

Race River Corporation Pty Ltd

ZAPITSMS SERVICE AGREEMENT

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

CUSTOMER DETAILS

Customer Name:			
ABN/ACN number:			
Address and Contact Details:			
	City:	Post code:	State:
	Telephone: ()	Fax: ()	
Billing Contact:	Name:	Position:	
	Telephone: ()	Fax: ()	
Billing Address (if different from above):			
	City:	Post code:	State:
Mobile Phone (Billing):		Email:	
Website / Domain Name:			
Effective Date:	Month of:	2011	

ZAPITSMS SERVICE AGREEMENT

INTRODUCTION

This is a Service Agreement between "you" and Race River Corporation Pty Ltd ABN 83 122 020 919 ("Race River"), a limited liability corporation registered in Australia. In this Service Agreement ("Agreement"), "you" and "your" shall refer to yourself as the customer ("Customer") and your agents and employees, including each person listed in your account as being associated with your account ("Authorised Users"), while "we", "us" and "our" refer collectively to Race River. This Agreement explains the mutual obligations between you and us with respect to the provision of SMS services, use of ZapitSMS, web-based SMS and our online administration and billing services. By submitting the executed copy of this Agreement to us, you agree to be bound by the terms and conditions of this Agreement for the provision of SMS services, entered into by you or your agent acting on your behalf. This Agreement supersedes any other oral or written correspondences or arrangements.

PROVISION OF SERVICE

1. PC TO MOBILE TEXT MESSAGING SERVICE

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

- 1.1 Race River grants to you a royalty free, non-exclusive and non-transferable licence to use and install our Software ("Software") for your own personal or internal business use in accordance with these terms and conditions. By downloading and installing the Software on a PC associated with your Internet domain name, e-mail address or mobile phone number or registering on the ZapitSMS system or otherwise registering for the Service and accessing our system, you will be deemed to have accepted and be bound by these terms and conditions.
- 1.2 Race River reserves the right to add, remove or modify the functionality of the Software which will be deemed to form part of the Software. This Agreement will continue to apply in all respects to the Service and the updated or upgraded Software.
- 1.3 You acknowledge that the Software may be supplied or used in conjunction with hardware, software and other services supplied by third parties. Race River shall not be liable for any loss or damage arising from the use of third party products or services which have not been supplied by us or are outside of our control. You will be responsible for the cost of your equipment, internet connection, computer hardware and software and any other equipment required to use the Service other than the Software that we provide you under this agreement.
- 1.4 Race River will use reasonable commercial endeavours to provide you uninterrupted access to our Service and in the event of any failure or interruption of the service, to restore the Service to an operational state with the minimum practicable delay however, you acknowledge and understand that:
 - a. your use of the Service is dependent and affected by external factors outside our control, including environmental, infrastructure and the services provided by Network Operators,
 - b. we do not undertake or guarantee that the Service including the Software, online access or the system is error or fault free and that you may experience interruptions, outage, usage or access difficulties from time to time; and
 - c. we are not responsible for the successful delivery of your messages and or reliability of any third party telecommunications and network operators.

2. FEES AND PAYMENT

As a consideration for the Services you purchase from Race River, you agree to pay us the applicable fees set forth on this Agreement, or, if applicable, upon receipt of your invoice from Race River.

- 2.1 You further agree to pay all fees by providing a valid credit card, or PayPal, for immediate charge by Race River. If you do not elect to make payment by credit card or PayPal, you will pay all amounts due to us within 14 days from the invoice date. You agree that all fees are non-refundable, except as otherwise expressly stated in this Agreement.
- 2.2 If for any reason we are unable to charge your credit card or debit your PayPal account for the full amount you owe to us for the Services provided, you agree that Race River may pursue any and all available remedies in order to enforce payment, including, but not limited to, immediate cancellation of your account without notice.
- 2.3 You understand and agree that Race River will charge you a fee for any bounced cheque and other bank charges. You further agree that 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.
- 2.4 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 system in your account and during the applicable monthly billing period. If you elect the Pricing Option B for the Service, the applicable minimum monthly fee for Post-Paid Plan including bundled SMS Credits is payable at the end of monthly billing period.
- 2.5 The Pre-Paid fees paid by Customer represent credit which will enable you to use our service until such time as that credit is exhausted.
- 2.6 The Service charges may increase due to increases imposed on us by other suppliers including international carriage service providers and premium services or charges in order to manage traffic and ensure maximum network performance, we will give you reasonable notice of the changes referred to in this clause where practicable to do so.
- 2.7 If Goods and Services Tax (GST), Value Added Tax (VAT) or any other like tax which is imposed on any supply we make to you under this Agreement or other consideration are not expressed to be inclusive of GST, you must pay to us an additional amount calculated by multiplying the value of that exclusive consideration (without deduction or set-off) by the prevailing GST or VAT rate.

