

Click SMS Agreement

1. Introduction. This Agreement is a legal document which sets out your rights and obligations, and those of Click SMS Limited ("Click SMS", "we" or "us"), in relation to this site and the services offered by us through it (the "Click SMS Service"). You must take the time to read and understand the Agreement before registering for the Click SMS Service. By registering, you accept that you are entering into a contract with us on the terms of this Agreement. Note that the Click 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 23 below.
2. Obtaining an Account. People who register for the Click SMS Service establish an "Account", and become "Users". They must be legally entitled to contract for and use the Click 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. Message Credits. If you decide to become a User, you are agreeing to purchase credits for messages sent through the Click SMS Service ("Message Credits"). Details of our Message Credits will be notified to you when you purchase your initial Message Credits and subsequently, in accordance with this Agreement. We will take payments for Message Credits, 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 also take payment by other means.

Message Credits will be debited from your Account upon the submission through your Account of a message for delivery; but a Message Credit will not be incurred where a submission properly made by you according to our specifications is not correctly transmitted by us to a relevant operator or other service provider for onward transmission or delivery (collectively, "Providers").

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 Message Credits in your Account against any amounts paid or payable by you to us.

4. Operation of Accounts.

You will be able to check your level of Message Credits through your Account.

If the Message Credits held on your Account are insufficient for the messages that you attempt to send through that Account, you will not be able to send those messages; you will be notified of this fact through your Account or by email.

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

5. Changes to the value of Message Credits. Because Providers reserve the ability to increase costs to us, please note that we reserve the right to change the value of Message Credits by ten days notice to Users who have Message Credits in their Accounts. If you have not added funds to your Account in order to reflect the change, we will be entitled to proportionately reduce the number of messages you

are able to send using the Message Credits you previously purchased: by way of example, if there should be a 10% increase in the number of Message Credits required for the sending of messages, then we will be entitled to require you to use eleven Message Credits for the volume of messages for which ten Message Credits were previously required.

6. Expiry of Message Credits. Please note that Message Credits will expire twelve months after you purchase them if they have not been used by you. In this event, any affected Message Credits will not be usable, and you will not be entitled to a refund of the price you paid for them. Therefore, when you purchase Message Credits, please make sure that you will be in a position to use them within twelve months of purchase, because if you do not do so, you will lose the value of those Message Credits.
7. Registration. You undertake to register for the Click 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 which are deducted from it. As part of the registration process for the Click 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.
8. Privacy policy. Click 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.
9. Our Role.
 - a. Click SMS will direct the messages you send through the Click SMS Service as specified by you, and for this purpose will pass them to the relevant Provider once they have passed through our systems. Please note that the delivery of a message is dependent upon;
 - i. the message having a correct destination mobile phone number; and
 - ii. the relevant Provider delivering the message as-addressed.
 - b. From time to time, the Click 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 Click SMS Service, are kept to a minimum. You will not be able send messages during these periods.
10. Changes by Providers. The Click SMS Service, and the terms and conditions which govern it, are subject to changes resulting from changes made by the relevant Provider to the corresponding services provided by the Provider to Click 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.
11. Click SMS Licensing. During the term of this Agreement, Click SMS licenses to you such use of the Click SMS messaging interface and associated portions of our website (collectively, the "Click SMS Licensed Elements") as we make available to you in connection with the conduct of the Click SMS Service, for use solely in the use of the Click 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 Click SMS Licensed Elements may not be copied or distributed, or used for any purpose other than using the Click SMS Service in accordance with this Agreement. You may not reverse engineer, decompile or disassemble any of

the Click 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 Click SMS Service, you must have internet access and all the software (and skills) required for the use of the Click SMS Service and the Click SMS Licensed Elements via the internet.

12. Misuse of the Click SMS Service. You will ensure that each message sent under your Account:
- 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 Click 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 Click SMS, or any deduction from sums otherwise payable to Click 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 12, then Click SMS shall be entitled (aa) to "freeze" your Account, and prevent the use of Message Credits held within it, (bb) upon notice to you, to use the cash value of those Message Credits to pay all or part of the amount levied by the Provider or regulator, and (cc) otherwise to recover from you the amount thereof, plus any costs or expenses incurred by Click SMS in connection with the incurring of the liability or the relevant charge, fine, debit or deduction.

13. 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.
14. Additional services. We or our affiliates may offer new or additional services through the Click 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 Click 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.
15. Operation of Click SMS Services. Click SMS reserves the right to withdraw or modify one or more aspects of the Click SMS Service, or the entirety of it, where we have legal or commercial reasons to do so. There may also be times when the Click 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 sums you have paid for Message Credits 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 Click SMS Service.

16. Liability.

- a. We warrant that the Click SMS Service will be performed with reasonable care and skill with the intention of meeting our specifications for the Click SMS Service, but, given the uncertainties associated with mobile telecommunications and related technologies, cannot and do not guarantee that the Click SMS Service will meet your requirements, including (without limitation) as to the speed of delivery of any message.
 - b. Click 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 Click SMS's liability for death or personal injury resulting from its negligence.
 - d. Subject always to sub-Clause f. below, Click 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 messages sent or intended to be sent through the Click SMS Service, that liability is limited to the value of the Message Credits associated with those messages.
 - e. It is your responsibility to take out insurance against risks which exceed the Message Credit 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 Click 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, Click SMS will not have liability to you or any other person in respect of the content of messages, or any instructions supplied by you in relation to 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 16 shall survive the termination or expiry of this Agreement.
17. **Indemnity.** The User, at its own expense, will indemnify, defend, and hold harmless Click 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 Click SMS Service or any breach of the Agreement by the User.
18. **Suspension.** Click SMS is entitled to suspend provision of the Click SMS Service at any time if:
- a. Click SMS is entitled to terminate this Agreement or close your Account;
 - b. Click SMS is obliged or advised to comply with an order, instruction or request of the government, regulator, court or other competent authority;
 - c. Click 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 Click SMS Service hereunder is dependent suspends its provision of those services to Click SMS.
19. **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 Click SMS, in the event that any modification to Click SMS's contracts with businesses responsible for the transmission or delivery of messages, or any change in any law, regulation or code of conduct, makes the provision of the Click SMS Service to you illegal or contrary to law, regulation or code of conduct, prohibitively difficult, or prohibitively expensive for Click 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 30 days following the date when it is required to be paid in accordance with this Agreement.
20. 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.
21. 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 Click SMS assign or dispose of this Agreement, nor subcontract any of your rights and obligations under it.
22. Entire Agreement. This Agreement is intended to contain your entire agreement with us relating to the Click SMS Service; we believe it to be fair and reasonable. It replaces all earlier agreements and understandings with you relating to the Click 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.
23. Changes to this Agreement. Click SMS reserves the right to change this Agreement from time to time, and post the new version on the Click SMS Service. When we do so, we will notify you of the fact that there are changed terms on the main screen (www.clicksms.co.uk), and the new version of these terms and conditions will take effect, and will govern all Click 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 Click 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.

24. 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.
25. Law. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
26. Keeping this Agreement. We don't separately file the individual Agreements entered into by members when they register for the Click SMS Service. You can access it at www.clicksms.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.
27. Contact. We are a company registered in England and Wales under registration no. 4499350. Our address is East House, 109 South Worple Way, London SW14 8TN. Our VAT registration number is 802 7977 12. **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@clicksms.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.