

## Part A – General Terms

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### 1. The Term of Your Customer Contract

- 1.1 We supply Services to you under your Customer Contract or, failing agreement, pursuant to the Telecommunications Act (as applicable).
- 1.2 Your Customer Contract will commence upon our acceptance of your Order Form or when we commence providing the Services to you, whichever happens first (the “**Commencement Date**”).
- 1.3 Your Customer Contract will continue until the end of the Minimum Term and thereafter:
  - (a) if you are contracted with MessageMedia U.S.A. Inc, your Customer Contract will automatically renew for subsequent periods of the same length as the Minimum Term unless either party gives the other written notice of termination at least thirty (30) days prior to the then-current Term; and
  - (b) in all other cases, on a month-to-month basis until it is terminated in accordance with this Customer Contract.
- 1.4 If your Plan or Order Form does not specify a Minimum Term, 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.

### 2. The Services

- 2.1 During the Term, we will provide to you a non-exclusive, non-transferable, licence for the Services subject to the terms of your Customer Contract.
- 2.2 We may provide the Services using such facilities and such Carriers as we choose from time to time. We currently rely on Carrier networks to provide our Services but are not otherwise affiliated or related to such Carriers.
- 2.3 We may provide the Services using Our Facilities and/or third-party Provider Facilities. Together, we call those Facilities our Network.
- 2.4 Product Terms may apply if you use additional Sinch MessageMedia products.

### 3. Exclusive or Preferred Supplier

- 3.1 If your Order 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.

### 4. Monthly Access Fee and Message Credits (AKA Periodic Entitlements)

- 4.1 If your Plan or Order Form states that you are required to pay a Monthly Access Fee:
  - (a) you may receive Message Credits as stated in your Plan or Order Form, which may be redeemed by you against Message Fees incurred during that month; and
  - (b) the Monthly Access Fee is billed in advance for the applicable month for all Plans, including Plans where Charges are payable in arrears.
- 4.2 Message Credits which are not used within the month of purchase are not refundable, do not carry forward and cannot be exchanged or redeemed for cash or other credit.
- 4.3 If you exceed your monthly Message Credits, extra Charges apply and a Service may be limited in some way.

### 5. Prepaid Plans

- 5.1 If you are on a Prepaid Plan:
  - (a) Prepayments are not redeemable for cash or other credit.

- (b) Your Prepaid Plan may specify a Use-by Date. Unless a Plan or your Order Form specifies otherwise, a Use-By Date of one year from the date your last purchased credit under the Account applies to all Prepaid Entitlements under Prepaid Plans.
- (c) When your Prepaid Entitlements are used up we may cease providing Service.

## **6. Automatic Top Ups for Prepaid Plans**

- 6.1 Unless you have elected otherwise (by checking the appropriate box in your Order Form indicating that you wish to top up the balance of your Prepaid Entitlements automatically) the automatic top up feature will not be enabled. You can enable the auto top up feature at any time by accessing the billing page in your Account.
- 6.2 If the automatic top up feature is enabled then, if the value of the balance of your Prepaid Entitlements falls below \$10 (or another amount as selected by you), the balance of your Prepaid Entitlements will be recharged with the amount and using the payment method as what you elected when you enabled the auto top up feature.

## **7. Compliance with Policies**

- 7.1 You must comply with any applicable policy (including our Acceptable Use Policy and International Sending Policy) we publish on our website or make available to you.
- 7.2 Wherever practicable, we will provide you with reasonable prior notice of any new policy, or updates to existing policy that you must comply with. If you do not accept the new or updated policy, you may terminate your Customer Contract by written notice to us within 30 days of us giving you notice of such new or updated policy and no Early Termination Fee will be payable, except if you are contracted with MessageMedia U.S.A Inc. If you do not give us such written notice in accordance with this clause, you will be deemed to have accepted the new or updated policy.

## **8. Operational Directions**

Acting reasonably, we may give Operational Directions about a Service or Account. 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. You must comply with any applicable Operational Direction that we give you.

## **9. Carrier or Carriage Service Provider**

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

## **10. Provider Requirements**

- 10.1 Telecommunications Services, including many of our Services, are commonly provided by means of Provider Facilities, provided by third party Providers.
- 10.2A Provider may only permit us to provide a Service to you subject to certain requirements imposed by the Provider (**Provider Requirements**). Acting reasonably, we may require that you comply with any applicable Provider Requirements we notify to you in writing.
- 10.3 Where a Provider Requirement states that a Provider has a certain right or power:
  - (a) the Provider itself may exercise that right or power; or
  - (b) we may exercise the right or power on behalf of the Provider.

## **11. Use of Service by others**

- 11.1 Unless your Order Form states that we have appointed you as a Reseller, you must not share, resell or resupply a Service for remuneration or reward.
- 11.2 The acts and omissions of your Staff and End Users with respect to a Service are deemed to be your acts and omissions.
- 11.3 You must ensure that your Staff and End Users do not do (or omit to do) anything that would breach your Customer Contract.

**12. Payment for third party services**

Using a Service may depend on you having goods or services supplied by third parties. For example, 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 that you acquire.

**13. Using a Service**

13.1 When using a Service, you must comply with:

- (a) your Customer Contract;
- (b) our Acceptable Use Policy;
- (c) any other policy we provide to you or introduce on reasonable notice to you; and
- (d) any applicable Laws.

13.2 You are solely responsible for all acts or omissions that occur under your Account (including acts or omissions of your Related Body Corporates), 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.