3. CONDITION AND LIMITATION OF USE

You acknowledge and agree:

Race River Corporation Pty Ltd

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

Phone: +61 7 3369 4770
Fax: +61 7 3369 4771
www.zapitSMS.com.au

- a. not to take any action in any way that may have a detrimental effect on the goodwill or good standing of Race River or any Network Operator in a way that may expose ZapitSMS or any Network Operator to the risk of any legal or administrative action including prosecution under any Laws,
- b. to use the Software or Service for the sending and receiving messages which 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,
- c. not to send unsolicited commercial messages where the recipient has not consented to receive such messages,
- d. not to make available the Software or part thereof, or access to the Service to another person other than in accordance with these terms and conditions,
- e. to notify us immediately if you become aware of any potential or actual unauthorised access or use of whole or part of the Software or Service,
- f. not to market, licence or distribute, transfer or otherwise commercially exploit the Software and Service, repackage, merge all or any part of the Software with other computer programs, translate or transfer the Software into any other computer languages without our prior written consent,
- g. not to upload harmful material, 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,
- h. you may not assign or transfer any of your rights or obligations under this Agreement without our prior written consent,
- i. comply with all applicable laws, regulations and requirements of any government or statutory body and all reasonable industry, spam acts and Race River policies and standard codes.

4. TERM OF AGREEMENT

This Service Agreement will commence on the effective date set out in Customer Details on page one and shall continue in full force and effect as long as you have any Customer account with Race River.

5. ACCURACY OF INFORMATION

You agree to provide accurate, current and complete information about you or your organisation as required on this Agreement or at the time of registration and/or application process of your account ("Account Setup"). You agree to maintain and update your information or to notify Race River within five (5) business days when there is a change to any of your Account Information. Failure to provide accurate information or timely update or respond to any inquiries to verify the information shall be considered a material breach of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

You agree and warrant that you have all requisite power and authority to execute this Agreement and perform your obligations set out in this Agreement.

7. CANCELLATION, SUSPENSION AND TERMINATION

7.1 Cancellation by You:

- a. if a contract term is specified in this Agreement, at anytime after the end of the contract term by giving us 30 days notice,
- b. you may terminate this Agreement at anytime with immediate effect from the date of any increase in charges notified by us,
- c. you may de-activate or request de-activation of your account or any of your Authorised Users at anytime.

7.2 Cancellation by Us:

- a. we may terminate this Agreement at any time with immediate effect for the transmission of messages and or damages in connection with complaints or claims relating to any messages or any negligent or fraudulent act, error, loss of or damage to any property or injury to or death of any person caused by any act or omission of the Customer and its Authorised Users,
- b. any claim by a third party including any Network Operator against Race River relating to the Services provided under this agreement,
- c. 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,
- d. we may suspend the Service without any notice to you during any system upgrade, modification or maintenance or technical failure.

7.3 Cancellation by either party:

- a. either party may terminate this Agreement 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,
- b. this Agreement will terminate automatically if either party becomes the subject of an insolvency event.

7.4 Consequences of Cancellation:

If the Service is suspended or the Agreement is terminated for any reason, you must immediately un-install our software, discontinue using the Service and pay to us all outstanding fees and charges including any fees for the period and up to the suspension of your account.

Other than in relation to any payment obligations under this Agreement, neither party shall be deemed in default or in breach of this Agreement if that failure or delay is as a consequence of a Force Majeure event.

8. PRIVACY AND USE OF CONFIDENTIAL INFORMATION

You agree to be bound by Race River's privacy policy that is incorporated herein and located on our web site. Confidential Information means all spoken, written or electronically stored information belonging or relating to Race River or its Customers.

You further agree that Race River in its sole discretion and without any liability to you for any resulting loss or damage may modify our privacy policy.

- a. both parties agree to keep confidential the other's Confidential Information,
- b. neither party will use or disclose the other's Confidential Information for any purpose, other than (i) with prior written consent of the other party (ii) to the extent necessary to perform obligations under this Agreement (iii) to comply with law, responding to subpoenas or compliance with court orders and legal requests or a direction by a Regulatory Authority.

