

Messaging – Terms and Conditions



These Messaging - Terms and Conditions (the “**Terms and Conditions**”) supplement the Master Service Agreement (the “**MSA**”) (including any Exhibits, SOFs, Rate Sheet(s), and any other attachments to the MSA, all of which are fully incorporated by reference within these Terms and Conditions). Capitalized terms not elsewhere defined in these Terms and Conditions will have the meaning ascribed to them in the MSA or any applicable SOF.

1. Service Description. Messaging is a Short Message Service delivering messages between Customer’s IP address(es) or domain(s) and Bandwidth’s Messaging facilities.

Customer’s use of Messaging must comply with any applicable CTIA Messaging Principles (as defined below) and all applicable laws. Customer will be solely responsible for the evaluation and qualification of Customer’s actual and prospective Subscribers’ and/or End Users’ use cases to ensure such use cases follow applicable CTIA Messaging Principles. Any SMS message that does not comply with the CTIA Messaging Principles and/or applicable laws constitutes a violation of the AUP. “**CTIA Messaging Principles**” means (1) the CTIA Messaging Principles and Best Practices, dated as of January 19, 2017, as amended, supplemented and/or superseded from time to time by the CTIA The Wireless Association; or (2) any other similar documents or guidelines promulgated from time to time by the CTIA The Wireless Association.

Customer (i) may not use or otherwise enable any telephone number (including, without limitation, TFNs (as defined below)) (each individually a “**TN**” and collectively “**TNs**”) provided by Bandwidth (or its affiliates) at any time in connection with Usage, Messaging and/or any other form of traffic other than Usage, SMS and/or any other form of traffic from Bandwidth and its affiliates, (ii) except as may be expressly permitted by the CTIA Messaging Principles from time to time, including, without limitation, with respect to toll-free telephone numbers (each individually a “**TFN**” and collectively “**TFNs**”), may not establish and/or operate peer-to-peer relationships with any third party(ies) with respect to any TNs provided by Bandwidth (or its affiliates) at any time; and (iii) will serve as the Responsible Organization (as defined below) with respect to all TFNs used by Customer in connection with Messaging, unless Bandwidth serves as such Responsible Organization with any applicable TFN. “**Responsible Organization**” means the party hereto that is responsible for managing and administering the account records in the Toll Free Service Management System Database.

Customer may not use Bandwidth’s TNs or TFNs to route messages over any another provider’s network.

Maximum Messages Per Second: Messaging limits the maximum number of messages Customer may transmit measured on a per second basis. Unless otherwise determined by Bandwidth, the maximum number of messages per second Customer may transmit with respect to any TN or TFN is limited to one (1). For clarity, the foregoing maximum number of messages per second Customer may transmit includes all messages sent and/or received by all Customer’s Subscribers or End Users on an aggregated basis with respect to any one (1) TN or TFN.

Message Rating: Messaging rates messages for billing purposes on a per message segment sent and/or received basis. Billable components of each message are based on: (i) the authorized IP sending an message (“**Outbound Message**”), and (ii) Customer and/or subscriber of a TN or TFN receiving an message (“**Inbound Message**”). Long message content will be split into multiple billable segments based on received data encoding. If any fee(s) is imposed by any destination network, including, without limitation, any international termination fee(s), Bandwidth will charge Customer such fee(s) and reserves the right to include an administrative or other fee(s) in addition to any such fee(s).

