



IntelliSoftware

SMS Gateway - Terms and Conditions

Version 1.3

Content subject to change

IntelliSoftware Ltd.
Arena Business Centre
Holyrood Close
Poole
Dorset
BH17 7FJ
Tel: +44 (0)1202 311572
Fax: +44 (0)870 762 0876

1 Document History

Version	Date	Author	Description
1.0	09/01/2001	Chris Vine	First Release
1.1	01/05/2009	Chris Vine	Updated Company Address
1.2	05/05/2018	Chris Vine	Updated for GDPR
1.3	02/10/2021	Chris Vine	Price change notice period

2 Terms and Conditions

1. Introduction

1. You wish to use the Service and we are willing to make the Service available to you subject to and in accordance with the terms and conditions of the Agreement.
2. The terms and conditions of the Agreement are the only terms and conditions upon which We are prepared to make the Service available to You and they shall govern Your access to and use of the Service to the exclusion of all other terms and conditions. The terms and conditions of the Agreement may only be amended by a variation in writing signed by one of Our directors and no other action on Our part (whether affording You access to the Service or otherwise) shall be construed as an acceptance by Us of any other terms or conditions.

2. The Service

1. The Service enables SMS messages to be sent to a GSM mobile phone and for SMS messages to be received from a GSM mobile phone.

3. Availability And Interruption Of The Service

1. We will make the Service available to You using reasonable skill and care.
2. You do however acknowledge and agree that the availability of the Service, your ability to access and/or use the Service and the conveyance of messages to and from end-users may depend upon factors beyond Our control, including (but not limited to) factors affecting the operation of the Service and/or preventing the delivery of messages to end-users (such as, by way of example, geographical or topographical shortcomings in the network of any telecommunications network operator (Network Operator), network capacity, physical obstructions or atmospheric conditions) or factors preventing end-users from receiving messages (such as, by way of example, the terms and conditions of an end-users service provider).
3. As such, We cannot guarantee that the Service will be available to You at all times or that it will be free from faults or interruptions, nor can We guarantee the receipt by the intended recipient(s) of any message sent using the Service.
4. If at any time the Service becomes unavailable (in whole or in part), We will use reasonable efforts to inform You (without undue delay) of any such unavailability through email, Our web site(s) and/or other appropriate channels.
5. We may in Our sole and absolute discretion alter or improve the Service at any time, provided that any such alteration does not materially affect the nature or detract from the functionality of the Service.
6. It may be necessary from time to time for Us to suspend part or all of the Service for routine or emergency maintenance and/or repairs and We will, in so far as it is reasonably possible, provide you with a reasonable period of notice prior to any suspension of part or all of the Service for such purposes.
7. We may in Our sole and absolute discretion suspend Your access to the Service and/or cease to convey any messages provided by You if:
 1. You are in material breach of the Agreement and/or any applicable codes of practice, guideline, rulings or regulations of any national telecommunications regulatory authority or other competent body or authority (Regulator) relating to the Service which may be introduced or made from time to time during the continuation of the Agreement and with which You must comply or to which You have agreed to be bound, including (but not limited to) those issued by ICSTIS (Codes);
 2. You are doing or have done anything unlawful in the course of using or relating to Your use of the Service;
 3. a Network Operator or a Regulator requires it;
 4. at any time the number of messages that You are sending exceeds any forecast You have given Us of the message traffic that You expected to send at that time (Forecast) or, in the absence of any applicable Forecast, the number of messages that You are sending at any time causes or is likely to cause congestion to any telecommunications network; or
 5. We are entitled to terminate the Agreement for any reason, in which case We will give You appropriate notice as soon as is reasonably possible.

4. Confidentiality And Data Protection

1. We will at all times keep confidential all information acquired as a consequence of the Agreement in respect of You or Your business, except for information already in the public domain or information which We are required to disclose by law, requested by any Regulator or reasonably required by Our professional advisors for the performance of their professional services.
2. Both parties agree that where such processing of personal data takes place, the Customer shall be the 'data controller' and the Service Provider shall be the 'data processor' as defined in the General Data Protection Regulation GDPR as may be amended, extended and/or re-enacted from time to time.
3. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
4. The Service Provider shall only Process Personal Data to the extent reasonably required to enable it to supply the Services as mentioned in these terms and conditions or as requested by and agreed with the Customer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.
5. Further information about the Service Provider's approach to data protection are specified in the 'IntelliSoftware Data Processing Addendum'.

5. Technical Support

1. We will provide on-line support in respect of the Service during UK business hours (09:00 GMT to 17:00 GMT) Monday to Friday, except for Bank Holidays in England and Wales. Outside these core hours, We will use reasonable efforts to provide support in respect of the Service.

