



## SMS Service Agreement

Texter Group Pty Ltd provide this document as its agreement with its Customer(s) on the provision of SMS Services.

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**These SMS Service Terms & Conditions (“Terms”) are between Texter Group Pty Ltd, ABN 44 636 431 117 (“Texter”) – AND – the party whose name and address appears in Item 1 of the Schedule (“You”).**

Item 1:	Customer name and address	Name:	
		Address:	
		Site ID:	
Item 2:	Messaging Fees at the commencement of this agreement		
Item 3:	Service Fees (other than Messaging Fees) at the commencement of this agreement		
Item 4:	Customer’s Requirements / Facilities		

### 1 INTRODUCTION

- 1.1 Texter has secured a license to offer the SMS Service to You.
- 1.2 You must comply with your obligations under this Agreement and the Software License Agreement so that Texter can comply with its obligations to the Service Provider.
- 1.3 When You sign this agreement, You agree to accept and be bound by the terms in this Agreement.

### 2 FEES SCHEDULE

- 2.1 Your fees will be (with pricing for the SMS Service in Australian dollars and excluding GST) as follows:
  - \$0.035 per message, billed at the end of each month

### 3 TERM

This Agreement commences when You sign this agreement and will continue while You are using the service unless earlier terminated as per the following events:

- 3.1 The license agreement between the Service Provider and Texter is terminated;
- 3.2 The Software License Agreement is terminated;
- 3.3 If You are in breach of any of the terms of this agreement or the Software License Agreement;
- 3.4 If Texter gives You 30 days’ notice that it will cease to provide the SMS Services.

Customer Initials \_\_\_\_\_

## 4 SMS SERVICES

Texter offers the SMS Services provided by the Service Provider for on sale by Texter to You. Texter will forward to You by email details to enable You to use the SMS Services.

## 5 ADDITIONAL SERVICES

Texter may provide Additional Services to enhance the SMS Service and/or in addition to the SMS Services. There may be additional Fees for the Additional Services.

## 6 PAYMENT OF FEES

- 6.1 The initial Messaging Fees are set out in the **FEES SCHEDULE** in Section 2 of this Agreement.
- 6.2 If the Messaging Fees and Service Fees change, You will be notified by Texter You will be provided with an additional agreement for those Messaging Fees and Service Fees.
- 6.3 You agree to pay the Messaging Fees and the Service Fees when required by Texter (billed at the end of each month).

## 7 YOUR OBLIGATIONS

- 7.1 You must have a current Software License Agreement for Best Practice Software; and
- 7.2 You must have the Customer's Requirements/Facilities in order to utilise the SMS Services and the Additional Services; and
- 7.3 You must comply with every reasonable request that Texter makes of You to utilise the SMS Service and the Additional Services; and
- 7.4 You must not use the SMS Service and the Additional Services in a way contrary to the reasonable instructions of Texter, including You must not incorporate into any message using the SMS Services any Restricted Content, but You may use content that is Unrestricted Content but You acknowledge that the SMS Services is solely for You to transmit messages for your (INSERT NAME OF BUSINESS) service.

## 8 INTELLECTUAL PROPERTY

Texter retains all title and intellectual property rights in the software provided, including any improvements or modification made to it for providing the SMS Services and the Additional Service and the Service Provider retains all the title and intellectual property rights in the messaging software and it remains the property of the Service Provider. You must not permit any act which infringes Texter's or the Service Provider's rights to the intellectual property rights.

## 9 YOUR RESPONSIBILITY FOR MESSAGING

You must:

- 9.1 Accept responsibility for all aspects of the use of the SMS Service and the Additional Services, including actions, omissions, and/or errors of a Carrier and/or any person in possession of Your password, user name and log-in details.
- 9.2 Not use the SMS Service to transmit any information or material that violates state or federal law or transmit any material that is in contravention of any privacy or copyright laws or any other propriety interest;
- 9.3 Not use or seek to use the SMS Services or the Additional Services for publishing, reproducing or advertising any message information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or needless anxiety to any person or for any unlawful purpose;
- 9.4 Use the SMS Services solely for the purpose of general information and the provision of Restricted Content is expressly prohibited under this Agreement;
- 9.5 Ensure that every Message sent using the SMS Service is sent to, received and read by, the correct recipient (and not anybody else);
- 9.6 Not use the SMS Service, connections or facilities to:
  - 9.6.1 Transmit computer works or viruses;
  - 9.6.2 Access any other computer system or networks without the owner's prior consent;
  - 9.6.3 Forge any messages; or
  - 9.6.4 Send any obscene, sexually explicit, abusive or defamatory material of material that violates or in contrary to any state or federal law; and

