

Hosted Messaging – Terms and Conditions



These Hosted 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-provided IP address(es) or domain(s) and Bandwidth’s Messaging facilities (“**Messaging**”) and which is an enhanced routing and processing function for sending and delivering messages for Customer via Bandwidth’s Hosted Messaging. The “**Hosted Messaging**” means the Electronic Tool that Bandwidth makes available to permit Customer to obtain Messaging from Bandwidth with respect to TNs and/or TFNs (each as defined below) provided to Customer by Bandwidth or by third party provider(s). **Messaging provided by Bandwidth through Hosted Messaging does not include the provisioning of any Short Codes, but may include Messaging from a Short Code to a TN or TFN included in Hosted Messaging and/or Messaging from a TN or TFN included in Hosted Messaging to a Short Code; for clarity, no applicable Service Level Agreement will apply to any such Messaging to or from a Short Code that may be available from time to time.** A “**Short Code**” is a 5, or 6-digit number that represents either the originating or terminating end of a Messaging conversation, as the case may be; Short Codes are associated with one or more Campaigns. A “**Campaign**” is a Messaging-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).

Neither Hosted Messaging nor Messaging includes any voice service. Any voice calls made to any TN or TFN included in Hosted Messaging at any time, including, without limitation, any 911 call(s), will be routed to the voice service provider(s) of such TN or TFN, as the case may be, even if the TN associated with the calling party is otherwise provided by Bandwidth.

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 End Users, customers and/or Subscribers’ use cases to ensure such use cases follow applicable Messaging Principles Any SMS message that does not comply with the CTIA Messaging Principles constitutes a violation of the AUP and a Default pursuant to the MSA and these Terms and Conditions. “**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.

Notwithstanding any other provision of these Terms and Conditions, Customer and its End Users’ are permitted to send up to thirty (30) messages per second through SMS per TFN; provided, however, (1) Bandwidth makes no assurances that any such use of Messaging will be (1) compliant with any applicable CTIA Messaging Principles; (2) the foregoing permission will not in any way alter, amend or modify Customer’s obligations pursuant to these Terms and Conditions, including, without limitation, pursuant to Section 2 below, or Bandwidth’s rights pursuant to these Terms and Conditions, including, without limitation, any right to suspend or terminate Messaging; and (3) Bandwidth will configure the aggregate messages per second through the aggregated TFNs (and TNs) based upon Customer’s historical and forecasted utilization.

Customer (i) may 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 third party provider(s) at any time in connection with Messaging through Hosted Messaging, and (ii) 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. “**TFN**” means a toll free number assigned to Customer. “**Responsible Organization**” means the party hereto that is responsible for managing and administering the account records in the Toll Free Service Management System Database.

Messaging includes the delivery or receipt of any International Message pursuant to the Rates provided in the Rate Sheet attached to the SOF to which these Terms and Conditions are attached. “**International Message**” means a message from or destined to any operator or user of a communications network operator other than in Zone 1 (as defined below). **Messaging does not include the delivery or receipt of any**

International MMS Message. “**International MMS Message**” means an MMS message from or destined to any operator or user of a communications network operator other than in Zone 1.

“**Zone 1**” means (1) the United States and all other countries or territories within the North American Numbering Plan, excluding 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.

- 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 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 reasonable 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 reasonable 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 reasonable discretion, Bandwidth reserves the right to block all message(s) initiated by Customer and/or any applicable End Users, customers and/or Subscriber(s) 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 End Users, customers and/or Subscribers 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 End Users, customers or Subscribers. Bandwidth does not guarantee delivery, regardless of the reason, of any messages.
- 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 End Users, customers or subscribers) 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 End Users, customers or subscribers to use services sold to such End Users, customers or subscribers. Customer will have the sole responsibility to input, validate and maintain accurate information with respect to Customer's End Users, customers and/or subscribers; Customer will furthermore be solely responsible for all support of and for Customer's End Users, customers, and/or subscribers as it relates to Messaging. Customer is responsible for maintaining continuous availability to receive messages from Bandwidth via IP connectivity.
- 4. Charges and Rates.** All Services are provided pursuant to the Rates set forth in the Rate Sheet.
- 5. 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 customers 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 End Users, or any other person or entity directly or indirectly utilizing Messaging. Notwithstanding anything in this Section 5 to the contrary, Customer is and will remain solely responsible for all Usage, fraudulent or otherwise.
- 6. 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 any and 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

customers, Customer's End Users, or any other person or entity to which Customer provide any services utilizing Messaging.

