

## Motivity Managed Message and Hosted Service Terms of Use

By Registering to use the Motivity Managed Message and Hosted Service, You are agreeing to the following Terms and Conditions governing your use of the "Service", including offline components as part of the Service.

If you are entering into this agreement on behalf of an organisation then you represent that you have the authority to bind that organisation to these Terms and Conditions, in which case the terms "you or "your" will refer to that organisation.

### The Service

As part of the Service, Appstation Ltd will provide you with use of the Motivity Managed Messaging Service, and either a 'connector' for the transferring of data, to and from a named application, or the hosted Motivity Workforce application. Your registration for the use of the Service shall be deemed to confirm your acceptance of the Terms of this Agreement.

### Definitions

As used in this Agreement and in any Registration Forms now or hereafter associated herewith: "Agreement" means these terms of use, any Registration Forms, whether written or submitted online, and any materials available on the Appstation Ltd website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Appstation Ltd from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of the date requested on the Registration Form or when you begin using the Service; "Initial Term" means the initial period during which you are obligated to pay for the Service.

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses by executing written Registration Forms and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Registration Form(s); "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Registration Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Registration Form, the terms of this Agreement shall prevail); "Appstation Ltd Technology" means all of Appstation Ltd's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Appstation Ltd in providing the Service; "Service(s)" means the specific edition of Appstation Ltd's Motivity Managed Message Service, maintained by Appstation Ltd, ancillary online or offline products and services provided to you by Appstation Ltd, to which you are being granted access under this Agreement, including the Motivity Connector; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by Appstation Ltd at your request).

### 1. License Grant & Restrictions

Appstation Ltd hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Appstation Ltd.

You may not access the Service if you are a direct competitor of Appstation Ltd, except with Appstation Ltd's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful material, including material harmful to children or in violation of a third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

You acknowledge that failure to adhere to these restrictions would amount to a serious and material breach by you of your contract with Appstation Ltd.

### 2. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Appstation Ltd immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Appstation Ltd immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate any known Appstation Ltd user or provide false identity information to gain access to or use the Service.

### 3. Account Information and Data

Appstation Ltd does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not Appstation Ltd, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Appstation Ltd shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Appstation Ltd shall not give any third party access to Customer Data, including without limitation Appstation's other customers, except subcontractors subject to a written contract with Appstation Ltd protecting the data. Appstation Ltd reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, but not limited to, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Appstation Ltd shall have no obligation to maintain or forward any Customer Data.

### 4. Intellectual Property Ownership

You agree that Appstation Ltd alone own all right, title and interest, including all related Intellectual Property Rights, in and to the Motivity Managed Messaging Service, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Motivity Managed Messaging Service or the Intellectual Property Rights owned by Appstation Ltd. The Appstation Ltd name, the Appstation Ltd logo, and the product names associated with the Service are trademarks of Appstation Ltd or third parties, and no right or license is granted to use them. Nothing in this Agreement either implicitly or explicitly assigns, or intends to assign, any of Appstation Ltd's intellectual property rights to you.

### 5. Third Party Interactions

Appstation Ltd provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services. You agree that Appstation Ltd is not liable for the actions of any third parties.

### 6. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The monthly charges will be equal to the current number of total User licenses requested multiplied by the User license fee currently in effect. Payments must be made monthly in advance unless otherwise mutually agreed upon in writing. All payment obligations are non cancellable and all amounts paid are non refundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. An authorized License Administrator may add licenses by applying in writing or by email. Added licenses will be subject to the following: (i) added licenses will be coterminous with the pre-existing License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full from the first day of the following month. Appstation Ltd reserves the right to modify its fees and charges and to introduce new charges at the time of contract renewal, upon at least one calendar month prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

### 7. Billing and Renewal

Appstation Ltd charges and collects monthly in advance, during the contract period, for use of the Service. Appstation Ltd will automatically renew the License Term, each year on the subsequent anniversary dates, for twelve months and issue the monthly invoices to you. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term, unless Appstation Ltd has given you at least 3 calendar months prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. Appstation Ltd's fees are exclusive of Value Added Tax.

