

Cosmic SMS Terms and Conditions

1. Introduction. This Agreement is a legal document which sets out your rights and obligations, and those of Cosmic SMS ("Cosmic SMS", "we" or "us"), in relation to this site (the "Cosmic SMS Site") and the services offered by us through it (the "Cosmic SMS Service"). You must take the time to read and understand the Agreement before registering for the Cosmic SMS Service. By registering, you accept that you are entering into a contract with us on the terms of this Agreement. Note that the Cosmic SMS Service is intended to be used by businesses and charities, rather than by consumers. This Agreement may change from time to time in accordance with Clause 21 below.
2. Obtaining an Account. People who register for the Cosmic SMS Service establish an "Account", and become "Users". They must be legally entitled to contract for and use the Cosmic SMS Service. Where the User is a limited company, partnership or other entity (an "entity"), you undertake that:
 - a. you are entitled to enter into this Agreement on behalf of the entity,
 - b. the entity will be bound to this Agreement in the same way as you, and
 - c. this Agreement will accordingly be enforceable both against you and the entity.
3. Basics of the Cosmic SMS Service. We rely upon mobile network operators and other service providers (collectively, "Providers") for the onward transmission and delivery of SMS messages which you send through the Cosmic SMS Service ("MT Messages") and for the receipt of SMS messages which are sent ("MO Messages") to any long number or other SMS reception mechanism you select through the Cosmic SMS Service ("Reception Mechanism").

If you decide to become a User, you agree to pay us for MT Messages ("Message Charges"), and charges for related services such as (without limitation) charges for the set-up and rental of Reception Mechanisms ("Other Charges"), by means of advance payments you make to us ("Prepayments"). Message Charges and Other Charges are collectively referred to as "Cosmic SMS Charges".

Cosmic SMS Charges vary by destination and from time to time, in particular because Providers change their charges to us. You must check the then-current Cosmic SMS Charges on the Cosmic SMS Site at the time when you take a step which may incur a Cosmic SMS Charge, such as (without limitation) by submitting through your Account an MT Message for delivery. You are deemed to agree to the then-current Cosmic SMS Charges by taking any such step.

4. Prepayments and Cosmic SMS Charges. We require you to make Prepayments to cover all Cosmic SMS Charges. Prepayments may only be made in the currency or currencies we specify (your "Prepayment Currency"). We specify the increments in which you are required to make Prepayments which will be apparent to you when you make Prepayments. We will take Prepayments, and any other payments you owe to us in connection with this Agreement, from the credit card, bank or other account details of which you provide to us. We may use other methods to obtain payments of amounts which you owe to us.

Cosmic SMS Charges are dependent upon the currency in which Providers make their related charges to us. We convert Cosmic SMS Charges into the Prepayment Currency by means of reasonably standard currency conversion methods which we specify from time to time on the Cosmic SMS Service.

We will be entitled to debit Cosmic SMS Charges from your Prepayments when you use the Cosmic SMS Service, such as by submitting through your Account an MT Message for delivery. However, a Message Charge for an MT Message will not be incurred where the relevant MT Message is properly submitted by you to the Cosmic SMS Service according to our specifications but is not correctly transmitted by us to a relevant Provider for onward transmission or delivery.

All amounts payable under this Agreement are exclusive of any Value Added Tax (or similar tax) that may be payable. You will pay all such tax at the rate and in the manner required by law.

In the event that any payment due under this Agreement is not paid on the due date for payment then we will be entitled to charge interest on the outstanding amount at three percent per annum over the then-current base rate of National Westminster Bank Plc from the date payment becomes due until payment is made in full. This interest will accrue daily.

We are also entitled to set off the monetary value of Prepayments you have made against any amounts paid or payable by you to us.

You will be able to check your level of Prepayments through your Account. It is your obligation to ensure that the amount of Prepayments we hold is sufficient for all Cosmic SMS Charges you incur.

If the Prepayments you have made are insufficient for the Cosmic SMS Charges you incur, you may be prevented from using the Cosmic SMS Service or incurring Cosmic SMS Charges, such as by sending MT Messages. Users may set up an email reminder which alerts them that the amount of Prepayment credit is low.

If we notify you that we are withdrawing the Cosmic SMS Service completely (such as if we cease trading), then you will be entitled to, and will be provided with, a rebate of your outstanding Prepayments at the time of the withdrawal of the Cosmic SMS Service.

