



# **GENERAL TERMS AND CONDITIONS SPAMEXPERTS B.V.**



# **SPAMEXPERTS B.V.**

## **TERMS OF SERVICE AND END USER LICENSE AGREEMENT**

Please read carefully the following legally binding Agreement between SpamExperts and You for the Software and Services defined below. By choosing the "I accept the licensing terms" option or clicking the accept button that indicates that You agree to its terms, breaking the seal on the Software or Service package or installing, copying or otherwise using this Software or Service You acknowledge that You have read, understood, and agreed to be bound by the terms of this Agreement. If You do not agree with the terms of this Agreement, select the "No, I do not accept the licensing terms" option or click the button that indicates that You do not agree to its terms and do not install the Software or Service or, if You have received the Software or Service, promptly return it and the accompanying items (including ANY written materials and packaging) to Your supplier together with proof of purchase for a full refund. If You do not agree with any of the terms or conditions of this Agreement, You are not authorized to use the SpamExperts Software or Service for any purpose whatsoever. Also, by installing, copying or otherwise using Updates and/or Upgrades from SpamExperts You agree to be bound by any additional License terms that accompany such Updates and/or Upgrades. If You do not agree to the additional License terms that accompany such Updates and/or Upgrades, You may not install, copy or use such Updates and/or Upgrades. SpamExperts remains the right to change the Agreement without notification at any moment in time.

All SpamExperts Software and Services have been copyrighted for:

SpamExperts B.V.  
Oxfordlaan 70  
6229 EV Maastricht  
The Netherlands  
[www.spamexperts.com](http://www.spamexperts.com)

The unauthorized reproduction or unauthorized sale of the SpamExperts Software or Services, or parts thereof is liable to prosecution. Such conduct can be prosecuted under criminal or civil law and results in severe penalties and/or claims for damages.

### **1. DEFINITIONS**

- 'Computer' means where the Licensed Product is deployed: (i) on or called by an email server, Your computers that are capable of receiving mail from that server; (ii) on or called by an internet proxy or other gateway device, Your computers that are capable of connecting to that proxy; (iii) on a database, Your computers that are capable of retrieving data from that database; (iv) in any other manner to scan data, Your computers, workstations or other electronic devices that are capable of retrieving that data; and (v) on or called by a computer other than a Server, Your computer.
- 'Documentation' means any documentation provided to You by SpamExperts (whether electronic or printed) which accompanies the Products or Services.
- 'Agreement' means this SpamExperts agreement and the Schedule.
- 'Expiry Date' means such date as may be set out in the Schedule.
- 'Fee' means the Licensed Products Fee and the Support Fee (if applicable).

- 'License Term' means the License term set out in Clause 7 of this Agreement.
- 'Licensed Products' means all or each (as the context so allows) of those programs which are listed on the Schedule together with the Documentation and any of the Upgrades and Updates to those programs.
- 'Licensed Products Fee' means the sums payable by You in respect of a License to use the Licensed Products for the License Term.
- 'Maintenance' means collectively Upgrades and/or Updates (where applicable to the Licensed Product), and standard technical support or enhanced technical support if You have paid a Support Fee.
- 'Media' means objects on which data can be stored including without limitation CD-ROMs, tapes and floppy disks or other media containing the Software provided to You by SpamExperts.
- 'Product' means the Media and the Software.
- 'Schedule' means the schedule provided to You by SpamExperts which sets out certain details in relation to Your use of the Licensed Products from time to time and which forms part of this End-User License Agreement.
- 'Server' means a Computer upon which the Licensed Product is installed AND from which other Computers receive or retrieve data PROVIDED THAT a Computer is not a Server where it is a single Computer from which other Computers receive or retrieve data AND such data is solely generated by the Licensed Product.
- 'Server License' means the maximum number of Server processors (if any) that are permitted under the Schedule to run the Licensed Product at any time.
- 'Software' means any service, program or data file supplied to You by SpamExperts or its resellers, distributors or dealers, including any Upgrades, Virus Updates and Spam Updates supplied to You.
- 'SpamExperts' means SpamExperts B.V. and its subsidiaries, or, as the context so applies, any of them.
- 'Start Date' means such date as may be set out in the Schedule.
- 'Support Fee' means the sums payable by You in consideration of the provision by SpamExperts of enhanced support services, if applicable.
- 'Update' means an update to the library of spam identification rules made available to You by SpamExperts where one of the Licensed Products is an anti-spam product; an update to the library of virus identities made available to You by SpamExperts where one of the Licensed Products is an anti-virus product; and/or other updates to the software filters, including but not limited to an update to the IP address reputation libraries made available to You by SpamExperts.
- 'Upgrade' means any enhancement or improvement to the functionality of the Licensed Product (excluding Updates) made available to You by SpamExperts at its sole discretion from time to time but excluding any software and/or updates marketed and licensed by SpamExperts as a new version or new release of the Licensed Product.
- 'User' means an employee, consultant or other individual who uses a Computer which benefits from the Licensed Product licensed to You and
- 'Users' shall be construed accordingly.



