

# TERMS OF SERVICE

Revision No. 4, enters into force on December 17, 2024

## GENERAL INFORMATION

This Terms of Service were last updated on December 17, 2024

These Terms of Service (“Terms”) govern the legal relationship between you – a legal entity, such as corporation, limited liability company or sole proprietor, performing business activities (“you” or the “Customer”) and MESSAGGIO LTD (“MESSAGGIO”, “we” or “us”) and incorporate the provisions of our Privacy Policy. Please read these Terms carefully before using any services offered on our website accessible at WEBSITE (“Website”). By ordering any services you agree to the terms contained herein, along with our Privacy Policy and any amendments thereto as well as any operating rules or policies that may be published from time to time by us and incorporated herein by reference.

TAKE NOTE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS THAT DISCLAIM, LIMIT AND EXCLUDE THE LIABILITY OF MESSAGGIO TO YOU AND THAT INDEMNIFY MESSAGGIO AGAINST CLAIMS AND DAMAGES THAT IT MAY SUFFER AS A RESULT OF YOUR CONDUCT.

## LEGAL NOTICE

YOU WARRANT AND REPRESENT THAT YOU HAVE READ AND UNDERSTAND, AND HAVE THE CAPACITY AND AUTHORITY TO ACCEPT, AGREE TO AND BE BOUND BY THESE TERMS.

YOU WARRANT AND REPRESENT THAT YOU ARE ACTING ON BEHALF OF A LEGAL ENTITY AND HAVE APPROPRIATE AND NECESSARY EXECUTIVE POWERS TO FORM LEGALLY BINDING CONTRACTS ON BEHALF OF SUCH ENTITY.

THESE TERMS MAY BE MODIFIED FROM TIME TO TIME AT OUR SOLE DISCRETION, AND SUCH CHANGES OR MODIFICATIONS ARE EFFECTIVE IMMEDIATELY UPON THE EARLIEST OF:

OUR EMAIL NOTIFICATION TO YOU ADVISING YOU OF SUCH CHANGES OR MODIFICATIONS,

YOUR ACCEPTANCE OF THE TERMS AFTER SUCH CHANGES OR MODIFICATIONS HAVE BEEN MADE TO THE TERMS AS INDICATED BY THE “DATE OF LAST REVISION” DATE AT THE TOP OF THE TERMS, OR

YOUR CONTINUED USE OF THE WEBSITE AFTER WE POST THE UPDATED TERMS AND MAKE THEM ACCESSIBLE ON THE WEBSITE.

FOR PARTICULAR SERVICES, YOU MAY BE SUBJECT TO ADDITIONAL TERMS OF A SERVICE LEVEL AGREEMENT (“SLA”) AND GUIDELINES OR RULES APPLICABLE TO SUCH SERVICES THAT MAY BE POSTED FROM TIME TO TIME ON THE WEBSITE.

## PROCEDURE FOR ACCESSION TO THE TERMS

The Customer's accession to the terms and conditions set out in the Terms as a whole is considered to be the Customer's consistent performance of the following actions:

1. Reading the terms and conditions of the Terms and Tariffs.
2. Account registration procedure:
  - Expressing consent to the conclusion of the Terms by checking the boxes next to "I have read the terms and conditions of the Terms, Privacy Policy and accept them as a whole" when registering the Account;
  - Entering reliable and up-to-date information, including, but not limited to: the name of the legal entity, information about legal entity, a sample message text, into the Account creation registration form located on the Internet at the network address <https://my.messaggio.com>;
  - Receiving a response from the System about the successful completion of the Account registration.
3. Changes in the Customer's status in the MESSAGGIO's System to "accepted".

## **SERVICES**

MESSAGGIO is a messaging service company that enables customers to send content ("Messages") to mobile subscribers ("Users") over telecommunications networks ("Communication channels") using various messaging technologies ("System").

The Services mean the transfer of such Messages to the Users using the System.

## **AGREEMENT**

### **USE OF THE TERMS**

Persons using the Website or the Services for any reason whatsoever bind themselves and agree to these terms and conditions.

Should you not agree to all the terms and conditions contained herein or be unable to comply with these terms and conditions, you should immediately cease using the Website and/or terminate the registration process.

You may not use the Website or the Services if you are not of a legal age to form a binding contract.

You agree that all terms and conditions herewith published shall be binding on you and that should there be a contradiction between these general terms and conditions and any other product-specific or service-specific terms and conditions, the product-specific or service-specific terms and conditions shall prevail to the limited extent of such conflict.

We reserve the right to refuse to accept and/or execute an order or request to do business or to render any Services without giving any reasons therefore. We also reserve the right to cancel orders in whole or in part at our sole and absolute discretion.

### **SERVICE LEVEL AGREEMENT**

MESSAGGIO and the Customer may be required to enter into a Service Level Agreement, which provides for additional product-specific or service-specific terms and conditions. Such

Service Level Agreement is deemed to incorporate these Terms and form the entire agreement between the Customer and MESSAGGIO for the purpose of delivering the Services.

## 1. INTERPRETATION

The words and phrases listed below shall bear the following meanings in these Terms, unless the context clearly indicates otherwise:

- “Customer” means the legal entity, such as corporation, limited liability company, sole proprietorship firm, or other such establishments which are entitled to perform business activities and exclude any natural persons, who do not pursue business activities (consumers).
- “MESSAGGIO” means the legal entity responsible for providing the Services – MESSAGGIO LTD, with its corporate seat at office E103, The Hub, Triq Sant Andrija, San Gwann, SGN 1612, Malta, and VAT identification number MT25357323.
- “Communication channel(s)” shall mean mobile and telecommunication networks pre-approved for the dissemination of Messages by MESSAGGIO. Customer acknowledges that third party networks may be utilized for connections between MESSAGGIO, Communication channel(s), and Users.
- “System” shall mean software, hardware, and infrastructure within MESSAGGIO’s control, including software, routing systems, computers, telecommunication equipment and the connectivity used for wireless and landline communication and any other technical resources of MESSAGGIO, allowing the Customer to send Messages via the Communication channels and trace the status of delivery of Messages to the Users.
- “Customer IT” shall mean application, software, hardware, network, telecommunication connection, service, or information that the Customer utilizes to establish and maintain a connection with the System.
- “Messages” shall mean, without limitation, any information, data, text, audio, music, graphics, instructions, photographs, artwork and/or other materials in digital electronic form, any of which has been provided by the Customer for the purpose of distribution to the Users via Messages.
- “Sender Name Subscription Fee” means a fee for using the Sender Name, which includes maintaining the active status (availability) of the Sender Name in the Message distribution system.
- “User(s)” shall mean a private individual(-s) or legal entity(-ies) who has agreed to receive Messages from the Customer via the Communication channel.
- “Indemnified Parties” means MESSAGGIO its past, present, and future officers, directors, agents and employees, subMESSAGGIOs, affiliate companies or other business partners, related to performance of the Services.
- “Service Policies” means any general or specific terms, conditions, requirements, and/or policies provided by MESSAGGIO and the Carriers of the Communication channels.
- “Account” means an account located on the Internet at the network address <https://my.messaggio.com> and containing information that the Customer provides about himself to the computer system.
- “Privacy Policy” means a document mandatory for execution by the Customer and MESSAGGIO, establishing the procedure for working with confidential information and posted at the address <https://messaggio.com/privacy-policy/>.
- “Sender Name Registration” means a service that includes:
  - a) registration of the Sender Name in the Carrier's network;
  - b) approval and verification of the Sender Name with the Carrier;
  - c) maintenance of the registration of the Sender Name in the Carrier's network;
  - d) ensuring that the Sender Name complies with the Carrier's requirements;

- e) renewal of the registration of the Sender Name with the Carrier (if applicable).
- “Sender Name Maintenance” means technical maintenance of the Sender Name by MESSAGGIO, which includes:
  - a) maintaining the technical infrastructure for the functioning of the Sender Name;
  - b) monitoring the operability and availability of the Sender Name;
  - c) ensuring the security and protection of data when using the Sender Name;
  - d) technical support and administration of the Sender Name;
  - e) storing the history of sendings and statistics for the Sender Name.
- “Carrier” means a cellular radio-telephone network having the respective licenses and permits stipulated by current laws of the country where the Carrier is located.
- “Tariff unit” means a measurable portion of the service established by the technical parameters of the Communication channel, on the basis of which the cost of sending Messages is calculated.
- “Tarrifs” means standard tariffs, which are set out in Appendix № 6 to the Terms and on the MESSAGGIO'S website on the Internet at the following address: [link](#).
- “Sender Name” means a symbol consisting of letters and/or numbers, displayed in the Message in the “Sender” field.

Depending on the technical features of the Communication channel, the Sender Name may be:

- a) Individual (branded) – uniquely identifiable with the commercial designation or company name of the Customer.
- b) General (technical) – set by the Communication channel by default, without the possibility of change by the Customer.

