £0.01 per email. e-shot™ credits – pre-purchased credits You buy; one credit for each email You send.

VESC - Virtual e-shot™ Sending Client – is a custom domain which is used uniquely for your company. We recommend using a domain name very similar to your main domain name which will instantly be associated with the name of your company, e.g., if your company and domain name is company.com We recommend using something like company-mail.com. Using this method ensures brand recognition, brand awareness and consistency in your message throughout all your communications

Sending Domain or Custom Domain – used in VESC, it is the URL referenced within your mailings. It is used in the tracking URL for your monitored links, the link for your included imagery and the links for opt-out, 'forward to friend' and 'view in a web browser'. It is also used for the 'from address' and email server authentication in the DKIM and SPF records (part of the anti-spam strategy). This enhanced Service offers the registration of your own preferred Domain Name to be used ONLY for your campaigns.

VSG – Virtual Sending Group - is a range of IP addresses that makes up a virtual mail server. When emails are being sent to external mail servers, especially the major ISPs (Yahoo, Gmail, Outlook), they check the 'reputation' of the sending server by looking up the server's IP address. VSG uses an IP pool to segregate email traffic for better deliverability. Can be shared or dedicated.

Dedicated IP - Additional IP address to be added to your VSG.

Branded Profile - customised web pages, branded to You based on your corporate identity and your logo for your subscription page, 'manage profile' and 'forward to friend' pages. It also enables these pages to include a choice of newsgroups for your subscribers to choose. e.g., Couples' holidays, Singles Holidays, etc.

Additional data fields (Custom fields) - every account includes 7 data fields as standard: Email address, Salutation, First name, Last name, Company, Telephone and URN (Unique Reference Number). However, we can increase the number of data fields available to You which can be used to customise your messages or reports. e.g., Gender, Post Code, etc.

Survey system - a collection of web pages designed to enable customised customer surveys and is integrated to the client's e-shot™ account which means that an email message can be sent to invite subscribers to take part in the survey where their actions are automatically recorded to their transaction records.

Events system - a collection of web pages designed to enable event registration pages which are integrated to the client's e-shot™ account. This means that an email message can be sent to invite subscribers to an event and their actions are automatically recorded to their transaction records.

Landing Page system - one or more web pages designed to capture all the responders to a campaign by directing them to one specific URL which will normally relate to a special offer campaign. The page is integrated to the client's e-shot™ account which means that an email message can be sent to invite subscribers to benefit from a special offer where their actions are automatically recorded to their transaction records.

Newsletter system - a collection of web pages which automatically store the e-shot™ campaigns and create a newsletter archive mini site.

API - Application Programming Interface - a set of functions and procedures that allow the creation of applications which access the features or data of an operating system, application, or other service. e-shot™ included a free to use API limited by fair usage policy. See APPENDIX 5 - Acceptable Use Policy.

General Definitions:

URL - A Uniform Resource Locator, also known as web address e.g., <http://www.example.com/path/to/name>

IP - Internet Protocol

MTA – Mail transfer Agent

DKIM – Domain Keys Identified Mail is a method for associating a domain name to an email for the purpose of authenticating who has the authority to send mail on behalf of a specific domain.

SPF - Sender Policy Framework, is an e-mail validation system designed to prevent e-mail spam by allowing administrators to specify which IP or hosts are allowed to send mail from a given domain.

DMARC – Domain-based Message Authentication - Reporting & Conformance is a technical specification created by a group of organisations that want to help reduce the potential for email-based abuse by solving a couple of long-standing operational, deployment, and reporting issues related to email authentication protocols. A DMARC policy allows a sender to indicate that their emails are protected by SPF and/or DKIM and tells a receiver what to do if neither of those authentication methods passes, such as junk or reject the message. DMARC removes guesswork from the receiver's handling of these failed messages, limiting or eliminating the user's exposure to potentially fraudulent and harmful messages. DMARC also provides a way for the email receiver to report back to the sender about messages that pass and/or fail DMARC evaluation.

SPAM Traps – email addresses created by Anti-SPAM organisations or old inboxes that ISPs reactivate specifically to trap spammers. These addresses have never been registered to receive email, therefore any mail that lands in the trap inbox is labelled as SPAM. Anti-SPAM organisations deliberately 'plant' SPAM trap email addresses on website; these addresses can only find their way to a contact list by Web scraping or web harvesting which means that there can be no lawful basis for sending emails to this address, not even Legitimate Interest!

The most severe of SPAM traps is Spamhaus trap!