- 'User Licenses' means the maximum number of Users as specified in the Schedule who are permitted to benefit from the Licensed Products.
- 'You' means the licensee and 'Your' means belonging to You or engaged by You or otherwise pertaining to You as the context so allows, whether on a temporary basis or otherwise.
- 'Your Internal Business Purpose' has the definition set out in Clause 3.1.1.

## 2. COPYRIGHT AND OWNERSHIP

**2.1** Once You have paid the Licensed Product Fee, You own only the Media on which the Software is recorded. You do not own the Software itself. The Software is the exclusive property of SpamExperts and its licensors. Further, You hereby acknowledge and agree that the right, title and interest in any modifications made by You to the Software or Documentation, as provided for below in Agreement, is retained by SpamExperts. The Software and the Documentation including all know-how, concepts, logic and specifications are proprietary products of SpamExperts and its licensors and are protected throughout the world by copyright and other intellectual property rights. No License, right or interest in SpamExperts' logos, or trademarks is granted to You under this Agreement and You hereby agree not to remove any product identification or notices of proprietary restrictions.

**2.2** You may use the Software for evaluation purposes only in a test environment without payment of a fee for a maximum of 21 days or such other duration as is specified by SpamExperts at its sole discretion. The Software is provided "AS IS" during such evaluation period and Clauses 3.1 and 4 of this End-User License Agreement do not apply to such evaluation.

## 3. GRANT OF LICENSE

In consideration of the payment of the Fee by You, SpamExperts hereby grants to You a non-exclusive right to use the Licensed Products and receive the Maintenance for the License Term subject to the terms and conditions contained within this Agreement.

### 3.1 You are permitted to:

**3.1.1** use the Licensed Products for Your internal business purpose, relating specifically to the integrity of Your documents, emails and other data ("Your Internal Business Purpose"). The aggregate number of Computers and Servers on which You may use the Licensed Products for Your Internal Business Purpose must not exceed the number of User Licenses. The number of Servers on which You may use the Licensed Products for Your Internal Business Purpose must not exceed the number of Server Licenses. The number of Users must not exceed the number of User Licenses. You are wholly responsible for the compliance by Users with this Agreement;

**3.1.2** if such facilities are provided as part of the Product, create diskette sets containing any part of the Licensed Products. The number of such diskette sets created must not exceed the number of User Licenses;

**3.1.3** except as provided in Clause 3.1.4 below, which relates only to the Documentation, make one copy of the Licensed Products or any part thereof for backup purposes provided that You reproduce SpamExperts's proprietary notices on any such backup copy of the Licensed Products. Such restriction shall not prevent You from backing up or archiving Your data;

**3.1.4** use, copy, reproduce in whole or in part, adapt and modify the Documentation for Your Internal Business Purpose only; and/or

3.1.5 transfer the Product and Your rights under this Agreement on a permanent basis to another person or entity, provided that You transfer the Media, all copies of the Software and Documentation and prior to such transfer (i) You pass full contact details for the recipient to SpamExperts; and (ii) You procure that the recipient agrees to be bound by the terms of this End-User License Agreement and notifies SpamExperts in writing of its agreement.