The specific type of Sender Name used is determined by the technical capabilities and rules of the relevant Communication channel.

- “Spam” means the Messages disseminated without the prior consent of the User and/or sowing confusion in the mind of the User about the Service and/or content of the Message, and/or not allowing identification of the Sender of the given Message which contains a nonexistent or false Sender address. This category of Spam includes but is not limited to the following:
  - a) Dissemination of Messages containing information which is prohibited for distribution by existing legislation of the Republic of Malta and/or by international law and/or by the laws of the country on the territory of which the dissemination of the Messages is carried out, and/or by applicable law; or
  - b) Mass messaging (by mass messaging we understand dissemination to a multitude of Users, as well as multiple dispatch to a single User) that have not been agreed in advance with the User and/or dissemination of information to Users who previously expressed their clear desire not to receive such information.

## **2. YOUR OBLIGATIONS AND ACKNOWLEDGEMENTS**

### **2.1. CONNECTIVITY AND APPLICATION**

Customer shall establish and maintain the appropriate and necessary connection between the Customer IT and the System, ensuring that the data transmitted in conjunction with the Services, is accurate, complete, and in the form, as requested by MESSAGGIO.

### **3. TRANSMISSION**

The Customer acknowledges that use of the Services may involve third-party services and the content of the Messages may not be private in certain circumstances and may be changed by those other companies to conform and adapt to their requirements. MESSAGGIO assumes no liability or responsibility for timeliness, deletions, duplications, misdelivery or failure to store any content or the Messages.

### **3.1. MESSAGES AND CONTENT**

- 3.1.1. Compliance with applicable laws and policies.** The Customer acknowledges that he alone is liable for the integrity and quality of the content of the Messages. The Customer shall maintain commercially reasonable business practices and general compliance with all applicable laws and regulations and rules regarding the Information systems and the Services including all applicable Service Policies.

If Customer or Customer's Users infringe upon the Service Policies or these Terms, the Customer shall be immediately obligated to correct such an infringement. If the Customer is purposely infringing upon any such terms, then MESSAGGIO reserves the right to immediately cut off all Message activity and cease the Services. If Customer's Users are infringing upon such terms, then Customer is obligated to make all efforts possible to correct such infringements including, but not limited to, blocking the Customer's User from Customer Offerings. If Customer is not able to correct Customer's User infringements, then Customer is in breach of these Terms and MESSAGGIO may, without waiving any other remedy available by law or equity, terminate any Service level Agreement with the Customer.

The Customer undertakes to procure User's written consent to receive Messages and inform the Users on ways to revoke their consent and enforce any other rights each perspective User may have under the GDPR, or other applicable national, federal or other laws and regulations pertaining to Users personal data. At the request of MESSAGGIO and within a period of no more than 2 (two) working days, the Customer presents proof of consent in written form for each User, as well as present any policies they have in place to ensure compliance with applicable laws and regulations pertaining to Users personal data.

- 3.1.2. Content.** Customer agrees and warrants it shall not use the Services to transmit any Messages which are tortious, defamatory, obscene, libelous, harmful to minors, "spam", containing software viruses or otherwise designed to disrupt the functionality of any computer software or hardware or telecommunications equipment, infringing of another's rights in intellectual property, invasive of another's right to privacy, or in violation of any applicable law or regulation.

Customer agrees and acknowledges it shall be solely responsible for any third party that Customer chooses to allow to provide any type of Content, messages, or any products or services through Customer's rights under these Terms and that Customer shall not be relieved of any obligation under these Terms in the event such third party rights are allowed.

Customer will ensure that all Content and Messages do not and will not contain any material that: (a) is unlawful, obscene, or defamatory or violates any intellectual property rights or any other rights of any third party; (b) facilitates any illegal activity; (c) is sexually explicit; (d) is false, misleading, or likely to mislead or deceive (including, without limitation, information relating to the source or the author); or (e) promotes violence, discrimination, or illegal activities.

Customer will not send any Messages to a User unless: (i) Customer has obtained such User's consent to receive such Message; or (ii) the recipient of the Message is an employee of Customer (a) using a Device owned or paid for by Customer or (b) using a personal Device that the employee has permitted Customer to use for communication with the employee.

If MESSAGGIO receives any questions or complaints from Users regarding the Customer or the content of the Messages, or if MESSAGGIO or the Communication channels experience any technical problems with the Messages or any problems that negatively affect Users, the Customer will cooperate in good faith with MESSAGGIO and use best efforts to resolve any problems raised by MESSAGGIO, the Communication channel Carrier, or the Users in a timely manner.

The Customer acknowledges that not all Content and Message types are supported on all Communication channels. The Customer further acknowledges that MESSAGGIO may have different pricing and approval policies regarding certain types of Messages for specific Communication channel(s) and to specific countries.

**3.1.3. Liability for the content and Messages.** Under no circumstances will MESSAGGIO or any of the Indemnified Parties be responsible to Customer or any third party for any loss, damage or liability arising from the content of the Messages, including, but not limited to, the use or transmission thereof. Customer acknowledges that MESSAGGIO does not represent that the Services provided herein are fit for any specific purpose.

**3.1.4. Message statuses.** The Parties agree that the Messages in the System are assigned but not limited to the following statuses: “Delivered”, “Sent”. A message is given the status “Sent” when the request of the System addressed to the Communication channel for transmission of the Message is successfully executed. A message is given the status “Delivered” when the System receives the respective status from the Communication channel.

### **3.2. LICENSE OF CONTENT AND USE OF THE SYSTEM**

Customer grants to MESSAGGIO all reproduction and distribution licenses to the content and Messages as necessary to perform the Services. Customer agrees that its use of the System, and other materials and information provided by MESSAGGIO to Customer, shall be limited to Customer’s use of the Services and governed by these Terms.

Customer agrees not to copy, disassemble, decompile, or reverse engineer the system or services in whole or in part.

### **3.3. SECURITY**

Customer agrees to maintain an appropriate level of security and integrity for the System and Customer’s Users, including but not limited to implementing procedures to prevent the sending or transmitting: (i) unsolicited content or Messages, (ii) viruses, or (iii) a volume of Messages that unreasonably burdens the System. The Customer will immediately notify of any of the aforementioned events.

The Customer agrees and undertakes to maintain all security regarding their account ID, password, and connectivity with the System.

The Customer shall maintain the confidentiality of any login and password information provided by MESSAGGIO, pertaining to any Communication channel, and safeguard it with at least the same standard of care the Customer exercises in the protection of their own login and password information.

Customer is responsible for all Messages it transmits via the System as well as any interactions and manipulations with the System, done in its name or with its ID. If Customer’s account ID or password are stolen, or otherwise compromised, and used for malicious purposes, Customer is responsible for all Messages transmitted using the stolen

account information prior to Customer's written and phone notification of the compromise to MESSAGGIO. Customer is obligated to immediately contact MESSAGGIO to have such account ID or passwords changed to prevent continued malicious use of the Customer account.

If MESSAGGIO detects signs of the Customer's improper access to the System or actions that may adversely affect the quality of the Services provided, or integrity of the System including but not limited to:

- detection of signs of hacking attempts
- the Customer's exceeding the established threshold for the frequency of Messages sent (requests per second),

MESSAGGIO has the right to suspend the provision of the Services at any time and begin an internal procedure to identify and analyze the reasons for a said procedure to restore the quality of the Services rendered. At the same time, MESSAGGIO shall immediately notify the Customer of such subsequent suspension of Services.

The Customer is liable to MESSAGGIO for any damages and losses, including the loss of profits sustained by MESSAGGIO which are a result of a security breach or improper use of the system by MESSAGGIO whether due to MESSAGGIO's malice or negligence.

### **3.4. CUSTOMER SUPPORT FOR USERS**

The Customer is obligated to provide support services to the Users. The Customer must provide support contact information to Users in one or more of the following formats: an email address, a website URL, or a phone number. Such contact information shall be provided (i) at the same time and location (i.e., on the same web page or in the same Message) as Users register for the receipt of Messages as or otherwise opt-in to receiving Messages from Customer; (ii) at a location easily accessible and conspicuous to Users to allow access to the contact information after the User has registered or opted into receiving Messages from Customer; and (iii) to adhere with requirements and procedures. Such support services shall be made available during reasonable business hours and follow-up shall occur in a timely manner.

## **4. MESSAGGIO'S RIGHTS AND OBLIGATIONS**

### **4.1. GRANT AND PERFORMANCE OF SERVICES**

MESSAGGIO shall grant to the Customer access to the System the use of Services subject to these Terms.

