

MOTORCENTRAL AMPD CRM: TERMS & CONDITIONS

Last updated: 31 March 2016

Definitions

"Notice" means a marketing notice sent by us to the email, SMS or postal address of a customer or prospective customer of yours and that complies with the Unsolicited Electronic Messages Act 2007.

"Customer" and *"Prospective Customer"* means an entity you wish to send Notices to via our Services and for which you have obtained their prior, written consent to do so.

"Registered Motor Vehicle Trader" means a current Registered Trader on the New Zealand Motor Vehicle Traders Register held by the New Zealand Ministry of Business, Innovation and Employment.

"Service(s)", *"Dealer Portal"* and *"website"* means the "Motorcentral AMPD CRM" service.

"We", *"us"*, *"our"* and *"Motorcentral"* means Limelight Software Limited trading as Motorcentral.

"You" and *"your"* means you.

Background

- A. *"Motorcentral AMPD CRM"* is a service where you can communicate, for marketing purposes, with your clients and prospective clients by way of automated email, SMS and postal service communication methods that are generated and delivered by us.
- B. By registering as a user of or by using Motorcentral AMPD CRM, you agree to be bound by these terms and conditions.
- C. You further acknowledge that these Terms and Conditions may be amended from time to time by us. Any amendments will be posted on the Motorcentral website.

1. Registration, membership & termination

- 1.1. In order to utilise the Motorcentral AMPD CRM service, you must register with us in accordance with our Terms and Conditions. If you are registering with us on a personal basis, you must also be over 18 years of age.
- 1.2. We reserve the right to decline to accept any person access to our Services and reserve the right to cancel access to our Services at any time for any reason whatsoever. The decision to suspend or terminate access is our sole right and is at our sole and absolute discretion.
- 1.3. We may terminate an account on the following (but not limited to) basis:
 - a) if these Terms and Conditions are breached;
 - b) if you have sufficient negative feedback that we consider, at our absolute discretion, you to be an inappropriate customer;
 - c) if you have failed to provide accurate information when registering for our services;
 - d) by giving you 3 working days' notice for any reason whatsoever and at our sole and absolute discretion.
- 1.4. You may terminate your registration and access to the Services by providing us with one month's prior, written notice. On the date of termination you will no longer be able to access the Services and you agree that you will immediately cease using all and any of the Services.

2. Use and Restrictions of Use

- 2.1. You must not misuse our Services. For example, you must not interfere with our Services or try to access them using a method other than the interface and the instructions that we provide. You may use our Services only as permitted by law, including applicable export and re-export control laws and regulations.
- 2.2. Using our Services does not give you ownership of any intellectual property rights in our Services or the data and information you access.
- 2.3. You acknowledge that the Service may use, present or be based on information provided to us or obtained by us through third parties. In such cases we will not be liable for the accuracy of this data.
- 2.4. You may only use the Services for the purpose of authorising us to send the Notices to Customers and/or Prospective Customers when you have obtained their prior, written consent to receive the Notices and otherwise in strict accordance with the Unsolicited Electronic Messages Act 2007.
- 2.5. You will select a standard Motorcentral AMPD CRM program or request a customised program for your requirements. A program consists of a set number of correspondence items that are sent during the specified term of the program. You may specify preferred forms of communication but you acknowledge and agree that the program may be limited by the information that you obtain from your Customer and/or Prospective Customer, who is entitled to specify their own preferred form of communication.
- 2.6. You must take due care to ensure that you obtain and maintain the correct details from your Customers and/or Prospective Customers.
- 2.7. You must advise us immediately if you receive confirmation from a Customer or Prospective Customer that they wish to unsubscribe from the Services.

3. Content and Usage of Content

- 3.1. You must not use this Service to supply, submit, store, send or receive any content that is illegal, offensive (including anything of a defamatory, pornographic, or racially or ethnically objectionable nature), stolen, or unsafe, anything which infringes copyright or other intellectual property rights, items which have been illegally imported or which would require illegal import or export in order to be sold, or any item of which the sale is prohibited by, or violates any, law. You are responsible for ensuring that any content supplied by you does not breach this clause (3). You agree that we may disclose your personal information, including your name and contact details, to the relevant authorities, parties and/or the applicable intellectual property right holders (or their representatives) if we consider that you are in breach of this clause (3) at any time.
- 3.2. We may review content for purposes such as to determine whether it is illegal or violates our policies, and we may remove or refuse to display any content we deem to be in breach. We are not obligated to review content and will do so at our own discretion.
- 3.3. When you upload, submit, store, send or receive content to or through our Services, you give Motorcentral (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones. This license continues even if you stop using our Services. You warrant that you have the necessary rights to grant us this license for any content that you submit to our Services and you indemnify us against any losses, damages, liability, costs and claims (including solicitor's costs on a solicitor-client basis) arising from any violation of this clause (3).

