

MESSAGENET PTY LTD ACN 082 712 589

MessageNet Terms and Conditions

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Account means an arrangement to pay a monthly account as set in clause 6.1.

Content means the data (including messages, mobile phone and pager numbers and the identification of senders and recipients) you send to MessageNet.

Content Specifications means the technical specification for Content accepted by MessageNet and includes Telocator Alphanumeric Protocol (TAP) and other protocols or interfaces that MessageNet tells you it will accept.

Contract Price means the amount that you pay to MessageNet under this agreement for the 12 months preceding the incurring of the liability for which the indemnity is sought.

Event of Delay means an event which renders a party unable to carry out the whole or any part of this agreement for any reason beyond its control including but not limited to acts of God, acts of governments or governmental authorities, strikes or riots, acts of war or terrorism and any other causes of like nature.

Insolvency Event means any of the following events:

- (a) a party, being an individual, commits an act of bankruptcy;
- (b) a party becomes insolvent;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;
- (d) a party assigns any of its property for the benefit of creditors or any class of them;
- (e) an encumbrance takes any step towards taking possession or takes possession of any assets of a party or exercises any power of sale; or
- (f) a distress, attachment or other execution is levied or enforced against a party in excess of \$10,000.00.

Message means an SMS or MMS message sent via a mobile phone network or a pager message sent via a paging network from MessageNet to a number you nominate. Messages are restricted to 160 characters. Accordingly, MessageNet may send one or more SMS messages when it receives Content from you which exceeds the 160 character limit applicable to SMS messages.

Marketing Message means a Message that is designed to promote the sale of or demand for goods or services.

MessageNet means MessageNet Pty Ltd ACN 082 712 589 of Level 4, 606 St Kilda Rd, Melbourne, Victoria.

MMS means a Multimedia Message Service message.

Pay As You Go means an arrangement to pay in advance as set out in clause 6.1.

Security Identification means all logon identity passwords and any other security code or devices used from time to time to access an Internet service provided as part of the Service.

Service means the service provided by MessageNet for the delivery of Messages via telecommunication networks and any other Additional Services selected by you as indicated in the registration form.

SMS means a digital mobile phone Short Message Service message.

Software means any software supplied by MessageNet from time to time and includes any modifications or alterations to the software.

You means the customer identified in the registration form and **your** has a corresponding meaning.

2. OUR AGREEMENT

This agreement is with you and MessageNet for the provision of the Service as set out in the registration form and these terms and conditions.

3. TERM

This agreement will start when MessageNet notifies you that it has accepted your application to use the Service. It will continue until terminated by either party in accordance with this agreement. However, the minimum term for Account customers is one month.

4. THE SERVICE

4.1 MessageNet will use its best endeavours to provide you with the Service. However, it does not guarantee delivery of Messages either in a timely manner or at all.

4.2 The provision of the Service may be affected by a range of factors including technical problems and telecommunications network coverage and availability which relies on third party services. Also, Messages may

not be received where the recipient's mobile phone memory is full.

4.3 MessageNet does not make any warranties in respect of services provided by third parties.

5. FEES

MessageNet will charge you the fees set out in the registration form and may vary the fees at any time by giving you at least 30 days notice in writing.

6. PAYMENT

You may pay for the Service in arrears by selecting an Account or in advance with the Pay As You Go option.

6.1 Account

If you select the Account option:

6.1.1 MessageNet reserves the right to refuse you credit and you may be required to Pay As You Go.

6.1.2 MessageNet will invoice you on the last day of each calendar month for the monthly fee and any other fees for use of the Service in that calendar month.

6.1.3 you must pay within 30 days of the date of the invoice.

6.1.4 any unused included messages for a month are forfeited and will not be credited to the next month.

6.2 Pay As You Go

If you select the Pay As You Go option:

6.2.1 MessageNet will credit your MessageNet account for an initial amount and charge you accordingly on registration; when your MessageNet account runs out of credit; on each anniversary of the date your MessageNet account was last credited; and as requested (for the amount requested);

6.2.2 MessageNet will deduct fees for use of the Service from the credit on your MessageNet account;

6.2.3 MessageNet may notify you when your MessageNet account is running low; and

6.2.4 You will forfeit any unused credit on your MessageNet account on each anniversary of the date your MessageNet account was last credited.

7. DIRECT DEBIT AUTHORITY

7.1 MessageNet will arrange payment of your MessageNet account by debiting your credit card where you have given us your credit card details and authorised us to do so in your registration form.

7.2 If you select the Account option, your credit card account will be debited monthly for the amount you owe on your MessageNet account; and

7.3 If you select the Pay As You Go option, your credit card account will be debited on registration and at other times as set out in clause 6.2.1.

7.4 You may also be charged fees on direct debits that are dishonoured. You should contact MessageNet if you have any issues or complaints about your direct debit arrangement or to cancel it. You can phone MessageNet on 03 8520 9025.

8. YOUR OBLIGATIONS

8.1 Compliance with Content Specifications

You must ensure that you (and anyone you authorise to use the Service, such as employees) only provide content to MessageNet that complies with the Content Specifications.

