

Dialogue Communications Limited

Standard Terms and Conditions



1. Definitions

In this Agreement:

"Additional Charges" means charges which arise over and above the stated fees, consisting of

- i. Additional charges from Dialogue's suppliers, which Dialogue passes on to the customer.
- ii. Additional items for additional work undertaken on a time and materials basis for the customer.

"Agreement" means this document, as amended from time to time in accordance with the amendment terms.

"Order Form" means the Dialogue Order Form, which the Customer signs to signify acceptance of these terms.

"Documentation" means any documentation describing any Software licensed hereunder or describing or relating to the use of the messaging Services provided by Dialogue to the customer.

"Service Period" means the service duration which has been purchased by the customer.

"Licensed Materials" means any Software and/or Documentation licensed to the Customer under this Agreement.

"Service Commencement Date" means the actual date Dialogue notifies the customer that the services are enabled.

"Services" means the Dialogue Messaging Services ordered by the customer.

"Software" means any software programs which are supplied by Dialogue to the customer.

"Support" means the provision of a helpdesk or support service by Dialogue to the customer.

"Dialogue Network" means Dialogue's host computers, network hubs and points of presence, from the moment messages arrive at Dialogue to the point at which Dialogue has managed transfer to the SMSC of a mobile operator.

"Regulatory Body" means PhonepayPlus and Ofcom in the UK (www.phonepayplus.org.uk), and equivalent bodies in other regions that govern the use of premium rate and standard rate text messaging.

"Codes of Practice" means any Legislation and the guidelines and regulations of PhonepayPlus and equivalent bodies, and also guidelines and regulations from mobile operators as are issued from time to time and may be published in any Legislation or

at http://dialogue.net/terms_conditions/

"Legislation" means any act of UK Parliament or subordinate legislation and any enforceable community right within in the meaning of the European Communities Act 1972

2. Term of Agreement, Commencement of Service and Suspension of Service

2.1 This Agreement shall be effective from the Service Commencement Date for a minimum of 1 month ("the Initial Period"). This contract may be cancelled any time after the end of the Initial Period by either party giving the other at least thirty (30) calendar days' prior written notice.

2.2 Dialogue shall use all reasonable endeavors to provide the Services from the Service Commencement Date or as soon thereafter as is possible.

2.3 Without prejudice to Dialogue's rights under this Agreement the parties hereby expressly agree that any breach of any of the provisions of this agreement shall entitle Dialogue to bar access to the Services and/or to cease to convey any Short Message or associated services in whole or in part at any time and without notice.

3. Licensed Materials

If Dialogue supplies software to enable the customer to connect to the Dialogue Network, Dialogue, hereby grants to the Customer a non-exclusive license to use the Licensed Materials as permitted herein.

The Customer may use the software to connect to the Dialogue network and use in the manner for which it was designed and make copies of the software for the purpose of backup. The customer may not, sell, lease grant licenses or distribute the software to third parties without the written permission of Dialogue.

4. Service Provisions

4.1 Dialogue will use its reasonable endeavours to provide prompt and continuing Services but will not be liable for any loss of data resulting from delays, non deliveries, missed deliveries, or service interruptions caused by events beyond the control of Dialogue or outside the Dialogue Network, or to the extent of errors or omissions of the Customer. Dialogue specifically excludes any warranty as to the accuracy of information transmitted through the Service. Dialogue is not responsible for what occurs at the SMSC, nor if an operator's telephony network is non operational. Dialogue exercises no control over, and accepts no responsibility for, the content of the information passing through the Dialogue Network.

4.2 From time to time certain servers, or the whole or part of the Network used by Dialogue to provide the service may be closed down for routine repair or maintenance work. Dialogue or its authorized representative shall give as much notice as in the circumstances is reasonable and Dialogue shall endeavour to carry out such works during the scheduled maintenance periods as published from time to time.

4.3 Improper Use and Liabilities

4.3.1 The Customer acknowledges that it may only use the Service for lawful purposes, and it shall observe all applicable Codes of Practice, and all rules of the Regulatory Body throughout the duration of this Agreement.

4.3.2 The Customer warrants that it shall not (nor shall it authorize or permit any other party to) use the Service or the Dialogue network to receive or transmit material which is in violation of any law, or which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property right (including copyright), or otherwise unlawful.

4.3.3 The Customer shall not knowingly or recklessly transmit any electronic material (including viruses) through the Service which shall cause or is likely

to cause detriment or harm, in any degree, to computer or telephone systems owned by Dialogue or mobile phone users.