MESSAGGIO may compel the Customer to (i) provide information about the number and status of the Messages transmitted for messaging and (ii) make changes in parameters of connecting to the System, by a written request, explaining the need for such changes. The aforementioned request must be prepared in writing (by email). The date when the aforementioned changes will be made is established by agreement of the Parties.

In case of delayed payment exceeding 5 (five) working days, to stop providing Services to the Customer until such time as the later settle any outstanding payments. If (i) the Customer repeatedly delays payment of the invoices rendered by MESSAGGIO and/or (ii) any such delay exceeds 10 (ten) calendar days, MESSAGGIO has the right to terminate any Service Level Agreement with the Customer.

In case of termination of any Service Level Agreement by MESSAGGIO, we shall return any prepaid amount less the transaction fees, unless such termination is due to a breach of these Terms or the Service Level Agreement by the Customer.

Any claims of the Customer in relation to MESSAGGIO's performance of the Services shall be submitted to the later in written form for review within a period no later than 3 (three) working days from the moment that the contested situation arose. The time period for review of the Customer's claims is no greater than 15 (fifteen) working days.

If the Customer violates the requirements stipulated in these Terms, as regards the content and dissemination of Messages, MESSAGGIO has the right:

- to terminate any Service Level Agreement with the Customer with a 2 (two) days notice period;
- collect in full all kinds of fines or claims assessed against MESSAGGIO; and/or
- halt provision of Services,

whereby MESSAGGIO shall immediately inform the Customer of such event. After consultation with the Customer, MESSAGGIO may restore access to the System at its own discretion.

#### **4.2. OPERABILITY OF THE SYSTEM**

MESSAGGIO undertakes to ensure the operability and timely modernization of the equipment and software used for the purpose of performing his obligations.

In MESSAGGIO's reasonable discretion, and upon reasonable electronic or written notice to Customer, may modify its System and services which may impact the message delivery Customer acknowledges that modifications of Messages may be required to continue the use of Services. The Customer agrees to be exclusively responsible for any costs associated with such modifications.

In case of breakdowns in the functioning of MESSAGGIO's equipment preventing the normal provision of Services, MESSAGGIO shall immediately inform the Customer of such event by a telephone call or via email, indicating the probable causes of the failure and the time required to resolve it, and take all necessary measures to ensure its timely resolution.

#### **4.3. MAINTENANCE**

MESSAGGIO may switch off the Customer's access to the System when performing preventive maintenance works, of which it will notify the Customer by email at least 1 (one) calendar day prior to such planned maintenance, indicating the time of expected System unavailability or downtime. The down-time for carrying out preventive maintenance work shall not exceed 9 (nine) hours at a time.

#### **4.4. TECHNICAL SUPPORT**

MESSAGGIO undertakes to provide the necessary information and technical support to the Customer and ensure the System's proper functioning except for planned technical interruptions required to perform maintenance of the System.

### **5. FEES AND PAYMENT TERMS**

#### **5.1. PAYMENT TERMS**



**5.1.1. General payment terms.** Customer acknowledges that without the prior written approval of an authorized MESSAGGIO representative, all Services will require prepaid fees. MESSAGGIO will invoice the Customer within the first 5 (five) days of every calendar month.

Unless expressly otherwise agreed otherwise, all payments must be received by MESSAGGIO fifteen (15) days from the date MESSAGGIO sends the invoice to Customer. Customer agrees that any delay on the part of MESSAGGIO in sending out any invoices will not relieve Customer of the obligation to pay the amounts reflected in such invoices by their specified due date. Each invoice will reflect the payments due for the payment period; Customer acknowledges that previous, unpaid invoice amounts may not be reflected on any other invoice.

**5.1.2. Late payment fees.** MESSAGGIO is entitled to collect interests on delayed payments in the amount 0,5% of the due amount for each day of delay, but no less than 15 (fifteen) Euros per day.

**5.1.3. Payment method.** MESSAGGIO will accept electronic funds transfer, or wire transfer in euros made as non-cash money transfers onto the bank account stipulated in the invoice.

MESSAGGIO reserves the right to change its methods of receiving payment at any time and require payment by a specific method for a particular Service or for a particular Customer. Such change shall be communicated in writing and take immediate effect.

The date of payment is considered to be the date when the funds are credited to the settlement account of MESSAGGIO.

**5.1.4. Prices subject to change.** MESSAGGIO reserves the right to change the prices for Services as necessary to account for considerations of its expenses, Communication channel price changes, competition, and market conditions. Customer acknowledges that MESSAGGIO does not have control over some industry-required price changes and does not always receive prior notice of such changes; however, MESSAGGIO will use its best efforts to notify Customer at least three (3) days prior to the effective date of the price change.

5.1.5. Unless alternate terms are agreed to in writing, Customer agrees to pay all applicable fees and prices specified in Appendix 5 to the Terms for the first month within 3 (three) working days following the execution of Terms.

Thereafter all applicable fees and prices is paid by the Customer each month on the basis of the invoice issued by MESSAGGIO.

**5.1.6. Billing disputes.** If there is any dispute associated with billing, the Customer shall make payment in accordance with the billing invoice as submitted to Customer. The Customer shall have the right to dispute any amount so invoiced and paid and must notify MESSAGGIO in writing of its dispute within thirty (30) calendar days of the receipt of such invoice or the dispute shall be waived. A notification of disputed charges plus any Customer documentation supporting Customer's claim shall be sent to MESSAGGIO in electronic form via email.

## 6. TAXES

Upon request of MESSAGGIO, the customer shall provide the necessary documents, such as an excerpt of the public company register, to provide accurate information with regards to their establishment.

Any taxes or surcharges (excluding taxes on MESSAGGIO income) on the Services provided under this Terms, and which are not already reflected in the fees for Services, shall be separately itemized on the bills rendered to Customer and shall be paid by Customer.

Should any competent tax authority determine that additional sales, use, gross receipts or other taxes or surcharges (and interest, penalty and/or surcharges thereon) are due on the provision of the Services. The Customer shall be liable for any such tax, interest, penalty and surcharge.

However, if the Customer disagrees with the assessment of any such additional tax, penalty, surcharge and interest, the Customer shall, at its option and expense (including payment of any such assessment prior to the final resolution of the issue), have the right to protest the assessment and participate in any legal challenge to such assessment, but shall be liable for any tax, penalty, surcharge and interest ultimately determined to be due.

MESSAGGIO shall when requested by Customer and at Customer's expense, cooperate with Customer in any such protest or legal challenge.

## **7. CONFIDENTIALITY**

Each party acknowledges that pursuant to or in connection with these Terms certain information may be disclosed or acquired that either is designated as proprietary and/or confidential or ought in good faith to be treated as proprietary and/or confidential, including but not limited to 1) the terms of this Terms, and 2) all other non-public information, technology, materials and specialized knowledge, whether oral, written or in any tangible form (inclusively referred to as "Confidential Information").

Each party shall retain Confidential Information in confidence, and neither party shall use any Confidential Information of the other party for any purpose other than to perform its obligations or exercise its rights under this Terms. Notwithstanding the foregoing, each party may disclose the terms and conditions of this Terms to the party's immediate legal and financial consultants in the ordinary course of business. Neither party shall provide Confidential Information of the other party to any third party or to any employees who do not have a need to know.

For the purposes of this section, "Recipient" shall mean the party receiving or acquiring Confidential Information. The restrictions set forth in this section shall not apply to any information that: (i) was known by Recipient without obligation of confidentiality prior to disclosure; (ii) was in or entered the public domain through no fault of Recipient; (iii) is disclosed to Recipient by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; (iv) is required to be disclosed by applicable laws or regulations (but, in such event, only to the extent required to be disclosed); or (v) is independently developed by the Recipient without reference to or knowledge of any Confidential Information of the other party. If a demand is made upon Recipient under the legal or regulatory authority of competent jurisdiction or requirement of law for disclosure of Confidential Information of the other party, when feasible, a notice of the demand or requirement shall be provided by Recipient to the other party prior to Recipient's

disclosure of the Confidential Information so that reasonable arrangements may be sought to protect the confidential and proprietary nature of the Confidential Information.

Each party agrees to use commercially reasonable efforts to protect Confidential Information of the other party from unauthorized or inadvertent disclosure or use, and in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. Recipient shall also notify the other party promptly in writing in the event Recipient learns of any unauthorized use or disclosure of any Confidential Information of the other party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible. Upon request of the other party, each party shall return to the other all materials, in any medium, which contain or reveal all or any part of any Confidential Information of the other party.

Each party acknowledges that breach of this section would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and, therefore, that the other party shall be entitled to seek injunctive relief in addition to all other available legal or equitable remedies to enforce the provisions of this Section.

## **8. PUBLICITY**

Both Customer and MESSAGGIO shall have the right to mention the following in their marketing materials, public announcements, or as a reference for future customers: (1) the existence of their business partnership, (2) the identity of either party, (3) Services, or (4) Customer Offerings. This right is given on the condition(s) that: (a) any such marketing materials accurately reflect the nature of the business relationship, and (b) any such marketing materials do not disclose Confidential Information.