You must ensure that any content sent to MessageNet conforms to the Federal Governments Email, Mobile Marketing and Spam acts and where no Federal Government act is in place, the relative Australian Direct Marketing Associations code of practise.

8.2 Reselling prohibited

You must not re-sell or make the Service available to any third party (other than your employees) without MessageNet's consent.

9. RESTRICTIONS ON USE OF THE SERVICE

You must ensure that you (and anyone you authorise to use the Service, such as employees) do not use it to transmit any Messages that:

9.1 are defamatory, offensive, abusive, indecent, sexually explicit, menacing or harassing or cause damage or injury to any person or property;

9.2 result in a misuse of a third party's confidential information;

9.3 constitute a violation or an infringement of any duty or obligation in contract, tort or otherwise to a third party;

9.4 infringe any intellectual property rights owned or licensed by a third party;

9.5 represent (by act or omission, unless accurate) that MessageNet, its network suppliers or any other person created, endorses, has reviewed, or is in any way involved in the production of the Content;

9.6 contain a Marketing Message unless:

9.6.1 the recipient has first consented to receiving the Marketing Message; and

9.6.2 the recipient is provided with a means to opt-out of receiving the Marketing Message; and

9.7 the Marketing Message includes a clear indication of the source or originating entity of the Marketing Message to enable the recipient to determine who sent the Marketing Message; are unsolicited or unauthorised;

9.8 involve sending or receiving any instructions which, if implemented, might cause damage or injury to any person or property;

9.9 expose either party to the risk of any legal or administrative action including prosecution under any law;

9.10 affects the availability of the Service or causes interference to the normal operation of a telecommunications network or equipment;

9.11 result in the sending of a "virus", "worm" or trojan" or similar program;

9.12 are for any illegal purpose or contravene any law, code, standard or regulation, or are in contempt of court; or

9.13 impersonate another person or entity or are misleading or deceptive as to your (or the sender's) identity.

10. SOFTWARE

10.1 If MessageNet gives you access to the Software, MessageNet grants you a non-exclusive licence to use the Software for the purpose of accessing the Service.

10.2 You must not (except with MessageNet's written consent):

10.2.1 use the Software for any purpose other than accessing the Service;

10.2.2 adapt or modify the Software;

10.2.3 transfer, sub-licence or otherwise dispose of your rights in the Software; or

10.2.4 make the Software available to any other person (other than your employees).

10.3 Unless otherwise agreed, you will be responsible for installation and support of the Software.

11. SECURITY IDENTIFICATION

11.1 You are responsible for keeping secure and protected from unauthorised use all Security Identification.

11.2 You agree that MessageNet is entitled to treat any access by the use of your Security Identification as access with

your authority and MessageNet is not required to verify that authority.

11.3 You must notify MessageNet immediately if you become aware of any access to your Security Identification by unauthorised persons or any unauthorised access to information intended for you.

12. PRIVACY

12.1 Limitations of security

You acknowledge that MessageNet cannot guarantee that the Content will be secure at all times.

12.2 MessageNet's Privacy Statement

MessageNet will only collect, use and disclose your personal information and the Content in accordance with its Privacy Statement and the *Privacy Act 1998*. MessageNet will provide a copy of its Privacy Statement at your request.

13. SOFTWARE WARRANTIES

13.1 MessageNet warrants that the Software will not infringe the intellectual property rights of any third party. However, MessageNet reserves the right to terminate your licence to use the Software and, if requested, you must delete or return any copies of the Software.

13.2 MessageNet does not warrant that the software will operate free from defects, bugs or errors. It is your responsibility to ensure that the software is compatible with any hardware, software, accessories or services supplied by third parties.

14. GENERAL WARRANTY

Each party warrants to the other that it is duly authorised to enter into and perform this agreement.

15. YOUR INDEMNITY

You indemnify and keep MessageNet, its officers and employees indemnified against liability for or in respect of any losses, expenses, damages and costs including, but not limited to, all consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit or indirect costs) incurred by MessageNet, its officers and employees as a result of persons making any claim whatsoever against MessageNet arising out of the provision of the Service to you, in so far as they are attributable to:

15.1 any breach of this agreement by you, or

15.2 your negligent or unlawful action in the course of complying with your obligations under this agreement.

16. LIABILITY OF MESSAGENET

16.1 No liability for delay or failure

MessageNet will not be liable for any delay or failure to provide the Service if the delay is due to an Event of Delay.

16.2 Limitation of liability

To the extent permitted by law, MessageNet is not under any liability to you in respect of any consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit or indirect costs) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of the Service under this agreement or the failure or omission on the part of MessageNet to comply with its obligations under this agreement.

16.3 Exclusion of warranties

Except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement or to this agreement generally, are excluded.

16.4 Limitation of warranties that may not be excluded at law

Where any Act of Parliament implies in this agreement any term, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such term, such term will be deemed to be included in this agreement. However, the liability of MessageNet for any breach of such term will be, if permitted by that Act, limited, at the option of MessageNet:

16.4.1 to the supplying of the Service again; or

16.4.2 to the payment of the cost of having the Service supplied again.

