

# Race River Corporation Pty Ltd

## ZAPITSMS SERVICE AGREEMENT

This Service Agreement (the "Agreement") is made between the persons or organisation named or described as the Customer (the "Customer") and on the Effective Date set out in Schedule 1 and Race River Corporation Pty Limited ("Race River") (ABN 83 122 020 919) for the provision of SMS services ("ZapitSMS").

### SCHEDULE 1

<b>Customer Name:</b>			
<b>ABN:</b>			
<b>Address:</b>			
	<b>City:</b>	<b>Post code:</b>	<b>State:</b>
<b>Telephone:</b>		<b>Fax:</b>	
<b>Billing Contact:</b>	<b>Name:</b>		<b>Position:</b>
<b>Billing Address (if different from above):</b>			
	<b>City:</b>	<b>Post code:</b>	<b>State:</b>
<b>Billing Telephone:</b>		<b>Fax:</b>	
<b>Billing Mobile:</b>		<b>Email:</b>	
<b>Website / Domain Name:</b>			
<b>Effective Date:</b>		<b>Month of:</b>	<b>2009</b>

#### Signed for and on behalf of Customer

.....  
 Signature of Authorised representative                      Name of authorised representative

#### Signed for and on behalf of Race River 2 Baroona Road, Milton, QLD 4064 Australia

.....  
 Signature of Authorised representative                      Name of authorised representative

### Pricing

<b>Fees and Charges:</b>	<b>Fees Excluding GST</b>
Set-Up Fee:	<b>N/A</b>
API Set-Up Fee:	<b>N/A</b>
Dedicated Number Fee:	<b>N/A</b>
SMS Fee per credit	<b>16 Cents</b>
<b>Credits per SMS Message Sent:</b>	
Credit per SMS sent to national mobile phone number.	<b>1</b>
Credit per SMS sent to international mobile phone number.	<b>1.5</b>
Price per Extra SMS Message	<b>N/A</b>
Credits per SMS Message Received:	<b>N/A</b>

All prices are exclusive of GST.

#### Race River Corporation Pty Ltd

2 Baroona Road, Milton  
 PO Box 2128,  
 Milton QLD 4064 Australia.

Phone: +61 7 3369 4770  
 Fax: +61 7 3369 4771  
[www.raceriver.com.au](http://www.raceriver.com.au)

# ZAPITSMS SERVICE AGREEMENT

This Service Agreement constitute the entire agreement and understanding between Race River Corporation Pty Ltd ABN 83 122 020 919 ("we", "us", "our") and the Customer specified in Schedule 1 of the Agreement ("you", "your") with respect to the provision of SMS services, use of ZapitSMS, web-base SMS and our online administration and billing services. This Agreement supersedes any other oral or written communications, understandings, arrangements, agreements or presentations.

The submission of executed copy of this Agreement to us constitutes your approval of these terms and conditions.

The definitions of the terms used in this agreement with the capitalised first letter are listed at the end of this Agreement.

## 1. PC to Mobile Short Messaging Service

This Agreement is for the provision of PC to mobile short messaging service ("Service") which enables users of Microsoft Outlook to send short messages to GSM mobile phone hand sets and receive replies to those messages.

- (a) We grant you a non exclusive or transferable licence for the term of this Agreement to install and use our software ("Software") and our Services solely for your own internal business purposes on the terms and conditions of this Agreement.
- (b) you will become an authorised user when you install our Software on a PC associated with your Internet domain name, e-mail address or mobile phone number and is registered on the ZapitSMS database system.
- (c) you may de-activate or request de-registration of your authorised users at any time.
- (d) you are liable for the payment of the fees and charges incurred as a result of the use of our Service.
- (e) we may provide you free of charge any updates and upgrades to our Software from time to time.
- (f) we will use reasonable endeavours to provide you uninterrupted access to our Service however, you acknowledge and understand that:
  - (i) the Service is not error or fault free and that you may experience interruptions, outage or usage difficulties from time to time;
  - (ii) we are not responsible for the successful delivery of SMS messages and any third party telecommunication networks;
  - (iii) we may suspend our Service without any notice to you:
    - during any system upgrade, technical failure, system modification or other maintenance work;
    - if, in our reasonable opinion you do or allow to be done anything that may cause or have the effect of jeopardising the operation of our or any third party's services, facilities or business.

