

Service Specific Terms & Conditions – SMS Advertising

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1. General

- 1.1 **The Service(s):** means SMS bulk messaging services and any value added, supplemental or additional Services as may be stated in the Registration Form.
- 1.2 **You:** Business Customer signing up for the Service(s).
- 1.3 The use of the Service(s) is subject to the General Terms & Conditions (“**GTC**”), Service Specific Terms & Conditions (“**SSTC**”), Summary Terms & Conditions (“**STC**”), Maxis Fair Usage Policy and any other applicable terms and conditions, all at www.maxis.com.my/tnc/business.
- 1.4 Capitalised terms herein have the same meaning as defined in the GTC.
- 1.5 Any conflict or inconsistency between this SSTC, the GTC and the STC, shall be construed in the following order of precedence: (a) SSTC; (b) GTC; and (c) STC.

2. Definitions and Interpretation

- 2.1 Unless the context otherwise requires, the highlighted words shall have the following meanings:

“**Package(s)**” means the SMS packages which are available to you at the prescribed rate for the allocated number of SMS messages.

3. Provision of the Service(s)

- 3.1 At your request and subject to acceptance by us, we will provide the Service(s) to you and any value added, supplemental or additional Service(s) as may be stated in the Registration Form and/or Additional/Special Terms and Conditions.
- 3.2 We will make reasonable attempts to ensure that the message reaches the intended recipient’s Mobile Device but we shall not be held responsible if the intended recipient’s Mobile Device is not activated or is unable to receive the messages.
- 3.3 We are not responsible nor shall we be held liable for the content of the messages which are transmitted via our platform which remains solely your responsibility.
- 3.4 We reserve the right to suspend the Service(s) or any part of them for operational reasons and/or in an emergency.
- 3.5 You acknowledge and agree that by using the Service(s), you may be subject to various risks, including amongst others:
- (a) unauthorised invasion of your privacy during, or as a result of, your or another party’s use of the Network; and
 - (b) unauthorised exposure of information and material you listed or sent, on or through the Service(s), to other users, the general public or any other specific entities for which the information and material was not intended by you.
- 3.6 Although we are not responsible to monitor your content, we reserve the right to not publish any content that is sent by you or remove such content which is (i) in contravention of applicable laws, regulation or code of conduct, or (ii) not in accordance with our prescribed specifications and directions. We reserve the right to charge you, at a rate as prescribed by us, for inventory held by us pending receipt of acceptable materials from you which are past due.
- 3.7 We reserve the right, but are under no obligation, to manage and control access to the Maxis’ web portal for the Service(s) (“**Portal**”), Your Equipment or any other equipment used in connection with the Service(s) and any content/data/information stored therein, as we may deem appropriate. We further reserve the right, but are under no obligation, to scan, review and/or delete any such content/data/information and to delete or deactivate your use of the Portal notwithstanding that such access and storage of such content/data/information is a requirement or constitutes as part of the Service(s).
- 3.8 You hereby grant us a non-exclusive, royalty-free, worldwide, fully paid license to store, use, reproduce and display the message (and the contents, trademarks and brand features contained therein) in accordance herewith.
- 3.9 We reserve the right to reject or cancel any content, URL, link, space, reservation or position commitment at any time for any reason whatsoever (including belief by us that placement of such content, URL, link etc. may subject us to criminal or civil liability or is adverse to our interest). The fact that we have not rejected any content, URL, link, etc. shall not in any way reduce, limit, waive or otherwise affect your responsibility and obligations under this Agreement.
- 3.10 You acknowledge and agree that all materials and content available on the Portal are protected by Intellectual Property rights and laws. You are not allowed to sell, license, rent, modify, distribute, publish, copy, reproduce, transmit, publicly display, publicly perform, adapt, edit or create derivative works from materials or content made available on the Portal. However, you may print or download a copy of the materials or content from the Portal on any single computer for its reference, provided always you keep intact all copyright and other proprietary notices.
- 3.11 We do not provide any details, database or distribution lists whatsoever under the Service(s).
- 3.12 If we are required to co-operate with investigations of suspected criminal violations, violations of system or Network security under the leadership of law enforcement or relevant authorities, it may result in the suspension or cancellation of your access to the Service(s), Network, system, servers, directories, listing, information and databases.
- 3.13 You acknowledge and agree that violations of system or network security are prohibited and may result in criminal and civil liability. Examples of system or network security violations include, without limitation, the following:-
- (a) unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network;
 - (b) unauthorized monitoring of data or traffic on any network or system without express authorisation of the owner of the system or network;
 - (c) interference with the Service(s) to any person, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks. Maxis and its Related Corporations’ networks may be used to link to other networks worldwide and the Customer agrees to conform to the acceptable use policies of these other networks;
 - (d) forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting; and
 - (e) circumventing any user authentication or security of any host, network or account (referred to as ‘cracking’ and ‘hacking’).
- 3.14 **Dedicated Short Code (eSMS)**
- (a) If you subscribe for the Dedicated Short Code Service (6XXXX) from us, we will provide you with a non-exclusive, nontransferable license to use on a temporary basis a short code (6XXXX) to be installed in Your Equipment (restricted to one of Your Equipment only) for the purpose of accessing the Dedicated Short Code Service. The access to the Dedicated Short Code Service application should be restricted and you shall be liable for any use, misuse or unauthorised use of the Dedicated Short Code Service.