2. Service Limitations. Messaging does not provide any audio and/or voice capabilities and/or features. In addition to any other rights or remedies that Bandwidth may have under any applicable circumstances, Bandwidth, in its sole and unfettered discretion, may block any Messaging traffic Bandwidth deems to be in violation of the MSA, these Terms and Conditions, the AUP, and/or any agreements, arrangements and/or practices of or between Bandwidth and any carriers and/or other service providers. Any violation of any of the foregoing provisions of this Section 2 could cause Customer’s TN or TFN and/or any applicable TN or TFN to be blocked for outbound message transmission by Bandwidth and/or traffic blocking and/or black-listing by any applicable receiving carriers and/or other service providers; Bandwidth does not guarantee removal from any applicable black-listed status. Bandwidth may block at any time any messages deemed by Bandwidth in its sole and unfettered discretion to jeopardize the integrity of Bandwidth’s network (including, without limitation, due to any action taken and/or threatened by any third party carrier and/or other service provider); any such blockage will be without prejudice to any other right or remedy that Bandwidth may have due to any such messages pursuant to the MSA, these Terms and Conditions, the AUP or otherwise. If any such blocking of any messages occurs, Bandwidth may in its discretion attempt to block only the TNs or TFNs breaching these Terms and Conditions and/or jeopardizing Bandwidth’s network; if the blocking of individual TNs or TFNs is not feasible for any reason, as determined by Bandwidth in its sole and unfettered discretion, Bandwidth reserves the right to block all message(s) initiated by Customer and/or any applicable Subscribers and/or End Users of Customer. If Bandwidth blocks any messages pursuant to this Section 2, Bandwidth will make commercially reasonable attempts to notify

Customer in advance of such blockage; provided, however, Bandwidth will be under no obligation to provide any such notification, including, without limitation, if circumstances do not permit delay of any blockage or other action by Bandwidth for any reason. Customer acknowledges and agrees that messages to or from Customer or Customer's Subscribers or End Users may be blocked by carriers or other service providers for reasons known or unknown to Bandwidth; Bandwidth is under no obligation to investigate or remedy any such blockage for Customer or any of Customer's Subscribers or End Users. Bandwidth does not guarantee delivery, regardless of the reason, of any messages.

With respect to any Messaging attributable to any TN(s) associated with Canada (also known as Zone Canada): Customer will not at any time utilize any Message Distribution Management (as defined below) and/or utilize Messaging in any manner that results in Disproportionate Messaging Distribution (as defined below) in connection with Customer's use of Messaging in Canada. "**Messaging Distribution Management**" means any process or system of analyzing, selecting and directing the use of Messaging in any manner based on cost. "**Disproportionate Messaging Distribution**" means any use of Messaging during any calendar month that results in the delivery of SMS and/or MMS messages to wireless operator(s) and/or other(s) in a manner that causes more than fifty percent (50%) of Customer's aggregate SMS and/or MMS messages to any single wireless operator; for the purposes of calculating the applicable percentage with respect to any applicable calendar month with respect to each Canadian wireless operator, the numerator will equal the aggregate SMS and/or MMS messages delivered to each applicable Canadian wireless operator (including its respective affiliate(s)) and the denominator will equal the aggregate SMS and/or MMS messages delivered to all Canadian wireless operators. For clarity, this paragraph applies only to Messaging subject to the Network Access Rate as set forth in the Rate Sheet.

3. Connection. Customer must connect to Bandwidth's network in a manner and at locations determined by Bandwidth. Customer will, at Customer's sole cost, be responsible for providing all equipment (including proxy servers), software, facilities and IP connectivity (including, without limitation, connectivity to Customer's Subscribers or End Users) necessary for Customer's Messaging applications and Customer's network to operate with Messaging, and for providing and ensuring the successful installation of all equipment and software necessary for Customer's Subscribers or End Users to use services sold to such Subscribers or End Users. Customer will have the sole responsibility to input, validate and maintain accurate information with respect to Customer's Subscribers or End Users; Customer will furthermore be solely responsible for all support of and for Customer's Subscribers or End Users as it relates to Messaging. Customer is responsible for maintaining continuous availability to receive messages from Bandwidth via IP connectivity.