### 3.2 You are not permitted to:

3.2.1 use the Licensed Products for the provision of any service for the benefit of third parties unless You first acquire an application service provider License from SpamExperts;

3.2.2 modify or translate the Licensed Products except (i) as necessary to configure the Licensed Products using the menus, options and tools provided for such purposes and contained in the Software; (ii) as necessary to develop custom filters; and, (iii) in relation to the Documentation, except as necessary to produce and adapt manuals and/or other documentation for Your Internal Business Purpose;

3.2.3 reverse engineer, disassemble or decompile the Licensed Products or any portion thereof or otherwise attempt to derive or determine the source code or the logic therein except to the extent and for the express purposes authorized by applicable law;

3.2.4 transmit or provide access to the Licensed Products save as provided in the User License;

3.2.5 use Software other than the Licensed Products;

3.2.6 sub-license, rent, sell, lease, distribute or otherwise transfer the Licensed Products save as provided under this Agreement unless You obtain a separate License from SpamExperts for such purposes (for example, You may not embed the Licensed Products into another application and then distribute such to third parties unless You first acquire an OEM License from SpamExperts);

3.2.7 use the Licensed Products in or in association with safety critical applications such as, without limitation, medical systems, transport management systems, vehicle and power generation applications including but not limited to nuclear power applications; and/or

3.2.8 use the Licensed Products for the purposes of competing with SpamExperts, including without limitation competitive intelligence.

## 4. LIMITED WARRANTY AND REMEDY

4.1 SpamExperts warrants to You only that for a period of ninety (90) days from the date of purchase (the "Warranty Period"): (i) the Licensed Products will perform substantially in accordance with the Documentation provided that it is operated in accordance with the Documentation on the designated operating system(s) and (ii) the Documentation adequately describes the operation of the Licensed Products in all material respects.

4.2 If SpamExperts is notified in writing of a breach of this warranty during the Warranty Period, SpamExperts's entire liability and Your sole remedy shall be (at SpamExperts's option) to correct or replace the Licensed Products and/or its Documentation within a reasonable time or provide or authorize a refund of the Fee following the return of the Product accompanied by proof of purchase. Any items provided as replacement under the terms of this warranty will be warranted for the remainder of the original Warranty Period.

## 5. DISCLAIMER OF WARRANTIES

EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN CLAUSE 4 ABOVE, SPAMEXPERTS OR ANY OF ITS THIRD-PARTY LICENSORS AND SUPPLIERS OR THE CONTRIBUTORS OF CERTAIN INCLUDED SOFTWARE MAKES NO WARRANTIES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO THE PRODUCT INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF DEALING, USAGE OR TRADE. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTIONS. WITHOUT LIMITATION TO THE FOREGOING, SPAMEXPERTS DOES NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE ERROR FREE OR UNINTERRUPTED OR THAT DEFECTS IN THE PRODUCT WILL BE CORRECTED. SPAMEXPERTS DOES NOT WARRANT THAT THE LICENSED PRODUCTS WILL DETECT AND/OR CORRECTLY IDENTIFY AND/OR DISINFECT ALL THREATS, MALICIOUS PROGRAMS OR OTHER HARMFUL COMPONENTS.

## 6. LIMITATION OF LIABILITY

**6.1** YOU USE THE PRODUCT AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SPAMEXPERTS OR ANY OF ITS THIRD-PARTY LICENSORS AND SUPPLIERS OR THE CONTRIBUTORS OF CERTAIN INCLUDED SOFTWARE BE LIABLE TO YOU FOR OR TO THOSE CLAIMING THROUGH YOU FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF CONTRACTS, BUSINESS INTERRUPTIONS, LOSS OF OR CORRUPTION OF DATA HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT OR TORT, INCLUDING NEGLIGENCE, EVEN IF SPAMEXPERTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.2** IF ANY LIMITATION, EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS END-USER LICENSE AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND SPAMEXPERTS BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT MAY LAWFULLY BE LIMITED, SUCH LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE LOWER OF THE FEE PAID BY YOU AND SPAMEXPERTS'S LIST PRICE FOR THE PRODUCT.

