

# eir Mobile Bulk Text Services Terms and Conditions of Use

These terms and conditions apply to the supply of the eir Mobile Bulk Text service (the “Service”) and are in addition to and form part of the eir Mobile terms and conditions of the use of the mobile telecommunications services. By continuing to register and/or use the Service you agree to be bound by these Terms and Conditions.

## 1. DEFINITIONS

“**Adult or Gambling related service**” any Service that involves gambling, betting, adult, sex or over 18 services or information;

“**Customer**” means the customer to whom eir Mobile has agreed to provide the Services and whose details appear on the Order Form or in the definition of Parties at the beginning of this Agreement;

“**Data Protection Legislation**” means all applicable laws implementing Directives 95/46/EC, 97/66/EC and 2002/58/EC of the European Parliament and the Council, and any subsequent legislation replacing, amending or supplementing the foregoing, concerning the protection, inter alia, of personal data and privacy

“**Fees**” means the fees published by or on behalf of eir Mobile from time to time on the Website or agreed with the Customer and payable in euros;

“**REGTEL**” The Regulatory of Premium Rate Telecommunications Services whose codes of practice and guidelines are held at <http://www.regtel.ie>

“**Intellectual Property Rights**” any intellectual property rights or other proprietary rights including but not limited to copyright, design rights, trade marks or names and patents in each case whether registered or unregistered names;

“**Website**” any Websites owned and operated by eir Mobile through which a Customer can access the Services and accessible via the internet;

“**Order**” means the Customer’s request for the Services;

“**Order Form**” means the Customer sign-up pages as displayed by or on behalf of eir Mobile on the Website;

“**Services**” means any services provided by eir Mobile to the Customer under through the Website.

## 2. APPLICATION OF TERMS AND CONDITIONS

2.1 These Terms and Conditions together with any Order Form or agreement specifically entered into between the Customer and eir Mobile relating to the Service govern the relationship between eir Mobile and the Customer. eir Mobile may from time to time amend these Conditions and any such amendment will be displayed on the appropriate eir Mobile website at least one month prior to the implementation of the amendment. Should the Customer place an Order or continue to use any of the Services following implementation of an amendment it will be deemed to have accepted the amendment.

## 3. OBLIGATIONS OF THE CUSTOMER

3.1 The Customer shall not:

- 3.1.1 submit to eir Mobile any Order that it knows or should (after reasonable enquiry) have discovered, infringes or might reasonably be considered to infringe the Intellectual Property Rights of any third party;
- 3.1.2 use the Services in any way that might reasonably be considered to infringe the rights of any third party, including but not limited to trademark infringement, copyright infringement, passing off and defamation.
- 3.1.3 reverse engineer, de-code or in any way disassemble any software provided by eir Mobile or its agents in relation to the provision of the Services;
- 3.1.4 use the Services to send SMS text messages or any other form of messaging, promotional materials, junk mail, spam, chain letters or other form of solicitation to any number unless that number has been obtained and the message sent in accordance with Data Protection Legislation;
- 3.1.5 use the Services to communicate, reproduce, transmit, store or knowingly receive any material that is offensive,

abusive, indecent, defamatory, obscene, menacing or in breach of confidence.

- 3.1.6** enter any incorrect or incomplete name, business name, address, email address, telephone number or any other false information on any Order Form or otherwise enter information intended to conceal the Customer's identity. The Customer further acknowledges that it is its responsibility to notify eir Mobile of any changes to its details and to ensure that those details provided are kept up to date.
- 3.2** In the event of any breach of the provisions of clause 3.1 by the Customer, eir Mobile reserves the right forthwith to withdraw, suspend or cancel the Services.
- 3.3** The Customer acknowledges that it is solely responsible for maintaining adequate insurance cover in respect of any loss or damage relating to the provision of the Services.
- 3.4** The Customer acknowledges that the internet is not a completely secure medium of communication, and, whilst eir Mobile and its agents have taken steps to safeguard the security of some information (i.e. payment details using Secure Sockets Layer "SSL" technology which encrypts the information the Customer inputs on its system before it is transmitted to eir Mobile ) the Customer inputs on the Website or sends to eir Mobile on the Website, eir Mobile is not and will not be responsible for any damages the Customer may suffer as a result of the loss of confidentiality of such information.
- 3.5** The Customer warrants, represents and undertakes that it will obtain all necessary licenses and consents in respect of any material transmitted or stored using the Services prior to posting such material;
- 3.6** The Customer warrants, represents and undertakes that any material transmitted or stored using the Services and any material linked to or referred to by way of the Services is not offensive, abusive, indecent, defamatory, obscene, menacing, in breach of confidence, and/or does not infringe the Intellectual Property Rights of any third party or contain a virus or other hostile code or constitute or encourage a criminal offence;
- 3.7** The Customer warrants, represents and undertakes that it will not nor will it permit or authorise any other party to use the Services in breach of any law or regulation;
- 3.8** The Customer warrants, represents and undertakes that it will not nor will it permit or authorise any other party to use the Services in any way which is or may be detrimental to eir Mobile or its agents;
- 3.9** The Customer warrants, represents and undertakes to abide by any limitations imposed by eir Mobile and to keep secure any confidential information provided by eir Mobile including any passwords.