4. Interoperability. If applicable, Customer and Bandwidth will reasonably cooperate with each other to test to ensure interoperability between Bandwidth and Customer's networks and systems. All necessary interoperability testing will be completed within a reasonable time. If after completion of initial interoperability, Customer plan to make upgrades, updates and/or enhancements (collectively "**Configuration Changes**"), Customer will notify Bandwidth prior to implementing a Configuration Change so that Customer and Bandwidth may work together in good faith to determine how best to proceed regarding such Configuration Change. If at any time an interoperability condition occurs that adversely affects Bandwidth's network that cannot be adequately remedied within a reasonable period, taking into consideration the severity of the interoperability condition and the effect on Bandwidth's network, Bandwidth may, at its sole discretion, suspend the provision of Services pursuant to these Terms and Conditions. The Parties will communicate as reasonably necessary to isolate and repair any problems in their respective networks; provided, however, each Party will remain solely responsible for any costs or liabilities incurred in connection with the repair of any problem with respect to such Party's network.

5. Charges and Rates. All Services are provided pursuant to the Rate Sheet.

6. Porting Numbers. Bandwidth may require a completed and signed Letter of Authorization ("**LOA**") for any existing telephone numbers Customer wish to port from another carrier to Bandwidth. Bandwidth may require a recent copy of the current phone bill which contains Customer's Billing Telephone Number ("**BTN**") as well as a record of any numbers that need to be ported. Bandwidth must receive necessary LOA(s) and/or bill copy(ies) before Bandwidth will initiate a port request and obtain a Confirmed Port Date. The "**Confirmed Port Date**" is the date upon which the current voice provider has agreed to port a number(s) to Bandwidth. The Confirmed Port Date interval may in some cases take as long as one (1) to two (2) business weeks after Customer initiate the port request; since the port interval is a product of the accuracy of the information provided to Bandwidth by Customer, as well as the processing speed of Customer's current voice provider, Bandwidth makes no guarantees regarding the promptness of a port, however all ports will be provided consistent with applicable law.

7. Fraud. Customer will not participate in or assist in any fraudulent Usage, in any form or by any means, either Customer, Customer's Users, Customer's Subscribers and/or any End Users. If Customer suspects, knows of, or should have known of any fraudulent Usage, Customer will immediately stop all fraudulent Usage and notify Bandwidth.

Customer acknowledges, understands and agrees that Bandwidth does not provide, is not required to provide, and does not warrant, any fraud prevention. If Bandwidth becomes aware of unusual Usage volumes or patterns, Bandwidth will make commercially reasonable attempts to notify Customer; provided, however, Bandwidth will have no obligation to notify Customer of any such volumes or patterns. Bandwidth's sole obligation to Customer with respect to any actual, alleged or suspected fraudulent Usage will be to reasonably cooperate with Customer, upon Customer's request and at no expense to Bandwidth, to assist Customer's efforts to stop any fraudulent Usage that Customer report to Bandwidth. Customer will be solely responsible for all risks, expenses and liabilities arising from or relating to fraudulent Usage by Customer, Customer's Users, Customer's customers and/or Customer's Subscribers, End Users, or any other person or entity directly or indirectly utilizing Messaging. Notwithstanding anything in this Section 9 to the contrary, Customer is and will remain solely responsible for all Usage, fraudulent or otherwise.

8. Regulatory Responsibilities. Customer (i) will be solely responsible for and will undertake all required action(s) before the FCC, any PUC, any state regulatory agency, any court or any other controlling regulatory bodies, agencies, commissions or other authority, (ii) will obtain any required governmental approval(s), and (iii) will fully comply with all applicable laws, regulations, including, without limitation, all applicable and/or FCC requirements, such as CALEA and CPNI, in each case as such actions, approvals and/or laws and regulations apply or relate to the utilization of Messaging by Customer, Customer's Users, Customer's Subscribers, End Users, or any other person or entity to which Customer provide any services utilizing Messaging.

9. Relationship. Bandwidth has no relationship with or obligation to any of Customer's Subscribers, End Users or any other person or entity to which Customer provide any services utilizing Messaging, none of whom is a third-party beneficiary of the MSA or these Terms and Conditions. Customer is solely responsible for all pricing, billing and collections, and/or compliance with any applicable laws or regulations related to any services Customer provide to Customer's Subscribers, End Users or any other person or entity to which Customer provide any services utilizing Messaging. Customer will provide technical support to Customer's Subscribers or End Users and will conduct customary problem resolution and troubleshooting activities directly with Customer's Subscribers or End Users to determine whether any condition affecting any Service(s) is attributable to Bandwidth's network prior to reporting a Service Outage pursuant to the Section 11 of the MSA.