Any breach of these obligations shall entitle Dialogue to immediately terminate the Service to the Customer without notice.

4.3.4 The Customer acknowledges that Dialogue is unable to exercise control over the content of information passing over the Dialogue network or via the Service, and Dialogue hereby excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.

4.3.5 The Customer agrees to provide Dialogue with a detailed description of each service that it intends to run, and agrees that Dialogue can pass on these descriptions to the Regulatory Body and to mobile operators so that they can be satisfied that a service is acceptable.

4.4 Connections to Mobile Networks: The Service is used by the Customer to link into mobile networks worldwide, and the Customer agrees to conform to Codes of Practice in each territory. Note that most mobile networks expressly forbid the use of spam (sending of unsolicited messages).

4.5 SMS Address spoofing: The customer may not send messages purporting to come from a Dialogue mobile address, including shortcode, virtual mobile number, NUA or SMPP address, unless it is via the Dialogue Network.

4.6 Profligate Use: Use of internet and telecommunications services, other than by means provided and coordinated by Dialogue is also prohibited.

4.7 The Customer is not permitted to resell use of the Service to third party entities except with the express prior written permission of Dialogue.

5. Fees and Payment

5.1 The Customer shall be liable to pay the fees and charges listed in the Service Order Form together with any Additional Charges.

5.2 Payment shall be made at the times and in the manner specified below:

a. Messages should be pre-paid.

b. Set-up, fees and monthly charges are invoiced and payable within 15 calendar days of the invoice date.

5.3 Dialogue will endeavour to ensure that money resulting from premium rate text usage are reclaimed from the mobile operators, and passed on promptly.

5.4 Changes to the charges and tariffs may be introduced by Dialogue's suppliers (interconnect, ringtone etc. and telephony charges) at any time, but will be passed on by Dialogue at cost; because Dialogue rarely itself receives advance warning of such increases, it is unable to give prior warning of changes in tariffs in most cases.

5.5 Dialogue also reserves the right to make additional charges if in the opinion of Dialogue there is a major change affecting this Agreement occasioned by statute or by government body.

5.6 Consultancy Fees, where applicable, will be due monthly in arrears, and will be at fixed price or at Dialogue's then current rates on a time and materials basis, as agreed for each project.

5.7 Dialogue may require that the Customer has entered into a direct debit arrangement before Service Commencement, and Dialogue may suspend Service provision without any liability on Dialogue if Customer refuses to enter into such an arrangement, or cancels that arrangement once commenced.

5.9 The prices given do not include Value Added Tax (or similar sales taxes as may be introduced from time to time), which will, where appropriate, be added to the amount of all fees at the prevailing rate.

5.10 Dialogue's prices assume that the Customer settles all fees/invoices within the payment period. Dialogue reserves the right at its discretion to charge the higher of either the statutory rate of interest for late payments or interest at 1 per cent per month, above the base lending rate of the Bank of England on any sum not paid on the due date, together with all costs of recovery. Such interest shall run from day to day and accrue until full payment has been made.

5.11 The Customer is required to notify Dialogue within ten (10) working days of its receipt of an invoice if it has any question, which would lead it to dispute an invoice or part thereof.

5.12 Whilst the Customer may withhold any disputed payment in respect of the whole or any part of an invoice, it shall not be entitled to withhold any payment of the whole or any part of any invoice properly raised and which is properly due on the ground that it has any dispute over the whole or part of any other invoice, or has an alleged claim, counterclaim or set-off against Dialogue.

5.13 Dialogue reserve the right to withhold payment of premium rate monies in the event of outstanding fees/invoices or complaints which are investigated by the Regulatory Body until the complaint is resolved, and may retain money to pay fines and administrative costs associated with processing the complaint.

5.14 The Customer accepts the loss of revenue if mobile operators refuse payments for the Customer's premium rate services that breach Codes of Practice, or claw-back payments once made if they are later found to have breached Codes of Practice.

6. Changes

Dialogue shall provide the services which may be varied, modified or extended from time to time by Dialogue.

7. Security

Dialogue reserves the right to alter security measures, including passwords, for the services at any time and advise the Customer of these changes as soon as it is able.

8. Data Protection

8.1 The Customer shall comply with the Data Protection Act 1998 and the Telecommunications Regulations 1999, and any amendments or replacements thereof, including any legislation implementing Directive 97/66/EC in relation to the services operated by the customer.

