



Your Contract with Infoways

1. About this document

The Customer Terms apply to all Services provided by us to you by agreement between us or, failing agreement, under section 479 of the Telecommunications Act.

2. Your Customer Contract

(a) We supply Services to you under your Customer Contract. Your Customer Contract comprises, in order of precedence from highest to lowest:

- (i) your Application Form;
- (ii) the terms of your Plan;
- (iii) these Customer Terms;
- (iv) if we are supplying Design Services to you, Design Services Contract; and
- (v) if you are a Reseller, Reseller Contract.

(b) The parties to the Customer Contract are the Customer (you) and the Supplier (we, us).

3. The Term of Your Contract

(a) The Customer Contract will continue until the end of the Minimum Term and thereafter on a month to month basis until it is terminated in accordance with this Customer Contract.

(b) If your Plan or Application Form states that there is no Minimum Term or is described as month-to-month, casual or no contract or similar, either party may terminate it on 30 days' notice at any time without penalty.

(c) Your Customer Contract will commence upon our acceptance of your Application Form or when we commence providing the Services to you, whichever happens first.

Provision of Our Services

4. The Services

- (a) We will provide to you a non-exclusive, non-transferable, licence for the Services subject to the terms of your Customer Contract.
- (b) We may provide the Services using such facilities and such Carrier as we choose from time to time.
- (c) We may provide the Services using Our Facilities and/or third party Provider Facilities. Together, we call those Facilities our Network.

5. Exclusive or Preferred Supplier

If your Application Form states:

- (a) that we are to be your preferred supplier then you must not engage a third party to provide to you more than 10% of your total requirements for the Messaging Services or services substantially similar to the Messaging Services; or
- (b) that we are to be your exclusive supplier then you must not engage a third party to provide to you any Messaging Services or services substantially similar to the Messaging Services.

Within 14 days of receipt of a written request, you will provide to us a statutory declaration, executed by a duly authorised officer, attesting to your compliance with clause 5.1(a) or clause 5.1(b).

6. Periodic Entitlements

- (a) If your Plan or Application Form states that you are required to pay a Monthly Access Fee you will receive Message Credits equal to the value stated in your Plan or Application Form, which may be redeemed by you against Message Fees incurred during that month. We call these Periodic Entitlements.
- (b) Unused Periodic Entitlements do not carry forward and are not redeemable for cash or other credit.
- (c) If you exceed your Periodic Entitlements, extra Charges may apply or a Service may be limited in some way. Your Plan or Application Form will give details.

7. Prepaid Plans

For a Prepaid Plan:

- (a) Prepayments are not redeemable for cash or other credit.

(b) The Plan may specify a Use-by Date i.e. a period after which any Prepaid Entitlements that are not used expire without refund. Unless a Plan or your Application Form specifies otherwise, a Use-By Date of one year from the date of last activity on the Account (ie prepayment or sending of a Message) applies to all Prepaid Entitlements under Prepaid Plans.

(c) When your Prepaid Entitlements are used up we may cease providing Service. We are not responsible for the consequences of Service ceasing.

8. Automatic Top Ups for Prepaid Plans

(a) Unless you have elected otherwise (by unchecking the appropriate box in your Application Form indicating you do not wish to top up the balance of your Periodic Entitlements automatically) the automatic top up feature will be enabled. You can disable the auto top up feature at any time by accessing the billing page in your Account.

(b) If the automatic top up feature is enabled then, if the value of the balance of your Prepaid Entitlements falls below \$10, the balance of your Prepaid Entitlements will be recharged with the same amount and using the same payment method as your initial purchase.

(c) The automatic top up feature will be disabled if your Prepaid Entitlements have expired.

9. Compliance with Policies

(a) You must comply with any applicable Acceptable Use Policy or any Anti-Spam Policy we publish on our website or make available to you.

(b) You must comply with any policy we publish on our website or make available to you directed to ensuring that the use of a Service complies with all Laws.

10. Operational Directions

(a) Acting reasonably, we may give Operational Directions about a Service. Operational Directions will be directed to the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency. We will only give an Operational Direction as and when reasonably necessary.

(b) You must comply with any applicable Operational Direction.

11. Carrier or Carriage Service Provider

You promise that you are not a Carrier or a Carriage Service Provider.

12. Provider Requirements – General

(a) Telecommunications Services, including many of our Services, are commonly provided by means of Provider Facilities, provided by third party Providers.

(b) A Provider may only permit us to provide Service to you subject to certain requirements (Provider Requirements).

(c) You must comply with any applicable Provider Requirements we notify.

(d) Where a Provider Requirement states that a Provider has a certain right or power:

(i) the Provider itself may exercise that right or power; or

(ii) we may exercise the right or power on behalf of the Provider.

13. Use of Service by others

(a) Unless your Application Form states that we have appointed you as a Reseller, you must not share, resell or resupply a Service for remuneration or reward.

(b) The acts and omissions of your Staff and End Users with respect to a Service are deemed to be your acts and omissions.

(c) You must ensure that your Staff and End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you.

14. Payment for third party services

Using a Service may depend on you having goods or services supplied by third parties. For instance, in order to use an email-to-SMS Service, you must have an internet connection. You are solely responsible for the costs of all third party goods and services you acquire.

15. Using a Service

(a) When using a Service, you must comply with:

(i) your Customer Contract (including any applicable Acceptable Use Policy or Anti-Spam Policy); and

(ii) any applicable Laws.

(b) You must not use a Service, and you must Ensure that your End Users do not use a Service:

(i) to send Restricted Content;

(ii) for publishing, reproducing or advertising any message, information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or for any unlawful purpose;

(iii) to defame any person;

(iv) to breach the rights of any person;

(v) to infringe copyright;

(vi) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Providers into disrepute;

(vii) to host or transmit Content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;

(viii) to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the Spam Act;

(ix) in a way that is misleading or deceptive, where that is contrary to Law;

(x) in a way that results, or is likely to result, in damage to property or injury to any person; or

(xi) in any way that damages or interferes with our Services to other customers, our Providers or any Facilities or exposes us to liability.

(c) You are solely responsible for all acts or omissions that occur under your Account including any password provided to you by us, and the Content of any Messages transmitted through the Service. You acknowledge and agree that any Messages sent using your Account are deemed to have been sent and/or authorised by you.