- (b) We shall not be liable in any way for failures, defects or delays in the delivery of the Dedicated Short Code Service application or the Dedicated Short Code Service for any reason whatsoever. You are responsible for all Charges incurred from the use of the Dedicated Short Code Service.
 - (c) If your Dedicated Short Code Services is suspended and/or terminated by us for any reason, your license to use the Dedicated Short Code Services will be immediately suspended and/or terminated and you shall stop using the Dedicated Short Code Services immediately.
 - (d) The Dedicated Short Code Service is to be used for Maxis mobile numbers only. For other networks, it will be sent randomly using other 6XXXX codes.
 - (e) You will need an ASP license to use the Dedicated Short Code Service.
- 3.15 A Delivery Report (DR) feature is available for direct SMS customers which you may activate and deactivate at your own discretion by including the DR request when the SMS Mobile Terminating request is sent over. The DR feature is for Maxis numbers only (ONNet). DR is a real-time SMS message delivery status stating the date and time the SMS message was received by the recipient from our SMS Centre and it will only work within 24 hours of the message submission. After 24 hours, no DR will be delivered to you even though the SMS message is received by the recipient.
- 3.16 By purchasing a Package, you agree that the allocated number of SMS messages within the Package which is not used either (i) by the end of the stipulated period, or (ii) by the effective date of termination, whichever is earlier will be forfeited. If the amount of SMS messages transmitted exceeds the allocated number of SMS messages, each SMS message will be charged at the standard rate per SMS message of the purchased Package.

4. Charges

- 4.1 In your first month's statement, you are to pay Maxis a refundable deposit, where applicable, a one-time installation charge at the prevailing rate and the agreed monthly recurring charges as per the offer made by us to you.
- 4.2 A one-off registration is applicable as determined by us with no deposit. We reserve the right to request you to make a deposit payment at the level and amount as determined by Maxis.
- 4.3 One SMS message shall consist of a maximum of 160 characters. However, if you send more than 160 characters then the message will be broken down into blocks of 160 characters each message before being sent to the recipient. You will be charged for every message of 160 characters or less.
- 4.4 If you activate the DR feature you agree that each DR will be charged RM0.01.
- 4.5 Each Package purchased for SMS messaging service will be billed at the end of each billing cycle.
- 4.6 For SMS messaging services, SMS messages which have been delivered into our Network but not into the intended recipient's Mobile Device will still be charged to you.