APPENDIX 6 – GDPR at a glance:

Lawful basis for processing mail:

Consent

- The GDPR sets a high standard for consent. But you often will not need consent. If consent is difficult, look for a different lawful basis. Consent means offering individuals real choice and control. Genuine consent should put individuals in charge, build trust and engagement, and enhance your reputation.
- Check your consent practices and your existing consents. Refresh your consents if they do not meet the GDPR standard.
- Consent requires a positive opt-in. Do not use pre-ticked boxes or any other method of default consent.
- Explicit consent requires a very clear and specific statement of consent.
- Keep your consent requests separate from other terms and conditions.
- Be specific and ‘granular’ so that you get separate consent for separate things. Vague or blanket consent is not enough.
- Be clear and concise.
- Name any third-party controllers who will rely on the consent.
- Make it easy for people to withdraw consent and tell them how.
- Keep evidence of consent – who, when, how, and what you told people.
- Keep consent under review and refresh it if anything changes.
- Avoid making consent to processing a precondition of a service.
- Public authorities and employers will need to take extra care to show that consent is freely given and should avoid over-reliance on consent.

Legitimate interests

- Legitimate interest is the most flexible lawful basis for processing, but you cannot assume it will always be the most appropriate.
- It is likely to be most appropriate where you use people’s data in ways they would reasonably expect and which have a minimal privacy impact, or where there is a compelling justification for the processing.
- If you choose to rely on legitimate interests, you are taking on extra responsibility for considering and protecting people’s rights and interests.
- Public authorities can only rely on legitimate interests if they are processing for a legitimate reason other than performing their tasks as a public authority.
- There are three elements to the legitimate interest basis. It helps to think of this as a three-part test. You need to:
 - identify a legitimate interest.
 - show that the processing is necessary to achieve it; and
 - balance it against the individual’s interests, rights, and freedoms.
- The legitimate interests can be your own interests or the interests of third parties. They can include commercial interests, individual interests, or broader societal benefits.
- The processing must be necessary. If you can reasonably achieve the same result in another less intrusive way, legitimate interests will not apply.
- You must balance your interests against the individual’s. If they would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to override your legitimate interests.
- Keep a record of your legitimate interest assessment (LIA) to help you demonstrate compliance if required.
- You must include details of your legitimate interests in your privacy information

APPENDIX 7 - Acceptable Use Policy (AUP):

The acceptable use policy specifies the activities and behaviour acceptable by the users of Forfront products and services and e-shot™ products and services.

We will always act reasonably and are not obligated to terminate the Services if you are in breach of the AUP.

AUP for Deliverability:

Over a period of one calendar month:

- **Bounce Rate** should not be higher than five percent (**5%**)
- **Display Rate** should not be lower than eight percent (**8%**)
- **Complaints** should not be higher than tenth of a percent (**0.1%**)

Bounce Rate means: A message that is returned to the sender because it was not deliverable for whatever reason. Number of bounced emails out of the total of number sent.

Display Rate means: Where an email view/display was registered. e-shot™ registers view/display/open when an image is downloaded or a link in the email is clicked.

Complaints means: Complaints are the single most damaging factor to your sender reputation. Complaints are one of the main contributors to identify a sender as a spammer which will dramatically reduce deliverability. Complaints will affect the Sending IP (VSG) and the Sending Domain (VESC).

AUP for the use of API:

API means: Application Programming Interface - a set of functions and procedures that allow the creation of applications which access the features or data of an application, or other service.

Depending on your e-shot™ package, the API may be available to you as part of your annual subscription. You are however bound by our AUP to a maximum of 2,000 calls per hour. Should you exceed this limit, We will contact you to make you aware and enable you to reduce the calls. Should you continue to exceed the AUP limit We will charge a set fee of £50.00 plus £10.00 per 1,000 calls over the 2,000 per hour (in blocks of 1,000). Charges will be invoiced at the beginning of the month for the previous month.

Clients may request a report of their API call usage at the beginning of the month for the previous month.

AUP for Deleting Contacts:

Deleting contacts will permanently remove all their personal information from your database. This action cannot be undone.

You should delete contacts when they exercise their 'right to erasure' also known as the 'right to be forgotten' Under Article 17 of the UK GDPR.

You should NOT delete contacts that you have sent an email campaign to, or text for at least 30 days since the send date. This is to ensure that the recipient can interact with your campaign or opt out / unsubscribe.

You must offer your recipients the option to opt out / unsubscribe from your marketing communication and by deleting their record too soon you may be in breach of this policy as well as in a breach of PECR and GDPR.