

Terms & Conditions

NUMBERCHECK.CO.UK TERMS AND CONDITIONS

Last Updated: 23rd September 2019

Background:

www.numbercheck.co.uk provided by Selectabase Ltd, a limited liability company, registered in England and Wales with company number: 5234487, whose main business address is The Archive Centre Honeywood Road, Dover, Kent, CT16 3EH, United Kingdom.

numbercheck (the "Service Provider") provides UK landline validation services to business clients. The Service Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement" means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;

"Business Day" means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the United Kingdom.

"Client" means the party procuring the Services from the Service Provider who shall be identified in the Agreement;

"Confidential Information" means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

"Data Protection Legislation" means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR;

"Intellectual Property Rights" means (a) any and all rights in any patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions;

(b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);

(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and

(d) the right to sue for past infringements of any of the foregoing rights;

“Services” means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and

1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. Intellectual Property Rights

www.numbercheck.co.uk and all of its code and original content are wholly owned by Selectabase Ltd.

3. Service Availability

We endeavour to ensure the service is available at all times, however there may be times whereby access to services are restricted or stopped. All reasonable efforts will be made to reinstate the service as quickly as possible. For planned outages (e.g. for maintenance or software upgrades) we will notify users wherever possible as well performing such tasks during non-peak hours (Monday – Sunday 8pm to 6am GMT) so as to minimise disruption.

The service is available via www.numbercheck.co.uk, whereby clients have the ability to process data, view credits balance and usage history. Clients are fully responsible for restricting unsolicited access to their accounts by keeping their account credentials (user name and password) secure. Clients can change their contact details within the application.

4. Payment

All payments are to be made in advance of credits being added to the client numbercheck account. Payments are to be made in GBP (Sterling) via bank transfer (BACS) or Debit/Credit card via our online payment provider (SagePay).

Credits are strictly valid for 12 months from the date of order.

5. Liability, Indemnity and Insurance

5.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.

5.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.

5.3 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.

5.4 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.

5.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.

5.6 Subject to sub-Clause 6.3 of the Agreement the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement.

5.7 The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.

5.8 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6. The Service

The service is provided on an 'as is' basis and does not guarantee 100% accuracy. Results can be adversely affected by a number of external factors beyond our reasonable control. As such, we cannot accept any liability for any inaccuracy, incompleteness or other errors that result from using the service.

The speed of the service is subject to a variety of factors (e.g. system load) that are beyond our control. As such, we cannot guarantee or make any commitments with regards to processing speed.

7. Confidentiality

7.1 Each Party shall undertake that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and after its termination:

7.1.1 keep confidential all Confidential Information;

7.1.2 not disclose any Confidential Information to any other party;

7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;

7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 of the Agreement.

7.2 Either Party may:

7.2.1 disclose any Confidential Information to:

7.2.1.1 any sub-contractor or supplier of that Party;

7.2.1.2 any governmental or other authority or regulatory body; or

7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

7.3 The provisions of Clause 7 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

8. Force Majeure

No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action,

civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

9. Termination

9.1 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

9.1.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 7 days of the due date for payment;

9.1.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 7 days after being given written notice giving full particulars of the breach and requiring it to be remedied;

9.1.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

9.1.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

9.1.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

9.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

9.1.7 the other Party ceases, or threatens to cease, to carry on business; or

9.1.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

9.2 For the purposes of sub-Clause 9.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

9.3 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

10. Effects of Termination

Upon the termination of the Agreement for any reason:

10.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

10.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

10.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;

10.4 subject as provided in Clause 10 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other;

10.5 each Party shall (except to the extent referred to in Clause 7 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information; and

11. Data Protection

11.1 All personal information that the Service Provider may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and the Client’s rights under the GDPR.

11.2 For complete details of the Service Provider’s collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Client’s rights and how to exercise them, and personal data sharing (where applicable), please refer to the Service Provider’s Privacy Policy.

12. Data Processing

12.1 In this Clause 12 and in the Agreement, “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”).

12.2 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 12 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.

12.3 For the purposes of the Data Protection Legislation and for this Clause 12 and the Agreement, the Service Provider is the “Data Processor” and the Client is the “Data Controller”.

12.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing shall be set out in a Schedule to the Agreement.

12.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions.

12.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these Terms and Conditions:

12.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.

12.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Schedule to the Agreement.

12.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and

12.6.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:

12.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;

12.6.4.2 Affected data subjects have enforceable rights and effective legal remedies;

12.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and

12.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.

12.6.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);

12.6.6 Notify the Data Controller without undue delay of a personal data breach;

12.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and

12.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with the Agreement and to allow for audits by the Data Controller and/or any party designated by the Data Controller.

12.7 The Data Processor may appoint a sub-processor and the Data Processor shall:

12.7.1 Enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor by this the Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and

12.7.2 Ensure that the sub-processor complies fully with its obligations under that agreement and the Data Protection Legislation.

12.8 Either Party may, at any time, and on at least 30 calendar days' notice, alter the data protection provisions of the Agreement, replacing them with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to the Agreement.

13. Data Retention

numbercheck allows the Client to select a default data retention period, during registration, up to a maximum of 28 days. Clients can amend this setting at any point as well as permanently delete data from within the numbercheck portal. Any Client data will be permanently erased after a maximum of 28 days.

14. No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

16. Costs

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

17. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

18. Assignment and Sub-Contracting

The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Service Provider.

19. Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

20. Third Party Rights

20.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

20.2 Subject to Clause 20 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

21. Notices

21.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

21.2 Notices shall be deemed to have been duly given:

21.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

21.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

21.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

21.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

22. Entire Agreement

22.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

22.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

23. Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

24. Severance

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

25. Dispute Resolution

25.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

25.2 If negotiations under sub-Clause 25.1 of the Agreement do not resolve the matter within 28 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

25.3 If the ADR procedure under sub-Clause 25.2 of the Agreement does not resolve the matter within 90 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

25.4 The seat of the arbitration under sub-Clause 25.3 of the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

25.5 Nothing in Clause 25 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

25.6 The decision and outcome of the final method of dispute resolution under Clause 25 of the Agreement shall be final and binding on both Parties.

26. Law and Jurisdiction

26.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

26.2 Subject to the provisions of Clause 25 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

27. Changes to this Agreement

Selectabase Ltd reserve the right to change these Terms and Conditions at any time. We will inform Clients should the terms change, and should you decide to continue using the service, this will constitute formal acceptance of the new Terms and Conditions.