#### **4. OBLIGATIONS AND RIGHTS OF EIR MOBILE**

- 4.1** In the event that the Customer submits any Order or uses any or all of the Services in such a way as may in eir Mobile opinion expose eir Mobile to the risk of legal or other proceedings or expose eir Mobile to loss or damage of any kind, eir Mobile reserves the right to refuse to process or continue processing any Order or to withdraw, suspend or cancel the Services or take any other action as it in its absolute discretion it sees fit.
- 4.2** eir Mobile will comply with all applicable data protection legislation in relation to the personal details that the Customer provides on an Order Form. All information provided to eir Mobile will be dealt with in accordance with eir Mobile privacy policy which can be found on the Website. The Customer acknowledges that eir Mobile is under no obligation to edit, review or modify information provided by or on behalf of the Customer. In order to maintain the integrity of the service, eir Mobile reserves the right to forward contact details to the Garda, or other regulatory authorities where requested to do so, eir Mobile may also forward contact details where a complaint arises concerning the Customer's use of the Service and where that use is deemed by eir Mobile to be inconsistent with these user conditions.

#### **5. FEES**

- 5.1** The Customer shall pay to eir Mobile the Fees, inclusive of any additional costs incurred by eir Mobile in processing an Order (subject to clause 5.4).
- 5.2** The Fees shall be paid by the Customer, as detailed in this Agreement, the Order Form and any agreement specifically entered into between the Customer and eir Mobile, without set off or counterclaim.
- 5.3** The Customer acknowledges that the provision of the Services is conditional on eir Mobile receiving payment of the Fees in full

and in the event of non-payment of Fees or suspected fraudulent activity in relation to payment of Fees by the Customer, eir Mobile reserves the right forthwith to withhold, suspend or cancel the Services.

- 5.4** The Customer acknowledges that occasionally unforeseen charges are incurred in processing Orders. eir Mobile shall obtain the Customer's consent in writing or by email before incurring such charges.

## **6. CANCELLATION, REFUNDS AND CREDITS**

- 6.1** The Customer shall not be entitled to any refund of Fees or a credit against any future Order.
- 6.2** The Customer accepts that any use of the Services by the Customer will amount to a waiver by the Customer of its right to cancel the Agreement under the Distance Selling Regulations.

## **7. INDEMNITY**

The Customer shall indemnify and keep indemnified eir Mobile and any of its employees, representatives, agents, suppliers and/or sub-contractors fully from and against all liability, claims, costs, losses, loss of profits, expenses, business interruption, and other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred as a result of:-

- (i) access to and/or use of the Services by the Customer;
- (ii) any information, data or material produced, transmitted or downloaded by the Customer;
- (iii) any breach by the Customer of any of the provisions of these Conditions or of any law, code or regulation relating thereto or to the internet including for the avoidance of doubt the Data Protection Legislation.
- (iv) any use of the Services that infringes Intellectual Property Rights or which causes a claim that Intellectual Property Rights have been infringed;
- (v) any material delivered or displayed that infringes Intellectual Property Rights or which causes a claim that Intellectual Property Rights have been infringed;

## **8. LIMITATION OF LIABILITY**

- 8.1** eir Mobile warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.2** Except as set out expressly in these conditions, eir Mobile excludes all conditions, terms, warranties and representations (other than fraudulent representations) in relation to the whole or part of the Services whether imposed by statute or operation of law or otherwise including but not limited to implied warranties or conditions of accuracy, completeness, satisfactory quality and fitness for a particular purpose.
- 8.3** Whilst eir Mobile makes no attempt in the Agreement to limit its liability for death or personal injury arising from its negligence, in no circumstances shall eir Mobile be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof for:
- 8.3.1** any increased costs or expenses;
  - 8.3.2** any loss of profit, business, contracts, revenues, or anticipated savings;
  - 8.3.3** the consequences of any failed or undelivered SMS text messages;
  - 8.3.4** any claims that the Customer infringed Intellectual Property Rights;
  - 8.3.5** the consequences of any software bugs, errors or interruption in the Services;
  - 8.3.6** any changes in any of eir Mobile's facilities, operations, procedures, products or Services which render obsolete or require modification of or alteration to the Customer's equipment or software; or
  - 8.3.7** any special indirect or consequential damage of any nature whatsoever, arising directly or indirectly out of the provision by eir Mobile of the Services or the performance by eir Mobile of its obligations under these Terms and Conditions, any Order Form. or any agreement specifically entered into between eir Mobile and the Customer.
  - 8.3.8** the consequences of any usage of the Services by a Customer or the Customer's customer that break or are suspected of breaking any REGTEL codes of practice or other regulations, codes of practice, legislation or

applicable laws.

**8.4** Notwithstanding anything contained in the Agreement eir Mobile's liability to the Customer in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the Fees paid by the Customer for the Services.

**8.5** Where the Services are performed under a consumer transaction the statutory rights of the Customer are not affected by these Conditions.

## **9. SUSPENSION AND TERMINATION**

**9.1** Without prejudice to any of its other rights either party shall have the right to immediately terminate the Agreement and eir Mobile's may also suspend or restrict the Services to the Customer, if:

**9.1.1** the Customer commits any material or repeated breach of the Agreement and/or, fails to remedy any breach which is capable of being remedied within fourteen days of receipt of a notice requiring it to remedy such breach. For the purpose of this clause a breach of clauses 3, 4 or 5 may be deemed a non-remediable breach and eir Mobile's may immediately suspend or restrict the Services without notice to a Customer breaching these clauses. In the case of a suspected breach by the Customer eir Mobile's will take whatever steps it believes necessary to investigate and resolve matters;

**9.1.2** the other is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of affecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of a relevant party under the Agreement) or compounds with or convenes a meeting of its creditors or has a Receiver or Manager or an Administrator appointed over its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party terminating means that the other may be unable to pay its debts.

## **10. PROPRIETARY RIGHTS**

The Customer acknowledges that all title, rights and interest in the Services shall remain with eir Mobile and/or its suppliers and that the Customer shall not under any circumstances obtain any proprietary rights in respect of the Services.