16. Telephone numbers – General

(a) We must comply with the Numbering Plan, which sets out rules for issuing, transferring and changing telephone numbers.

(b) You must not knowingly and deliberately:

(i) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it; or

(ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.

17. Telephone numbers – Messaging Services

- (a) Messaging Services are not a portable service within the meaning of the Numbering Plan.
- (b) A number we use in association with your Account:
 - (i) is not a portable number; and
 - (ii) is not subject to number portability – within the meaning of the Numbering Plan.
- (c) You are not a ‘customer’ for the purposes of the Communications Alliance code titled Mobile Number Portability C570:2009.
- (d) Any Shared Number or Dedicated Number used in association with your Account has not been issued to you. You acknowledge that we retain ownership of any Dedicated Number used in association with your Account and you have no right to retain a particular number when your Contract ends.
- (e) We retain all rights, obligations and liabilities under the Numbering Plan and other legislation relevant to such numbers.
- (f) If your Application Form states that we will provide you with a Dedicated Number/s (inbound or outbound) we will provide you with use of those Dedicated Numbers in accordance with clauses 16 and 17.

18. Voluntary number porting

- (a) If, despite clause 17, we agree to transfer:
 - (i) a Shared Number or a Dedicated Number to you; or
 - (ii) a mobile service number from you for use in connection with an Account – then as far as the law allows, you release us and our third party supplier/s from all liability to you, and you indemnify us and them against all costs, expenses, liability, loss or damage incurred or suffered by us or them in conjunction with any claims, actions or proceedings against us or them (including third party claims or claims by you) arising out of the following:
 - (iii) our inability to transfer-in or transfer-out the number; or
 - (iv) the fact that the number is not, or ceases to be, available for use in connection with an Account.

19. Maintenance and faults

- (a) From time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

(b) Reporting faults

(i) You may report faults in relation to a Service or the Network by contacting our help line during its operating hours.

(ii) Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by equipment, which is not part of the Network.

(iii) You must not report a fault directly to one of our Providers unless we ask you to do so.

(iv) If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

(c) Repairing faults

(i) We will use reasonable efforts to repair faults in Our Facilities within a reasonable period.

(ii) We will use reasonable efforts to have our Providers repair faults in Provider Facilities within a reasonable period.

(iii) You are responsible for maintaining and repairing your own equipment

(d) If you cause a fault or damage to the Network, we may charge you the reasonable cost of repairing it.

20. Your cooperation

(a) You must give us all reasonable cooperation that we require in order to provide a Service to You, and fixing any problems that arise, and resolving any disputes that may arise or complaints that you may have.

(b) You acknowledge that, where a Service is a carriage service within the meaning of the Telecommunications Act, we or a Provider may be required to:

(i) intercept communications over the Service, and

(ii) monitor usage of the Service and communications over it.

(iii) retain and store data, including metadata, as required under Data Retention Laws.

Confidentiality, Intellectual Property and Privacy

21. Confidentiality

(a) Each party (Recipient) undertakes that, in respect of Confidential Information disclosed to the Recipient by the other party (Disclosing Party), it will not disclose Confidential Information except:

(i) for the purpose for which the Confidential Information was disclosed to the Recipient under the terms of the Customer Contract;

(ii) to those employees, officers and agents of the Recipient who need to know the information for the purposes of the Customer Contract, if that person undertakes to keep confidential the Confidential Information;

(iii) to professional advisers and consultants of the Recipient whose duties in relation to the Recipient require that the Confidential Information be disclosed to them;

(iv) with the prior written approval of the Disclosing Party; or

(v) as otherwise required by law to disclose such information.

(b) The parties acknowledge that monetary damages alone would not be adequate compensation for a breach of the obligations of confidentiality under this Customer Contract, and a Disclosing Party is entitled to seek an injunction from a Court of competent jurisdiction on a breach or threatened breach of this clause.

(c) Despite anything else contained in this Customer Contract and in particular in this clause 21, we retain the unconditional and irrevocable right to disclose your identity and address and those of any of your Staff or End Users in the event of any complaint received from any regulatory or Government body or Carrier, in connection with this Customer Contract.

(d) Nothing in this clause 21 prevents us from naming you as a customer and user of our Services in our marketing materials.

22. Intellectual Property

(a) The parties agree that other than as provided in this clause 22, nothing in the Customer Contract transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

(b) If a party provides any material to the other party that contains any Intellectual Property Rights which were developed by or on behalf of, or licensed to, the first party independently of the Customer Contract (Pre-Existing Material), then the first party grants to the other party a non-transferable, non-exclusive, royalty-free licence to use, during the term of the Customer Contract, the Pre-Existing Material solely for the purpose of using or supplying the Services under the Customer Contract.

23. Privacy

(a) If a party is provided with, or has access to, Personal Information in connection with the Services, it must comply with the Privacy Act and any other applicable law in respect of that Personal Information, whether or not it is an organisation bound to comply with the provisions of the Privacy Act. Details of our privacy policy can be found on our website.

(b) You acknowledge and agree that where you authorise or require us to collect or otherwise deal with Personal Information in your name or on your behalf in connection with providing the Services, that we do so as your agent.

(c) You acknowledge and agree that except as may be required by the Customer Contract, we are not required to take steps to ensure that any Personal Information collected by you has been collected in accordance with the Privacy Act. Further, you indemnify us for any Claim by a third party that it has suffered Loss as a result of a breach of the Privacy Act.

(d) We work with a number of third party software providers. From time to time those third party software providers may recommend our services to new customers. If a third party has referred you to our services we may pay that third party a commission. Any commission paid will not affect the Charges you pay to us. In order to calculate the commission we pay, we may also provide the third party with information about the number of messages you send in a certain period (we will not give them any other information about your Account, message content or other data) and you consent to us doing so.

(e) If the Services or the performance of our respective obligations under this Customer Contract involve any processing of any personal data (as defined in the GDPR) of, or sending Messages to, any individuals in the European Union, then we each agree that we shall comply with the additional terms set out in Parts D and E.

Credit Management

24. Credit management (1): Guarantees and security

We may, at any time, make supply of Service conditional on you providing and/or maintaining security and/or third party guarantees to our reasonable satisfaction.