5. Registration. You undertake to register for the Cosmic SMS Service using accurate and current information about yourself – including your correct name, address and any other requested details. If you are asked for, and provide, details of a credit, debit or charge card, you must ensure that (a) you are fully entitled to use that card, and (b) it has available funds sufficient to cover the charges, notably Prepayments, which are deducted from it. As part of the registration process for the Cosmic SMS Service, you will receive a verification email, the purpose of which is to take reasonable steps to ensure that the email address you have nominated during registration is controlled by you. That email contains an order confirmation, and includes our VAT details. A username and initial password for your Account will also be sent to a mobile phone number nominated by you.
6. Privacy policy. Cosmic SMS's [Privacy Policy](#) forms part of this Agreement, and by agreeing to this Agreement, you also give your consent to the way we may handle your personal data in that policy.
7. Our Role.
 - a. Cosmic SMS will direct the MT Messages you send, and MO Messages you receive, through the Cosmic SMS Service as specified by you, and for this purpose will pass MT Messages to, and receive and MO Messages from, the relevant Provider.
 - b. Please note that the delivery of an MT Message and receipt of an MO Message is dependent upon;
 - i. the relevant MT Message or MO Message having a correct destination mobile phone number; and
 - ii. the relevant Provider delivering the relevant MT Message or MO Message as-addressed.
 - c. Cosmic SMS Service are wholly dependent upon Providers; we have no responsibility for their acts or omissions, or for any non-performance of Cosmic SMS Service which results from their acts or omissions.
 - d. From time to time, the Cosmic SMS Service may be unavailable for the sending of messages. We will strive to ensure that the periods of unavailability, which you will be informed of when you access the Cosmic SMS Service, are kept to a minimum. You will not be able send messages during these periods.
8. Changes by Providers. The Cosmic SMS Service, and the terms and conditions which govern it, are subject to changes resulting from changes made by the Providers to the corresponding services provided by the Provider to Cosmic SMS or the terms and conditions which govern those corresponding services. In the event that any such change is made which has any effect upon the rights and obligations of the parties under this Agreement, then:
 - a. the change in question will automatically bind you; and
 - b. we will use our reasonable endeavours to notify the relevant changes to you (such as through your Account) as soon as is reasonably practicable.

9. Cosmic SMS Licensing. During the term of this Agreement, Cosmic SMS licenses to you such use of the Cosmic SMS messaging interface and associated portions of the Cosmic SMS Site (collectively, the "Cosmic SMS Licensed Elements") as we make available to you in connection with the conduct of the Cosmic SMS Service, for use solely in the use of the Cosmic SMS Service. This licence is non-transferable, non-sublicensable, non-exclusive and royalty-free and shall be limited to the duration of this Agreement. The Cosmic SMS Licensed Elements may not be copied or distributed, or used for any purpose other than using the Cosmic SMS Service in accordance with this Agreement. You may not reverse engineer, decompile or disassemble any of the Cosmic SMS Licensed Elements, save to the extent expressly permitted by applicable law. We are not an internet service provider, nor a vendor of consumer software. In order to avail of the Cosmic SMS Service, you must have internet access and all the software (and skills) required for the use of the Cosmic SMS Service and the Cosmic SMS Licensed Elements via the internet.
10. Misuse of the Cosmic SMS Service. You will ensure that each MT Message and MO Message and your use of the Cosmic SMS Service:
- a. does not infringe the rights of any third parties or any laws or regulations, including, without limitation, the Data Protection Directive (95/46/EC), the Directive on Privacy and Electronic Communications (2002/58/EC), the Electronic Commerce Directive (00/31/EC) and the Distance Selling Directive (97/7/EC), and any national implementations thereof, in any country where any message is originated, delivered or in respect of which any of the Cosmic SMS Service are performed;
 - b. accords with such reasonable instructions as we may from time to time notify to you (including through your Account);
 - c. is not defamatory, offensive or abusive or of an obscene or menacing nature;
 - d. is not intended or likely to cause needless annoyance, inconvenience or distress to any person;
 - e. does not have a detrimental effect to the goodwill and good standing of any of the relevant Providers;
 - f. is not inappropriate for the recipient; and
 - g. could not be considered to be unsolicited by or contrary to any option exercised by the recipient.