5. Your Additional Obligations

- 5.1 You agree to comply with all of the following:
- (a) ensure that the Service(s) are used solely for the reception and transmission of messages (including without limitation picture and data); and
 - (b) the Malaysian Communications and Multimedia Content Code and applicable laws as may be updated from time to time; and
 - (c) obtain the consent of intended recipients and ensure they have not subsequently withdrawn such consent prior to sending any messages or information via the Service(s) or part thereof to such recipients; and
 - (d) be solely responsible for managing the use of the storage capacity for your data/information to ensure it is within the capacity allocated to you or as may be stipulated by us. We are not liable and shall have no obligation to back up or manage the data/information on the Service(s); and
 - (e) not to re-supply or resell the Service(s) to any person unless otherwise agreed by us; and
 - (f) ensure that the Equipment and software used by you in connection with the Service(s) or part thereof are compatible and can properly function; and
 - (g) comply with all notices or directions in relation to the Service(s) if we have reason or cause to suspect that you are not complying with its responsibilities and obligations under this Agreement; and
 - (h) you must inform the recipient by including in the message whether the message and any reply to the message will be charged to the recipient. If you fail to do so for SMS messages, we are entitled to include wordings to such effect to the SMS message and if such SMS message exceeds 160 characters, you agree that you will be charged for each block of SMS message; and
 - (i) if the Service(s) is used for communicating advertisements, all advertisements must be clearly presented as advertisements and should be legal, decent, honest and truthful and prepared with a sense of responsibility to consumers and society and respecting the principles of fair competition; and
 - (j) at your own expense, carry out such additions, improvements, adjustments, modifications, alterations or replacements to any of Your Equipment and software (other than Maxis' equipment and software) used in relation to the provision of the Service(s), as and when required by us for the purpose of maintaining the quality or increasing the efficiency of the Service(s) or for any other purpose whatsoever.
- 5.2 You acknowledge and agree that it is explicitly prohibited to send "spam" of any kind including, without limitation, political tracts, etc. "Spam" means unwanted and unsolicited communication sent to the recipient without explicit consent of the recipient and without the option for the recipient to opt out from receiving such communication in the future. You must provide the option for the recipient to easily opt out or request to be removed from your database or distribution list. The removal shall be done promptly and no further messages should be forwarded to the said recipient.
- 5.3 You may not do or allow to be done any of the following:
- (a) forward or propagate chain letters or malicious content or send or deliver content or material that offends good taste or decency, is indecent, obscene, false, menacing, harmful, disruptive, destructive or offensive in character with an intent to annoy, abuse, threaten or harass any person;
 - (b) solicit content/mail from or for any other person, except with the full consent of that person;
 - (c) send any unsolicited message or material to any person, except with full consent of that person;
 - (d) send any unsolicited message or material to any person not in your database or distribution list;
 - (e) introduce into our systems or distribute via the Service(s), any system contamination, including, without limitation, viruses, worms and Trojan horses causing unauthorised, damaging or harmful access and/or retrieval of information and data on Your Equipment and/or other forms of activity that may be considered unlawful;