- 3.4. Our automated systems may analyse your content (including emails). This analysis occurs as the content is sent, received, and when it is stored.
- 3.5. You may not use content from our Services unless you obtain permission from us or are otherwise permitted by law. These Terms and Conditions do not grant you the right to use any branding or logos used in our Services. You may not remove, obscure, or alter any legal notices displayed in or along with our Services.

4. Fees and Accounts

- 4.1. Our fees are as set out in Schedule 1.
- 4.2. We reserve the right to change the fees at any time by posting the new fee schedule on our website. Any changes in fees will be posted to our website and will give no less than 5 working days' notice (by posting on our website) of the change of fees.
- 4.3. All of our fees are exclusive of GST and are in New Zealand dollars and must be paid within 14 working days of date of the invoice unless otherwise arranged.
- 4.4. In the event of overdue or non-payment of an invoice you will pay any reasonable costs incurred by us (including legal costs, collection agency fees and administration costs) as a result of servicing overdue accounts.
- 4.5. We reserve the right to interrupt or delay the provision of Services to you until payment is received in full. Such interruption does not relieve you from the obligation to pay all outstanding amounts owing to us.

5. Mailing List

- 5.1. It is our policy to send out promotional material and newsletters, including material not actually directly related to this Service, to our registered users and members. Further, it is our policy to immediately remove any registered user or member from any mailing list upon that members or registered users request.

6. Disclaimer

- 6.1. The information and data used in this Service is provided by you and other third parties and accordingly we cannot guarantee that the information is true and correct. We do not provide any warranty of the Services whatsoever, whether express, implied, or statutory, including, but not limited to, any warranty of merchantability or fitness for a particular purpose or any warranty that the contents of the Services will be error-free.
- 6.2. Any Notices transmitted by this service are at your own risk and you acknowledge that we take no responsibility or liability for any loss or damage that you suffer as a result of utilising this service.
- 6.3. We do not accept liability for the Services being accurate, complete or up-to-date or for the contents of such Notices. We distance ourselves expressly from the contents of the Notices where we have no control over the information relating to the content or the Customers and/or Prospective Customers.

7. Limitation of Liability

- 7.1. To the maximum extent permitted by law we will not under any circumstances be liable under the law of tort, contract or otherwise for any monetary sum, including without limitation loss of profits, for any direct, indirect or consequential loss or damage, however caused, relating to or in connection with the Software, services provided by third parties, or these Terms and Conditions.
- 7.2. In the event that clause 7.1 does not apply to a particular circumstance or event, our maximum total liability to you arising out of any claim or of claims during or after the term of these Terms

and Conditions, for any cause whatsoever, will under no circumstances exceed NZ\$100.

8. Unsolicited Electronic Messages Act 2007

- 8.1. You acknowledge that you are aware of the principles of the Unsolicited Electronic Messages Act 2007 which are as follows:
- a) To prohibit unsolicited commercial electronic messages with a New Zealand link (i.e. messages sent to, from or within New Zealand);
 - b) To require commercial electronic messages to include accurate information about the person who authorised the sending of the message and a functional unsubscribe facility to enable the recipient to instruct the sender that no further messages are to be sent to the recipient;
 - c) To prohibit address-harvesting software being used to create address lists for sending unsolicited commercial electronic messages;
 - d) To deter people from using information and communication technologies inappropriately.
- 8.2. You warrant to us that you have obtained the written consent of your Customer and/or Prospective Customer to receive the Notices in compliance with the Unsolicited Electronic Messages Act 2007.