You agree to provide Appstation Ltd with complete and accurate billing and contact information. This information includes your legal company name, street address, post code, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you

have provided is false or fraudulent, Appstation Ltd reserves the right to terminate your access to the Service in addition to any other legal remedies. If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

**8. Non-Payment and Suspension**

In addition to any other rights granted to Appstation Ltd herein, Appstation Ltd reserves the right to suspend or terminate this Agreement and your access to the Service if your account falls into arrears. You will continue to be charged for User licenses during any period of suspension. If you or Appstation Ltd initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Appstation Ltd may charge, and bill you, for such unpaid fees.

Appstation Ltd reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Appstation Ltd has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is suspended for 30 days or more.

**9. Termination upon Expiration / Reduction in the number of Licenses**

This Agreement commences on the Effective Date. The Initial Term will be as you elect on the Registration Form, commencing on the date you agree to pay for the Service by completing the Registration form. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at Appstation Ltd's then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least one calendar month prior to the annual renewal date. You agree and acknowledge that Appstation Ltd has no obligation to retain the Customer Data more than 30 days after termination and will make the Customer Data available for download within that 30 day period and will thereafter delete or destroy all copies of Customer Data within the Service.

**Termination for Cause**

Any breach of your payment obligations or unauthorized use of the Appstation Ltd Technology or Service will be deemed a material breach of this Agreement. Appstation Ltd, at its sole discretion, may terminate your use of the Service if you breach or otherwise fail to comply with this Agreement. You agree and acknowledge that Appstation Ltd has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been remedied within 30 days of notice of such breach.

**10. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Appstation Ltd represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

**11. Mutual Indemnification**

You shall indemnify and hold Appstation Ltd, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, lawyers and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Appstation Ltd (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Appstation Ltd of all liability and such settlement does not affect Appstation Ltd's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Appstation Ltd shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Appstation Ltd of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Appstation Ltd; provided that you (a) promptly give written notice of the claim to Appstation Ltd; (b) give Appstation Ltd sole control of the defence and settlement of the claim (provided that Appstation Ltd may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Appstation Ltd all available information and assistance; and (d) have not compromised or settled such claim. Appstation Ltd shall have no indemnification obligation, and you shall indemnify Appstation Ltd pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, and hardware or business process(s).

**12. Disclaimer of Warranties**

Appstation Ltd and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the service or any content. Appstation Ltd and its licensors do not represent or warrant that (a) the use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the service will meet your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your requirements or expectations, (e) errors or defects will be corrected, or (f) the service or the server(s) that make the service available are free of viruses or other harmful components. The service and all content are provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Appstation Ltd and its licensors.

**13. Internet Delays**

Appstation Ltd's services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Appstation Ltd is not responsible for any delays, delivery failures, or other damage resulting from such problems.

**14. Notice**

Appstation Ltd may give notice by means of a general notice on the Service; electronic mail to your e-mail address on record in Appstation Ltd's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Appstation Ltd's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Appstation Ltd (such notice shall be deemed given when received by Appstation Ltd) at any time by any of the following: letter sent by confirmed facsimile to Appstation Ltd; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail.

**15. Modification to Terms**

Appstation Ltd reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon giving reasonable notice. Continued use of the Service after having been given reasonable notice of any such changes shall constitute your consent to such changes.

**16. Assignment; Change in Control**

This Agreement may not be assigned by you without the prior written approval of Appstation Ltd but may be assigned without your consent by Appstation Ltd to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

**17. General**

No text or information set forth on any other purchase order, pre printed form or document (other than a Registration Form) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Appstation Ltd as a result of this agreement or use of the Service. The failure of Appstation Ltd to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Appstation Ltd in writing. This Agreement, together with the Registration Form, comprises the entire agreement between you and Appstation Ltd and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.