## 2. Limitation of Use

You agree, not to take any action that may, in our reasonable opinion, adversely affect or impair any of our rights, title and interests in the Software, Service or any of our Intellectual Property Rights in any manner or form;

- (a) to restrict access to our Software and Services to Authorised Users;
- (b) to use the Software and the Service for the sending and receiving of SMS which:

**Race River Corporation Pty Ltd**

2 Baroona Road, Milton  
PO Box 2128,  
Milton QLD 4064 Australia.

Phone: +61 7 3369 4770  
Fax: +61 7 3369 4771  
[www.raceriver.com.au](http://www.raceriver.com.au)

- (i) Comply with all applicable laws, regulations and the requirements of any government or statutory body and all reasonable industry, spam acts and Race River policies, standards and codes.
- (ii) contains nothing which is likely in the light of generally prevailing standards of decency and propriety to cause offence or racially or religiously vilifies, incites violence or hatred or is likely to offend, insult or humiliate others based on gender, age, race, religion, sexual orientation or any other physical or mental disability; and
- (c) not to repackage, market, license, lend, rent, distribute, transfer or otherwise commercially exploit the Software and Service or translate or export the Software into any other computer languages;
- (d) not to merge all or any part of the Software with other computer programs, products or services without our prior written consent;
- (e) not to reverse assemble, engineer or reverse compile or directly or indirectly allow a third party to reverse assemble, engineer or reverse compile the Software or attempt to discover any portion of the source code or trade secrets related to the Software, except as and to the extent that you are legally authorised to do so under any applicable laws;
- (f) you will not upload harmful material and will not delete any author attributions, legal notices or proprietary designations or labels or introduce into our system viruses, worms, trojan horses or other harmful or malicious software;
- (g) to notify us immediately if you become aware of any unauthorised use by any person of the whole or any part of the Software or Service;
- (h) to indemnify us for any loss, cost or damage we incur as a result of your failure to comply with your obligations under this agreement.

### **3. Fees and Charges**

- (a) You will pay to us the Set-up Fee (if applicable) and the Message Fees as specified in Schedule 1 of the Agreement;
- (b) for the avoidance of doubt, for the purpose of calculating the Monthly Fee, the number of SMS will be determined by counting the number of credits used by all of your authorised users registered on the ZapitSMS database system during the applicable monthly billing period;
- (c) you may elect to make payment by credit card by completing a Credit Card Authorisation Form. If you do not elect to make payment by credit card, you will pay all amounts due to us within 14 days from the invoice date;
- (d) if you elect to pay via credit card and your credit card expires or we are for any other reason unable to apply the charges to your credit card, we may immediately and without notice suspend your use of the Service. In such circumstances we will only reactivate the Service when the problem with the direct debit has been rectified and the outstanding amount including any charge back fee has been paid to us;
- (e) at our sole discretion, we may charge you interest on any overdue amount, at the annual lending rate of interest charged by our principal banker plus 2% and to the maximum rate allowable by law, calculated daily from the due date until the date of the full payment of the total overdue amount. Nothing in this clause affects our right to terminate this agreement;
- (f) we may vary the charges at any time by giving you 30 days written notice;
- (g) to the extent permitted by law any prepayment of charges is not refundable;
- (h) you will be responsible for the cost of your equipment, internet connection, computer, hardware, software and all other equipment required to use the Service other than the Software that we provide you under this agreement.

#### **Race River Corporation Pty Ltd**

#### **4. Exclusion of Warranties**

Race River endeavor to use all reasonable efforts to rectify, correct or provide work-around for any defects in our Software or Service. Except as otherwise expressly stated in these terms and conditions, we make no express or implied warranties to you and expressly exclude all warranties, conditions and terms implied by statute, general law, international convention or custom, including without limitation any and all implied warranties with respect to merchantability, fitness for purpose, title and non-infringement, except for any implied condition or warranty, the exclusion of which would contravene any statute or cause this clause to be void.

#### **5. Limitation of Liability**

- (a) To the extent permitted by law, where the goods or services we supply under these terms and conditions are subject to warranties or terms implied by statute, general law, international convention and that cannot be excluded, restricted or modified, our liability for breach of any such condition or warranty will be limited at our option to:
  - (i) in the case of goods, to the supply of the goods again or payment of the cost of supplying the goods again; and in the case of services, the supply of the services again or payment of the cost of supplying the services again.
- (b) To the extent permitted by law, our liability to you for any loss or damage, whether arising in contract, negligence or otherwise shall not exceed the total amount we actually received from you with respect to the Service. We will not be liable in any event (whether in contract, tort or otherwise) for any consequential, indirect, incidental, special, punitive or exemplary damages, including without limitation any loss of profits, loss or corruption of data, loss of anticipated savings, loss of goodwill or economic loss even if we have been advised of the possibility of such loss or damage;
- (c) Each party's liability in contract, tort, negligence, under statute or otherwise must be reduced by the extent, if any, to which the other party contributed to the loss.

#### **6. Intellectual Property**

You acknowledge that the Software and all its related documentation, trademarks, branding, know-how, get-up, logos, images and marketing material (whether registered or unregistered) are commercially valuable, proprietary product and reflects the effort of skilled development experts and the investment of considerable time and resources and is subject to copyright and other Intellectual Property Rights. Race River is the owner or authorised licensee of all rights, title and interests in and to the Software and except as otherwise specifically granted under these terms and conditions, you obtain no right, title or interest in or to the Software.

#### **7. GST**

You must pay us on demand any Goods and Services Tax (GST), Value Added Tax (VAT) or any other like tax which is payable as a consequence of any supply made or deemed to be made or other services under or in connection with this Agreement by us. The amount shown on this Agreement are excluding of any tax therefore, the amount paid by you to us on account of any tax such as GST, VAT or any like tax must be sufficient to ensure that the economic benefit to us from this Agreement remains the same whether any tax such as GST, VAT or any like tax applies or not.