13.3 If you integrate or request us to integrate your Account with a third-party application or platform:

- (a) you are solely responsible for such integration;
- (b) you acknowledge we have no control over any third-party application or platform;
- (c) we are not liable for any transaction you enter into with them; and
- (d) you warrant that your use of the Messaging Services will not infringe the terms and conditions of any third party applications or platforms.

13.4 From time to time third parties 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 and you consent to us doing so. We will not give them any other information about your Account, message content or other data.

13.5 You must take steps to prevent unauthorised access to a Service and ensure that best security practices are followed, for example, by using strong passwords, not disclosing your log in credentials, by securing any web APIs, and by implementing multi-factor authentication. You indemnify us against any Claim, cost, loss or liability which may arise in connection with your failure to comply with your obligations under this clause 13.5.

13.6 If you use or facilitate authentication via any social network in the sign-up and/or sign-in process in the course of using the Services, we are not liable for any Claim, cost, loss or liability which may arise in connection with such use or facilitation.

13.7 If you use Alpha-tags and Sender IDs in the course of using the Services, then you warrant and represent that you have a valid use case and/or right of use for such use in accordance with applicable Law and you indemnify us against any Claim cost, loss or liability which may arise in connection with your breach of your warranty and representation under this clause.

13.8 If we incur costs (including but not limited to increased Carrier fees and charges, surcharges or taxes) in connection with your failure to comply with your obligations under clause 13, you acknowledge and agree that you are responsible for these costs and that we may pass these costs onto you by increasing the amount of the Charges in our sole discretion.

**14. Telephone numbers – General**

14.1 We must comply with the Numbering Plan.

14.2 You must not knowingly and deliberately:

- (a) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it; or
- (b) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.

**15. Telephone numbers – Messaging Services**

15.1 Messaging Services are not a portable service within the meaning of the Numbering Plan.

15.2 A number we use in association with your Account:

- (a) is not a portable number; and
- (b) is not subject to number portability – within the meaning of the Numbering Plan.

15.3 For Australia, you are not a ‘customer’ for the purposes of the Communications Alliance code titled Mobile Number Portability C570:2009.

15.4 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 Customer Contract ends.

15.5 We retain all rights, obligations and liabilities under the Numbering Plan and other legislation relevant to such numbers.

15.6 If your Order 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 14 and 15.

**16. Voluntary number porting**

16.1 If, despite clause 15, we agree to transfer a Shared Number or a Dedicated Number to you or 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 or Claims arising out of the following:

- (a) our inability to transfer-in or transfer-out the number; or
- (b) the fact that the number is not, or ceases to be, available for use in connection with an Account.

**17. Maintenance and faults**

17.1 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.

17.2 You may report faults in relation to a Service or the Network by contacting our help line during its operating hours. 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. You must not report a fault directly to one of our Providers unless we ask you to do so. If you report a fault that turns out to be a ‘false alarm’, or not to relate to the Network, we may apply a reasonable charge for our effort and expenses in responding to your report.

17.3 We will use reasonable efforts to repair faults in Our Facilities within a reasonable period and we will use reasonable efforts to have our Providers repair faults in Provider Facilities within a reasonable period.

17.4 You are responsible for maintaining and repairing your own Equipment.

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

**18. Your cooperation**

18.1 You must give us all reasonable cooperation that we require in order to provide a Service to you.

18.2 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:

- (a) intercept communications over the Service;
- (b) monitor usage of the Service and communications over it; and
- (c) retain and store data, including metadata, as required under Data Retention Laws.

**19. Professional Services**

19.1 This clause 19 applies when we supply you with Professional Services.

- 19.2 Prior to providing any Professional Services we will agree:
- (a) the specifications and requirements for the Professional Services; and
  - (b) total estimated cost of the Professional Services.
- 19.3 We may require you to pay a deposit (of up to 35% of total estimated cost) for any Professional Services that you have asked us to provide to you.
- 19.4 Where we undertake Professional Services or any form of professional services, you 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.
- 19.5 You warrant that all material provided to us in relation to the provision of the Professional Services is duly licensed or authorised and not in breach of any law and not infringing any third party Intellectual Property Rights. You further accept without limitation that any fees, royalties or other payments for use of materials are to be paid by you.
- 19.6 Upon completion of the Professional Services you agree to pay the total cost of the Professional Services within 14 days of receipt of an invoice for such services.

## **Confidentiality, Intellectual Property and Privacy**

### **20. Confidentiality**

- 20.1 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:
- (a) for the purpose for which the Confidential Information was disclosed to the Recipient under the terms of your Customer Contract;
  - (b) to those employees, officers and agents of the Recipient who need to know the information for the purposes of your Customer Contract, if that person undertakes to keep confidential the Confidential Information;
  - (c) to professional advisers and consultants of the Recipient whose duties in relation to the Recipient require that the Confidential Information be disclosed to them;
  - (d) with the prior written approval of the Disclosing Party; or
  - (e) as otherwise required by law to disclose such information.
- 20.2 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.
- 20.3 Despite anything else contained in this Customer Contract and in particular in this clause 20, 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, query or request received from any regulatory or Government body or Carrier, in connection with this Customer Contract.
- 20.4 Nothing in this clause 20 prevents us from using your logo and naming you as a customer and user of our Services in our marketing materials and you consent to us doing so.

### **21. Intellectual Property**

- 21.1 The parties agree that other than as provided in this clause 21, nothing in your Customer Contract transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.
- 21.2 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 your 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 your Customer Contract, the Pre-Existing Material solely for the purpose of using or supplying the Services under your Customer Contract or otherwise as required by Law.
- 21.3 Nothing shall restrict our right to use, disclose, publish, commercialise or otherwise exploit any suggestion or idea that you provide for improving or otherwise modifying our products or Services, without compensating or crediting you.