25. Credit management (2): Credit checks

(a) At our discretion, we may obtain a credit report about you to help us decide whether to accept your application for service and to help us collect overdue amounts. In the course of a credit check, we may disclose personal information about you to a credit reporting agency or other credit information provider. We may receive a credit report and other information about you, including personal information. A credit reporting agency may include the fact that we obtained a credit report about you in its credit information file on you.

(b) We may disclose to a credit reporting agency: information in your application, details of your account, that you have applied for credit with us, that we are a current credit provider to you, payments that are more than 60 days overdue and are subject to collection processes, any cheque of yours for

\$100 or more which has been dishonoured more than once, any serious credit infringement you have committed or that payments are no longer overdue.

(c) We may disclose information about you and any debt you owe us to:

(i) a debt collection service we engage; and

(ii) anyone who takes, or is considering taking, an assignment of any debt you owe us.

(d) Your consents

(i) If you are an individual, you agree that we can conduct a credit check and verify your personal details, in accordance with this clause.

(ii) If you are self-employed, you agree that we can:

(A) obtain and use any report or information from a credit reporting agency, which contains information about your commercial activities or commercial credit worthiness;

(B) exchange with your other credit providers, any credit report or other report about your credit worthiness or history, or personal information contained in those reports – in accordance with this clause.

(e) You acknowledge that credit and other information about you may be used:

(i) to assess your application,

(ii) to assist you to avoid defaulting on your credit obligations,

(iii) to notify other credit providers of a default by you,

(iv) to assess your creditworthiness.

Prices, Billing and Payment Terms

26. Charges & payment: Prices

(a) You agree to pay our Charges in accordance with the terms of your Contract.

(b) Our current prices at any time are referred to as our 'Price List'.

(c) If the price for a service is not listed in our Price List, for example the price for international SMS, we may charge you a fee equal to the cost to us of providing that service plus a reasonable margin.

(d) You warrant that you will use the Messaging Services exclusively for the sending of Standard Rate Messages containing Unrestricted Content to End Users and, where the Service supports it, receiving Messages from End Users. We may make an extra Charge if you send any Messages that are not Standard Rate Messages, equal to the amount charged to us by the Carrier plus a reasonable margin.

(e) You must pay for every Message despatched using the Messaging Services irrespective of receipt by the intended recipient.

(f) On written request received within 30 days of the Message being despatched, we will provide evidence that the Message was delivered to the relevant Carrier or Provider.

(g) Any failure by a Carrier to deliver a Message to the intended recipient is beyond our control and you will not hold us liable in respect of any such failure.

27. Calculation of number of SMS

Information point: The SMS system allows a maximum message size of 160 characters. If a user sends a longer message, the system splits it to two or more separate SMS's that may be reassembled on delivery so that they appear to be a single message (or, on some handsets, may be delivered as a series of separate SMS). When a longer message is split in this way, the components are no more than 153 characters long, because seven characters are used to facilitate re-joining on delivery. As a result, a longer message will result in more than one SMS being transmitted, and charges apply accordingly, as described in this clause.

Charges for an SMS Service will be based on the number of SMS you send, calculated in accordance with the following rules:

(a) If you include any Unicode characters and send via a Unicode supported service, content that contains no more than 70 characters counts as one SMS. In all other cases, content that contains no more than 155 characters counts as one SMS.

(b) If you include any Unicode characters and send via a Unicode supported service, content that contains more than 70 characters counts as one SMS for each block of 67 characters or part thereof. In all other cases, content that contains more than 155 characters counts as one SMS for each block of 155 characters or part thereof.

(c) A 'character' includes each individual letter, digit, punctuation and other symbol in the Content.

(d) Each press of a 'spacebar' generates a separate character.

(e) Some special symbols and non-English letters may comprise more than one character and you will be charged accordingly.

(f) Where an SMS is sent to multiple End Users, each one is counted separately.

28. Calculation of the size of an MMS

Charges for an MMS Service will be based on the size and number of MMS you send, calculated in accordance with the following rules:

(a) Content that contains no more than 215kB is charged at the Standard Rate (as defined in your Plan or Application Form).

(b) Content that contains between 216kB and 350kB is charged at the First Tier Premium Rate (as defined in your Plan or Application Form).

(c) Content that contains more than 351kB up to 2000kB is charged at the Second Tier Premium Rate (as defined in your Plan or Application Form).

(d) Where an MMS is sent to multiple End Users, each one is counted separately.

29. When we can bill

(a) Your 'Billing Period' is the period between bills. Unless your Application Form states otherwise, our standard Billing Period is monthly.

(b) We can bill a part-period eg to align your Billing Period with the first day of each month.

30. Extra Charges for bills and information

(a) We may charge you an extra Charge if:

(i) you request non-standard information about your bill or Charges, or

(ii) you ask us to deliver a bill by a method that is not the standard method for a Plan.

(b) If you request a paper bill when that is not the standard method for a Plan, the extra Charge is \$5 per bill, or as otherwise notified in our Price List.

31. Late billing

(a) We may late bill.

(b) Some Charges in a Bill may relate to a previous Billing Period.

32. When you must pay

(a) Where a Direct Debit or credit card arrangement applies, we may Extract payment for Charges:

(i) 14 days after they are billed (if we issue a Bill for the Service); or

(ii) 14 days after the end of the current Billing Period (if we do not issue a Bill for the Service).

(b) If any Bill is overdue for payment, you must pay that Bill and any other Bill immediately.

(c) You must pay a Bill within 14 days after the date of the Bill, unless your Application Form or Plan states otherwise.

33. How you can Pay

(a) If your Plan or Application Form specifies 'Direct Debit only' (or similar) then:

(i) Direct Debit payment is a precondition to supply of Service to you.

(ii) We may suspend Service if Direct Debit arrangements are not maintained.

(iii) You must not cause to be reversed any Direct Debit payment to us, unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

(b) In any other case:

(i) Direct Debit is our preferred payment method and incurs no surcharges.

(ii) You may pay by MasterCard or Visa or any other card we notify you that we accept.

(iii) Payments made using credit cards may be subject to a surcharge as per our current Price List. Unless the Price List specifies other amounts, non-Direct Debit payments attract a monthly surcharge of \$5 + GST and, in addition to our usual credit card processing fee, Amex or Diners Club will attract an extra 2% surcharge.