6. Charges and Payment

1. You agree to pay all charges due to Us in respect of making the Service available to You and Your access to and use of the Service (Charges) in accordance with the payment terms detailed in the Connection Agreement Signature Page that forms part of the Agreement.
2. Credit terms, including Direct Debit payment, are subject to Our continued approval.
3. We will make a search with a credit reference agency, which will keep a record of that search and will share that information with other businesses. We may also make enquiries about the principal directors with a credit reference agency.
4. Alternatively, You may wish to pre-purchase SMS message credits by credit card or cheque and, on Our receipt of cleared funds from You by credit card or cheque, We will allocate to You a corresponding number of SMS message credits (1 SMS message credit costing 1 unit charge in pence (subject to any variation thereof) and allowing You to send 1 SMS message using the Service). Each SMS message that You send using the Service will reduce the value of any SMS message credits available to You by 1 unit charge (subject to any variation thereof). You shall be solely responsible (by checking Your remaining available SMS message credit level on Our website www.intellisoftware.co.uk) for ensuring that you have enough SMS message credits to meet your requirements from time to time and we shall not be in any way responsible or liable in the event that You find you have insufficient SMS message credits for your requirements.
5. We may vary any of our Charges on giving you not less than 7 days written notice. If You do not agree with any proposed Charge variation, You have the right to terminate the Agreement on giving Us no less than 7 days written notice, such notice to take effect on the effective date of the Charge variation.

7. Your Liabilities and Obligations

1. You will not use the Service or permit the Service to be used for any purpose other than to:
 1. deliver within a message written information relating to any topic (including, but not limited to, news, sport, weather or entertainment), games playable on or between mobile phones, ring tones suitable for mobile phones, logos suitable for mobile phone screens and pictures and graphics suitable for mobile phones; or
 2. provide any other service to which We have given our prior written consent (which We may withhold in our sole and absolute discretion).
2. You will not use the Service or permit the Service to be used:

1. to send messages to any end-user without that end-users explicit request for or consent to receiving such message;
 2. for any improper, fraudulent, immoral or unlawful purpose;
 3. for the transmission of any material which is of a defamatory, offensive, abusive, obscene or menacing character or nature;
 4. in a manner that infringes the intellectual property rights or any other proprietary rights of any third party; or
 5. in a manner that may injure or damage any person or property or cause the quality of the Service to be impaired.
3. You will at all times during the continuation of the Agreement:
1. send only messages that comply with all applicable laws, regulations and Codes and that contain nothing which is likely to cause offence in view of the generally prevailing standards of decency and propriety from time to time;
 2. comply with all reasonable directions and instructions issued by Us from time to time in relation to the Service;
 3. comply with and observe at all times all applicable laws, regulations and Codes and any directions, recommendations and decisions of any Regulator; and
 4. not act in any manner likely to bring Us, the Service or any Network Operator into disrepute.
4. You will, upon request, provide Us, any Network Operator or any Regulator with any information relating to Your use of the Service that the requesting party reasonably requires. You are responsible for ensuring that any information provided to Us relating to Your end-users, including (but not limited to) Your End-User Data, is accurate and complete.
5. You will not state or imply any approval by Us of any particular message you send using the Service or refer to Us in any way without Our prior written approval.
6. Where requested by Us, You will promptly provide Us with a representative Forecast of Your Service needs for the requested period, including all reasonable details required for Us to plan capacity requirements and to maintain the levels of Service availability provided for in these Terms and Conditions (which form part of the Agreement).
7. You will at all times during the continuation of the Agreement ensure that, prior to You sending any message to any of Your end-users for any commercial purpose, You give those end-users the right to opt out of receiving any messages sent for commercial purposes (and You shall promptly process any end-users request not to do so).
8. We may, at Our sole and absolute discretion, cease to convey, and You will promptly cease to transmit at Our request, any message which We reasonably consider to be in breach of the Agreement.
9. You will not convey messages to any end-user, the frequency and number of which is excessive in Our reasonable opinion.
10. You will not acquire any title or other proprietary right to any intellectual property, including (but not limited to) any patents, know-how, registered or unregistered trademarks, design rights or copyright, relating to the Service, nor will You cause or knowingly permit anything to be done which may in any way damage or endanger any such intellectual property. You will notify Us of any suspected infringement of Our intellectual property of which You become aware and will take all reasonable action as We may direct in relation to that suspected infringement.
11. You warrant that:
1. You are the sole owner or licensor or all rights in Your End-User Data or You have obtained all necessary rights, licences and consents from all relevant third parties to enable You, Us and Our sub-contractors to use the End-User Data for the purposes of the Agreement; and
 2. nothing contained in any message conveyed by You or on Your behalf will infringe the intellectual property rights or any other proprietary rights of any third party or be defamatory, offensive, abusive, obscene, menacing or otherwise unlawful character or nature, nor will the accessing, holding, conveyance, transmission or supply of any such message amount to a criminal offence or be otherwise unlawful.
12. Without prejudice to any other rights or remedies available to Us under the Agreement or at law, You shall fully indemnify Us for all liabilities, losses, damages, costs and expenses suffered or incurred by

Us as a result of any breach by You or any of Your officers, employees or sub-contractors of any term(s) or condition(s) of the Agreement.