## 22. Privacy and Spam Laws

- 22.1 You acknowledge and agree that we will collect, use and disclose Personal Information in accordance with our Privacy Policy.
- 22.2 If a party is provided with, or has access to, Personal Information in connection with the Services, it must comply with the applicable Data Protection Legislation and any other applicable law in respect of that Personal Information.
- 22.3 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.
- 22.4 You warrant and represent that:
- (a) End Users to whom you send Messages have consented or otherwise opted-in to the receipt of such Messages and the collection of Personal Information as required by the Spam Laws, Data Protection Legislation or any other applicable Law;
  - (b) you will include clear opt out/unsubscribe information in your Messages when required to do so by applicable Law;
  - (c) you will cease sending Messages to End Users who opt out of receiving Messages;
  - (d) you have provided notice to End Users that we may collect, handle, disclose or otherwise will have access to their Personal Information for the purposes of us providing the Services to you; and
  - (e) where our collection, handling or disclosure of, and/or access to Personal Information on your behalf requires the consent of End Users, you have and/or will obtain any such consent before, or at the time such Personal Information is made available to us for collection, handling, disclosure or access (and provide us with evidence of such consent on reasonable request).
- 22.5 You acknowledge and agree that except as may be required by your Customer Contract, we are not required to take steps to ensure that any Personal Information collected by you has been collected in accordance with applicable Data Protection Legislation. Further, you indemnify us for any Claim by a third party that it has suffered Loss as a result of a breach of any relevant Data Protection Legislation arising out of your use of the Services.
- 22.6 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 Part D (EU and UK Privacy Terms) and Part E (EC Standard Contractual Clauses).
- 22.7 Our Services include the maintenance of a functioning and effective unsubscribe process that complies with the Spam Laws (when used by you) and you agree to use that functionality. However, where you have requested that we delegate management of opt out or unsubscribe functionality to you (and we have approved such request) without limiting clause 22.4, you assume all liability and responsibility for ensuring that any End Users' opt-out or unsubscribe requests are actioned in accordance with Spam Laws, as we will not stop Messages being sent to End Users.

## 23. Credit

- 23.1 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.
- 23.2 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.

- 23.3 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 / direct debit of yours for AU\$100 (or equivalent) or more which has been dishonoured / refused more than once, any serious credit infringement you have committed or that payments are no longer overdue.
- 23.4 We may disclose information about you and any debt you owe us to a debt collection service we engage and anyone who takes, or is considering taking, an assignment of any debt you owe us.
- 23.5 If you are an individual, you agree that we can conduct a credit check and verify your personal details, in accordance with this clause.
- 23.6 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; and
  - (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.
- 23.7 You acknowledge that credit and other information about you may be used:
- (a) to assess your application;
  - (b) to assist you to avoid defaulting on your credit obligations;
  - (c) to notify other credit providers of a default by you; and
  - (d) to assess your creditworthiness.

## Prices, Billing and Payment Terms

### 24. Charges & payment: Prices

- 24.1 You agree to pay our Charges in accordance with the terms of your Customer Contract.
- 24.2 Unless specified in your Order Form, the Charges are set out in our Price List. If the price for a service is not listed in our Order Form or Price List, we may charge you a fee equal to the cost to us of providing that service plus a reasonable margin.
- 24.3 All Charges are subject to indexation increases and Third Party Charges plus a reasonable margin. If any Third Party Charges increase, then we may immediately pass the increased Third Party Charges on to you. Where practicable, we will provide you with reasonable notice of any increases to Charges.
- 24.4 Unless specifically provided otherwise in your Customer Contract, our Charges are in the Nominated Currency. We will calculate any international currency conversions using an exchange rate from a reputable independent provider which we elect to use for currency conversions. Currency conversions will be calculated at or about the time payment of the relevant Charge is made and, as there can be fluctuations in the exchange rates, the amount which you are charged may differ to Charge which was previously published or notified to you.
- 24.5 We may impose 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.
- 24.6 You must pay for every Message despatched using the Messaging Services irrespective of receipt by the intended recipient, unless failure of receipt by the intended recipient was solely due to our failure to provide the Services. Any failure by a Carrier to deliver a Message to the intended recipient is beyond our control and we will not be liable for any such failure.
- 24.7 On written request received within 30 days of a relevant Message being despatched; we will provide evidence that the relevant Message was delivered to the relevant Carrier or Provider.
- 24.8 Our Charges for multichannel messaging / messaging on social channels (for example Messenger, Instagram Direct, Google Business Messages or WhatsApp) are charged per Conversation.

### 25. Calculation of number of SMS

**Information point:** The SMS system typically allows a maximum message size of 160 characters (or 70 characters if you include any Unicode characters and send via a Unicode supported

service). If a user sends a longer message, the system splits it to two or more separate SMSs 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, (or 67 characters long if you include any Unicode characters and send via a Unicode supported service) because several 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. For messages sent to End Users in Canada, the maximum message size is 140 characters. When a message longer than 140 characters is sent to an End User in Canada, the system splits the message into two or more components, each of which are no more than 133 characters long (or 67 characters long if you include any Unicode characters and send via a Unicode supported service). As a result, a longer message will result in more than one SMS being transmitted, and charges apply accordingly, as described in this clause.

25.1 Charges for an SMS Service will be based on the number of SMS you send, typically calculated in accordance with the following rules (however, we reserve the right to pass any Third Party Charges on to you):

- (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 160 characters (or no more than 140 if you send to End Users in Canada) 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 160 characters (or more than 140 characters if you send to End Users in Canada) counts as one SMS for each block of 153 characters or part thereof (or each block of 133 characters or part thereof if sending to End Users in Canada).
- (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.