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9.7 Comply with anti-spam legislation, guidelines and codes of practice and You must not use the SMS Services or the Additional Services to circulate or send any unsolicited or unauthorised marketing, publicity or advertising material or message any person unless the person has first consented to receiving the material, and the person has been provided with a means to Opt-out of receiving any further material, and the person can clearly identify that You are the sender of the material. Upon receipt of an Opt-out request, You must remove the person from any relevant marketing list as soon as practical.

## 10 DISCLAIMER

You acknowledge that the disclaimer in the Software License Agreement extends to the SMS Services and the Additional Services and the software required to utilise the SMS Services and the Additional Services.

## 11 INDEMNITY

You must indemnify Texter if there is any claim by the Service Provider or anybody else, as a consequence of Your breach of the terms of this Agreement, including, but not limited to, all legal costs and damages (including economic or consequential loss or damage).

## 12 GST

12.1 You must pay to Texter, in exchange for a valid tax invoice, any GST payable by Texter on the supply of the SMS Services and/or the Additional Services.

12.2 Messaging Fees and Service Fees quoted in the **FEES SCHEDULE** in Section 2 of this Agreement are exclusive of GST, unless stated otherwise.

## 13 DEFINITIONS

*SMS Services* means the service provided by the Service Provider through Texter which enables You to send and receive Standard Rate Messages through the Service Providers SMS Gateway.

*Standard Rate Message* means messages that are billed by Carriers at the standard SMS rates.

*Carrier* means an Australian or international telecommunications carrier.

*Service Provider* means the messaging provider that Texter selects at its discretion.

*Unrestricted Content* means content not falling within the definition of Restricted Content.

*Restricted Content* means content that:

- a) Is likely to be, having regard to the contemporary attitudes of Australian society, offensive to reasonable adults;
- b) Is likely to be, having regard to the average attitude of Australian society, unsuitable for minors;
- c) Incites or instructs in the matter of crime;
- d) Describes, incites or promotes unlawful sexual activity;
- e) Promotes or incites violence against any person or group or incites racial hatred;
- f) Causes unnecessary harm, distress or panic to any person;
- g) Is false, misleading or deceptive, or likely to mislead or deceive;
- h) Provides financial advice to any person;
- i) Is out of date, having regards to the information generally available, subsequently published or released or made available ; and/or
- j) Is for the purpose of providing warnings or notifications about serious risk to the safety of personal property (for example emergency services)

*Message* means text or binary content generated from either a mobile telephone or other application such as a website, call/content centre or PC terminal and received by mobile telephone or otherwise.

*Messaging Fees* means the fees initially set out in Item 2 of the Schedule, as varied by notice from time to time.

*Additional Services* means those services over and above the SMS Services that may be provided from time to time by Texter as an enhancement and/or addition to the SMS Services.

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*Service Fees* means the services fees initially set out in Item 3 of the Schedule as varied from time to time by notice.

*Opt-out* means the ability for a person to stop receiving any further text messages from You, or anyone on Your behalf.

*Software License Agreement* means the End User License Agreement You have with Texter to use Best Practice Software.

Executed as an Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_.

For and on behalf of <

>:

For and on behalf of **Texter Group Pty Ltd**:

.....  
Signature

.....  
Signature

.....  
Name

.....  
Name

.....  
Role Title / Position with Customer

.....  
Role Title / Position with Texter Group Pty Ltd

## APPENDIX: Customer Billing and Contact Information

As a first time SMS Service user, please complete and return the following details:

	Site ID:	
<b>Key Contact:</b>	Details of the person authorised to represent the Customer in this Agreement	
Key Contact name:		
Key Contact telephone:	Key Contact fax:	
Key Contact E-mail:		
<b>Administrator:</b>	Details of the person handling the day-to-day running of the account as the primary contact	
Administrator name:		
Administrator telephone:	Administrator fax:	
Administrator E-mail:		
<b>Billing Contact:</b>	Details of the secondary contact who will receive invoices and process account payments	
Billing Contact name:		
Billing Contact address:		
Billing Contact telephone:	Billing Contact fax:	
Billing Contact E-mail:		