(c) If any payment you make is dishonoured, we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

34. Late payment

If a Bill is not paid on time:

(a) you are in breach of your Contract, and

(b) we may also charge:

(i) interest at the 90-Day Bank Accepted Bill Rate published by the Reserve Bank of Australia plus 2% from the date of the Bill until it is paid in full; and

(ii) a reasonable late fee; and

(iii) any collection fees and expenses that we incur.

35. Billing disputes

(a) Our records of what you owe us are deemed to be right unless you show them to be wrong.

(b) If you dispute a bill, you must pay it on time and without set off. We shall credit you if it is later determined that you are entitled to a credit.

(c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay a refund or give a credit in respect of a period prior to that.

36. GST

(a) In this clause, an expression within a pair of asterisks means the same as in the GST Act.

(b) Amounts payable under your Contract are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.

(c) Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any **taxable supply** for which that amount is paid. Otherwise:

(i) The **consideration** payable by a party represents the **value** of any **taxable supply** for which payment is to be made.

(ii) If a party makes a **taxable supply** for a **consideration**, which represents its **value**, then the other party must pay immediately the amount of any GST payable in respect of the **taxable supply**.

(d) If these terms require a party to pay, reimburse or contribute to an amount paid or payable by the other party in respect of an **acquisition** of a **taxable supply** from a third party, the amount the other party must pay, reimburse or contribute will be the value of the **acquisition** by the first party less any

input tax credit to which the first party is entitled plus, if the first party's recovery from the other party is a *taxable supply*, any GST payable under this clause.

(e) We may recover any GST payable under this clause in the same manner as our Charges.

Warranties and Indemnities

38. Service Level Agreements

If a Service or a Plan includes a Service Level Agreement (SLA):

- (a) we are only liable for the remedy or rebate specified by the SLA (if any); and
- (b) subject to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate; and
- (c) you agree we are not liable for any failure, for any reason, to supply the Services in accordance with the SLA.

39. Exclusion of Implied Terms and Warranties

You agree and acknowledge that:

- (a) any representation, warranty, condition, guarantee or undertaking that would be implied in your Contract by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Contract to the fullest extent permitted by law;
- (b) we do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.

40. Your liability to us – General

(a) Subject to clause 43, you must indemnify us for any loss or damage we suffer arising from or in connection with:

- (i) your breach of your Contract;
- (ii) all Content sent or received on your Account;
- (iii) any wilful or negligent act or omission by you, your employees, agents or contractors;

(iv) a Claim against us by your Staff, any End User or any third party arising out of or in relation to your use of the Services and/or Equipment;

(v) your use of the Service in a way that breaches any Law or infringes the rights of any third party; and

(vi) acts or omissions of End Users;
except to the extent that we are negligent or caused or contributed to the loss or damage.

(b) Your obligations under this clause survive termination of your Contract.

41. Your liability to us – requests for information or evidence

(a) This clause applies where we reasonably incur expense as a result of or in connection with:

(i) a police request for information or evidence in relation to you or your use of a Service; or

(ii) a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or

(iii) a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.

(b) If we incur any expenses under paragraph (a), you must reimburse them on request.

(c) Your obligations under this clause survive termination of your Contract.

42. Our liability to you

(a) Subject to clause 43, we must indemnify you for any loss or damage you suffer arising from or in connection with:

(i) our breach of your Contract;

(ii) any wilful or negligent act or omission by us, our employees, agents or contractors;

(iii) a Claim against you by any End User in relation to a Service we supply to you arising out of our negligence in supplying the Services to you; and

(iv) our supply of the Services in a way that breaches any Law or infringes the rights of any third party; except to the extent that you are negligent or caused or contributed to the loss or damage.

(b) Our obligations under this clause survive termination of your Contract.

43. Limitation on Liability

(a) To the maximum extent permitted by law, the parties agree:

(i) that the maximum cumulative liability of a party under or in connection with this Customer Contract (including pursuant to an indemnity) will be the total amount payable to us by you under this Customer Contract in the 12 months preceding the incident or event giving rise to the liability;

(ii) that neither party will be liable to the other party for any loss of profit or indirect loss or consequential loss suffered by the other party arising out of the Customer Contract, whether arising as a result of any act, omission or negligence of a party or otherwise.

(b) Nothing in this document limits or excludes the liability of a party for claims relating to:

(i) personal injury or death directly arising from that party's negligent acts or omissions;

(ii) infringement of intellectual property rights; or

(iii) fees and Charges payable.

Termination and Suspension

44. Termination by us

We may, by written notice to you, terminate your Contract:

(a) at any time (except during the period of the Minimum Term), on 30 days' written notice to you;

(b) immediately if you are in material breach of your Contract (including but not limited to a failure to pay us on time, a breach of the Acceptable Use Policy or a breach of the Anti-Spam Policy) and you fail to remedy such breach within 14 days of being served notice to do so;

(c) immediately if you breach clause 5(a) (preferred supplier) or 5(b) (exclusive supplier) and you fail to remedy such breach within 14 days of being served notice to do so;

(d) immediately if you suffer an Insolvency Event (except for so long as an Insolvency Protection Stay applies);

(e) immediately if we become entitled to suspend the Service, and the suspension continues for more than a month (except for as long as an Insolvency Protection Stay applies);

(f) immediately if we reasonably suspect that you, your Staff or your End User has infringed or attempted to infringe our Intellectual Property Rights;

(g) immediately if you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement);

(h) immediately if it is necessary to do so in order to comply with a warrant or other court order, or as otherwise required or authorised by law;

(i) immediately if we reasonably suspect fraud or attempted fraud involving the Service;

(j) immediately if you are, or become, a carrier or carriage service provider under the Telecommunications Act; or

(k) in any other circumstances stated elsewhere in your Contract.

45. Termination by you

You may terminate your Contract:

(a) at any time (except during the period of the Minimum Term) on 30 days' written notice to us;

(b) immediately, by giving us written notice, if we are in material breach of your Contract and we fail to remedy that breach within 14 days of being served notice to do so;

(c) immediately, by giving us written notice, if we suffer an Insolvency Event;

(d) by giving us 14 days' written notice, if an Intervening Event occurs and you are unable to use the Service for more than 30 days;

(e) by giving us 14 days' written notice, if you reasonably suspect that we have infringed or attempted to infringe your Intellectual Property Rights; or

(f) in any other circumstances stated elsewhere in your Contract.