16.5 Limitation of indemnities

Regardless of any other provision of this agreement, MessageNet's total liability to you under any indemnities that MessageNet has given to you under this agreement must not exceed the Contract Price.

17. TERMINATION AND SUSPENSION

17.1 Termination by either party

Either party may terminate this agreement at any time by notifying the other party. MessageNet will deal with a request for termination as soon as reasonably practicable.

17.2 Termination and suspension by MessageNet

MessageNet may terminate this agreement or suspend the Service immediately by giving you written notice:

17.2.1 if you have selected the Account option and you fail to pay your account on time;

17.2.2 if you have selected the Pay As You Go option and a debit to your credit card is not accepted;

17.2.3 if you breach any of these terms and conditions or suffer an Insolvency Event; or

17.2.4 if MessageNet can no longer provide the Service.

17.3 Consequences of termination

If this agreement is terminated for any reason:

17.3.1 you will no longer be able to use the Service;

17.3.2 you will forfeit any included messages or unused credits; and

17.3.3 if you have selected an Account, you will be liable for any accrued or unpaid fees.

18. GENERAL

18.1 This agreement may only be varied or replaced by an agreement duly executed by the parties.

18.2 This agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

18.3 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

18.4 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

- 18.5 You cannot assign, novate or transfer any of its rights and/or obligations under this agreement without MessageNet's written consent.
- 18.6 Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.
- 18.7 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.

19. NOTICES

All notices to be given to or demands to be made upon any party to this agreement must be in writing and may be delivered in person or sent by mail, email or facsimile to the current business address of the party.

All notices are deemed served 48 hours after the date of posting or if delivered personally, on the actual date of receipt or if sent by facsimile or email, in the normal course of transmission.

20. INTERPRETATION

- 20.1 This document is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.
- 20.2 If a party consists of more than one person, this document binds them jointly and each of them severally.
- 20.3 In this document:
- 20.3.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 20.3.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document; and
- 20.3.3 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 20.4 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

- 20.5 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

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PRIVACY STATEMENT

1. BACKGROUND

We are committed to preserving your privacy. This privacy statement was drafted having regard to our obligations under the *Telecommunications Act 1997*, the *Privacy Act 1998* (including the *National Privacy Principles*) and the *ACIF Code on the Protection of Personal Information of Customers of Telecommunications Providers*. This statement reflects our commitment to you.

2. HOW WE COLLECT INFORMATION

The personal information that we collect from you is information that is necessary for the provision and billing of our service, including the information you provide in your application form or online registration. We also collect information on your use of the service and related billing data and store the content of your messages.

We do not collect sensitive information such as your race, religion, beliefs or sexual preference.

3. HOW WE USE AND DISCLOSE INFORMATION

We will use information we collect from you to provide you with our service, for billing and to inform you about promotions, new services and features offered by MessageNet.

We may sometimes use or disclose the personal information we collect for a secondary purpose, that is, for use in a way different from the original reason for collection. We will only do this where the secondary purpose is directly related to the primary purpose, and you would reasonably expect us to use or disclose the information in such a way.

For example, if we collect information about your use of our services, we may use that information to provide you with promotional materials about similar services we offer.

Where we give you marketing material about our services, we will always give you an opportunity to 'opt-out' (that is, to request not to receive any such promotional materials in the future).

Generally, we treat information we collect from you as strictly confidential. However, we may also use or disclose your personal information in the following circumstances:

- where you have consented,
- where we are permitted or required by law, or it is in the interests of public safety to do so,
- where the disclosure is to a law enforcement agency, government agency, court or external adviser and we are permitted or required to do so,
- where we believe that there has been a breach of your obligations under paragraph 7.2 of our Terms and Conditions in relation to the content of your messages, or
- where it is necessary for a contractor to provide their services to us, in which case we will take all reasonable steps to ensure that the contractor keeps the information confidential.

4. SECURITY

We take all reasonable steps to protect the information we hold from misuse and loss and from unauthorised access, modification and disclosure.

You can view some of your information such as customer message logs, contact lists and user lists at our Internet site by using your username and password. We have designed the web page architecture of our Internet site with the aim of preventing this information from being disclosed by any other means. However, the inherent nature of the Internet is such that the security of information cannot be guaranteed.

Our authorised staff may access your information for the purposes of providing our service and they may also access your message content when you request a verification of your message records.

When registering online using a credit card, your credit card details are protected by 128 bit encryption across a secure Internet connection.

5. DATA QUALITY, ACCESS AND CORRECTION

We will take all reasonable steps to ensure that the personal information that we collect, use or disclose is accurate, complete and up to date.

You have the right to access the personal information that we hold about you. If this information is not accurate, complete and up to date, you can ask us to modify it.

To make such a request, please contact us by email at info@messagenet.com.au or phone 1300 55 15 15.

We will not charge you to lodge a request. However, we may charge a reasonable fee for providing access to the information and may refuse access in accordance with the *National Privacy Principles*.

6. CONSENT AND CHANGES

By providing us with your information and using our services, you consent to the collection, use and disclosure of your personal information in the manner described in this privacy statement. We encourage you to check our privacy statement regularly as it may change from time to time.