10. Additional Terms.

The following applies only if Customer utilizes Multimedia Messaging Service in connection with any TN or TFN to which Messaging applies:

Multimedia Messaging Service ("MMS") delivers messages between Customer-provided IP address(es) or domain(s) and Bandwidth's Messaging facilities if such messages include multimedia content and/or two or more intended recipients. Customer acknowledges and agrees that MMS interoperability is an evolving standard. Messages are exchanged between service providers on a best efforts basis and Bandwidth does not guarantee delivery. Customer will pay Bandwidth with respect to MMS pursuant to the Rates set forth in the Rate Sheet; for clarity, such Rates will apply to each intended recipient and/or each text message. All terms and conditions applicable to Messaging pursuant to the MSA, these Terms and Conditions or otherwise also will apply to MMS. For clarity, Customer will be solely responsible for compliance by Customer (and by Customer's Subscribers or End Users) with any CTIA Messaging Principles applicable to any utilization of MMS by Customer, Customer's Subscribers, End Users, or any other person or entity to which Customer provides any services utilizing MMS.

If there are termination fees or other related charges levied by a carrier or any third party for the traffic processed by Bandwidth on behalf of Customer, Bandwidth will pass on to Customer those fees and any fees required to support the transaction. Bandwidth will, to the extent reasonably practicable, notify Customer in writing (including email notification) in advance of any charge or fee assessed by a third party in connection with Customer's receipt of the Services set forth herein, including, without limitation, any carrier or other third-party termination fees or other fees. If it is not reasonably practicable for Bandwidth to provide notice to Customer of any such fees, Bandwidth will provide such notice promptly upon the date Bandwidth is notified that such fees have commenced. However, regardless of when Bandwidth provides notice to Customer as described above, Customer will be fully responsible for all such fees incurred, until Bandwidth receives the Customer Rejection (as defined below) and further provided that, as between Customer and Bandwidth only, Bandwidth has sole control over the cessation of such fees on Customer's behalf.

If Customer elects to reject any such fees described in the immediately preceding paragraph from the date of notice forward, Customer will notify Bandwidth in writing (including email notification) that it rejects such fees going forward ("Customer Rejection"). Upon Bandwidth's receipt of the Customer Rejection, and depending upon the nature of the applicable fees, as determined by Bandwidth in Bandwidth's reasonable discretion, Bandwidth will cease exchanging MMS with such third party on behalf of Customer within thirty (30) business days thereafter.

The following applies only if Customer uses Short Codes:

A “**Short Code**” is a 5, or 6-digit number that represents either the originating or terminating end of an SMS conversation, as the case may be. Short Codes are associated with one or more Campaigns. A “**Campaign**” is an SMS-based one-way or two-way conversation that an End User “opts in” to receive; Campaigns are assigned to one or more Short Code(s). A “**Premium Short Code**” is any Short Code that results or would result in a charge to the End User exceeding any applicable Rate associated with the transmission of the SMS itself; for example, any Short Code that would result in a charge to the End User’s (excluding any charge associated with the transmission of the SMS itself and/or any applicable usage of data associated with the transmission of the SMS), including, without limitation, any charitable contribution or donation resulting from such Short Code, would constitute a Premium Short Code.

Customer may access available common Short Codes (excluding Premium Short Codes) through Bandwidth’s Electronic Tools. Bandwidth will route any applicable SMS with respect to any applicable Short Code to applicable aggregator(s), which aggregator(s) gather(s) and manage(s) Short Codes from applicable content provider(s) associated with the applicable Short Code. Customer’s use of all Short Codes will comply with applicable CTIA Messaging Principles and/or any guidelines established from time to time by the Mobile Marketing Association.