8.2 The Customer agrees that Dialogue or its authorized representative may put the Customer's name and other information obtained about it from the Order Form and sales process into a computerised directory for internal use only, until Dialogue or its authorised representative receive specific written instructions to the contrary from the Customer.

9. Confidentiality

The Customer shall treat as confidential all information obtained from Dialogue pursuant to this Agreement and shall not divulge such information to any person without the prior written consent of Dialogue. The foregoing obligations as to confidentiality shall continue to apply notwithstanding the termination of this Agreement.

10. Limitation of Liability

a. Except as provided in this Agreement, no warranty, expressed or implied, is given or assumed by Dialogue.

b. Notwithstanding any other provision of this Agreement, in no event shall either party be liable to the other for any loss of profit, business data, contracts, revenues, or anticipated savings or any indirect or consequential loss of whatever nature, howsoever caused, whether occurring in contract, tort, negligence, or otherwise.

c. Nothing in this Clause shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.

d. The Customer will be entirely responsible for, and for indemnifying Dialogue in respect of, the content of any messages provided by the Customer in using services provided by Dialogue, and the Customer undertakes to ensure that all persons authorised by the Customer to use such services operate in an appropriate way. The Customer is also responsible for obtaining and complying with the message content rules and policies of the various network operators, and will indemnify Dialogue in respect thereof. The Customer will ensure traceability of SMS messages sent, via Services provided by Dialogue, by or on behalf of the Customer or its message recipients, and the Customer accepts that Dialogue is under a duty to comply with Codes of Practice which require disclosure details of Customer services and messages.

e. The Customer acknowledges that content of messages must be strictly controlled so as not to give rise to legal consequences, and that from time to time Dialogue will issue notices in this regard.

f. The customer is also responsible for, and will indemnify Dialogue against, any liability arising from:

- i. The Customer failing to ensure that it is running services which fully comply with Codes of Practice and the rules of the Regulatory Body.
- ii. The Customer failing to provide Dialogue with full descriptions of their service, including marketing details.
- iii. All losses, Dialogue's and those of the Customer and other customers, arising from short codes becoming barred as a result of the Customer failing to adhere to Codes of Practice and the rules of the Regulatory Body.
- iv. Termination of the Agreement due to the Customer's breach of any obligation or clause of this Agreement.

11. Patents, Trademarks and Intellectual Property Rights

a. The Customer acknowledges that any and all of the trademarks, trade names, copyrights, patents and all other intellectual property rights used or embodied in or in connection with the provision by Dialogue of the Licensed Materials and the Services are and shall remain the sole property of Dialogue and/or its licensors.

b. In the event that new inventions, designs or processes evolve in performance or as a result of this Agreement, the Customer acknowledges that the same shall belong to Dialogue unless otherwise expressly agreed in writing by Dialogue.

c. The Customer shall indemnify Dialogue fully against all liabilities of any nature whatsoever, including (without limitation) all costs and expenses which Dialogue may incur as a result of the Customer's infringement of any patent or other proprietary right of any third party provided that the Customer is given, insofar as it can be, immediate and complete control of any such claim, that Dialogue does not prejudice the Customer's defence of such claim and that Dialogue gives the Customer all reasonable assistance with such claim (for which the Customer shall reimburse all costs or expenses properly incurred by Dialogue in providing such assistance), and the Customer shall pay all damages and costs finally assessed against the Customer or Dialogue or payable by Customer or Dialogue in relation to such infringement. The Customer shall not have any liability to Dialogue to the extent that any infringement or claim thereof is based (a) on activities or information provided by Dialogue; and/or (b) on following specifications of Dialogue.

12. Relationship of the Parties

In the performance of its obligations hereunder, each party hereto will at all times be an independent contractor, and this Agreement shall not constitute, or be deemed to constitute, either party as being the agent, partner or joint venture partner of the other.

13. Injunctive Relief

Because a party's breach of any of its obligations hereunder may irreparably harm the other and/or its licensors and substantially diminish the value of the proprietary rights of the other and/or its licensors, the parties hereto each agree that if they breach any of their obligations the other party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including but not limited to injunctive relief) to enforce the obligations of the party in breach hereunder and to protect the other's

and/or its licensors' proprietary rights.

14. Force majeure

Neither party shall be liable to the other for any breach of its obligations hereunder resulting from any cause beyond its reasonable control including but not limited to fire, strikes, delays in transportation, inability to obtain supplies, hostilities, and regulations of any civil or military authority. The party whose performance is affected by force majeure shall use all reasonable efforts to avoid or overcome the causes affecting performance as soon as it becomes practical to do so.