8. Our Liability To You

1. Nothing in the Agreement will in any way exclude or limit either party's liability to the other for death or personal injury caused by the negligence of that party or its employees.
2. We will not be in any way liable to You for any liabilities, losses, damages, costs and/or expenses incurred or suffered by You as a result of Your use of the Service, except to the extent that such liabilities, losses, damages, costs and/or expenses directly result from Our negligence or wilful misconduct.
3. We will not be in any way liable for the content of any messages sent or transmitted using the Service, nor will We be in any way liable for any failure to make the Service available to You or maintain the availability of the Service to the extent that such failure results from a technical or other failure on the part of any Network Operator or any other event which is outside Our reasonable control.
4. Subject to any express provision to the contrary in the Agreement, Our aggregate liability in contract, tort, negligence or otherwise arising under or in connection with the Agreement shall be limited to the proceeds received by Us under Our professional indemnity policy (or other relevant insurance policy) in respect of the liability in question,
5. Subject to any express provision to the contrary in the Agreement, neither party will in any circumstances be liable in contract, tort, negligence or otherwise for any economic loss (including, but not limited to, any loss or profits, business, contracts, revenue, turnover or anticipated savings) or for any indirect or consequential losses, whether or not they were foreseen or foreseeable.
6. Each party acknowledges that, in entering into the Agreement, it does not do so on the basis of or in reliance upon any representation, warranty or other term except as expressly provided in the Agreement and, as such, all conditions, warranties and other terms implied by statute, common law or otherwise are hereby excluded to the greatest extent permitted by law.

9. Contract Period And Termination

1. Unless We otherwise agree in writing, the Agreement is for an initial minimum 12-month period unless otherwise agreed commencing on the Start Date set out in the Connection Agreement Signature Page that forms part of the Agreement.
2. If You wish to terminate the Agreement, You must either: (i) give Us written notice to that effect within the 7-working day period from and including the Start Date, such notice to take effect immediately; or (ii) give Us no less than 30 days written notice, such notice to take effect on or any time after the End Date set out in the Connection Agreement Signature Page that forms part of the Agreement.
3. Either party may also terminate this Agreement with immediate effect by notice to the other party if:
 1. the other party becomes insolvent, makes any arrangement with or for the benefit of its creditors, goes into compulsory or voluntary liquidation, has a receiver, administrative receiver, liquidator or other similar official appointed over its assets, is subject to an administration or similar order or ceases trading;
 2. the other party commits a material breach of the Agreement and (where such breach is capable of remedy) fails to remedy the breach within 14 days of a written notice from the party not in breach requiring its remedy; or
 3. any licence required for Us to operate the Service is revoked, terminated or modified or, in the case of new licence requirements being imposed, the applicable licence is not granted to Us or granted to Us in such a way as to prevent Us from continuing to make the Service available or a Network Operator from enabling Us to make the Service available.
4. We may terminate the Agreement immediately on giving you 14 days written notice in the event that any relevant legislation of regulation is implemented or modified with the effect that it is no longer commercially viable or possible for Us to make the Service available.
5. Termination of the Agreement for any reason does not affect any rights that have accrued to either party under the Agreement up to the date of its termination and those terms and conditions of the Agreement that are by their nature capable of surviving termination will continue in full force and effect following such termination.
6. On termination of the Agreement:
 1. You will immediately cease to use the Service; and

2. all monies then owing to Us under or in connection with the Agreement will become immediately due and payable.

10. Force Majeure

1. Neither party will be liable for any delay in the performance of or any failure to perform any of its obligations under this Agreement that is caused by any event which is beyond its reasonable control, including, but not limited to, the failure, malfunction or unavailability of necessary telecommunications, data communications and/or computer services, power supply failures or shortages, acts or omissions of third parties (including, but not limited to, Network Operators), acts of government or Regulators or telecommunications network congestion.

11. Assignment

1. Neither party will assign, transfer or sub-contract either in whole or in part any of its rights or obligations under the Agreement without the other party's prior written consent (not to be unreasonably withheld or delayed), provided that We shall be entitled without Your consent to assign, transfer or sub-contract in whole or in part any of Our rights or obligations under the Agreement to any company that is, or is a subsidiary of, Our ultimate holding company (as defined in section 736 of the Companies Act 1985).

12. General

1. Any notices to be given under the Agreement will be given in writing to the addressee at its address, its fax number or its email address as set out in the Agreement and will be deemed to have been received within 48 hours of posting first class or within 24 hours of sending if sent by facsimile transmission or email to the correct fax number or email address of the addressee.
2. Nothing in the Agreement will be deemed to constitute a partnership or joint venture between the parties or constitute any party the agent of the other party.
3. Any failure by either party to enforce any of the terms or conditions of the Agreement at any time will not be a waiver of those terms or conditions or of the right to subsequently enforce those or any other terms and conditions of the Agreement at any time.
4. In the event that any of the terms or conditions of the Agreement are held to be invalid or unenforceable, this will not affect the validity or enforceability of all remaining terms and conditions.
5. The Agreement constitutes the entire understanding between the parties and supersedes all previous agreements, arrangements, representations and understandings between the parties relating to the subject matter of the Agreement, provided that nothing in the Agreement will in any way exclude or limit either party's liability for any fraudulent misrepresentation or concealment.
6. A party who is not a party to the Agreement has no right to enforce or rely on any term or condition of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
7. The Agreement is governed by and shall be construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English courts.