## 26. Calculation of the size of an MMS

Charges for an MMS Service will be determined by us with reference to the relevant regional requirements, including those below:

26.1 **Australia:** based on the number of MMS you send, calculated in accordance with the following rules:

- (a) An MMS can be a maximum total file size of 600kb which includes a maximum of 190kb for text content and a maximum of 410kb for an image.
- (b) It is not possible to send an MMS any larger than this through the platform.
- (c) Where an MMS is sent to multiple End Users, each one is counted separately.

26.2 **US and UK:** 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 Order Form).
- (b) Content that contains between 216kB and 350kB is charged at the First Tier Premium Rate (as defined in your Plan or Order 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 Order Form).
- (d) Where an MMS is sent to multiple End Users, each one is counted separately.



**27. Billing**

- 27.1 Your 'Billing Period' is the period between Bills. Unless your Order Form states otherwise, our standard Billing Period is monthly. Bills may relate to a part-period, for example, to align your Billing Period with the first day of each month.
- 27.2 We will issue you with a Bill for each Billing Period. Subject to clauses 27.3 and 27.4, our Bills will be issued within 10 Business Days after the end of a Billing Period.
- 27.3 If your Order Form provides for "Sign-up Date Billing", then:
- you will be issued a Bill on the date that the relevant Service commences and on that same day of each following month while your Customer Contract remains in effect; and
  - the Charges in each such Bill will be in respect of the period from the date of the Bill until the same day of the next month.
- 27.4 We reserve the right to issue Bills outside of the usual Billing cycle described above, for example if we see an unusual volume in traffic or if we consider there are other unusual circumstances that warrant an out-of-cycle Bill being issued to you.
- 27.5 If you are on a Prepaid Plan, then we will issue you a Bill after your prepayment has been made.
- 27.6 Some Charges in a Bill may relate to a previous Billing Period, if such Charges were not included in any previous Bill or remain unpaid. We do not waive our right to require payment of applicable Charges by not including the Charges in a Bill.
- 27.7 We may charge you an extra Charge if we provide billing, payment or security-related services or information to you, for example:
- accessing your purchasing platform and entering our invoices into your systems; or
  - Completing lengthy security questionnaires or due diligence exercises at your request.

**28. When you must pay**

- 28.1 You must pay a Bill within 14 days after the date of the Bill, unless your Order Form states otherwise.
- 28.2 Where an Automatic Payment or credit card arrangement applies, we may deduct an amount by Automatic Payment for payment for Charges:
- 14 days after they are billed (if we issue a Bill for the Service); or
  - 14 days after the end of the current Billing Period (if we do not issue a Bill for the Service).
- 28.3 If a Bill is dishonoured or otherwise not paid on time we may also charge to you:
- a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment;
  - a late payment fee of 1.5% per month of the unpaid amount from the due date until date of the payment in full or the maximum amount permissible by applicable law, whichever is less. The late payment fee may be charged each month an account is overdue. Late payment fees will be applied to arrears balances greater than 15 days overdue; and
  - any costs that we incur in engaging debt collection agencies to recover dishonoured payments.

**29. How you can Pay**

- 29.1 Automatic Payment is our preferred payment method and if your Plan or Order Form specifies 'Automatic Payment only' (or similar) then:
- Automatic Payment is a precondition to supply of Service to you;
  - we may immediately suspend Service without notice if Automatic Payment arrangements are not maintained; and
  - you must not cause to be reversed any Automatic Payment to us unless you have our prior written approval. Otherwise, you must pay our reasonable costs of reinstating the transaction.
- 29.2 Any non-Automatic Payments are subject to Third Party Charges and we do not accept payment via BPAY.
- 29.3 You represent and warrant that you have the legal right to use any credit card or other payment method you provide to us.

**30. Billing disputes**

30.1 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.

30.2 You may not raise a billing dispute more than 6 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.

**31. Taxes**

31.1 Amounts payable under your Customer Contract are exclusive of Taxes.

31.2 Unless otherwise stated in the Order Form, you shall be responsible for and shall pay all Taxes imposed on or with respect to the Services that are the subject of this Contract whether such Taxes are imposed directly upon you or upon us.

31.3 If you are exempt from any such Taxes for any reason, we will exempt you from such Taxes on a going-forward basis once you deliver a duly executed and dated valid exemption certificate to our tax department and our tax department has approved such exemption certificate.

31.4 If you are required by law to make any deduction or withholding on account of any Taxes from payments due to us under this Customer Contract, you must increase the payment due so that, after deducting or withholding such Taxes, we receive an amount equal to the amount we would have received had no deduction or withholding been made.

**Warranties and Indemnities****32. General warranties**

32.1 If you are in Australia and if we supply you with services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, ACL Guarantees apply but when permitted by the Australian Consumer Law our liability for failure to comply with an ACL Guarantee is limited to supplying the services again or paying the cost of having the services supplied again.

32.2 Both parties represent to each other that this Customer Contract constitutes a legal, valid and binding obligation, enforceable against each other in accordance with its terms.

32.3 You represent and warrant that:

- (a) you are engaged in a lawful business and are duly licensed to conduct such business under the laws of all jurisdictions in which you conduct business; and
- (b) all statements made by you in this Customer Contract, or in any other document relating hereto by you or on your behalf, are to the best of your knowledge true, accurate and complete.

**33. Service Level Agreements**

33.1 Subject to clause 32, if a Service or a Plan includes a Service Level Agreement (SLA):

- (a) we will remedy or provide a rebate as specified by the SLA (if any); and
- (b) subject to the express terms of the SLA and to the extent permitted by Law, our liability for breach of the SLA is limited to such remedy or rebate.