## 7. LICENSE TERM

This Agreement is effective from the moment of acceptance as described in the first paragraph of this Agreement or from the Start Date, whichever date is earlier, and shall remain in force either until the Expiry Date specified in the Schedule, or until the stated term after date of purchase for the specific SpamExperts product has expired (and if no such date is specified, this Agreement shall continue in perpetuity, although Your right to use the Licensed Products is dependent upon Your payment of the Licensed Products Fee) or until terminated as provided below, whichever is the sooner. If You want to renew Your License You should contact Your supplier or SpamExperts. Your obligations under this Agreement in respect of the intellectual property and confidential information of SpamExperts shall survive any expiry or termination of this End-User License Agreement.

## 8. MAINTENANCE

**8.1** This Agreement entitles You to receive Maintenance for the License Term.

**8.2** You acknowledge and agree that the Licensed Products and SpamExperts may directly and remotely communicate for the purposes of, without limitation, verifying Your credentials, issuing reports and alerts such as automated support requests and alert messages, and to provide Maintenance.

## 9. OPTIONAL DATA SHARING

**9.1** If You do not choose to allow: (i) sharing of data with SpamExperts in order to improve threat protection; or (ii) remote assistance, this Clause 9 does not apply to You.

**9.2** If You choose to allow sharing of such supplementary data with SpamExperts or authorize SpamExperts to provide remote assistance, You have agreed to implement optional functions which allow the Licensed Products to provide SpamExperts with various data. While SpamExperts does not intend that such data include proprietary, confidential or user-identifiable data, by enabling this option You acknowledge that it may be possible for such data to include proprietary, confidential or user-identifiable data and You represent to SpamExperts that You have obtained all necessary permissions to share such data with SpamExperts

## 10. U.S. GOVERNMENT RESTRICTED RIGHTS

If You are an agency or other part of the U.S. Government, the Software and the Documentation are commercial computer software and commercial computer software documentation and their use, duplication and disclosure are subject to the terms of this Agreement per FAR 12.212 or DFARS 227.7202-3, as amended.

## 11. EXPORT CONTROL REQUIREMENTS

You hereby agree that You will use, disclose and/or transport the Product in accordance with any applicable export control laws and regulations and that You are solely responsible for fulfilling any applicable governmental requirements in connection with Your use, disclosure and/or transport of the Product and relating to any transfer under Clause 3.1.6 above. You agree to indemnify and hold SpamExperts harmless from and against any claim, loss, liability or damage suffered or incurred by SpamExperts resulting from or related to Your violation of this paragraph.

## 12. TERMINATIONS

You may terminate this Agreement at any time by destroying the Software and all copies of it. This Agreement and Your rights under it will also terminate immediately if: (i) You fail to pay the Fee in accordance with the agreed payment terms; or (ii) You fail to comply with any of the terms and conditions of this Agreement; or (iii) if You take or suffer any action on account of debt or are insolvent. On termination of this Agreement, You must destroy the Software and all copies of it. Within one month after the date of termination of this Agreement, You must supply written certification to SpamExperts of the destruction by You of the Software and all copies of all or any part of it. All fees paid or payable are non-refundable to the extent allowed by applicable law.

## 13. CONFIDENTIALITY

**13.1** The Software may include confidential information that is secret and valuable to SpamExperts and its licensors. You are not entitled to use or disclose that confidential information other than strictly in accordance with the terms of this Agreement. SpamExperts reserves the right to disclose details of the Agreement to third parties for publicity and promotional purposes and:-

**13.1.1** You expressly give SpamExperts permission to include and publish Your name and logo on lists of SpamExperts' customers for the Licensed Products; and

**13.1.2** You agree that SpamExperts may send emails to You to provide information and goods and services to You and to let You know about other goods and services in which You may be interested.

