



TextAnywhere Terms and Conditions of Running Premium Rate Services

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TextAnywhere Ltd.

Terms and Conditions of Running Premium Rate Services

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SECTION ONE - GENERAL

- 1.1 TextAnywhere's *Terms and Conditions*, which you accepted when you opened your account with us, impose a number of obligations on you. In particular, when running a *Premium Rate* service through *TextPremium*, you have a legal requirement to ensure that your services, the messages that you send and all associated marketing materials comply with all applicable laws and regulations, including those of the *Advertising Standard Association*. This document does not qualify those obligations in any way.
- 1.2 We recommend that you obtain independent legal advice on your services to ensure that you are compliant with your obligations under this document and applicable law. These guidelines are not intended to constitute legal advice to you or to address all legal issues which are likely to apply.
- 1.3 You are required to comply with these guidelines, pursuant to the TextAnywhere's *Terms and Conditions* that you have entered into.
- 1.4 The *UK Mobile Networks* may, at its option, and without incurring any liability to you, suspend its services, withhold payments due to you, and recover reasonable costs that it has incurred in making refunds to Clients and investigating any breach of this document, if it has reason to believe that you are in breach of TextAnywhere's *Terms and Conditions*.
- 1.5 There are strict regulations that govern the deployment and use of premium rate text messaging services. The regulatory body responsible for ensuring that the regulations are adhered to is PhonepayPlus.

There are strict regulations that govern the deployment and use of premium rate text messaging services. The regulatory body responsible for ensuring that the regulations are adhered to is PhonepayPlus.

The purpose of PhonepayPlus is to both protect consumers and ensure that premium rate SMS services are run professionally and ethically.

It is the responsibility of the service provider to ensure that their premium content service conforms to the appropriate TextAnywhere, PhonepayPlus and EU legislation, covering premium content services, anti-spamming and data protection.

The TextAnywhere terms and conditions associated with running a TextPremium reverse billing SMS service can be downloaded [here](#).

The PhonepayPlus website is www.phonepayplus.org.uk. The PhonepayPlus 12th *Code of Practice* can be downloaded [here](#).

From 1st September 2011, it is a legal requirement that any organisation running a premium rate SMS service MUST be registered with PhonepayPlus, before running their service.

Prior to hosting your premium rate service, TextAnywhere will require your PhonepayPlus Registration ID and a copy of the PhonepayPlus registration confirmation email.

SECTION TWO - BANNED SERVICE PROVIDERS

You must not knowingly engage or permit the involvement of any individual who is banned from offering premium rate services by PhonepayPlus, as an "*Associated Individual*".

A list of these individuals is published in the monthly report produced by PhonepayPlus, which can be found on the PhonepayPlus website below:

www.phonepayplus.org.uk

SECTION THREE - UNSOLICITED MESSAGES AND REVERSE CHARGING

3.1 Unsolicited Messages

Commercial text message messages must not be sent to the UK Mobile Networks' Clients unless they have given their prior consent and agreed to receive such messages.

3.2 Reverse Charging

Clients must not be sent text messages for which they will incur a charge unless the Client has previously agreed to this.

- 3.3 You, as the supplier, are responsible for compliance with the requirements of paragraphs 3.1 and 3.2 and you should retain copies/confirmation of consent to show to the UK Mobile Networks on request.
- 3.4 If consent has been obtained from Clients to marketing via text message, such marketing must be restricted to products and services which are the same or similar to those originally provided and for which consent was originally given. Text messages which promote products or services dissimilar or unrelated to the original consent may only be sent where the additional and specific consent of a Client has been secured.

SECTION FOUR - INFORMATION TO BE PROVIDED

The following information must be provided to a Client by you before any charges are applied. All information must be supplied in a clear and unambiguous manner and in a form which is readily intelligible to recipients of a premium rate service.

4.1 The identity of the Supplier

This must be the trading or operating name of the organisation. If the service is a text message service, we would recommend adding the words "*From [company name]*" at the beginning of a text message, and including this information in associated marketing and promotional material.

Premium rate voice or text services must not imply that such services are being supplied by or are endorsed by UK Mobile Networks.

4.2 Contact Details

Must consist of at least one of the following:

- a full postal address including postcode;
- a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services);
- a telephone contact number (which must not be charged at a premium rate).