9. INTELLECTUAL PROPERTY

Except as otherwise set forth herein, you agree that all rights, title and interest in and to all registered and unregistered trademarks, logos, patents, patentable ideas and patent applications, inventions or improvements, trade secrets, know-how, proprietary information, copyrights including, without limitation, any forms, images, text, software and audiovisual displays and all other intellectual property rights or other rights related to

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intangible property which are used, developed or embodied in, or practiced in connection with any of the Race River Services are owned by Race River or its licensors. You acknowledge and agree that no title to the Race River Intellectual Property Rights is transferred to you, and that you do not obtain any rights, express or implied, in Race River's or its licensor's Intellectual Property Rights other than the rights expressly granted in this Agreement.

10. DISCLAIMER OF WARRANTIES

Race River expressly disclaims all warranties of any kind, whether express or implied including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. We make no warranty that the Service will meet your requirements or that the Service will be error free or without defects, uninterrupted, secure or timely.

11. MODIFICATION

You agree that, Race River may revise the terms and conditions of this Agreement and or change the Services it provides under this agreement at any time. Any such changes or revisions shall become binding and effective thirty (30) days after posting on our website or change to the Services or upon notification to you. You agree to periodically review our website for any such revisions or changes.

12. LIMITATION OF LIABILITY

Despite any other provision in this agreement, you agree that Race River's entire liability and your exclusive remedy in law, in equity, or otherwise, in connection with any Service provided to you by us under this Agreement and/or for any breach of this Agreement by us shall be limited to the maximum amount of fees you paid to us for the Service during the term of this Agreement.

You understand and agree that Race River disclaims any loss or liability resulting from access delays or interruptions, non-delivery of data, delays or interruptions by third party networks and telecommunication providers.

Race River endeavour to use all reasonable efforts to rectify, correct or a provide work-around for any defects in our Software or Service. Our liability where the goods or Services we provide under this Agreement are subject to warranties or implied terms that cannot be excluded is limited, at our sole discretion to:

- a. in the case of goods, repair or replacement of the goods or payment of the cost of the repair or replacement; and
- b. in the case of services, resupplying the services or payment of the cost of resupplying the services again.

If either party is in breach of this Agreement and it is necessary to assess damages (whether or not the Agreement is terminated), it is agreed that the damages awarded will be reduced to the extent that the party suing was responsible for loss suffered by that party.

13. INDEMNIFICATION TO RACE RIVER

You agree to release, indemnify, defend, and hold harmless Race River and any of its offices, employees, agents, contractors, directors, shareholders, members, affiliates from and against any losses, liabilities, claims, damages or costs, including reasonable attorneys' fees and expenses, relating to or arising out of your registration and use of Services provided by us to you including your Authorised Users. You agree that such indemnification obligation shall survive the termination or expiration of this Agreement.

14. SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable by court, the remaining provisions of this Agreement shall remain in full force and effect.

15. NOTICES

Both parties agree that all notices concerning this Agreement may be sent to the email address, mailed to the postal address or facsimile to the address provided on this Agreement or as varied by written notice.

16. GOVERNING LAW

This Agreement shall be deemed entered into in the State of Queensland, Australia. This Agreement shall be governed by the laws and judicial decisions of the State of Queensland. You agree to waive the right to trial by jury in any proceeding that arises out of or relates to this Agreement.

17. WAIVER

No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by an authorised representative of Race River.

HEADINGS

The section headings in this Agreement are for the purpose of convenience only, and are not intended to and in no way define, describe, limit, expand, or construe the scope of any provision or its applicability.

SOFTWARE AND SERVICE

Includes ZapitSMS software, web-based 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.

AUTHORISED USERS

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

FORCE MAJEURE

Neither party shall be deemed in default or shall hold the other party responsible for any delay or failure to perform its obligations under this Agreement if that failure or delay is due to anything beyond that party's reasonable control. This includes, without limitation, any act of God, war (declared or undeclared), act of terrorism, sabotage, blockade or strikes, revolution, riot, insurrection, civil commotion or epidemic, other hostilities, fire, flood, delays in transport, breakdowns in machinery, restrictions or prohibitions or any other acts by any government or semi-government authority. This clause does not apply to any obligation to pay money. The deadline for any obligation that is affected by the Force Majeure will be extended by a period equivalent to the period for which the Force Majeure has prevented that obligation being performed. Should the force majeure event persist for a period of more than thirty (30) days, Race River may at its option terminate this Agreement.

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