46. Consequences of Termination

If your Contract ends:

(a) if your Contract ends during the period of the Minimum Term then you will be required to immediately pay us the Early Termination Fee (other than if you terminate the Contract pursuant to clauses 45.1(b), 45.1(c), 45.1(d), 45.1(e) or 45.1(f)). You acknowledge and agree that any liability to pay us an Early Termination Fee does not prejudice any other right we may have to claim damages as a result of the termination.

(b) our obligations to you under your Contract are at an end;

- (c) you must immediately cease use of any of our Services supplied under that Contract;
- (d) we may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract;
- (e) all bills are payable immediately;
- (f) you authorise us to recover any outstanding Charges and Early Termination Fees from any overpayment you have made, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit;
- (g) it does not affect the accrued rights or liabilities of either party; and
- (h) it does not affect the provisions which expressly or by implication are intended to operate after termination including, without limitation clauses 21, 22 and 23 and the limitations of liability and rights of indemnity.

47. Suspension of Service

We may suspend Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency), if:

- (a) there are problems with the Network, or we or our Providers need to suspend the Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Service under your Customer Contract (which is not the subject of a bona fide dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;
- (c) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy including but not limited to a breach of the Spam Laws;
- (d) there is an emergency;
- (e) there is a threat or risk to the security of the Service or integrity of the Network;
- (f) the Service may cause death, personal injury or damage to property;
- (g) we are required to do so to comply with any Law or direction of any Regulator;
- (h) an Intervening Event occurs; or
- (i) we are otherwise entitled to do so under your Customer Contract.

48. Charges during a period of suspension

If we suspend Service:

- (a) because of your fault or breach of your Contract – you remain liable for all Charges payable under your Contract during the period of suspension;
- (b) otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

48A Insolvency Protection Stays

- (a) If you are a corporation and your Customer Contract commenced on or after 1 July 2018, our enforcement of certain rights may be stayed by the operation of sections 415D, 434J or 451E of the Corporations Act (Insolvency Protection Stay).
- (b) If, and for so long as, an Insolvency Protection Stay operates, we do not assert an entitlement to enforce any right that is subject to it.
- (c) This clause 48 does not prevent us from disputing that an Insolvency Protection Stay applies, or from making an application for an Insolvency Protection Stay to be lifted, in whole or in part, or otherwise exercising our legal rights.

General

49. General power to vary your Contract

Subject to clause 50,

- (a) we may vary your Contract from time to time on 14 days' written notice to you; and
- (b) any variations that have been deemed to be accepted pursuant to clause 50 will take effect 15 days after the date of any notice.

50. Customer Right to terminate on Receipt of Notice of Variation

If you do not accept the variation set out in a notice from us pursuant to clause 49 you must notify us in writing within 14 days. If you fail to do so, you will be deemed to have accepted the variation. If you notify us that you do not agree to the variation, then we must discuss the proposed variation in good faith. If no agreement on the variation is achieved within 10 Business Days either party may terminate this Customer Contract by providing 30 days' written notice to the other party and no Early Termination Fee will be payable.

51. Acknowledgments

You acknowledge that:

- (a) there has been no reliance by you on our skill or judgement or written or oral representations in deciding whether our Service is fit for a particular purpose or meets particular criteria;
- (b) the internet is not an inherently secure system and you undertake responsibility for the protection of your information and data;
- (c) the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within your system, and that we have no control over these viruses; and
- (d) we do not provide any filtering or checking of data to eliminate these viruses, and you agree to provide you own mechanism for checking your system for viruses, and to indemnify us against any damage caused by viruses obtained through the Service.

52. Assignment

- (a) We may assign or novate all or part of our rights and obligations under your Contract without your consent.
- (b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

53. Governing law

Your Contract is governed by and must be construed in accordance with the laws of Victoria. You and we submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.

54. Entire agreement

Your Contract is the entire agreement between you and us regarding its subject matter, and you acknowledge that:

- (a) your Contract does not include any term, condition, warranty, representation or guarantee that is not expressly set out in it, other than an ACL Guarantee to the extent it may not lawfully be excluded; and
- (b) you have not relied on any representation that is not expressly set out in your Contract.

55. Delays

- (a) Time is not of the essence in the performance of our obligations, including the provision of Services, under your Contract.

(b) We are not liable to you for any delay in the provision of any Service.

(c) You may not cancel or amend an order for a service on the grounds of any delay in providing it.

56. No waiver

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Contract (such as a right that we have due to your breach of your Contract) does not operate as a waiver of the power or right.

57. Commercial Electronic Messaging

(a) Subject to this clause, we may send you Commercial Electronic Messages regarding telecommunications goods and services, and ancillary goods and services, and you consent to us doing so.

(b) You consent under clause 57(a):

(i) applies while your Contract is in force and for a year afterwards; and

(ii) is in addition to any other consent that you may give, or which may be inferred, for the purposes of section 16(2) of the Spam Act; but

(iii) terminates if you give us reasonable written notice that it is withdrawn.

(c) Any Commercial Electronic Message we send you does not have to comply with section 18(1) of the Spam Act.

(d) This clause 57 survives the termination of your Contract.

Interpretation and Dictionary

58. Interpreting your Contract

(a) If an expression is defined in the Dictionary in clause 59, that is what it means.

(b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint blue', then 'coloured' means 'painted blue'.)

(c) Expressions like 'includes', 'including', 'eg' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.

- (d) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (e) A schedule to a document is part of that document.
- (f) A reference to the singular includes the plural and vice versa.
- (g) There is no significance in the use of gender-specific language.
- (h) A 'person' includes any entity which can sue and be sued.
- (i) A 'person' includes any legal successor to or representative of that person.
- (j) A reference to a law includes any amendment or replacement of that law.
- (k) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (l) Anything we can do, we may do through an appropriately authorised representative.
- (m) Any matter in our discretion is in our absolute and unfettered discretion.
- (n) A reference to a document includes the document as modified from time to time and any document replacing it.
- (o) The word 'month' means calendar month and 'year' means 12 months.
- (p) The words 'in writing' include any communication sent by letter or email or any other form of communication capable of being read by the recipient.
- (q) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.
- (r) Money amounts are stated in Australian currency unless otherwise specified.