**34. Exclusion of Implied Terms and Warranties**

34.1 You agree and acknowledge that:

- (a) any representation, warranty, condition, guarantee or undertaking that would be implied in your Customer Contract by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Customer Contract to the fullest extent permitted by Law;
- (b) given the nature of telecommunications systems the Service is provided on an “as-is” basis and 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; and
- (c) IF YOU ARE CONTRACTED WITH **MESSAGEMEDIA U.S.A. INC**, WE EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR

NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

### **35. Your liability to us – General**

35.1 Subject to clause 38, you must indemnify us for any loss or damage we suffer arising from or in connection with:

- (a) your breach of your Customer Contract;
- (b) all Content sent or received on your Account;
- (c) any negligent act or omission by you, your employees, agents or contractors;
- (d) 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;
- (e) your use of the Service in a way that breaches any Law or infringes the rights of any third party;
- (f) acts or omissions of End Users;
- (g) your integration of the Service with a third party application or platform, except to the extent that we are negligent or caused or contributed to the loss or damage.

35.2 Your obligations under this clause survive termination of your Customer Contract.

### **36. Your liability to us – requests for information or evidence**

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

- (a) a police request for information or evidence in relation to you or your use of a Service; or
- (b) 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
- (c) a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.

36.2 If we incur any expenses under clause 36.1, you must reimburse us on our request.

36.3 Your obligations under this clause survive termination of your Customer Contract.

### **37. Our liability to you**

37.1 Subject to clause 38, we must indemnify you for any loss or damage you suffer arising from or in connection with:

- (a) our breach of your Customer Contract;
- (b) any negligent act or omission by us, our employees, agents or contractors;
- (c) 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
- (d) 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.

37.2 Our obligations under this clause survive termination of your Customer Contract.

### **38. Limitation on Liability**

38.1 To the maximum extent permitted by law, the parties agree:

- (a) 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;
- (b) that without prejudice to our right to be paid fees and Charges payable, neither party will be liable to the other party for any loss of profit, punitive damages, indirect loss or consequential loss suffered by the other party arising out of your Customer Contract;
- (c) we and our Related Bodies Corporate disclaim all liability whatsoever that may arise from your use of any third-party products and our licensors will have no liability of any kind whatsoever under your Customer Contract; and

- (d) that if you are contracted with MessageMedia U.S.A. Inc, a party may only bring a claim against the other in its individual capacity, and not as plaintiff or class member in any purported class action or representative proceeding.

38.2 Notwithstanding any other provision in this Customer Contract, nothing in this Customer Contract limits or excludes the liability of a party for claims relating to:

- (a) personal injury or death directly arising from that party's negligent acts or omissions;
- (b) infringement of intellectual property rights;
- (c) fees and Charges payable;
- (d) fraudulent, criminal or malicious acts or omissions;
- (e) a breach of Part C (Additional Security Terms applicable to use of our API);
- (f) a failure to comply with our International Sending Policy or Acceptable Use Policy; or
- (g) if you are contracted with MessageMedia U.S.A. Inc, your breach of contract.

## Termination and Suspension

### 39. Termination by us

39.1 We may, by written notice to you, terminate your Customer 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 Customer Contract (including but not limited to a failure to pay us on time, a breach of the Acceptable Use Policy) and you fail to remedy such breach within 14 days of being served notice to do so;
- (c) immediately if your breach is something which cannot be remedied;
- (d) where permitted by law, immediately if you suffer an Insolvency Event;
- (e) immediately if we become entitled to suspend the Service, and the suspension continues for more than a month;
- (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 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;
- (h) immediately if we reasonably suspect fraud or attempted fraud involving the Service;
- (i) immediately if you are, or become, a carrier or carriage service provider under the Telecommunications Act;
- (j) immediately, if your Account remains inactive for a period of 12 months or more; or
- (k) in any other circumstances stated elsewhere in your Customer Contract.

### 40. Termination by you

40.1 You may terminate your Customer Contract:

- (a) upon giving 30 days' written notice to us, except:
  - i. during the period of the Minimum Term; or
  - ii. where you are contracted with MessageMedia U.S.A. Inc, and your Customer Contract has automatically renewed pursuant to clause 1.3(a);
- (b) immediately, by giving us written notice, if we are in material breach of your Customer Contract and we fail to remedy that breach within 14 days of being served notice to do so;
- (c) immediately if our breach is something which cannot be remedied;
- (d) where permitted by law, immediately, by giving us written notice, if we suffer an Insolvency Event;
- (e) 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;
- (f) by giving us 14 days' written notice, if you reasonably suspect that we have infringed or attempted to infringe your Intellectual Property Rights; or
- (g) in any other circumstances stated elsewhere in your Customer Contract.

#### **41. Consequences of Termination**

41.1 If your Customer Contract ends:

- (a) 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 your Customer Contract pursuant to clauses 40.1(b) to 40.1(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 Customer Contract are at an end;
- (c) you must immediately cease use of any of our Services supplied under that Customer Contract;
- (d) we may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under your Customer Contract;
- (e) all bills are payable immediately;
- (f) you authorise us to recover any outstanding Charges and Early Termination Fees from any pre-payment you have made, or through use of Automatic Payment if you normally pay by Automatic Payment;
- (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 20, 21 and 22 and the limitations of liability and rights of indemnity.