In the event that any Provider or regulator makes a charge, fine, penalty or debit against Cosmic SMS, or any deduction from sums otherwise payable to Cosmic SMS for one or more actual or alleged events the liability for which (if proven) would have arisen out of a breach of this Clause 10, then Cosmic SMS shall be entitled (aa) to "freeze" your Account, (bb) prevent your use of Prepayments, (cc) upon notice to you, to use the cash value of those Prepayments to pay all or part of the amount levied by the Provider or regulator, and (dd) otherwise to recover from you the amount thereof, plus any costs or expenses incurred by Cosmic SMS in connection with the incurring of the liability or the relevant charge, fine, debit or deduction.

11. Contact from Providers. If a Provider, regulator or other relevant party contacts us in relation to any message sent under your Account, you agree to provide all reasonable information and assistance we may require in connection with responding to that contact.
12. Additional services. We or our affiliates may offer new or additional services through the Cosmic SMS Service from time to time. Your use of those services may be subject to additional terms and conditions, and codes of conduct, which you must comply with. Provided that those terms or codes are notified to you on the Cosmic SMS Service in an appropriate manner (as determined by us in our reasonable discretion), any failure by you to comply with a material provision of the terms or codes governing those services will amount to a breach of this Agreement.
13. Operation of Cosmic SMS Services. Cosmic SMS reserves the right to withdraw or modify one or more aspects of the Cosmic SMS Service, or the entirety of it, where we have legal or commercial reasons to do so. There may also be times when the Cosmic SMS Service becomes inaccessible as a result of technical difficulties experienced by or on the Internet; we will, however, use reasonable skill and care to overcome these difficulties where they are within our control. Please note that there will be no refund of Prepayments except as provided elsewhere in this Agreement. For security or other reasons, we may require you

to change password or other information which facilitates access to the Cosmic SMS Service.

14. Liability.

- a. We warrant that the Cosmic SMS Service will be performed with reasonable care and skill with the intention of meeting our specifications for the Cosmic SMS Service, but, given the uncertainties associated with mobile telecommunications and related technologies, cannot and do not guarantee that the Cosmic SMS Service will meet your requirements, including (without limitation) as to the speed of delivery of any MT Message or MO Message.
- b. Cosmic SMS shall be liable as expressly provided in this Agreement, but shall have no other obligation, duty or liability whatsoever in contract, tort (including negligence, breach of statutory duty and any other tort) or otherwise.
- c. Nothing in this Agreement shall exclude or restrict Cosmic SMS's liability for death or personal injury resulting from its negligence.
- d. Subject always to sub-Clause f. below, Cosmic SMS shall be liable for direct loss or damage only, whether in contract, tort (including negligence, breach of statutory duty or other tort) or otherwise, and whether caused by its act or omission or that of its employees, agents or subcontractors. Where we have any liability to a User for or relating to MT Messages or MO Messages sent or received or intended to be sent or received through the Cosmic SMS Service, that liability is limited to the value of the Prepayments associated with those MT Messages or MO Messages.
- e. It is your responsibility to take out insurance against risks which exceed the Prepayment values specified in sub-Clause d. above or are otherwise excluded from this Agreement.
- f. We will not be liable to you or anyone else, whether in contract, tort (including negligence, breach of statutory duty or other tort) or otherwise:
 - i. for any loss of revenue, business, anticipated savings or profits, or
 - ii. for any indirect, special or consequential loss damage, costs or other claims,howsoever caused or arising, whether through non-supply or late supply of Cosmic SMS Service or other non-performance of this Agreement or otherwise.
- g. Except as expressly stated elsewhere in this Agreement, all representations, warranties, conditions and other terms, whether express or implied (by common law, statute, collaterally or otherwise) are hereby excluded, except in the case of fraud, or where such exclusion is not permitted by law.
- h. For the avoidance of doubt, Cosmic SMS will not have liability to you or any other person in respect of the content of MT Messages or MO Messages, or any instructions supplied by you in relation to MT Messages or MO Messages, including any which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or any other act or omission of you.
- i. The provisions of this Clause 14 shall survive the termination or expiry of this Agreement.

15. Indemnity. The User, at its own expense, will indemnify, defend, and hold harmless Cosmic SMS, its affiliates, and its employees from and against all losses, damages, liabilities, settlements, costs and expenses arising out of any claim, demand, suit, action, or proceeding initiated by a third party relating to the User's use of the Cosmic SMS Service or any breach of the Agreement by the User.