59. Dictionary

<i>The expression:</i>	<i>means:</i>
Acceptable Use Policy	a policy so titled and issued under clause 9
Account	the Customer's entitlement to Messaging Services subject to the Customer Contract and, where relevant, includes any Service features, associated usernames or passwords
ACL Guarantee	a guarantee in the Australian Consumer Law in Schedule 2 of the <i>Competition and Consumer Act 2010</i> .

<i>The expression:</i>	<i>means:</i>
Anti-Spam Policy	a policy so titled and issued under clause 9
Application or Application Form	your application to us to access Messaging Services, in a form we specify from time to time which may also contain features, entitlements, Charges and special conditions in connection with a Service
Automatic Direct Debit	a periodic payment that is automatically deducted by us from your nominated financial institution account
Bill	an invoice from us which advises you of the total of each Charge that is due for payment
Billing Period	see clause 29.1(a)
Carriage Service	as defined in the Telecommunications Act
Carrier	as defined in the Telecommunications Act but also includes an entity that operates a telecommunications network outside Australia
Charges	fees and/or charges applicable under your Customer Contract
Claim	any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim)
Commercial Electronic Message	as defined in the <i>Spam Act 2003</i>
Confidential Information	<p>in relation to each party (for the purposes of this definition, the Discloser):</p> <ul style="list-style-type: none"> a. all information relating to or used by the Discloser or its Related Body Corporate, including know-how, trade secrets, ideas, marketing strategies and operational information; b. all information concerning the business affairs (including products, services, customers and suppliers) or property of the Discloser or its Related Body Corporate, including any business, property or transaction in which the Discloser or its Related Body Corporate may be or may have been concerned or interested; c. any other information disclosed by or on behalf of the Discloser or its Related Body Corporate which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential; d. the terms and the actual existence of your Contract; and e. including any such information made available to the Discloser or its Related Body Corporate by any third party, but excluding any information that: <ul style="list-style-type: none"> i. is publicly known or becomes publicly known other than by breach of this Contract or any other obligation of confidentiality; ii. is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or iii. is developed independently by the other party without reliance on any of the Discloser's Confidential Information
Content	the content of a Message you send or receive
Contract	same as Customer Contract

<i>The expression:</i>	<i>means:</i>
Customer	the customer named in the Application Form
Customer Contract	see clause 2
Customer Terms	the terms and conditions set out in Part A of this document
Data Retention Laws	the Telecommunications (Interception and Access) Act 1979 (Cth) and any other Laws which require data, including metadata, to be retained or dealt with in a particular way
Dedicated Number	a digital mobile service number provided by us to you under this Contract for exclusive use by you as part of your Messaging Service
Design Services	the design and creation of text and/or images used in an SMS and/or MMS and includes, without limitation, concepts, ideas, innovation and development work to further enhance the Messaging Services. Design Services may also include the management of the delivery or execution of a process or campaign on behalf of the Customer
Direct Debit	a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit
Early Termination Fee	is calculated as follows – (45% of the average amount we have invoiced you from the commencement of the Contract until the date of termination) multiplied by (the number of remaining months (or any part thereof) of the Minimum Term)
End User	a person who receives a Message you send using your Account, and a person who sends you a Message via your Account
Equipment	a handset, modem, router or other hardware
Extract	deduct an amount by Direct Debit
Facilities	systems, software, computers, equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
GDPR	the General Data Protection Regulation (Regulation (EU) 2016/6790)
GST	Goods and Services Tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
Insolvency Event	includes an event where a receiver or receiver and manager is appointed over a party's property or assets, an administrator, liquidator or provisional liquidator is appointed to the party, the party enters into any arrangement with its creditors, the party becomes unable to pay its debts when they are due, the party is wound up or becomes bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction
Insolvency Protection Stay	see clause 48A
Intellectual Property Rights	<p>Includes all right, title and interest wherever subsisting (now or in the future) throughout the world, and whether registered or not, in and to:</p> <ul style="list-style-type: none"> a. copyright, neighbouring rights, moral rights and the protection of databases, circuit layouts, topographies and designs; b. methods, inventions, patents, utility models, trade secrets, confidential information, technical and product information; and

<i>The expression:</i>	<i>means:</i>
	<p>c. trade-marks, business and company names and get ups,</p> <p>and includes the right to apply for registration, grant or other issuance of the rights described in paragraphs (a), (b) and (c) above and any other rights generally falling within this term</p>
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Providers, any disruption to our or our Providers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, industrial action and acts of God including but not limited to lightning strikes, earthquakes, floods or other natural disaster
Law	laws, Acts of Parliament, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator
Listed Carriage Service	as defined in the Telecommunications Act (but covers most public voice and data communications services)
Message	an SMS, MMS or OTT Message
Message Credits	a credit equal to your Monthly Access Fee that may be applied to your Messaging Fees for that month, provided that any unused balance in each month (a) is not carried over to any later month and (b) is not refundable
Messaging Fee	a Charge per Message sent or received on your Account
Messaging Service	a Telecommunications Service for sending and/or receiving and/or processing Messages
Minimum Term	the period specified in your Plan or Application Form, or if your Plan or Application Form does not so specify, means 12 months
MMS	a message including text and/or multimedia content carried by the multimedia messaging service developed by the Open Mobile Alliance, whether it originates or terminates on a mobile phone or another kind of computer
MMS Service	a Messaging Service for MMS
Model Clauses	the standard contractual clauses for transfers from data controllers in the EEA to data processors outside the EEA set out in the Commission Decision 2010/87/EU, dated 5th February 2010, entered into between you and us, as set out in Part E of this Customer Contract
Monthly Access Fee	the charge identified as such in a Plan or Application Form
Network	see clause 4.1(c)
Numbering Plan	the Telecommunications Numbering Plan issued under the Telecommunications Act
Operational Directions	Any direction we give you in relation to the Services or your Account in accordance with clause 10
OTT Message	is an instant message that uses the internet for transmission
Our Facilities	Facilities we own and/or operate
Personal Information	as defined in the Privacy Act from time to time
Periodic Entitlements	see clause 6