#### **42. Suspension of Service**

42.1 We may suspend a Service or all Services at any time, without liability and without any requirement to provide notice to you, if:

- (a) there are problems with the Network (which are outside of our reasonable control), 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) we reasonably suspect you have breached any policy, including the Acceptable Use Policy;
- (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;
- (i) your Account remains inactive for a period of 12 months or more;
- (j) we exercise discretion to block a Service in relation to a specific overseas territory, acting reasonably; or
- (k) we are otherwise entitled to do so under your Customer Contract.

42.2 We will use reasonable endeavours to provide you with notice of a suspension of Service under clause 42.1.

#### **43. Charges during a period of suspension**

43.1 If we suspend Service:

- (a) because of your fault or breach of your Customer Contract you remain liable for all Charges payable under your Customer Contract during the period of suspension and we may pass on to you a reasonable reactivation fee for our administration costs of reactivating the Service for you (where we decide to do so); or

- (b) otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

## General

### 44. General power to vary your Customer Contract

44.1 Subject to clause 44.2, and without limiting our rights under clauses 24 we may vary your Customer Contract:

- (a) immediately without notice to you if the variation will likely have a benefit to you, no adverse impact on you, or immaterial impact on you; or
- (b) immediately without notice to you if the variation is required or necessitated by Law; or
- (c) by providing you with 30 days' written notice of that variation, in all other circumstances.

44.2 If you do not accept the variation set out in a notice from us pursuant to clause 44.1 you may terminate your Customer Contract by giving written notice to us within 30 days of us giving you notice of such variation and no Early Termination Fee will be payable, except if you are contracted with MessageMedia U.S.A. Inc. If you do not give us notice in accordance with this clause, you will be deemed to have accepted the variation.

### 45. Acknowledgments

45.1 You acknowledge that:

- (a) the internet is not an inherently secure system and you undertake primary responsibility for the protection of your information and data;
- (b) to the extent permitted by Law, you will be responsible for maintaining the accuracy and timeliness of your and your End User information, and we bear no liability for such inaccuracies, delays or errors;
- (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 your own mechanism for checking your system for viruses.

### 46. Assignment

46.1 We may assign or novate all or part of our rights and obligations under your Customer Contract to another entity (**Assignee**) provided that:

- (a) we have notified you and the Assignee is a Related Body Corporate of us and your rights under the Customer Contract will not be materially prejudiced as a result of the assignment or novation; or
- (b) we have notified you and the assignment is occurring as part of a sale of our business or a business restructure and your rights under the Customer Contract will not be materially prejudiced as a result of the assignment or novation; or
- (c) we have provided you with 30 days' prior notice of the assignment or novation.

46.2 If you do not agree to an assignment or novation pursuant to subclause 46.1(c), you may terminate your Customer Contract by written notice to us within 30 days of us giving you such notice and no Early Termination Fee will be payable, except if you are contracted with MessageMedia U.S.A. Inc.

46.3 You cannot assign or novate all or part of your rights and obligations under your Customer Contract unless we consent in writing, but such consent must not be unreasonably withheld by us.

### 47. Governing law and disputes

47.1 Your Customer Contract is governed by and must be construed in accordance with the laws of the applicable state and/or country identified below.

47.2 If you are domiciled or incorporated in a country identified in the table in this clause, you and we submit to the exclusive jurisdiction of the applicable courts identified below. Any legal suit, action,

or proceeding arising out of or relating to this Customer Contract or the Services will be instituted in the applicable courts identified below and the parties hereby consent to the jurisdiction of these courts.

<b>If you are domiciled or incorporated in:</b>	<b>Governing law:</b>	<b>Courts with jurisdiction:</b>
Australia	State of Victoria, Australia	The Courts of Victoria and the Commonwealth of Australia
United States	State of Colorado	State or federal courts located in the City and County of Denver Colorado, United States
United Kingdom or the European Union	England	Courts of London, England, United Kingdom
New Zealand	New Zealand	Courts of New Zealand

47.3 In the event of any dispute, claim, or controversy in connection with this Customer Contract (collectively, “**Dispute**”), each party’s senior representatives will, in good faith, attempt to resolve a Dispute. If the parties are unable to resolve a Dispute within thirty (30) days or within such other time period as the parties may agree in writing, then:

- (a) either party may commence court proceedings in relation to the Dispute in the relevant court with jurisdiction in clause 47.1; or
- (b) if you are not domiciled or incorporated in a country as listed in clause 47.1, such Dispute, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of 1 arbitrator. The language of the arbitration shall be English. This contract is governed by the laws of Victoria, Australia.

#### 48. Entire agreement

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

- (a) your Customer Contract does not include any term, condition, warranty, representation or guarantee that is not expressly set out in it, other than an ACL Guarantee (if applicable) 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 Customer Contract.

#### 49. Delays

49.1 Time is not of the essence in the performance of our obligations, including the provision of Services, under your Customer Contract.

49.2 We are not liable to you for any delay in the provision of any Service which is outside of our reasonable control (including but not limited to number verification and implementation) and you may not cancel or amend an order for a Service on the grounds of any such delay.

#### 50. No waiver

A failure, delay, relaxation or indulgence by either party in exercising any power or right conferred to that party under the Customer Contract does not operate as a waiver of the power or right.

## 51. Commercial Electronic Messaging

51.1 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.

51.2 Your consent under clause 51.1:

- (a) applies while your Customer Contract is in force and for a year afterwards; and
- (b) is in addition to any other consent that you may give, or which may be inferred, for the purposes of any applicable Spam Laws; but
- (c) terminates if you give us reasonable written notice that it is withdrawn.

51.3 Any Commercial Electronic Message we send you does not have to comply with section 18(1) of the Spam Act 2003 (Australia) (as amended and replaced).