- (f) use the Service(s) in any way that may damage and/or harm Maxis' reputation including but not limited to for any offensive, unlawful or illegal purposes or which is likely to encourage crime, against public interest, public order or national harmony; (g) cause excessive or disproportionate load on the Service(s) and/or on our Network.
- 5.4 In the event we receive any complaint that the Service(s) and/or our Network has been used to transmit Spam or is in contravention of applicable laws, standards, regulations or code of conduct, you agree to work together with us to suspend the relevant account immediately failing which we reserve the right to suspend the Service(s) or refuse further Service(s) to you.
- 5.5 Unless you are an aggregator / Mobile Content Services provider, you are not allowed to send any messages on behalf of any affiliate and/or third parties. We reserve the right to suspend or terminate the Service(s) if you contravene and/or refuse to comply with this prohibition.
- 5.6 You are not allowed to send any SMS messages via the international grey-route (ss7) or send any SMS messages from international brands via the domestic route. If you do, you agree that we are entitled to charge you the rate of RM2.00 per SMS message for all SMS messages sent in the month when the contravention of this clause occurred. We reserve the sole right and absolute discretion to determine which brands will be regarded as international brands and will provide you with a list of such international brands, which we may update as we see fit from time to time.
- 5.7 If you continue to contravene and/or refuse to comply with this prohibition, we are entitled to charge RM3.00 per SMS message for all SMS messages sent in the month when the 2nd contravention occurred and RM4.00 per SMS message for all SMS messages sent in the month when the 3rd contravention occurred. Thereafter upon the 4th contravention, we will immediately suspend the relevant Dedicated Short Code used by you for sending such SMS messages via the international grey-route (ss7) or from international brands for a minimum of 7 days without prior notice and without any liability to you. For clarity, the contravention need not occur in consecutive months.
- 5.8 You are required to include the brand name/name of the party providing the content in each SMS message. If you fail to include brand name/name of the party in the SMS message, such message will be deemed as a message from an international brand and you agree that we are entitled to charge RM0.30 for each SMS message.
- 5.9 You agree that you shall comply with any and all notices, instructions and/or directions relating to the Service(s) given by us via any mode of communication, as we may see fit to issue from time to time. If we detect any non-compliance or if we have reason or cause to suspect that you are not complying with your responsibilities and obligations, we shall notify you in writing to rectify such non-compliance or cease such prohibited actions failing which we reserve the right to suspend the Service(s) or refuse further Service(s) to you.
- 5.10 Pursuant to Clause 6.12 of the GTC, if you make payment for Charges by way of Maxis Pay, you declare and undertake that if the Direct Debit payment method is activated within Maxis Pay, it is made pursuant to the selection of the Direct Debit option by you.
- 5.11 You shall, prior to reporting a Service(s) failure or problem, carry out all necessary steps to determine the cause of the Service(s) failure or problem.
- 5.12 Aggregator / Mobile Content Services provider
In addition to and not in derogation of the above, if you are an aggregator or a Mobile Content Services (MCS) provider, you agree that:
- (a) you must adhere to and comply with the Mandatory Standards for the Provision of Mobile Content Services as set by the Malaysian Communications and Multimedia Commission for MCS providers and any legislation, standards, regulations and requirements imposed by the authorities in relation to messaging service advertising. In the event of any breach by you, we will immediately suspend your account for minimum period of 7 days without prior notice; and
 - (b) if there are complaints against you received by Maxis where the number of complaints has accumulated up to 100 complaints or the number of complaints is equivalent to 10% of the total messages sent by you in a month, whichever is lower, we are entitled to immediately suspend the relevant Short Code used by you for a minimum period of 7 days without prior notice and without liability to you; and
 - (c) we are entitled without any liability and without prior notice to you, to manage the allocated bandwidth to you and may reduce the speed and bandwidth to ensure all our customers are able to access our Network in accordance with our Fair Usage Policy.

6. Term and Termination

- 6.1 The period of subscription for the Service(s) is on a monthly basis unless otherwise agreed between you and Maxis.
- 6.2 Either party may terminate this Agreement and/or the Service(s) for convenience by giving the other party a thirty (30) days' advance written notice.
- 6.3 If you breach any of the provisions herein and where capable of remedy, remains not remedied within the stipulated period as stated in the notice from us requesting you to remedy such breach, we are entitled, at our sole and absolute discretion to suspend or terminate the Service(s) and this Agreement immediately without further notice to you.
- 6.4 Termination of this Agreement by either you or Maxis for any reason whatsoever does not prejudice any other rights, remedies or claims we may have against you under this Agreement or at law in respect of any antecedent breach by you of any provision of this Agreement.