## **9. WARRANTY / DISCLAIMER**

MESSAGGIO represents and warrants that the Services will be performed in a workmanlike manner consistent with generally-accepted industry standards. Customer's sole remedy for MESSAGGIO's breach of this warranty shall be MESSAGGIO's reasonable efforts to repair or replace the Services.

## **10. LIABILITY**

MESSAGGIO's services and any other services provided by any Communication channel are provided "as is," "where is" and "when available". MESSAGGIO is responsible only for providing data transmission to effect certain routing of Message requests from Customer to the Communication channel and is not responsible for the Communication channel or any other pass-through agent's actions and/or ability to effectuate Customer's requests. MESSAGGIO is therefore not responsible for the availability of any Communication channel, the availability and/or performance of the Internet, or the availability and/or performance of any third party provider required to effectuate any Services. MESSAGGIO is also not responsible for any damages or costs Customer suffers or incurs as a result of any instructions given, actions taken or omissions made by Customer.

In no event will MESSAGGIO's liability arising out of this Terms exceed the fees paid to MESSAGGIO by customer during the three (3) month period immediately preceding the event which gave rise to such claim.

Notwithstanding the above, the limitations set forth above shall be enforceable to the maximum extent allowed by applicable law.

10.1. **MESSAGGIO's Liability.** MESSAGGIO shall not be liable for the interruption in the provision of Services relating to his carrying out technical maintenance, and also for interruptions which arise in the following situations:

- fire, flood or problems with electricity supply,
- overloading of the network or the technical platform of the Communication channel,

as well as in other cases where the non-performance is due to the failure of third-party software or hardware or in cases of force majeure.

MESSAGGIO shall not bear liability for errors or improper use of the System or any violations of applicable terms and conditions provided by the manager of each respective Communication channel by the Customer.

10.2. **Customer's Liability.** The Customer is liable for the completeness, fitness of purpose and reliability of the information provided all Messages which are to be distributed to the Users as well as compliance with the terms of this Terms and any applicable laws and regulations.

## 11. INDEMNIFICATION

Customer will indemnify, defend and hold harmless MESSAGGIO, and the remaining Indemnified Parties, from and against any and all third party claims, and associated losses, demands, liabilities, damages, costs and expenses (including reasonable attorneys' fees), to the extent arising out of or relating to (i) the breach of this Terms by Customer, (ii) the sale or use of any product or services sold by Customer or (iii) claims brought or damages suffered by any Communication channel Carrier, MESSAGGIO, MESSAGGIO's customers, or prospective or actual Users customers of Customer relating to Customer's or its agents' misuse and/or abuse of the Services.

The indemnification obligations set forth in this Section are contingent upon (a) the indemnified party giving prompt written notice to the indemnifying party of a claim for which the indemnified party is seeking indemnification, (b) the indemnified party allowing the indemnifying party to control the defence and related settlement negotiations for any such claim, and (c) the indemnified party fully assisting and cooperating in the defence so long as the indemnifying party pays the indemnified party's out-of-pocket expenses. The indemnifying party shall not settle a claim without the written consent of the indemnified party, such consent not to be unreasonably withheld.

If as a result of the Customer's violation of this Terms, MESSAGGIO is exposed to losses, the Customer is obliged to compensate the later for the losses incurred in the full amount on the basis of a written demand from MESSAGGIO together with supporting documents confirming his expenses. In case MESSAGGIO receives claims from third parties, or if MESSAGGIO is held liable by an entity of the state or municipal authorities in relation to the actions of the Customer, the latter is obliged to make full monetary compensation to MESSAGGIO on the basis of respective written demand of MESSAGGIO together with supporting documents.

## 12. INTELLECTUAL PROPERTY

The Customer guarantees that he has all the necessary licenses, permissions and approvals required under any applicable laws to perform the Services.

### **13. GOVERNING LAW AND DISPUTE RESOLUTION**

This Terms will be governed by and construed in accordance with the laws of the Republic of Malta without reference to its conflicts of laws principles.

Disputes and disagreements which may arise between the Parties during the execution of this Terms or in relation to it should be resolved by means of negotiations between the parties.

If it is impossible to resolve a dispute in the process of negotiations, it shall be ultimately resolved by legal action under the jurisdiction of the competent court in the Republic of Malta, with the obligatory observation of the claims procedure for settling disputes. The period of time for responding to a claim is 15 (fifteen) working days from the moment it has been received.

The Parties have agreed to recognize print-outs of electronic documents from the System as proofs for resolution of disputes.

### **14. FORCE MAJEURE (EVENTS BEYOND THE PARTIES' CONTROL)**

Neither party shall incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Terms if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquakes, fire, and explosions, but the delay or failure to meet financial obligations under this Terms is expressly excluded.

The Parties undertake to inform each other in written form about the onset of such circumstances. Failure to make timely notification, meaning more than 10 (ten) working days from the moment of the onset or cessation of the circumstances indicated above deprives the Party of the possibility of referring to them.

If the circumstances of Force-Majeure continue for more than one month, then each of the Parties has the right to terminate this Terms unilaterally and out of court, and in this case, neither Party has the right to demand from the other Party compensation of losses caused by the termination of the Terms. In this case, during a period of time no later than 10 (ten) days following the termination of the Terms both Parties make mutual payments of indebtedness to each other at the moment before receiving the respective written notification.

### **15. ENTIRE AGREEMENT AND MODIFICATION**

The terms contained herein, alongside with any Service Level Agreements, concluded between the Parties, constitute the entire agreement between MESSAGGIO and Customer regarding its subject matter, and its terms supersede any prior or simultaneous agreement or terms on the same subject matter, whether written or oral. Except as otherwise provided for herein, any waiver, modification, or amendment of any provision of this Terms by

Customer will be effective only if in writing, acknowledged and signed by an authorized representative of MESSAGGIO.

In case of conflict of terms between this Terms and a Service Level Agreement, the terms of Service Level Agreement shall override the terms contained herein.

Any attempt by Customer to modify or amend any provision of this Terms except as expressly set forth herein shall be void.

Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Terms and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. This Terms, any other document necessary for the consummation of the transaction contemplated by this Terms may be accepted, executed or agreed to through the use of an electronic signature in accordance with Regulation (EU) No 910/2014 Of The European Parliament And Of The Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (“EU Regulation No 910/2014”) and any applicable state law. Any document accepted, executed or agreed.

#### **16. SEVERABILITY**

In the event that any provision of this Terms is unenforceable or invalid, such unenforceability or invalidity will not render this Terms unenforceable or invalid as a whole, and in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

#### **17. ASSIGNABILITY**

Performance of the Services and any obligations of MESSAGGIO assignable by MESSAGGIO. Customer may not assign their rights and licenses granted hereunder without the prior written consent of MESSAGGIO, nor are the obligations imposed on the Customer delegable.

Any attempt by Customer to improperly sublicense, assign or transfer any of the rights, duties, or obligations under this Terms shall be void. For the purposes of this section, a change in the persons or entities that control 50% or more of the equity securities or voting interest of Customer shall be considered an assignment of Customer’s rights. Customer will give MESSAGGIO twenty (20) days prior written notice of any change in ownership or establishment by Customer. Customer acknowledges that MESSAGGIO may, at its sole discretion, immediately terminate any Services or any Service Level Agreement upon any change of ownership of Customer. Customer acknowledges that written notice must be provided immediately to MESSAGGIO of any actual or potential ownership or ownership interest of Customer by a MESSAGGIO competitor or company who owns a competing product.

#### **18. NOTICES**

Except as otherwise expressly stated, any notice required or permitted under the terms of this Terms or required by law must be in writing and sent to the email addresses stated

below prior to receipt of the originals of these documents (if there is a need to send the originals). The fact of confirmation of receipt of documents is the dispatch of the respective message in a reply by the Party to whose address the documents were sent.

The Parties undertake to immediately notify one another in written form about all changes: organizational-legal forms, postal address, legal address, bank details, contact persons, telephone numbers and other contact information and other information relevant for the performance of this Terms.

Either party may change its contact information by written notice to the other party.

## **19. CONTACT**

You can contact s via email at: [support@messaggio.com](mailto:support@messaggio.com)

Or by letter addressed to: MESSAGGIO LTD, E103, The Hub, Triq Sant Andrija, San Gwann, SGN 1612, Malta.

## **Appendix № 1**

### **to the Terms of Service**

#### **SERVICE LEVEL AGREEMENT – SMS MESSAGES**

##### **1. DEFINITIONS**

In this Terms all the names and terms are used in the definitions and in the sense established by the Terms:

**‘SMS Message’** – short text message which can be received by a standard GSM mobile device. If message length exceeds the number of characters that may be placed in one SMS, such message is defined as concatenated and priced accordingly to the number of SMS parts in it depending on message encoding.