The following applies only if Customer obtains Messaging as a product without Inbound Calling pursuant to any applicable SOF:

Porting Numbers. Bandwidth will require a completed and signed Letter of Authorization (“**LOA**”) for any existing telephone numbers Customer wishes to port from another carrier to Bandwidth. Bandwidth may require a recent copy of the current phone bill which contains Customer’s Billing Telephone Number (“**BTN**”) as well as a record of any numbers that need to be ported. Bandwidth must receive necessary LOA(s) and/or bill copy(ies) before Bandwidth will initiate a port request and obtain a Confirmed Port Date. The “**Confirmed Port Date**” is the date upon which the current voice provider has agreed to port a number(s) to Bandwidth. The Confirmed Port Date interval may in some cases take as long as one (1) to two (2) business weeks after Customer initiates the port request; since the port interval is a product of the accuracy of the information provided to Bandwidth by Customer, as well as the processing speed of Customer’s current voice provider, Bandwidth makes no guarantees regarding the promptness of a port, however all ports will be provided consistent with applicable law.

The following applies only if Customer selects any International SMS / MMS Service (as defined below) in connection with Messaging pursuant to any applicable SOF:

“**International SMS / MMS Service**” means, subject to these Terms and Conditions, the transmission of International MMS Messages and/or International SMS Messages as selected by Customer as an “International” feature pursuant to any applicable SOF.

“**International MMS Message**” means an MMS message from or destined to any third-party operator or user of a communications network operator in Zone 1; for clarity, “International MMS Message” does not include any MMS message from or destined to any third party operator or user of a communications network operator in Zone Canada (also known as Canada, unless subsequently modified in accordance with these Terms and Conditions), Zone 2, Zone 3, Zone 4 or Zone 5.

“**International SMS Message**” means an SMS message from or destined to any third-party operator or user of a communications network operator in Zone Canada (also known as Canada, unless subsequently modified in accordance with these Terms and Conditions), Zone 2, Zone 3, Zone 4 or Zone 5.

“**Zone 1**” means (1) the United States and all other countries or territories within the North American Numbering Plan, excluding Canada and the Dominican Republic; and (2) Anguilla, Antigua, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, British Virgin Islands, Cayman Islands, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, St Kitts & Nevis, St Lucia, Trinidad & Tobago, Turks & Caicos Islands, and Uruguay, provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone 1” or remove any country or territory from the definition of “Zone 1,” including, without limitation any country or territory previously included within the definition of “Zone 1” pursuant to this proviso.

“**Zone Canada (also known as Canada, unless subsequently modified in accordance with these Terms and Conditions)**” means Canada; provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone Canada” or remove any country or territory from the definition of “Zone Canada,” including, without limitation any country or territory previously included within the definition of “Zone Canada” pursuant to this proviso.

“Zone 2” means Afghanistan, Albania, American Samoa, Angola, Armenia, Ascension Island, Azerbaijan, Bahrain, Bangladesh, Bhutan, Botswana, Brunei, Bulgaria, Burundi, Cambodia, Cape Verde, Central African Republic, China, Comoros, Cyprus, Diego, Garcia (BIOT), Djibouti, Egypt, Equatorial Guinea, Estonia, Ethiopia, Falkland Islands, Faroe Islands, Federated States of Micronesia, Fiji, French Polynesia, French West, Indies, Gibraltar, Greece, Guam, Guatemala, Guinea, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Ivory Coast (Côte d'Ivoire), Jordan, Kazakhstan, Kiribati, Kosovo, Kyrgyzstan, Luxemburg, Macedonia, Madagascar, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Moldova, Mongolia, Montenegro, Montserrat, Morocco, Myanmar, Namibia, Nepal, Niue, Norfolk Island, Oman, Pakistan, Palau, Palestinian authority, Papua New Guinea, Philippines, Qatar, Reunion, Romania, Rwanda, Samoa, Sao Tome & Principe, Slovak republic, Slovenia, Solomon Islands, Somalia, South Sudan, Sri Lanka, St Pierre et Miquelon, Sudan, Surinam, Swaziland, Tajikistan, Thailand, Timor, Togo, Tonga, Turkey, Tuvalu, Uganda, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia; provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone 2” or remove any country or territory from the definition of “Zone 2,” including, without limitation any country or territory previously included within the definition of “Zone 2” pursuant to this proviso.