Important Note The above information (4.1, 4.2) is mandatory for promotions for premium rate SMS regardless of whether the promotion is advertised through print media, the internet, television or promotion sent by text message.

4.3 A description of the service

It should be clear to the Client what the service is (i.e. a reverse charge text chat service, entertainment service, information service, etc.) and how it works. Text messages should not use any implied personal message or other message which creates a false imperative to reply by premium text message or by premium rate telephone number. There are no definitive rules as to what may constitute such an invitation - it is up to you, as the supplier, to apply common sense. Examples of implied personal messages may include "I fancy you", "I miss you", "I'm lonely, do you want to chat?", "Where are you?", "Urgent, please call".

4.4 The price (including tax) of the service

The price must be clear and not misleading in any way. This will mean giving the full price of the service, wherever possible, including the cost to initiate and terminate the service. For example, for a text message game, we would recommend that both the price of each text message sent and received and the total maximum cost of playing the entire game should be provided.

Pricing information must be prominently displayed, be easy to understand, and, where the Client is unlikely to have seen or heard any promotion containing pricing information, the pricing information should be placed at the beginning of the message or call.

If you are providing a service via WAP, such as the provision of multimedia messages, you must:

- Make clear to the Client before the service is confirmed, e.g., in advertising material, that the Client will also be charged in accordance with their standard GPRS tariff to download any content, and that the Client will need a handset both capable of receiving multimedia messages and enabled to receive such messages.
- Not attempt to submit any unsolicited multimedia messages via WAP. In this regard, it is not sufficient that a Client has previously given consent to receive marketing messages; rather, a Client must be aware of and agree to the GPRS charge to download any 'free' content.
- If you are charging for these services via premium rate text message, you must, in addition:
 - Ensure that any message sent to the Client containing the URL where they download a Multimedia Message or other WAP content is not charged at a premium rate.
 - Send a separate text message, which can be charged at a premium rate, which sets out your company name or contact number and repeats the cost of the Multimedia Message or WAP content and the fact that the Client will also be charged in accordance with their standard GPRS tariff to download the Multimedia Message or WAP content. This is so that the Client can recognise the service when they receive their phone bill. For the avoidance of doubt, you must still provide pricing information in advance of the provision of the service.
 - Use a separate Sub-Address for premium rate text traffic used to charge for Multimedia Messages.

4.5 Arrangements for Payment

In other words, how the charges will be billed.

4.6 How long the service is available for (where applicable)

For example, for a text message chat service where subscribers continue to receive messages, we would recommend sending a message to the Client which states that "*You will receive up to X messages. To cancel at anytime Text STOP to xxxx*".

4.7 Instructional Messages

Instructional messages are messages that welcome, explain or provide general or specific information about a premium rate SMS service to Clients, but are not a substantive part of the service being promoted.

These messages must not be charged at premium rates.

Non-exhaustive examples of instructional messages include:

- An SMS sent confirming the entrance of a Client to a service
- An SMS sent confirming the age of a Client
- An SMS sent confirming the exit of a Client from a service
- An SMS sent explaining how a service works but which does not contain any 'content' or form a substantive part of the service itself

4.8 How Clients can cease or exit a service and ensure no further messages are received and charged for.

This information must be provided before a Client starts to engage in the service. This opt-out 'request' should be charged at normal (not premium) text message rates and require not more than one text message to take effect. Any messages confirming exit from the service should be free. See *Section Nine* for STOP code requirements.

The above information may be provided in marketing literature or on an associated website. However, you, the supplier, should check that the Client has seen this (or has had a reasonable opportunity to see it), for example by referring the Client to this material. You, as the supplier, must ensure that the Client is also able to obtain the postal address of the supplier's place of business where complaints can be sent.

UK Mobile Networks require that as a minimum, the name, contact details and price of a service must be included in any text message marketing a service.

SECTION FIVE - AGE CHECKS

TextAnywhere's premium rate services' platform does not support the running of services of an adult nature, i.e. sexual entertainment. To support adult services, short code numbers in specific number ranges must be used, which we do not run.