**‘Subscriber’** – a private individual or legal entity using the services of the Carrier on the basis of a Terms which is not the subject of this Terms and who is a receiver of SMS Messages from the Customer.

##### **2. RIGHTS AND OBLIGATIONS OF THE PARTIES**

**2.1.** MESSAGGIO has the right to require that all SMS Messages sent by the Customer contain the contact information of the Customer. By contact information, it means the telephone, email, Web-address, as well as the name of the organization (or project) of the Customer by agreement with MESSAGGIO. To halt the performance of his obligations under this Terms in case this requirement is not carried out in the time periods established in point 2.4 of this Appendix to the Terms. Resumption of the provision of the Services occurs in the course of 1 (one) working day after the Customer fulfils the aforementioned requirement.

**2.2.** MESSAGGIO has the right to block any SMS Messages falling into the category of Spam at their own discretion. In case Spam is discovered, MESSAGGIO at his discretion has the right to refuse to deliver the given information to the Subscriber.

**2.3.** MESSAGGIO has the right unilaterally to change the Tarriffs, the method of calculation and conditions of providing Services subject to prior notification to the Customer of 3 (three) working days before the introduction of such changes by email of the Customer. In case the Customer does not agree to the given changes and notification by MESSAGGIO, within 2 (two) working days from the moment the Customer receives the notification of such changes, MESSAGGIO has the right to terminate this Terms. If the Customer continues to use the System after the expiry of the deadline indicated above, this is taken to mean his agreement with the new tariffs, payments procedure and conditions of providing Services. The given changes can be introduced by MESSAGGIO also in shorter time periods and will be recognized and accepted by the Customer if they are made due to change in the conditions of cooperation between MESSAGGIO and the Carrier and/or with third parties invited by MESSAGGIO to perform this Terms.

**2.4.** If MESSAGGIO requires that in each SMS Message sent by the Customer there is shown the Customer’s contact information (point 2.1 of this Appendix to the Terms), the Customer is obliged to fulfil this requirement within 2 (two) working days.



- 2.5. In any available way, the Customer is necessarily obliged to bring to the attention of the Subscribers, the receivers of SMS Messages, information about the possibility and way they can refuse to receive further SMS Messages.

### **3. SENDER NAME REGISTRATION**

- 3.1. MESSAGGIO's service for the Sender Name Registration includes:
- checking the compliance of the requested Sender's Name with the Carrier's requirements;
  - preparing and executing a set of documents in accordance with the Carrier's requirements;
  - submitting documents for review to the Carrier;
  - supporting the review process of submitted documents;
  - informing the Customer about the status of review of submitted documents (if applicable);
  - interacting with the Carriers on issues of registering the Sender's Name.
- 3.2. Fee for the Sender Name Registration.
- The cost for the Sender Name Registration is calculated for each country where SMS Messages are sent.
  - The list of countries is provided by the Customer prior to Sender Name Registration in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger.
  - Adding new countries during the use of the Sender's Name is charged as a new Sender's Name Registration service for each additional country.
- 3.3. The fee for Sender Name Registration shall be paid in full regardless of the outcome of the review of the submitted documents by the Carrier.
- 3.4. In case of refusal to Sender Name Registration by the Carrier:
- MESSAGGIO shall provide the CUSTOMER with information about the reasons for the refusal via e-mail specified in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger;
  - The CUSTOMER has the right to submit an application for registering another Sender's Name, and the services for registering the new Sender's Name shall be paid for additionally;
  - In case of refusal to Sender Name Registration in individual countries, the fee shall be charged for all countries specified in the original application.
- 3.5. The term for rendering services for Sender Name Registration shall be up to 14 business days from the date of provision by the Customer of a full set of documents required for Sender Name Registration, the list of which is posted in the Account.

### **4. SAVING THE SENDER'S NAME**

- 4.1. In case of temporary suspension of the use of the Sender's Name, the Customer has the right to submit an application for temporary suspension of the use of the Sender's Name. The application is submitted by the Customer in the Account, or by the MESSAGGIO'S e-mail specified in Section 19 of the Terms, in any form.

- 4.2. During the saving, the Customer has the right to use the Sender's Name under the following cumulative conditions:
- sending SMS Messages is blocked for the saving;
  - the Sender's Name remains assigned to the Customer;
  - all Sender's Name settings and sending history are saved.
- 4.3. Minimum saving period: 1 calendar month.
- 4.4. Resumption of use of the Sender's Name is made on the basis of the Customer's application. The application is submitted by the Customer in the Account, or by sending a message to the authorized person of MESSAGGIO in the messenger.

## **5. PAYMENT TERMS**

- 5.1. The cost of the MESSAGGIO's Services for the calendar month is determined in accordance with the Tariffs, which are an integral part of the Terms.
- The Parties have agreed that MESSAGGIO has the right to offer the Customer individual tariffs by sending a notification to the Customer by e-mail or to the authorized person of the Customer via messenger. The Customer accepts individual tariffs or refuses them by sending a response message to MESSAGGIO's e-mail or to the authorized person of the MESSAGGIO via messenger.

## **6. LIABILITY OF THE PARTIES**

- 6.1. In case of violation of point 3.1.2. of the Terms MESSAGGIO has the right to fine the Customer with the amount of 5,000 (five thousand) Euro for each violation detected, namely for every SMS Message sent falling under the category "Spam".
- 6.2. MESSAGGIO has the right, at its discretion, to apply to the Customer any measure of liability provided by the Terms.

## Appendix № 2

### to the Terms of Service

#### SERVICE LEVEL AGREEMENT – VIBER MESSAGES

##### 1. DEFINITIONS

In this Terms all the names and terms are used in the definitions and in the sense established by the Terms:

**'Viber'** – a mobile app developed by the company Viber Media S.a.r.l. ([www.viber.com](http://www.viber.com)) enabling Viber Users to carry on a text dialogue, and also to transmit photo and videos.

**'Viber Message'** – a message which is received and is delivered by Viber to Viber Users.

**'Balance'** – the remainder of funds on the Account.

**'Service'** – Sender name explicitly identified with the commercial designation or company name of the Customer, consisting of letters and/or numbers displayed in the Viber Message in the 'Sender' field.

**'Policy of Viber Media S.a.r.l.'** – conditions, provisions and/or policy which are accessible on the viber.com site and are applicable to Viber Users and/or other documents developed by Viber Media S.a.r.l and regulating sending messages.

**'Viber User'** – a private individual or legal entity which has agreed to receive Messages from the Customer and uses Viber services.

##### 2. RIGHTS AND OBLIGATIONS OF THE PARTIES

2.1. MESSAGGIO has the right to unilaterally block Viber Messages which violate the Policies of Viber Media S.a.r.l, or which fall under the category of Spam as determined at the MESSAGGIO's sole discretion. In case Spam is discovered, MESSAGGIO at his discretion has the right to refuse to execute delivery of the given information to Viber Users.

2.2. MESSAGGIO has the right to establish restrictions on the number of Viber Messages or on other parameters for their distribution to Viber Users for separate Services if this is required by the Policy of Viber Media S.a.r.l.

2.3. MESSAGGIO has the right unilaterally to change the Tariffs, payment procedure and conditions of providing Services with advance notification to the Customer 3 (three) working days before introducing such changes in practice by email of the Customer. In case the Customer does not agree to the given changes and MESSAGGIO notification, in the course of 2 (two) working days from the moment the Customer received the notification MESSAGGIO has the right to terminate this Terms. If the Customer continues to use the System after the expiry of the deadline indicated above, that is taken to mean his agreement with the new tariffs, payment procedure and conditions of providing Services. The given changes can be introduced by MESSAGGIO in a shorter time period and will be acknowledged and accepted by the Customer if they have been made due to changes in conditions of cooperation between MESSAGGIO and Viber Media S.a.r.l. and/or by third parties invited by MESSAGGIO to perform this Terms.

2.4. The Customer is obliged not to allow the following Content in any form:

- nonexistent and/or fraudulent advertisements or information;
- extorting money or other material benefits;

- assisting extortion or fraud;
  - encouraging extortion, fraud, advertising, sponsorship;
  - extorting money or other material benefits in the name of nonexistent or fraudulent persons, organizations;
  - sponsoring financial pyramids or other similar schemes which violate the laws of the Republic of Malta, international law and/or the laws of the country on the territory of which the distribution of Viber Messages is made, and/or applicable legislation.
- 2.5. The Customer is obliged not to disseminate Content which does not correspond to any information declared initially, as well as Content which does not correspond to the Customer's form of activity, and/or does not correspond to the site which the Customer communicated to MESSAGGIO for the purpose of effecting the distribution of Viber Messages, and/or Content which does not correspond to the name of the Service given to the Customer.
- 2.6. MESSAGGIO reserves the right to unilateral change of tariffing of Messages, that is to define Message template type at the discretion of MESSAGGIO.
- 2.7. The Customer declares and guarantees the fulfilment of all obligations under this Terms and undertakes to comply with the Viber Media S.a.r.l Policy for the purpose of sending out Viber Messages.
- 2.8. The Parties agree that Viber Media S.a.r.l reserves the right to change the Viber Media S.a.r.l Policy at its discretion at any time and with any frequency.