“Zone 3” means Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Democratic Republic of Congo, Gabon, Gambia, Ghana, Iran, Kenya, Korea, South, Kuwait, Laos, Lesotho, Liberia, Macau, Malawi, Mali, Mauritius, Monaco, Mozambique, Niger, Senegal, Sierra Leone, Singapore, Syria, Taiwan, Tanzania, Tunisia, and Zimbabwe; provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone 3” or remove any country or territory from the definition of “Zone 3,” including, without limitation any country or territory previously included within the definition of “Zone 3” pursuant to this proviso; and provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone 3” or remove any country or territory from the definition of “Zone 3,” including, without limitation any country or territory previously included within the definition of “Zone 3” pursuant to this proviso.

“Zone 4” means Dominican Republic, Haiti, Hong Kong, Iceland, Japan, and St. Vincent; provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone 4” or remove any country or territory from the definition of “Zone 4,” including, without limitation any country or territory previously included within the definition of “Zone 4” pursuant to this proviso.

“Zone 5” means Australia, Austria, Belgium, Croatia, Czech Republic, Denmark, Finland, France, Germany, Ireland, Israel, Italy, Latvia, Lithuania, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Russia, Satellite, Saudi Arabia, Serbia, Seychelles, South Africa, Spain, Sweden, Switzerland, U.A.E., Ukraine, and United Kingdom; provided, however, Bandwidth may, upon ten (10) days prior written notice to Customer, either include any other country or territory within the definition of “Zone 5” or remove any country or territory from the definition of “Zone 5,” including, without limitation any country or territory previously included within the definition of “Zone 5” pursuant to this proviso.

For all purposes related to International SMS / MMS Service, as used in Sections 1 – 9 above, “Messaging” will be deemed to include the International SMS / MMS Service.

International SMS / MMS Service. Bandwidth will provide International SMS / MMS Service to Customer. Customer will pay Bandwidth pursuant to the Rates set forth in the Rate Sheet. All such Rates and/or any other applicable charges, fees, including, without limitation, with respect to the porting of TNs, will be subject to the MSA; provided, however, except as expressly stated in any applicable Rate Sheet, Bandwidth may change any such Rates at any time upon ten (10) days’ notice to Customer. If at any time any network operator, peering intermediary, or other intermediary carrier in Zone 1 or Zone Canada (also known as Canada, unless subsequently modified in accordance with these Terms and Conditions) imposes, or seeks to impose, any fee or any other charge of any kind relating to the International SMS / MMS Service, except as expressly stated in any applicable Rate Sheet (X) Bandwidth will have the right immediately to cease transmission of International MMS Messages and/or International SMS Messages to any such network operator, peering intermediary or other intermediary carrier in such country or territory unless and until (1) such country or territory is re-designated to another zone within Zone 1, Zone Canada (also known as Canada, unless subsequently modified in accordance with these Terms and Conditions), Zone 2, Zone 3, Zone 4 or Zone 5, or (2) these Terms and Conditions are otherwise amended by mutual written agreement; and (Y) Bandwidth will have the right immediately to cease transmission of International MMS Messages to any such network operator, peering intermediary or other intermediary carrier in such country or territory if such country or territory no longer is designated within Zone 1 or Zone Canada (also known as Canada, unless subsequently modified in accordance with these Terms and Conditions), as applicable.

Additional Limitations on Proper Use of International SMS / MMS Service. In addition to all other applicable limitations pursuant to the MSA and/or these Terms and Conditions, including, without limitation, Section 2 above,

Customer will not bundle, aggregate or otherwise combine in any way any International MMS Message or International SMS Message originating from any TN with any MMS or SMS originating from any other TN, or engage in any group messaging, it being understood and agreed that each single unique TN shall only and exclusively be used for, including, without limitation, all billing and reporting purposes with respect to, MMS and/or SMS originating and terminating from and to such single, unique TN.

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