16. Suspension. Cosmic SMS is entitled to suspend provision of the Cosmic SMS Service at any time if:

- a. Cosmic SMS is entitled to terminate this Agreement or close your Account;
- b. Cosmic SMS is obliged or advised to comply with an order, instruction or request of the government, regulator, court or other competent authority;
- c. Cosmic SMS has cause to believe in its reasonable opinion that you are in breach of any of its obligations under this Agreement; or
- d. the services of one or more of the Providers upon which the provision of Cosmic SMS Service hereunder is dependent suspends its provision of those services to Cosmic SMS.

17. Termination. This Agreement may be terminated by notice as follows:

- a. by either party in the event the other has failed to perform any material obligation required to be performed under this Agreement and such failure is not corrected within seven (7) days from receipt of written notice advising of such failure from the other party, which notice shall make reference to this Clause;
 - b. by Cosmic SMS, in the event that any modification to Cosmic SMS's contracts with Providers, or any change in any law, regulation or code of conduct, makes the provision of the Cosmic SMS Service to you illegal or contrary to law, regulation or code of conduct, prohibitively difficult, or prohibitively expensive for Cosmic SMS;
 - c. by either party in the event that the other party (being a company) presents a petition or has a petition presented by a creditor for its winding up, convenes a meeting to pass a resolution for voluntary winding up or enters into liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), enters into a voluntary arrangement with its creditors, has a receiver, administrative receiver or administrator of all or any of its undertakings or assets appointed, or is deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or (if an individual) presents or has presented against him a bankruptcy petition or (if a non UK national or corporation) shall suffer anything analogous to these matters to occur to him or it;
 - d. by either party in the event that any payment due hereunder is not paid by the other party within seven (7) days following the date when it is required to be paid in accordance with this Agreement.
18. Matters Beyond Reasonable Control. Either party's performance of any obligation under this Agreement, other than payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by the acts or omissions of the other party or any Provider, or any other cause beyond the reasonable control of that party.
19. Assignment. We reserve the right to assign this Agreement, and to assign or subcontract any or all of our rights and obligations under this Agreement. You may not without the written consent of Cosmic SMS assign or dispose of this Agreement, nor subcontract any of your rights and obligations under it.
20. Entire Agreement. This Agreement contains your entire agreement with us relating to the Cosmic SMS Service. It replaces all earlier agreements and understandings with you relating to the Cosmic SMS Service, except for any fraud or fraudulent representation by either of us. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.
21. Changes to this Agreement. Cosmic SMS reserves the right to change this Agreement from time to time, and post the new version on the Cosmic SMS Service. When we do so, we will notify you of the fact that there are changed terms on the main screen (www.cosmicsms.co.uk), and the new version of these terms and conditions will take effect, and will govern all Cosmic SMS Services and your relationship with us:
- a. commencing fourteen days after the date of posting (or such later date as we indicate in the relevant posting), if any of the changes is to an operative provision of this Agreement which is capable of adversely affecting you; if you do not wish to be governed by the new version of the Agreement, you may notify us on or before the date when the new version of the Agreement is to take effect, and from that date you must cease to use the Cosmic SMS Service; or
 - b. immediately upon the date of posting (or such later date as we indicate in the relevant posting), if the changes are not to operative provisions, or not capable of adversely affecting you - examples of which would include, without limitation, changes to contact details referred to, or the refinement of provisions that are already included, in this Agreement.
22. Severability. In the event that any term of this Agreement is held to be invalid or unenforceable by judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable.
23. Law. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

24. Keeping this Agreement. We don't separately file the individual Agreements entered into by members when they register for the Cosmic SMS Service. You can access it at www.cosmicsms.co.uk. Please make a durable copy of this Agreement by printing and/or saving a downloaded copy on your own computer. It is offered in English only.

Contact. We are Cosmic Apps Limited, a company registered in England and Wales under registration no. 8712860. Our address is East House, 109 South Worple Way, London SW14 8TN. Our VAT registration number is 182 7860 75. **Please note that all notices under this Agreement are to be sent and received by email.** For this purpose, your notices should be sent to support@cosmicsms.co.uk, and we will send our notices to you at the email address you notify to use when you register as a User as changed subsequently by emailed notice you give to us.