9. Privacy Act 2003

- 9.1. You acknowledge that you are aware of the principles of the Privacy Act 2003 which are as follows:
- a) An agency may only collect personal information where it is needed to perform a function or activity of the agency.
 - b) The agency must collect the information directly from the person concerned. There are exceptions: for example, where the person agrees otherwise, or where the information is publicly available.
 - c) The agency must take all reasonable efforts to ensure the person is aware that the information is being collected, what it will be used for, the recipients of the information, whether the supply of the information is voluntary or mandatory, the consequences of not providing the information and the person's rights of access to and correction of the information.
 - d) Personal information must not be collected in an unlawful, unfair or intrusive fashion.
 - e) The agency must ensure the information is protected against loss, misuse, or unauthorised disclosure.
 - f) Where the information can be readily retrieved, the individual is entitled to confirmation of whether the information is held, and to have access to it. There are exceptions, for example, where disclosure would prevent detection of a criminal offence, or would involve a breach of someone else's privacy.
 - g) Individuals may request correction of information held. Where this is not agreed to by the agency, the individual may request that the information is tagged with a statement that the correction was sought and was refused.
 - h) The agency must not use the information without taking reasonable steps to ensure it is accurate, up-to-date, complete, relevant and not misleading.
 - i) The agency must not keep the information for any longer than it is needed for the purposes for which it was collected.
 - j) Information collected for one purpose must not be used for any other purpose. There are exceptions: for example, where the agency reasonably believes the individual has

authorised the further use, or that the information was from a publicly available publication.

- k) The information must not be disclosed except in certain situations. These include where the disclosure is directly related to the purpose for which the information was collected, where the source of the information is a publicly available publication, and where the disclosure is authorised by the individual concerned.
 - l) An agency must not assign a unique identifier to an individual unless doing so is necessary for the agency to carry out its functions efficiently. Where doing so is necessary, agencies must not use a unique identifier that has been assigned to that individual by another agency (the only exception is for certain taxation purposes).
- 9.2. You warrant to us that you have obtained the written consent of your Customer and/or Prospective Customer to receive the Notices in compliance with the Privacy Act 2003 and that you will comply with all other requirements of the Privacy Act 2003.

10. Indemnity

- 10.1. You shall indemnify us against any and all direct, indirect and consequential damages, losses, claims, costs (including legal costs), expenses, actions, demands, liabilities or proceedings whatsoever incurred by us in respect of any claim by a third party arising from or connected to any breach or alleged breach by you of your obligations under these Terms and Conditions, including but not limited to your failure to obtain the consent of the client or prospective client to receive the Notices.

11. No Resale

- 11.1. You expressly confirm and agree that you will not reproduce, copy, sell, distribute or otherwise disseminate for commercial purposes any information or material obtained from or via Motorcentral AMPD CRM.

12. General Provisions

- 12.1. System: We will use reasonable endeavours at all times to ensure that this Service is available and that there is the least amount of down time possible for maintenance, however we do not take any responsibility for system unavailability or for any loss incurred as a result of the system unavailability.
- 12.2. Copyright: The copyright in this website, including all text, graphics, logos, icons, sound recordings and software is owned or licenced by Motorcentral. Other than for the purposes of and subject to the conditions prescribed hereunder, the New Zealand Copyright Act 1994 and similar legislation which applies in your location, and except as expressly authorised by these Terms and Conditions, you may not in any form or by any means adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of this Service or commercialise any information, products or services obtained from any part of this Service without our written permission.
- 12.3. Force Majeure: Without prejudice to the disclaimer clauses herein, we have no responsibility or liability for any lack of performance, unavailability or failure of the Services or the website or any failure of Motorcentral to comply with these Terms and Conditions where the same arises from any cause reasonably beyond the control of Motorcentral.
- 12.4. Governing Law: These Terms and Conditions are governed by the laws of New Zealand and you confirm that you submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 12.5. Non-Waiver: If we do not exercise or enforce any right available to us under these Terms and Conditions, that does not constitute a waiver of those rights.

12.6. Each party warrants to the other that it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it.

13. Resolution of Disputes

13.1. Motorcentral is not a party to any transaction or communication between you and the Customer and/or Prospective Customer and accordingly will not be involved with any dispute between these parties.

Schedule 1 – Motorcentral AMPD CRM Fees

The most up-to-date version of our Fee Schedule can be found online at:

<https://portal.motorcentral.co.nz/fees>