15. Termination & Suspension of Service

15.1 This Agreement may be terminated:

a. Forthwith by Dialogue by written notice to the Customer if the Customer fails to pay any sum due hereunder within seven (7) calendar days of the due date.

b. Forthwith by Dialogue by written notice to the Customer if the Customer is in breach of Codes of Practice or the rules of the Regulatory Body.

c. Forthwith by either party by written notice to the other if the other commits any breach of any term of this agreement (other than one falling within a or b. above) and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) calendar days of a written request to remedy the same or within such other time as may be expressly provided herein; and

d. Forthwith by either party by written notice to the other if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or by any amendment or replacement thereof which may be issued from time to time) or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the other's business or assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

15.2 Subject to the limitations of the liability of either party contained in any part of this document, any termination of this Agreement pursuant to this Clause 15. shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

15.3 Upon termination of this Agreement, howsoever caused, the Customer shall immediately stop all use of any Licensed Materials (if any) and use of Services provided by Dialogue and promptly return to Dialogue (or at Dialogue's option destroy and certify in writing to Dialogue that it has destroyed) the original and all copies of any Licensed Materials, including but not limited to all archival copies, compilations, translations, partial copies, updates, and modifications, if any, and delete all copies of any such items from the Customer's computer hardware and any other hardware or storage facilities.

15.4 The Customer accepts that Dialogue may suspend without incurring any liability to the Customer any service immediately at the request of the Regulatory Body, or at the request of mobile operators if a service is the subject of a complaint, or appears to be in breach of Codes of Practice.

16. Notices

Any notice of termination, breach or other notice of a legal nature, or any other correspondence required to be given by either party under this Agreement shall be written and given by receipt requested email or facsimile followed by postal notification.

17. Invalidity and severability

If any provisions of this Agreement are found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for an invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18. Entire agreement and Amendment

18.1 This Agreement between Dialogue and the Customer constitutes the entire agreement between the parties hereto as to the subject matter hereof and supersedes all prior communications, representations and agreements relating to the subject matter hereof, whether written or oral, and the parties hereby acknowledge that no reliance is placed on any communication, representation or agreement made but not embodied in this Agreement and waive any right they may have in respect of any misrepresentation not expressly contained in this Agreement unless such misrepresentation was made fraudulently and/or to rescind this Agreement. The operation of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Agreement.

18.2 Dialogue reserves the right from time to time, by notice in writing of not less than 30 days, to issue to the Customer variations to these terms and conditions, which shall be binding on the Customer unless the Customer notifies Dialogue to the contrary in writing, in which case the original notice issued by Dialogue pursuant to this clause 18.2 shall be deemed to be notice of termination pursuant to clause 15.1.

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19. Successors

This Agreement shall be binding upon, and continue for the benefit of, the successors in title of the parties hereto in accordance with its terms.

20. Assignment

The Customer shall not be entitled to assign this Agreement (or any part thereof) nor all or any of its rights and obligations hereunder nor sublicense the use (in whole or in part) of the Licensed Materials. Dialogue shall be entitled to subcontract any part of this Agreement but such shall in no way reduce Dialogue's liability to the Customer hereunder. Whilst Dialogue may assign this Agreement for purposes of internal reorganisation, any assignment will occur only after consultation with the Customer.

21. Press, Publicity and Public Announcements

Neither party shall make any press statement, publicity statement or announcement nor publish or actively participate in any article concerning the subject matter of this Agreement without advising the other party hereto and agreeing with the other the content of such. However, shortly after entering into this Agreement Customer consents to agreeing with Dialogue a brief statement, which Dialogue may issue on or shortly after the Service Commencement Date. Dialogue may later request Customer to agree to more detailed statements, but shall only produce such after the Customer's agreement thereto. The foregoing shall not prevent basic disclosure by either party in accordance with financial, investment or auditing disclosures required by law or regulatory authorities, nor disclosure by Dialogue of message content or sender details as may be required by law or regulatory authority.

22. Law

The construction, validity and performance of this Agreement shall be governed by English law and the parties hereto hereby submit to the non-exclusive jurisdiction of the English courts.

Signed on behalf of the customer: _____

Name: _____

Position: _____

Company: _____

Date: _____

Signed on behalf of Dialogue: _____

Name: _____

Position: _____

Date: _____