<i>The expression:</i>	<i>means:</i>
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service. Many of our Services are available under different Plans, each with its own features, entitlements, contract period, Charges and special conditions. The terms of your Plan form part of your Customer Contract
Prepaid Entitlement	an entitlement to send a message based on an amount prepaid by the Customer
Prepaid Plan	a Plan where you must pay in full for a Service before you use it
Price List	see clause 26.1(b)
Privacy Act	the Privacy Act 1988 (Cth) and the Australian Privacy Principles contained in that Act, as amended from time to time;
Provider	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content or (c) a service – that we resupply to you
Provider Facilities	Facilities that are managed or maintained by a Provider
Provider Requirements	see clause 12
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and any other relevant government or statutory body or authority and the Telecommunications Industry Ombudsman
Related Body Corporate	as defined in the <i>Corporations Act 2001</i>
Reseller	a Customer whose Application Form states that they are appointed as a reseller of our Services
Restricted Content	<p>Content that:</p> <ul style="list-style-type: none"> a. is likely to be, having regard to the contemporary attitudes of Australian society, offensive to reasonable adults; b. is likely to be, having regard to Law and the contemporary attitudes of Australian society, unsuitable for minors; c. promotes, incites or instructs in matters of crime; d. describes, incites or promotes unlawful sexual activity; e. promotes or incites violence or hatred against any person or group, or incites racial hatred; f. causes unnecessary alarm, distress or panic or is menacing in character; g. contains a computer worm or virus; h. breaches any Law; i. is in contravention of any privacy rules; j. infringes the confidentiality, copyright or other intellectual property rights or any other proprietary interest of any person; k. is false, misleading or deceptive, or likely to mislead or deceive; l. provides financial advice to any person; m. is out of date, having regard to information generally available, subsequently published, or released, or made available; or n. is for the purpose of providing any warning or notification about a serious risk to the safety of persons or property (for example, emergency

<i>The expression:</i>	<i>means:</i>
	services)
Services	a service (including any Equipment) which we provide to you, including but not limited to (a) a carriage service of a kind specified in the <i>Telecommunications Regulations 2001</i> ; or (b) ancillary goods or service of a kind specified in the <i>Telecommunications Regulations 2001</i>
Service Level Agreement	a written service quality assurance titled as such, as updated by us from time to time
Shared Number	a digital mobile service number that we associate with multiple Accounts
SLA	a Service Level Agreement
SMS	a text message carried by the short message service that was originally developed for use on the GSM mobile telephone network, whether it originates or terminates on a mobile phone or another kind of computer
SMS Service	a Messaging Service for SMS
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act
Spam Act	the <i>Spam Act 2003</i> (Australia)
Spam Laws	The Spam Act, the <i>Unsolicited Electronic Messages Act 2007</i> (New Zealand), the <i>CAN-SPAM Act</i> (USA) and any other similar legislation, guidelines and codes of practice in relation to Spam
Staff	any person, whether your employee, contractor or otherwise, who uses your Account
Standard Rate Messages	Messages that are billed by Carriers at standard rates, and in particular are not premium rate Messages, which are billed by Carriers at premium rates
Supplier	the entity described as such in the Application Form and/or your Plan and/or on the website on which these Customer Terms are published
Telecommunications Act	<i>Telecommunications Act 1997</i>
Telecommunications Service	a Listed Carriage Service or any service we supply in connection with that service
Unrestricted Content	Content that is not Restricted Content
Use-by Date	see clause 7.1(b)

Part B – Design Services Service Terms

60. About this Part

This Part applies when we supply you with Design Services.

61. Quote and Specifications

Prior to providing any Design Services we will agree:

- (a) the specifications and requirements for the Design Services; and
- (b) total estimated cost of the Design Services.

62. Deposit for Services

We may require you to pay a deposit for any Design Services that you have asked us to provide to you.

63. Approval of Design Services

Where we undertake Design Services or any form of professional services, you must will not unreasonably withhold signoff and approval of the completed project, where we are able to reasonably demonstrate that we have met the agreed specifications or requirements.

64. Customer Warranty

You warrant that all Content provided to us in relation to the provision of the Design Services is duly licensed or authorised and not in breach of any law, third party rights or trademarks. You further accept without limitation that any fees, royalties or other payments for use of Content are to be paid by you.

65. Payment

Upon completion of the Design Services you agree to pay the total cost of the Design Services within 14 days of receipt of an invoice for such services.

Part C – Reseller Terms

66. About this Part

This Part C applies if your Application Form states that you are a Reseller.

67. Reseller Rights

We grant you the non-exclusive right to market and resell the Services to your customers.

68. Reseller Independence

Your business is an independent business. Accordingly:

- (a) you are not, and must not (in any circumstances) hold yourself out as our agent, associate or affiliate;
- (b) you must not represent that we are in any way the owner or operator of the business;
- (c) your acts or omissions do not bind us;

(d) this Customer Contract does not constitute either you or us as a joint venturer, partner, agent, employee or fiduciary of the other.

69. Provision of Services to Others

You:

(a) will enter in to separate legal agreements with your customers to whom you resell the Services which contain terms and conditions substantially similar to the Customer Terms (but you must not appoint any sub-seller or partner);

(b) expressly acknowledge that we will not, at any time, be responsible for or liable for the Content or the destination of any Content conveyed by or to you;

(c) agree that, if you become aware that any End User does not wish to continue to receive Messages, you will take all necessary steps, including notifying us, to ensure that the End User does not continue to receive Messages;

(d) must ensure that your customers do not do anything that, if done by you, would breach your Contract;

(e) indemnify us against any claim against us by your customer or a Regulator arising out of or in connection with your business or the Services you resell.

70. 90 Day Notice of Termination

If you are a Reseller, then the reference to “30 days” in clause 45.1(a) is deleted and replaced with “90 days”. For the avoidance of doubt this means that you may terminate your Customer Contract at any time (except during the period of the Minimum Term) on 90 days’ written notice to us.

Part D – E-Privacy

71. About this Part

This Part D applies if the Services or the performance of our respective obligations under this Customer Contract involve the processing of any personal data (as defined in the GDPR) of, or sending Messages to, any individuals in the European Union.

72. Privacy and Electronic Communications and Ecommerce

(a) You warrant and undertake at all times to comply (and to ensure that your Staff and End Users also comply) with your obligations under the Privacy and Electronic Communications Regulations (EC Directive) 2003 and the Electronic Commerce (EC Directive) Regulations 2002, in particular, you:

(i) warrant and represent that End Users to whom you send Messages have consented or otherwise opted-in to the receipt of such Messages as required by any applicable Law or regulation.