SECTION SIX - LEGAL AND REGULATORY COMPLIANCE

The following are common areas of concern:

- 6.1** Prize Competitions/Prize Draws - Legal advice should always be taken when offering prize competitions or prize draws to ensure that they are not illegal. Competitions should always have a publicised closing date, and lists of winners must be made available upon request.
- 6.2** You, as the supplier, must comply with any other applicable codes of practice, such as the *British Codes of Advertising and Sales Promotion*, which are supervised by the *Advertising Standards Authority* and those published by the *Independent Television Commission* and the *Radio Authority*.
- 6.3** You should ensure that all personal and mobile phone data is processed in accordance with the requirements of the *Data Protection Act 1998* and the *Telecommunications (Data Protection and Privacy) Regulations 1999*, and any other relevant legislation. Further information on these requirements can be obtained from the *Office of the Information Commissioner* and their website, www.dataprotection.gov.uk.
- 6.4** Where you have sub-contracted the provision of text messages to anyone else, you, as the supplier, remain responsible for compliance with the premium rate services agreement and these guidelines.

SECTION SEVEN - MARKETING TO CHILDREN

- 7.1** The recent Independent *Expert Group investigation into Mobile Phones and Health* under Professor Sir William Stewart has stated that, on the basis of the evidence currently available, there is no need for the adult regular phone user to be worried about the use of mobile phones.
- 7.2** However in accordance with the precautionary approach which the Expert Group adopted in its report, the Expert Group recommended that the widespread use of mobile phones by children for nonessential calls should be discouraged and that the mobile phone industry should refrain from promoting the use of mobile phones by children: that is the under-16s.
- 7.3** The UK Mobile Networks do not market or promote mobile phone services to the under-16 age group. The UK Mobile Networks have no products targeted at this age group, do not advertise in publications targeted at the under-16s and do not range its products in areas of retail stores targeting children (such as toy sections). It is a requirement of companies using the UK Mobile Networks premium text message services that this group is not targeted and that premium text message services do not have the effect of promoting non-essential mobile phone calls to those below the age of 16.

SECTION EIGHT - E-MONEY RESTRICTIONS/SERVICES NOT DELIVERED TO THE MOBILE (SNDTTM)

8.1 The EU commission has issued updated guidance on what constitutes e-money, easing the definition in relation to pre-pay mobile credit. Whilst the final say on the matter in the UK is in the hands of the FSA, whose guidance is expected later in the year, the previous restrictions on service not delivered to the mobile can be relaxed.

8.2 Premium SMS may now be used to pay for content and services not delivered to the mobile, subject to the following conditions:

- Charging must be on the MO leg, and therefore cannot be used for subscription services
- SNDTTM must be on separate short codes from other services

8.3 Short code ranges 78XXX and 79XXX

- It is required to run SNDTTM only on these defined short code ranges;
- Both MO SMS and MT SMS must use the same short code.
- A 79XXX prefix must be used where the service is only for adults aged 18 years or over. Where appropriate the IMCB classification framework shall be used.

8.4 Subscriptions

Recurring payments may be permitted where an MO is received from the consumer for each transaction as described above. An invitation MT for the consumer to agree to a further payment may be sent (in accordance with existing requirements) and this may be either:

- in a prior billed message
- in a free to user message

SECTION NINE - STOP COMMAND FOR MOBILE TEXT SERVICES

- 9.1** In support of the consultative work performed by the *Mobile Data Association* in 2004, The UK Mobile Networks require all text services to support STOP texts as follows:
- 9.2** STOP TEXT – is any MO text message starting with the word ‘STOP’. The word STOP can be made up of any mix of lower or upper case letters and be followed by a space or by no further character.
- 9.3** STOP ALL TEXT – is similar to the STOP TEXT and contains the words ‘STOP ALL’.

In certain cases the word ‘stop’ may be preceded by spaces or by a tag such as ‘<forwarded from...>’ – the word ‘stop’ may follow such characters.

- 9.4** A STOP TEXT sent to a short code will terminate the text services from that short code as follows:
- If the short code is used for only one service then that service shall be terminated.
 - If the short code has shared use for several services then the most recent service used by the handset shall be terminated. This means the service sending the most recent Mobile Terminated (MT) text.
 - A STOP ALL text shall terminate all services on the short code.
- 9.5** A STOP TEXT sent in response to a free-of-charge text, such as a marketing message, will terminate the users consent for further texts.
- 9.6** A free-of-charge MT text should be sent to the handset to confirm the termination of service. This text can promote how to rejoin the service. This text must be non-adult.

Similarly, if an MO text cannot be decoded it is acceptable that the text application sends a helpful text to the handset.