51.4 This clause 51 survives the termination of your Customer Contract.

## Interpretation and Dictionary

### 52. Interpreting your Customer Contract

- (a) If an expression is defined in the Dictionary below, 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', 'for example' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) A schedule to a document is part of that document.
- (e) A reference to the singular includes the plural and vice versa.
- (f) A 'person' includes any entity which can sue and be sued.
- (g) A 'person' includes any legal successor to or representative of that person.
- (h) A reference to a law includes any amendment or replacement of that law.
- (i) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (j) Anything we can do, we may do through an appropriately authorised representative.
- (k) A reference to a document includes the document as modified from time to time and any document replacing it.
- (l) The word 'month' means calendar month and 'year' means 12 months.
- (m) 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.
- (n) 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.

### 53. Dictionary

<i>The expression:</i>	<i>means:</i>
Acceptable Use Policy	a policy so titled accessible at <a href="http://www.messagemedia.com/legal/use-policy/">www.messagemedia.com/legal/use-policy/</a>
Account	the Customer's entitlement to Messaging Services subject to your Customer Contract and, where relevant, includes any Service features, associated usernames or passwords and sub-accounts
ACL Guarantee	a guarantee in the Australian Consumer Law in Schedule 2 of the <i>Competition and Consumer Act 2010</i>
Alpha-tag	a distinctive sender name you can customise to your branding using text



<i>The expression:</i>	<i>means:</i>
API	an application programming interface
Automatic Payment	a payment that is deducted by us from your nominated financial institution account, including a periodic payment that is automatically deducted by us from your nominated financial institution account (for example, direct debit)
Bill	an invoice from us, in the form specified in your Order Form, which advises you of the total of each Charge that is due for payment
Billing Period	the period between Bills
Business Day	a week day on which trading banks are open for the transaction of banking business in Melbourne, Australia
Cardholder Data	cardholder name, expiration date, and/or service code and such other cardholder data included in the applicable definition of Cardholder Data in the PCI Security Standards from time to time
Carriage Service	as defined in the applicable Telecommunications Act, or in the UK: a service for carrying communications by means of guided and/or unguided electromagnetic energy
Carrier	as defined in the applicable Telecommunications Act and includes but is not limited to: <ul style="list-style-type: none"> <li>• in <b>Australia</b>: Telstra, Optus and Vodafone but also includes an entity that operates a telecommunications network outside Australia;</li> <li>• in <b>NZ</b>: One.nz, Spark, 2Degrees and Skinny but also includes an entity that operates a telecommunications network outside New Zealand; and</li> <li>• <b>anywhere else in the world</b>: a telecommunications carrier or entity that operates a telecommunications network</li> </ul>
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)
Commencement Date	refer to clause 1.2
Commercial Electronic Message	as defined in the <i>Spam Act 2003</i> (Australia), <i>Unsolicited Electronic Messages Act 2007</i> (New Zealand), as applicable
Confidential Information	in relation to each party (for the purposes of this definition, the Discloser): <ol style="list-style-type: none"> <li>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;</li> </ol>

<i>The expression:</i>	<i>means:</i>
	<p>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;</p> <p>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;</p> <p>d. the terms of your Customer Contract; and</p> <p>e. including any such information made available to the Discloser or its Related Body Corporate by any third party,</p> <p>but excluding any information that:</p> <ol style="list-style-type: none"> <li>i. constitutes Personal Information;</li> <li>ii. is publicly known or becomes publicly known other than by breach of this Customer Contract or any other obligation of confidentiality;</li> <li>iii. is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or iv. is developed independently by the other party without reliance on any of the Discloser’s Confidential Information but excludes data and Personal Information provided to us by you in connection with the Services or generated by us in providing the Services</li> </ol>
Content	the content of a Message you send or receive
Conversation	in the context of multichannel messaging / messaging on social channels, means a 24-hour session of unlimited two-way messaging with one End User on one social channel, commencing with the first business-initiated message sent in reply to an End User message
Customer	see definition of you / your
Customer Contract	see clause 1
Data Protection Legislation	<ul style="list-style-type: none"> <li>• in <b>Australia</b>: the <i>Privacy Act 1988</i> (Cth) and any other Laws relating to the processing of Personal Information and privacy, including where applicable the guidance and codes of practice issued by Regulators;</li> <li>• in the <b>US</b>: the Telephone Consumer Protection Act (TCPA) and applicable Federal Communications Commission (FCC) regulations; the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN SPAM) and applicable FCC and Federal Trade Commission (FTC) regulations; state-</li> </ul>

<i>The expression:</i>	<i>means:</i>
	<p>based legislation; as such may be amended from time to time; and -</p> <ul style="list-style-type: none"> <li>in the <b>UK</b>: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), with effect from 25 May 2015: the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications Regulations, Electronic Commerce (EC Directive) Regulations 2002;</li> <li>in <b>NZ</b>: the Privacy Act 2020,</li> </ul> <p>as applicable to you and as amended and replaced from time to time</p>
Data Retention Laws	the <i>Telecommunications (Interception and Access) Act 1979</i> (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 during the Term as part of your Messaging Service
Early Termination Fee	<p>is calculated as a genuine pre-estimate of our loss of net profits and wasted costs as a result of any early termination within the Minimum Term, following our reasonable steps to mitigate our loss, which is the greater of either:</p> <ul style="list-style-type: none"> <li>45% of the average monthly amount we have invoiced you from the Commencement Date until the date of termination multiplied by the number of remaining months (or any part thereof) of the Minimum Term; or</li> <li>45% of the “Total Monthly Fee” noted in your Order Form multiplied by the number of remaining months (or any part thereof) of the Minimum Term</li> </ul>
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
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)
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