### **3. SENDER NAME REGISTRATION**

- 3.1. MESSAGGIO's service for the Sender Name Registration includes:
- checking the compliance of the requested Sender's Name with the Carrier's requirements;
  - preparing and executing a set of documents in accordance with the Carrier's requirements;
  - submitting documents for review to the Carrier;
  - supporting the review process of submitted documents;
  - informing the Customer about the status of review of submitted documents (if applicable);
  - interacting with the Carriers on issues of registering the Sender's Name.
- 3.2. Fee for the Sender Name Registration.
- The cost for the Sender Name Registration is calculated for each country where Viber Messages are sent.
  - The list of countries is provided by the Customer prior to Sender Name Registration in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger.
  - Adding new countries during the use of the Sender's Name is charged as a new Sender's Name Registration service for each additional country.
- 3.3. The fee for Sender Name Registration shall be paid in full regardless of the outcome of the review of the submitted documents by the Carrier.
- 3.4. In case of refusal to Sender Name Registration by the Carrier:

- MESSAGGIO shall provide the CUSTOMER with information about the reasons for the refusal via e-mail specified in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger;
  - The CUSTOMER has the right to submit an application for registering another Sender's Name, and the services for registering the new Sender's Name shall be paid for additionally;
  - In case of refusal to Sender Name Registration in individual countries, the fee shall be charged for all countries specified in the original application.
- 3.5. The term for rendering services for Sender Name Registration shall be up to 14 business days from the date of provision by the Customer of a full set of documents required for Sender Name Registration, the list of which is posted in the Account.

#### **4. SAVING THE SENDER'S NAME**

- 4.1. In case of temporary suspension of the use of the Sender's Name, the Customer has the right to submit an application for temporary suspension of the use of the Sender's Name. The application is submitted by the Customer in the Account, or by the MESSAGGIO'S e-mail specified in Section 19 of the Terms, in any form.
- 4.2. During the saving, the Customer has the right to use the Sender's Name under the following cumulative conditions:
- sending Viber Messages is blocked for the saving;
  - the Sender's Name remains assigned to the Customer;
  - all Sender's Name settings and sending history are saved.
- 4.3. Minimum saving period: 1 calendar month.
- 4.4. Resumption of use of the Sender's Name is made on the basis of the Customer's application. The application is submitted by the Customer in the Account, or by sending a message to the authorized person of MESSAGGIO in the messenger.

#### **5. PAYMENT TERMS**

- 5.1. The cost of the MESSAGGIO's Services for the calendar month is determined in accordance with the Tariffs, which are an integral part of the Terms. The Parties have agreed that MESSAGGIO has the right to offer the Customer individual tariffs by sending a notification to the Customer by e-mail or to the authorized person of the Customer via messenger. The Customer accepts individual tariffs or refuses them by sending a response message to MESSAGGIO's e-mail or to the authorized person of the MESSAGGIO via messenger.

#### **6. LIABILITY OF THE PARTIES**

- 6.1. MESSAGGIO has the right to exact a fine from the Customer in the following circumstances:
- 6.1.1. 5,000 (five thousand) Euros in case of:
- violating point 3.1.2. of the Terms;
  - violating points 2.4 - 2.7 of this Appendix;

- any unauthorized change in the initially approved subject matter of Viber Messages without prior acknowledgement and consent of MESSAGGIO via the email shown in clause 19 of the Terms;
- failure to present to MESSAGGIO the confirmation received by the Customer from the User to receive Viber Messages (point 3.1.1. of this Terms) within 2 (two) working days from the moment when MESSAGGIO sends the respective requirement by email as shown in clause 19 of the Terms.

- 6.1.2. For each Viber Message sent which contained materials of a crude, insulting, humiliating or threatening character; insulting human dignity; promoting violence, terrorism, racial or national enmity; having pornographic or political content, MESSAGGIO has the right to exact a fine from the Customer in accordance with a rate established by Viber.
- 6.2. The Parties agreed that MESSAGGIO has the right to exact from the Customer the sums of fine indicated above for each revealed violation, namely for each Viber Message sent.
- 6.3. MESSAGGIO has the right at his own discretion to apply to the Customer any measure of liability stipulated by the Terms
- 6.4. The Parties agreed separately that a sufficient fact of proof of violation by the Customer of his obligations under the Terms is any visual information on the Content, and MESSAGGIO also has the right to present as proofs information in the form of uploading or print-outs of documents obtained by any channels of electronic communications, as well as documents signed with an electronic signature or other form comparable to a handwritten signature. The given information is presented from MESSAGGIO, Viber Media S.a.r.l and/or from Users.

## **Appendix № 3**

### **to the Terms of Service**

#### **SERVICE LEVEL AGREEMENT – WHATSAPP MESSAGES**

##### **1. DEFINITIONS**

In this Terms all the names and terms are used in the definitions and in the sense established by the Terms:

**‘WhatsApp’** – a mobile app developed by the company WhatsApp Inc. ([www.whatsapp.com](http://www.whatsapp.com)) to enable the Customer to communicate with WhatsApp Users on the WhatsApp network (WhatsApp Business Solution).

**‘WhatsApp Message’** – a message which is received and delivered to WhatsApp User by WhatsApp. The Parties separately agreed that sending WhatsApp Messages by the Customer can be carried out only with the approval of templates by MESSAGGIO and WhatsApp Inc.

**‘WhatsApp Chat’** – outgoing message of the Customer to the WhatsApp User in the dialogue mode which is active within 24 hours from the moment of sending the message by the WhatsApp User to the Sender Name of the Customer.

**‘WhatsApp Template’** – WhatsApp Message pattern, approved by MESSAGGIO.

**‘WhatsApp Policy’** – conditions, provisions and policies accessible from the following sites:

- <https://www.whatsapp.com/legal/business-solution-terms>
- <https://www.whatsapp.com/legal/FB-terms-whatsapp-business/>,
- <https://developers.facebook.com/docs/whatsapp/guides>,
- <https://www.whatsapp.com/legal/business-solution-policy/>,
- <https://facebook.com/legal/terms>,
- [https://www.facebook.com/legal/commercial\\_terms](https://www.facebook.com/legal/commercial_terms),
- <https://www.whatsapp.com/legal/business-terms-for-service-providers/>,
- as well as the other conditions placed on the site [www.whatsapp.com](http://www.whatsapp.com).

**‘WhatsApp User’** – a private individual or legal entity which has agreed to receive WhatsApp Messages from the Customer and uses a mobile app developed to the company WhatsApp Inc.

##### **2. RIGHTS AND OBLIGATIONS OF THE PARTIES**

- 2.1. The Customer declares and guarantees the fulfillment of all obligations under the Terms and undertakes to comply the WhatsApp Inc. Policy in order to use WhatsApp and send WhatsApp Messages.
- 2.2. The Parties take into account the fact that Facebook is the distributor of the WhatsApp Business Solution. Thereby the Customer undertakes to comply with the Facebook Terms, specified on the sites in clause 1 of this Appendix (WhatsApp Inc. Policy).

- 2.3. The Parties agreed that Facebook and WhatsApp keep the right to change the location of WhatsApp Inc. Policy.
- 2.4. It is the Customer's responsibility to follow the changes that Facebook and WhatsApp make in their WhatsApp Inc. Policy and make sure that it complies with them.
- 2.5. In case if the Customer provides its clients with WhatsApp Business Solution the Customer is obliged to ensure that the essential conditions of the Terms are included in its conditions with its client.
- 2.6. The Customer acknowledges and agrees that MESSAGGIO has no control over the Content which passes via WhatsApp Communication channel and that MESSAGGIO does not examine the use of such Content or the nature or the sources of the Content. The Customer will be solely liable for such Content. MESSAGGIO will not be liable for the Content or any other material transmitted by the Customer or WhatsApp User.
- 2.7. MESSAGGIO will have the right to immediately suspend all or any part of the sending WhatsApp Messages if MESSAGGIO has reason to suspect fraudulent, unlawful or unauthorized use of the Service by the Customer.
- 2.8. MESSAGGIO is entitled to suspend the provision of Service with prior notification of the Customer in 20 (twenty) calendar days if the Customer did not send WhatsApp Messages for 3 (three) months.
- 2.9. If the Customer becomes aware of the unauthorized use and/or threat of such use of the System and/or violation of the conditions of the Terms/WhatsApp Inc. Policy, the Customer shall immediately notify MASSAGGIO. In such case MESSAGGIO has the right to suspend the provision of services or terminate the Terms at its sole discretion.
- 2.10. If the Customer receives official information from regulatory or state authorities regarding the content of WhatsApp Messages that don't comply with applicable law and/or violate the WhatsApp Inc. Policy and/or the conditions of the Terms, the Customer agrees to provide MESSAGGIO with a copy of this notification with explanations of the violation.
- 2.11. Upon receipt of a written or oral appeal (claims, complaints) to the Customer from the competent state authorities or upon filing a claim, related to the violation by the Customer/Customer's client of the conditions of the Terms, the Customer shall provide MESSAGGIO with copies of the documents above with explanations on their settlement.
- 2.12. The Parties agree that the change in the cost of Service of MESSAGGIO is carried out in the order prescribed by the WhatsApp Inc. Policy.