SECTION TEN - SUBSCRIPTION SERVICES

10.1 Definition of Subscription Service

- Recurring service initiated by a sign-on process.
- Scope – all services billed by a mobile payment mechanism – not just SMS services.
- The result of a single sign-on process is one single subscription service, and rules apply for each single subscription service.

10.2 Advertising and Promotion

- Promotional material for subscription services must clearly indicate that the service is subscription based, for example using words such as “join our club”. These words must be prominent and highly visible to readers.
- Subscription services’ terms of use, e.g., whole cost pricing and opt-out information, must be clearly visible.
- Wherever STOP instructions are displayed, the information provided must advertise the generic STOP command, and, additionally, any service specific stop commands – for example “STOP POLYTONES” may also be advertised.
- An example wording is: “To unsubscribe text STOP or STOP POLYTONES to 77777”. An unsatisfactory wording is “To unsubscribe text STOP POLYTONES to 77777”.

10.3 Service Operation - subscription initiation

Initial subscription messages must contain the following information:

- name of service;
- that the service is subscription based;
- what the billing period is, e.g. per week or per month;
- how much the user is charged for that billing period;
- how to leave the service (including the generic STOP command);
- service operator contact details.

These points must be in the first message(s) sent to the Client, and must be before any promotional content. They may be in a free-to-receive message(s).

Note: The initiation of any form of subscription service must result in this SMS message being sent to the handset

Good practice wording example:

Welcome Ringtone Club. Subscription service charged £4.50 per month. You may download 10 ringtones each month. To leave, text 'stop' to 77777.Help-0206 555 4444

10.4 Service operation – subscription reminder where the service is charged less than or equal to 50p inc VAT

- At least once a month, the cost per message (including VAT) is advised. This may be at the end of a service message

Example of good practice wording:

FA Premiership HT. Portsmouth 1, Southampton 1. Each text costs 25p

10.5 Service operation – subscription reminder where the service costs more than 50p inc VAT

At least once per month the following information shall be sent to subscribers:

- name of service;
- that the service is subscription based;
- what the billing period is, e.g. per week or per month;
- how much the user is charged for that billing period;
- how to leave the service (including the generic STOP command);
- service operator contact details.

These points must be in the first message(s) sent to the Client, and must be before any promotional content. This may be a free to-receive message or the first of any billing messages.

Example of good practice wording:

Ringtone club: your subscription is renewed and you have been charged £4.50 for August. U now have 12 credits go 2 www.ringtoneclub.com. Help Tel 0206 555 4444

10.6 Service operation – STOP command reminder

- Subscription service users must be sent a reminder of the STOP command. The frequency is determined by the cost of the service.
- Service operator must send a STOP command reminder every time a Client's spend reaches £20 since the last stop command reminder.
- If the service is designed to cost less than £20 per month, the service operator may choose to send the stop command reminder every month instead of when £20 has been spent.
- Definitions of 'designed to cost':
 - A £1.50 daily horoscope service is designed to cost more than £20 per month
 - A 25p football alert service which could theoretically exceed £20 in a month is not a service designed to cost more than £20 per month

- Service operators may discharge their responsibility for separate STOP command reminders by including the STOP command in every service message, such as the monthly subscription reminder or in every billing message group.

10.7 Service Operation – Opt out of STOP command

Subject to prior permission from PhonepayPlus, service operators may offer the facility for consumers to choose to opt out of the spend reminder for specific services. This is primarily intended for high value services aimed at informed adult Clients, in which the frequency of spend alerts would be annoying to the user or disruptive to the service. Another example might be a corporate service where the corporate might not want an employee to be able to stop a service.

10.8 Termination of Services

- After a user has sent a “STOP” command to a service, the service operator must not submit any further billing messages for the relevant service.
- No service may advertise or operate a “*minimum subscription period*”. Users must be free to leave a service at any time and service operators must do nothing to indicate that this is not the case.
- Where mobile operators provide lists of dormant or quarantined handset numbers, service providers must clean their databases to reduce the number of failed billing attempts.

10.9 Post Subscription Marketing – Best practice advice

- Users who have sent in STOP to cancel a service are particularly sensitive to any further messages they receive from that service. Service operators wishing to continue advertising to ex-subscribers are advised to take the following action to avoid unnecessary complaints:
 - inform the Client that this will happen in the subscription cancellation message, and provide an opt-out at that point;
 - begin every marketing message with the words “free message”.