(ii) agree that you will include clear opt-out/unsubscribe information on your Messages when required to do so by any applicable Law or regulation; and

(iii) will adhere to the Consumer Best Practices Guidelines promulgated by the Mobile Marketing Association, if applicable to your messages

(b) You indemnify us for any Claim which results from your breach of paragraph (a) above.

73. Data Protection

(a) The terms 'data subject', 'personal data', 'process', and 'supervisory authority' have the meanings given to them in the GDPR.

(b) With effect from 25 May 2018, if a party is provided with, or has access to personal data in connection with the Services, it must comply with the GDPR and any other applicable law in respect of that personal data.

(c) The subject matter of the processing by us shall be the performance of this Customer Contract. The nature and purpose of the processing shall be the provision of the Services. The duration of the processing shall be the duration of this Customer Contract.

(d) We shall:

(i) only process personal data on your behalf in accordance with, your instructions and for the purposes set out in this Customer Contract;

(ii) implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

(iii) ensure that any of our personnel engaged in the processing are subject to a duty of confidentiality.

(iv) co-operate with you if you are required to deal or comply with any assessment, enquiry, notice or investigation by the Information Commissioner, to assist you in complying with such assessment, enquiry, notice or investigation.

(v) notify you if we receive a request from a data subject for access to personal data, and shall provide you with reasonable co-operation and assistance in relation to any such request.

(vi) inform you without undue delay if at any time any personal data is or is suspected to be, lost, corrupted, used or disclosed to a third party except in accordance with this Customer Contract and provide reasonable assistance to you in relation to your obligation to notify data subjects or a supervisory authority.

(e) You acknowledge that in providing the Services, personal data may be transferred outside the European Economic Area under the Customer Contract and each party undertakes to comply with its obligations under the Model Clauses.

(f) You hereby consent to the sub-processing of personal data by a Provider. We shall only appoint additional sub-processors where we have your prior consent to do so and where we have written terms in place with the sub-processor that reflect these terms.

(g) You warrant that you have provided a fair processing notice to End Users that notifies them of our processing activities and that where our processing of personal data on your behalf requires the consent of End Users, you have and will obtain this and provide us with evidence on request.

(h) On termination of this Client Contract, we shall delete all personal data that you have provided to us, unless we are required by law to retain it (in which case, we will not actively process it after the termination date).

(i) You may, not more than once in any 12-month period and on giving at least 30 days' written notice, conduct an audit of our processing of personal data under this Client Contract. We shall mutually agree on the scope, timing and duration of the audit. The audit shall exclude any personnel records and any data, systems and facilities which are subject to confidentiality obligations to third parties. You shall not be entitled to take copies of any information.

(j) You indemnify us for any Claim by your Staff, End Users or any other third party that it has suffered Loss as a result of your breach of paragraphs (b), (e) or (g) above.

Part E – Model Clauses

STANDARD CONTRACTUAL CLAUSES (PROCESSORS) For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: Customer as shown on the Application Form

Address: Customer's address as shown on the Application Form

Tel: Customer's telephone number as shown on the Application Form

E-mail: Customer's email address as shown on the Application Form

Other information needed to identify the organisation: N/A
(the data exporter)

and

Name of the data importing organisation: Supplier as shown on the Application Form

Address: Supplier's address

Tel: Supplier's telephone number as shown on the Application Form

E-mail: Supplier's email address as shown on the Application Form

Other information needed to identify the organisation: N/A
(the **data importer**)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1 Definitions

For the purposes of the Clauses:

(a) '**personal data**', '**special categories of data**', '**process/processing**', '**controller**', '**processor**', '**data subject**' and '**supervisory authority**' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) '**the data exporter**' means the controller who transfers the personal data;

(c) '**the data importer**' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) '**the sub-processor**' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) '**the applicable data protection law**' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) '**technical and organisational security measures**' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2 Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3 Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4 Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses; 12.2.2010 Official Journal of the European Union L 39/11 EN;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5 Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about: (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; (ii) any accidental or unauthorised access; and (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6 Liability

1. The parties agree that any data subject who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which

case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses. 12.2.2010 Official Journal of the European Union L 39/13 EN

Clause 7 Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8 Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9 Governing law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely the Country specified in the Application Form.

Clause 10 Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11 Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the Country specified in the Application Form.

4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12 Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

Appendix 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter: The data exporter is a customer of the data importer, who wishes to use the data importer's telecommunications services to send electronic messages to individuals within the European Economic Area.

Data importer: The data importer, who is specified in the Application Form, is a telecommunications service provider that processes certain personal data provided to it by its customers in order to provide electronic messaging services to those customers.

Data subjects The personal data transferred concerns the following categories of data subjects: Customers, employees and other end users of the data exporter. As the data exporter has full control over the personal data which is being transferred to the data importer, and the data importer will receive any personal data that the data exporter transfers, the data exporter has sole control over the specific data subjects.

Categories of data:

As the data exporter has full control over the personal data which is being transferred to the data importer, and the data importer will receive any personal data that the data exporter transfers, the data exporter necessarily has sole control over the specific categories of data. Categories may include name, telephone numbers and email addresses.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):
As the data exporter has full control over the personal data which is being transferred to the data importer, and the data importer will receive any personal data that the data exporter transfers, the data exporter necessarily has sole control over any special specific categories of data which may be transferred to and processed by the data importer.

Processing operations: The personal data transferred will be subject to the following basic processing activities: Submission to telecommunication providers for delivery; storage; access for customer service, email and messaging abuse detection, prevention, and remediation; monitoring, maintaining and improving the data importers services.

Appendix 2 to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The data importer's security measures include, but are not limited to:

- Customers interact with and transmit messages over a secure (encrypted) TLS/SSL connection
- Services interact and transmit to carriers over a secure (encrypted) TLS connections and/or VPN tunnels
- Firewalls protecting the data importer's production network and servers.
- Non-public access to production network and servers is also protected by a secure VPN connection
- Services are hosted in secure Tier-1 datacentres protecting physical servers and devices.
- Strict protocols and controls governing authorisation and access to the data importer's servers and devices.
- Audits by security experts, including penetration testing.