### **3. SENDER NAME REGISTRATION**

- 3.1. MESSAGGIO's service for the Sender Name Registration includes:
  - checking the compliance of the requested Sender's Name with the Carrier's requirements;
  - preparing and executing a set of documents in accordance with the Carrier's requirements;
  - submitting documents for review to the Carrier;



- supporting the review process of submitted documents;
  - informing the Customer about the status of review of submitted documents (if applicable);
  - interacting with the Carriers on issues of registering the Sender's Name.
- 3.2. Fee for the Sender Name Registration.
- The cost for the Sender Name Registration is calculated for each country where Viber Messages are sent.
  - The list of countries is provided by the Customer prior to Sender Name Registration in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger.
  - Adding new countries during the use of the Sender's Name is charged as a new Sender's Name Registration service for each additional country.
- 3.3. The fee for Sender Name Registration shall be paid in full regardless of the outcome of the review of the submitted documents by the Carrier.
- 3.4. In case of refusal to Sender Name Registration by the Carrier:
- MESSAGGIO shall provide the CUSTOMER with information about the reasons for the refusal via e-mail specified in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger;
  - The CUSTOMER has the right to submit an application for registering another Sender's Name, and the services for registering the new Sender's Name shall be paid for additionally;
  - In case of refusal to Sender Name Registration in individual countries, the fee shall be charged for all countries specified in the original application.
- 3.5. The term for rendering services for Sender Name Registration shall be up to 14 business days from the date of provision by the Customer of a full set of documents required for Sender Name Registration, the list of which is posted in the Account.

#### **4. SAVING THE SENDER'S NAME**

- 4.1. In case of temporary suspension of the use of the Sender's Name, the Customer has the right to submit an application for temporary suspension of the use of the Sender's Name. The application is submitted by the Customer in the Account, or by the MESSAGGIO'S e-mail specified in Section 19 of the Terms, in any form.
- 4.2. During the saving, the Customer has the right to use the Sender's Name under the following cumulative conditions:
- sending Viber Messages is blocked for the saving;
  - the Sender's Name remains assigned to the Customer;
  - all Sender's Name settings and sending history are saved.
- 4.3. Minimum saving period: 1 calendar month.
- 4.4. Resumption of use of the Sender's Name is made on the basis of the Customer's application. The application is submitted by the Customer in the Account, or by sending a message to the authorized person of MESSAGGIO in the messenger.

#### **5. PAYMENT TERMS**

- 5.1. The cost of the MESSAGGIO's Services for the calendar month is determined in accordance with the Tariffs, which are an integral part of the Terms.  
The Parties have agreed that MESSAGGIO has the right to offer the Customer individual tariffs by sending a notification to the Customer by e-mail or to the authorized person of the Customer via messenger. The Customer accepts individual tariffs or refuses them by sending a response message to MESSAGGIO's e-mail or to the authorized person of the MESSAGGIO via messenger.

## **6. LIABILITY OF THE PARTIES**

- 6.1. MESSAGGIO has the right to exact a fine from the Customer in the following circumstances:
- 6.1.1. 5,000 (five thousand) Euros in case of:
- violating point 3.1.2. of the Terms;
  - violating points 2.1 - 2.7 of this Appendix;
  - any unauthorized change in the initially approved subject matter of WhatsApp Messages without prior acknowledgement and consent of MESSAGGIO via the email shown in clause 19 of the Terms;
  - failure to present to MESSAGGIO the confirmation received by the Customer from the User to receive WhatsApp Messages (point 3.1.1. of this Terms) within 2 (two) working days from the moment when MESSAGGIO sends the respective requirement by email as shown in clause 19 of the Terms.
- 6.1.2. For each WhatsApp Message sent which contained materials of a crude, insulting, humiliating or threatening character; insulting human dignity; promoting violence, terrorism, racial or national enmity; having pornographic or political content, MESSAGGIO has the right to exact a fine from the Customer in accordance with a rate established by WhatsApp.
- 6.2. The Parties agreed that MESSAGGIO has the right to exact from the Customer the sums of fine indicated above for each revealed violation, namely for each WhatsApp Message sent.
- 6.3. MESSAGGIO has the right at his own discretion to apply to the Customer any measure of liability stipulated by the Terms.
- 6.4. The Parties agreed separately that a sufficient fact of proof of violation by the Customer of his obligations under the Terms is any visual information on the Content, and MESSAGGIO also has the right to present as proofs information in the form of uploading or print-outs of documents obtained by any channels of electronic communications, as well as documents signed with an electronic signature or other form comparable to a handwritten signature. The given information is presented from MESSAGGIO, WhatsApp inc. and/or from Users.

## **Appendix № 4**

### **to the Terms of Service**

#### **SERVICE LEVEL AGREEMENT – OUTGOING TRAFFIC**

##### **1. DEFINITIONS**

In this Terms all the names and terms are used in the definitions and in the sense established by the Terms:

**‘Call’** – connection between the Subscriber's and the Customer's equipment which allows verifying the Subscriber on the Customer's equipment.

**‘Code’** – a unique sequence of letters, numbers and other symbols that are contained in the Subscriber's Outgoing calls.

**‘MESSAGGIO's equipment’** – software and hardware complex of MESSAGGIO which is designed to receive and transmit Calls between the Customer, MESSAGGIO and the Operator.

**‘Customer's equipment’** – software and hardware complex of the Customer which is designed to receive and transmit Calls between the Customer and MESSAGGIO.

**‘Operator’** – the operator of the cellular radiotelephone communication network which has the appropriate licenses and permits which are provided for by the legislation of the country where the Operator is located.

**‘Operator Platform’** – the Operator's software and hardware complex, which makes it possible to receive, process and redirect Calls.

**‘Outgoing call’** – the call that comes to the Subscriber from the Service number.

**‘Outgoing traffic’** – the total number of Outgoing calls to the Subscriber from the Service numbers for the Reporting period, which the Parties have determined in the Terms.

**‘Outgoing traffic services’** – services for organizing and ensuring the reception, processing and transmission of Outgoing calls to the Operator's Platform (for the purpose of subsequent transmission and redirection to the Customer).

**‘Reporting period’** – 1 calendar month.

**‘Service number’** – number from the numbering capacity of the Operator's special numbering resource used for receiving and transmitting Calls.

**‘Subscriber’** – a private individual or legal entity using the services of the Operator on the basis of an Terms which is not the subject of this Terms.

**‘Verification’** – confirmation of the Subscriber's phone number by using an Outgoing call.

##### **2. RIGHTS AND OBLIGATIONS OF THE PARTIES**

###### **2.1. The Customer is obliged to:**

- 2.1.1. connect the Customer's Equipment to the MESSAGGIO's Equipment together with the MESSAGGIO's specialists;
- 2.1.2. ensure the operability of the Customer's Equipment during the period of the Terms;
- 2.1.3. independently determine the content of the Customer's Outgoing Calls, the recipients of the Customer's Calls and the time of sending the Customer's Calls;
- 2.1.4. don't use the rights and (or) technical capabilities that he received under this Appendix and the Terms to carry out actions prohibited by the laws of the Republic of Malta;

- 2.1.5. don't use the means of selecting and/or dialing Subscribers' telephone numbers without the participation of an individual when making Outgoing calls of the Customer;
- 2.1.6. don't not make Calls to consecutive telephone numbers of Subscribers;
- 2.1.7. don't send Calls to Subscribers who have expressed unwillingness to:
  - receive Calls from the names of the senders used by the Customer;
  - receive promotional Calls;
  - receive any Calls.
- 2.2. The Customer will independently consider and resolve claims and other appeals of Subscribers and third parties on the following issues:
  - 2.2.1. in connection with the content and the fact of acceptance and transmission of the Calls that MESSAGGIO makes on the instructions of the Customer;
  - 2.2.2. on issues within the competence of the Customer.
- 2.3. Within 1 (one) working day from the date of the MESSAGGIOs request, inform the MESSAGGIO by e-mail about the receipt of requests specified in clause 2.2. of this Appendix, and within 2 (two) business days from the date of receipt - on the results of their consideration. In the event that the request received by the Customer is related to the poor-quality provision of outbound traffic services by MESSAGGIO, the Customer undertakes to immediately transfer it to MESSAGGIO for consideration after receiving such a request.
- 2.4. MESSAGGIO has the right to temporarily suspend the provision of the Services or refuse to provide the Outgoing Traffic Services in respect of individual Subscribers in the following cases:
  - 2.4.1. if MESSAGGIO loses the technical ability to use the Service Numbers specified in the relevant Annexes and (or) Additional Agreements to the Terms;
  - 2.4.2. if MESSAGGIO loses the technical ability to provide Outgoing traffic services due to the special requirements of the Operators;
  - 2.4.3. if MESSAGGIO or the Operator receives from the Subscriber an application to stop sending Outgoing Calls to the address of such Subscriber;
  - 2.4.4. in case of termination of the subscription agreement between the Subscriber and the Operator.