<i>The expression:</i>	<i>means:</i>
	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
Intellectual Property Rights	Includes all right, title and interest wherever subsisting (now or in the future) throughout the world, and whether registered or not, in and to: <ol style="list-style-type: none"> <li>a. copyright, neighbouring rights, moral rights and the protection of databases, circuit layouts, topographies and designs;</li> <li>b. methods, inventions, patents, utility models, trade secrets, confidential information, technical and product information; and</li> <li>c. trade-marks, business and company names and get ups,</li> </ol> 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
International Sending Policy	a policy so titled accessible at <a href="http://www.messagemedia.com/legal/international-sending-policy/">www.messagemedia.com/legal/international-sending-policy/</a>
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 any applicable Parliament or Congress, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator or Carrier
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 (AKA Periodic Entitlements)	a credit equal to your Monthly Access Fee that may be applied to your Messaging Fees for that month
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 minimum period specified in your Plan or Order Form for which you will purchase the Services from us

<i>The expression:</i>	<i>means:</i>
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
Monthly Access Fee	the charge identified as such in a Plan or Order Form
Network	what we use to provide the Services and includes Our Facilities and/or third party Provider Facilities
Nominated Currency	as follows, unless otherwise nominated in your Order Form: <ul style="list-style-type: none"> <li>• Australian Dollars where you are contracted with Message4U Pty Ltd.</li> <li>• US Dollars where you are contracted with MessageMedia, U.S.A. Inc.</li> <li>• GBP where you are contracted with MessageMedia Europe Limited</li> </ul>
Numbering Plan	the rules and regulations issued by the Regulator in the relevant jurisdiction in which we provide the Services for issuing, transferring and changing telephone numbers including the Telecommunications Numbering Plan issued under the Telecommunications Act (where applicable) or where applicable numbering rules
Operational Directions	Any direction we give you in relation to the Services or your Account in accordance with clause 8
Order Form	your order to us to access Messaging Services, in a form we specify from time to time (including via application form, online sign-up or e-form) and which may also contain features, entitlements, Charges and special conditions in connection with a Service
OTT Message	is an instant message that uses the internet for transmission
Our Facilities	Facilities we or our Related Body Corporates own and/or operate
Personal Information	as defined in the applicable Data Protection Legislation
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service. 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	the Charges published on our website or otherwise notified to you

<i>The expression:</i>	<i>means:</i>
Privacy Policy	our privacy policy found on our website at <a href="http://www.messagemedia.com/legal/privacy-policy/">www.messagemedia.com/legal/privacy-policy/</a>
Product Terms	terms and conditions which are available on our website which apply to additional Sinch MessageMedia products
Professional Services	advisory services which may include 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. Professional Services may also include the management of the delivery or execution of a process or campaign on behalf of the Customer
Provider	a third party (including a Carrier) 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	the requirements of a Provider as described in clause 10
Regulator	includes, where applicable, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, the UK Information Commissioner, Federal Trade Commission, the US Federal Communications Commission and any other relevant government or statutory body or authority
Related Body Corporate	as defined in the <i>Corporations Act 2001</i> (Cth)
Reseller	a Customer whose Order Form states that they are appointed as a reseller of our Services
Sender ID	an alphanumeric distinctive sender name or number you can customise to your branding or for your business using digits and text
Services	a service 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

<i>The expression:</i>	<i>means:</i>
SMS Service	a Messaging Service for SMS
Spam	an unsolicited commercial electronic message within the meaning of the applicable Spam Laws
Spam Laws	the <i>Spam Act 2003</i> (Australia), 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 including but not limited to the e-Marketing Code of Conduct
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	see definition of we / our / us
Taxes	all applicable federal, state and local taxes, fees, charges, telecommunications provider (e.g., carrier) surcharges or other similar exactions, including, without limitation, sales and use taxes, communications service taxes, utility user's taxes or fees, excise taxes, VAT, GST, other license or business and occupations taxes, 911 taxes, franchise fees and universal service fund fees or taxes. Taxes do not include any Taxes that are imposed on or measured by our net income, property tax, or payroll taxes
Telecommunications Act	<i>Telecommunications Act 1997</i> (Australia) or the <i>Telecommunications Act 2001</i> (New Zealand), as applicable
Telecommunications Service	a Listed Carriage Service or any service we supply in connection with that service
Term	the term of this Customer Contract, which includes the Minimum Term
Third Party Charges	the costs or fees imposed on us in connection with the provision of the Services including costs or fees imposed by Carriers or Providers (e.g. international rates or surcharges), credit card or EFT providers or other payment merchants or any costs, fees or fluctuations in connection with currency conversion exchange rates
Unicode	the international encoding standard for use with different languages and scripts, by which each letter, digit, or symbol is assigned a unique numeric value that applies across different platforms and programs, including (but not limited to) emojis
Use-by Date	a period after which any Prepaid Entitlements that are not used expire without refund
We / our / us / Supplier	as follows, unless otherwise agreed to in writing by us:

<i>The expression:</i>	<i>means:</i>
	<ul style="list-style-type: none"> <li>• MessageMedia U.S.A., Inc. Colorado Corp No. 20211959186, if you are domiciled or incorporated in North America;</li> <li>• MessageMedia Europe Limited (3771735), if you are domiciled or incorporated in Europe or the United Kingdom; and</li> <li>• Message4U Pty Ltd ABN 16 095 453 062, if you are domiciled or incorporated in Australia or any other part of the world</li> </ul>
You / your	you, the customer named in the Order Form, being the legal entity who has entered into this Customer Contract or is otherwise using the Services