7. **Relationship.** Bandwidth has no relationship with or obligation to any of Customer's 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 End Users or any other person or entity to which Customer provide any services utilizing Messaging. Customer will provide technical support to Customer's End Users and will conduct customary problem resolution and troubleshooting activities directly with Customer's 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.
8. **Letters of Authorization; Related Matters.** In order to utilize Hosted Messaging and Messaging, Customer will be required to produce valid Letters of Authorization ("**LOA**") that demonstrates express end-user authorization to text-enable all TNs that are utilized by Customer in the Hosted Messaging platform. The required LOA will be obtained by Customer for the TNs being added to Hosted Messaging that are not otherwise associated with Bandwidth in the LERG; Customer only will add to Hosted Messaging TNs associated with Rate Center(s) made available by Bandwidth from time to time in Bandwidth's sole discretion. The LOA will be subject to Bandwidth's review and approval and Bandwidth retains sole discretion to determine whether the LOA is acceptable for use together with Hosted Messaging and Messaging. The LOA will expressly be for the use of TNs that Customer is supporting authorized end-users with Messaging services and are otherwise lawfully obtained from the North American Number Plan Administrator ("**NANPA**"). The LOA must authorize Customer to utilize the TNs with Bandwidth to enable SMS/MMS services and traffic routing features that may include rearranging Customer's point of interconnection separately from the original certified local exchange carrier. In accordance with accepted LOAs, Bandwidth and Customer will work in good faith to establish, register and maintain all requisite service provider identification ("**SPID**") with third party provider(s) and to resolve any all related technical and operational issues associated with the LOA. Customer is solely responsible for its on-going relationship with its end-users, customers and vendors, including, without limitation, the original certified local exchange carrier associated with TNs being utilized with Hosted Messaging and Messaging. Bandwidth does not guarantee un-impeded, on-going routing of SMS/MMS traffic, which is subject to the continued approval and authorization of each original certified local exchange carrier. For clarity, if Customer ports any applicable TN included in Hosted Messaging to any other carrier or provider, Customer will be solely responsible for the immediate deprovisioning such TN from Hosted Messaging.
9. **Additional Terms.**

The following applies only if Customer utilizes Multimedia Messaging Service in connection with any TN 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 Section 4. 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 End Users, customers and/or Subscribers) with any CTIA Messaging Principles applicable to any utilization of MMS by Customer, Customer's End Users, Subscribers or any other person or entity to which Customer provides any services utilizing MMS.

10. Additional Terms Concerning Carrier Charges.

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 that are required to provide a transaction for Messaging or MMS (collectively, "**Carrier Charges**"), Bandwidth may pass on to Customer those Carrier Charges to the extent Bandwidth has complied with the provisions of this Section 9. Bandwidth will first provide at least thirty (30) calendar days' advance (or such lesser period if any applicable carrier or any third party imposes such Carrier Charges with less than thirty (30) calendar days' advance notice or no notice at all) written notice to Customer of such Carrier Charges (the "**Charge Notice**"). Following the thirty (30) day (or such lesser period as described above) notice period, Customer will be fully responsible for all such fees incurred unless and

until Bandwidth receives the Customer Rejection (as defined below). As between Customer and Bandwidth only, Bandwidth has sole control over the cessation of such fees on Customer's behalf. In no event shall Bandwidth charge Customer the charges set forth in a Charge Notice prior to the expiration of the thirty (30) day (or such lesser period as described above) notice period, nor shall Bandwidth charge Customer any Carrier Charges that have been rejected in a Customer Rejection (but only for the period following Bandwidth's receipt of the Customer Rejection).

If Customer elects to reject any such fees described in a Charge Notice, Customer will notify Bandwidth in writing (including email notification) that it rejects such fees going forward (a "**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 immediately cease exchanging Messaging or MMS traffic, as applicable, with such third party on behalf of Customer.

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