**13.2** If You do not wish to give SpamExperts permission under Clause 13.1.1 and/or 13.1.2, You must notify SpamExperts by the date no later than seven days after the License Start Date specifying which permission is not granted.

## 14. GENERAL

**14.1** Any reseller, distributor or dealer from whom You may have purchased the Product is not appointed or authorized by SpamExperts as its servant or agent. No such person has any authority, either express or implied, to enter into any contract or provide You with any representation, warranty or guarantee with or to You or to translate or modify this Agreement in any way on behalf of SpamExperts or otherwise to bind SpamExperts in any way whatsoever.

**14.2** You agree that SpamExperts may use any technical information provided by You, including without limitation information provided under the terms of the Optional Data Sharing in Clause 9, for its business purposes, including without limitation for product support and development.

**14.3** You agree to pay the Fee in full in accordance with an invoice from SpamExperts, or an authorized reseller, distributor, or dealer, if applicable. Unless otherwise stated, the Fee is exclusive of any federal, state, municipal or other governmental taxes, duties, Licenses, fees, excises or tariffs. You agree to pay such taxes or, in lieu thereof, to provide an exemption certificate acceptable to SpamExperts and the applicable authority. Invoices may provide for interest to be paid on any sums not remitted by the due date.

**14.4** You shall permit SpamExperts or an independent certified accountant appointed by SpamExperts access on written notice to Your premises and Your books of account and records at any time during normal business hours for the purpose of inspecting, auditing, verifying or monitoring the manner and performance of Your obligations under this Agreement including without limitation the payment of all applicable License fees. SpamExperts shall not be able to exercise this right more than once in each calendar year. If an audit reveals that You have underpaid fees to SpamExperts, You shall be invoiced for and shall pay to SpamExperts within 30 days of the date of invoice an amount equal to the shortfall between the fees due and those paid by You. If the amount of the underpayment exceeds 5% of the fees due or the audit reveals a violation of any License restrictions pursuant to this End-User License Agreement then, without prejudice to SpamExperts's other rights and remedies, You shall also pay SpamExperts's reasonable costs of conducting the audit.

**14.5** SpamExperts may at its sole discretion subcontract any of its rights or obligations hereunder to any of its subsidiaries, resellers, distributors or dealers, as applicable.

**14.6** Failure by SpamExperts to enforce any particular term of this Agreement shall not be construed as a waiver of any of its rights under it.

**14.7** The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.

**14.8** If You and SpamExperts have signed a separate written software License agreement covering the use of the Product, the terms of such signed software License agreement shall take precedence over any conflicting terms of this Agreement. Otherwise this Agreement and the Schedule constitute the entire agreement between the parties in relation to the Product and its licensing and supersedes any other oral or written communications, agreements or representations with respect to the Product, save for any oral or written communications, agreements or representations made fraudulently.

**14.9** The construction, validity and performance of this Agreement shall be governed by and submitted to the laws of The Netherlands and the non-exclusive jurisdiction of the courts of the Netherlands. Notwithstanding the foregoing, SpamExperts and its licensors shall have the right to seek injunctive, or similar, relief in any courts of competent jurisdiction. If there are any inconsistencies between the English language version of this Agreement and any translated version, then the English language version shall prevail.

**Any notices required to be given in writing to SpamExperts or any questions concerning this Agreement should be addressed to The Company Secretary, SpamExperts B.V., Oxfordlaan 70 6229 EV Maastricht, The Netherlands.**



**SPAM EXPERTS**  
SIMPLY SPAMFREE

**FOR MORE INFORMATION  
PLEASE VISIT OUR WEBSITE:  
[WWW.SPAMEXPERTS.COM](http://WWW.SPAMEXPERTS.COM)**