#### **8. Confidential Information**

Confidential Information means all spoken, written or electronically stored information belonging or relating to Race River or its clients;

- (a) Neither party will disclose to any third party without the prior written consent of the other party any Confidential Information received from the other party. This restriction excludes information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this Agreement), is independently known or developed by the recipient or is required by law to be disclosed;

#### **Race River Corporation Pty Ltd**

2 Baroona Road, Milton  
PO Box 2128,  
Milton QLD 4064 Australia.

Phone: +61 7 3369 4770  
Fax: +61 7 3369 4771  
[www.raceriver.com.au](http://www.raceriver.com.au)

- (b) Each party will only use the Confidential Information of the other party for the sole purpose of performing its obligations under this Agreement;
- (c) This clause does not prevent us from disclosing the existence of this Agreement to third parties for the purposes of marketing of our Service to our current or potential customers.

## **9. Term and Termination**

- (a) This Agreement will commence on the Effective Date specified in Schedule 1 and will continue unless terminated in accordance with this Agreement;
- (b) Either party may terminate these terms and conditions without cause by giving 30 days notice in writing to the other party;
- (c) Either party may terminate these terms and conditions at any time with immediate effect if the other party breach any of these terms and conditions and fail to remedy that breach within 21 days after receiving notice of the breach requiring to do so;
- (d) You may terminate these terms and conditions with effect from the date of any increase in charges notified by us by giving notice to us within 14 days after receiving notice of the increase in charges;
- (e) These terms and conditions will terminate automatically if either party becomes the subject of an insolvency event.

## **10. Consequences of Termination**

- (a) Upon the termination of these terms and conditions for any reason, all rights granted to you under these terms and conditions cease and you must:
  - (i) immediately discontinue all use of the Software and the Service; and
  - (ii) immediately pay to us any outstanding charges.
- (b) The provisions of clauses 5, 6 and 8 survive termination of this Agreement.

## **11. Force Majeure**

Other than in relation to any payment obligations under these terms and conditions, no party will be in breach of its obligations under these terms and conditions to the extent that the failure or delay occurs because of a Force Majeure event and the affected party will be granted a reasonable time extension to complete its performance of any obligations affected by that event.

## **12. General Provisions**

- (a) Any variation or amendment to this Agreement must be in writing and signed by all parties.
- (b) All notices to be given by one party to the other must be in writing and shall be sent by facsimile, electronic mail or by post to their respective addresses specified on schedule 1 and this Agreement or as varied by written notice.
- (c) If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this Agreement.
- (d) You may not assign or attempt to assign any of your rights or obligations under these terms and conditions without our prior written consent which shall not be unreasonably withheld.
- (e) The laws of Queensland apply to this Agreement and the parties submit to the courts of that jurisdiction.

### **Race River Corporation Pty Ltd**

2 Baroona Road, Milton  
PO Box 2128,  
Milton QLD 4064 Australia.

Phone: +61 7 3369 4770  
Fax: +61 7 3369 4771  
[www.raceriver.com.au](http://www.raceriver.com.au)

### 13. In this Agreement

**"Confidential Information"** in relation to a party, means all information relating to that party including, without limitation, that party's, systems, processes, data, customers, personnel, assets, products, services, technical and financial information, intellectual property, concepts and affairs, which is disclosed, communicated or delivered to the other party or which comes to the other party's knowledge or into its possession, before, on or after the date of these terms and conditions.

**"Software" and "Service"** includes ZapitSMS, web-base SMS and our online administration and billing system and any related software and services provided to you under this Agreement for the provision of SMS services.

**"Force Majeure"** means an event or circumstance that, despite its reasonable effort and without its fault or negligence, a party is unable to control and includes, without limitation, any act of God, war and other hostilities, fire, flood, strikes, lock-outs, delays in transport, breakdowns in machinery, or restrictions or prohibitions or any other acts by any government or semi-government authority.

**"Insolvency Event"** includes, without limitation, an arrangement, compromise, winding up, dissolution, official management, appointment of administrator, liquidator, provisional liquidator or controller, assignment for the benefit of a creditor, scheme of arrangement with creditors, insolvency, bankruptcy or if it applies, a merger, amalgamation, reconstruction or change in the constitution of an entity for the purpose or having the effect of altering a party's rights with its creditors, or anything having a substantially similar effect to any of the events specified under the law of any jurisdiction.

**"Intellectual Property Rights"** means all rights, whether registrable, registered or unregistered under the laws of any jurisdiction throughout the world, including, but not limited to any documentations, copyrights, patents, designs, trade marks, trade secrets, trading names, business names, get up and any applications for, or rights to obtain or acquire any such intellectual property rights.

**"Authorised Users"** are all users that have been allowed and registered on the ZapitSMS database system in your account to use the Software and Service.