### **3. SENDER NAME REGISTRATION**

- 3.1. MESSAGGIO's service for the Sender Name Registration includes:
  - checking the compliance of the requested Sender's Name with the Carrier's requirements;
  - preparing and executing a set of documents in accordance with the Carrier's requirements;
  - submitting documents for review to the Carrier;
  - supporting the review process of submitted documents;
  - informing the Customer about the status of review of submitted documents (if applicable);
  - interacting with the Carriers on issues of registering the Sender's Name.
- 3.2. Fee for the Sender Name Registration.
  - The cost for the Sender Name Registration is calculated for each country.

- The list of countries is provided by the Customer prior to Sender Name Registration in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger.
  - Adding new countries during the use of the Sender's Name is charged as a new Sender's Name Registration service for each additional country.
- 3.3. The fee for Sender Name Registration shall be paid in full regardless of the outcome of the review of the submitted documents by the Carrier.
- 3.4. In case of refusal to Sender Name Registration by the Carrier:
- MESSAGGIO shall provide the CUSTOMER with information about the reasons for the refusal via e-mail specified in the Account and/or by sending a message to the MESSAGGIO's authorized person in the messenger;
  - The CUSTOMER has the right to submit an application for registering another Sender's Name, and the services for registering the new Sender's Name shall be paid for additionally;
  - In case of refusal to Sender Name Registration in individual countries, the fee shall be charged for all countries specified in the original application.
- 3.5. The term for rendering services for Sender Name Registration shall be up to 14 business days from the date of provision by the Customer of a full set of documents required for Sender Name Registration, the list of which is posted in the Account.

#### **4. SAVING THE SENDER'S NAME**

- 4.1. In case of temporary suspension of the use of the Sender's Name, the Customer has the right to submit an application for temporary suspension of the use of the Sender's Name. The application is submitted by the Customer in the Account, or by the MESSAGGIO'S e-mail specified in Section 19 of the Terms, in any form.
- 4.2. During the saving, the Customer has the right to use the Sender's Name under the following cumulative conditions:
- sending is blocked for the saving;
  - the Sender's Name remains assigned to the Customer;
  - all Sender's Name settings and sending history are saved.
- 4.3. Minimum saving period: 1 calendar month.
- 4.4. Resumption of use of the Sender's Name is made on the basis of the Customer's application. The application is submitted by the Customer in the Account, or by sending a message to the authorized person of MESSAGGIO in the messenger.

#### **5. PAYMENT TERMS**

- 5.1. The cost of the MESSAGGIO's Services for the calendar month is determined in accordance with the Tariffs, which are an integral part of the Terms.  
The Parties have agreed that MESSAGGIO has the right to offer the Customer individual tariffs by sending a notification to the Customer by e-mail or to the authorized person of the Customer via messenger. The Customer accepts individual tariffs or refuses them by sending a response message to MESSAGGIO's e-mail or to the authorized person of the MESSAGGIO via messenger.

## **6. LIABILITY OF THE PARTIES**

- 6.1. The Customer is fully responsible to MESSAGGIO, Subscribers and third parties, including the competent state authorities, for the content of the Calls and the fact of their acceptance and transmission within the framework of this Appendix to the Terms and the Terms in accordance with the legislation of the Republic of Malta.
- 6.2. MESSAGGIO has the right, at its discretion, to apply to the Customer any measure of responsibility provided for by the Appendix and / or the Terms.

## Appendix № 5

### to the Terms of Service

#### DETERMINING THE COST OF THE MESSAGGIO'S SERVICES

1. The cost of the MESSAGGIO's Services for the month is determined by the formula:

If  $\text{Volume} * \text{Price} < \text{ChannelFee}$ ,

then  $S = \text{ChannelFee} + \text{ServiceFee} + \text{OPSOS\_Fee} + \text{Freeze\_Fee} + \text{Reg\_Fee}$ , else

$S = \text{Volume} * \text{Price} + \text{ServiceFee} + \text{OPSOS\_Fee} + \text{Freeze\_Fee} + \text{Reg\_Fee}$ , where

**Volume** – total number of Tariff units.

**Price** – price for 1 Tariff unit.

**ChannelFee** – Sender Name Subscription Fee.

**ServiceFee** – the Sender Name Maintenance fee for each active Sender Name.

**OSS\_Fee** – fee for the allocation of the Sender's Name from the Carrier.

**Freeze\_Fee** – fee for the saving the Sender Name for each registered Sender Name in the calendar month.

**Reg\_Fee** – Sender Name Registration fee.

**S** – total cost of MESSAGGIO services for the Reporting period.

The prices in the tables below for Communication channels are indicated excluding VAT. VAT is charged in accordance with the country of location of the Customer.

#### 1.1. SMS MESSAGES:

| Name   | Abbreviation | Price (euro, excluding VAT)                              |
|--|--------------|--|
| Sender Name Maintenance fee (monthly)                                  | ServiceFee   | 30   |
| Sender Name Registration (one-time)                                    | Reg_Fee      | 30   |
| Fee for the Allocation of the Sender's Name from the Carrier (monthly) | OSS_Fee      | According to the rates on the link: <a href="#">link</a> |
| Price for 1 Tariff unit  | Price        | According to the rates on the link: <a href="#">link</a> |
| Fee for the saving the Sender Name (monthly)                           | Freeze_Fee   | 0  |
| Sender Name Subscription Fee   | ChannelFee   | 0  |

#### 1.2. VIBER MESSAGES:

| <b>Name</b>  | <b>Abbreviation</b> | <b>Price (euro, excluding VAT)</b>                       |
|--|---------------------|--|
| Sender Name Maintenance fee (monthly)                                  | ServiceFee          | 0  |
| Sender Name Registration (one-time)                                    | Reg_Fee             | 50   |
| Fee for the Allocation of the Sender's Name from the Carrier (monthly) | OSS_Fee             | 0  |
| Price for 1 Tariff unit  | Price               | According to the rates on the link: <a href="#">link</a> |
| Fee for the saving the Sender Name (monthly)                           | Freese_Fee          | 40   |
| Sender Name Subscription Fee   | ChannelFee          | 200  |

### 1.3. OUTGOING TRAFFIC:

| <b>Name</b>  | <b>Abbreviation</b> | <b>Price (euro, excluding VAT)</b>                       |
|--|---------------------|--|
| Sender Name Maintenance fee (monthly)                                  | ServiceFee          | 30   |
| Sender Name Registration (one-time)                                    | Reg_Fee             | 30   |
| Fee for the Allocation of the Sender's Name from the Carrier (monthly) | OSS_Fee             | 0  |
| Price for 1 Tariff unit  | Price               | According to the rates on the link: <a href="#">link</a> |
| Fee for the saving the Sender Name (monthly)                           | Freese_Fee          | 0  |
| Sender Name Subscription Fee   | ChannelFee          | 0  |

### 1.4. WHATSAPP MESSAGGES:

| <b>Name</b>                           | <b>Abbreviation</b> | <b>Price (euro, excluding VAT)</b> |
|---------------------------------------|---------------------|------------------------------------|
| Sender Name Maintenance fee (monthly) | ServiceFee          | 0                                  |



|  |            |  |
|--|------------|--|
| Sender Name Registration (one-time)                                    | Reg_Fee    | 100  |
| Fee for the Allocation of the Sender's Name from the Carrier (monthly) | OSS_Fee    | 0  |
| Price for 1 Tariff unit  | Price      | According to the rates on the link: <a href="#">link</a> |
| Fee for the saving the Sender Name (monthly)                           | Freeze_Fee | 30   |
| Sender Name Subscription Fee   | ChannelFee | 50   |