

<b>FAX TO:</b>	<b>09 974 9105</b>	<b>OPTN Consultant Number</b>	
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**Licensee Billing Details**

**Partnership / Sole Trader / Company** (please circle one) Other (please specify)

Full Legal Name of Customer

Street Address

Postal Address Town/City

Country Phone Fax

**Credit Details Section A – Sole Trader/Partnership**

1. Residential Status: Own / Rent / other (please circle one)

If other please state

2. Time at current address

If Less than two years, please state previous address

3. Time at previous address

4. Current occupation

**Guarantor Details**

Name

Address

Full Name Signatory

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Signature of Signatory

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I certify that by signing this Agreement that I have read and accept the Terms and Conditions in respect of the use of OPTN's product and I also certify that I have read and accept the terms of this Agreement

**Pricing**

**Setup (One off fee)**

**Monthly Licence Fee**

**SMS/TXT per message**

Monthly licence fee billed in advance. SMS/TXT cost billed monthly in arrears  
Prices Exclude GST.

**Licence Plate Names:**

Plate/s	Alert Name	User Name & Password
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**OPTN**

**OPTN**

**OPTN**

**Admin Alert Mobile #:**

The admin mobile will automatically receive OPTN weekly alerts. If you do not wish to receive, please mark  in box

**Credit Details Section B – Company**

1. Date Company Established

2. Registered Address

3. PO Box Address

4. Number of Directors

5. Company Registration Number

6. Industry Category

7. Position in Company

8. Purchase Order Number

**Director Details**

Name

Home Address

**Director Details**

Name

Home Address

Full Name of Director / Authorised Signatory

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Signature of Director / Authorised Signatory

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## LICENCE AGREEMENT (PARTICIPATING MERCHANT TERMS)

### Our Service

1. Our<sup>1</sup> service to you<sup>2</sup> is for us to use our technology to endeavour to assist in:
  - a) electronically sending your SMS messages to end users<sup>3</sup> nominated mobile number using OPTN's gateway<sup>4</sup> and
  - b) acting on end users' subscribe<sup>5</sup> and unsubscribe<sup>6</sup> SMS messages so their mobile number is activated or deactivated from the OPTN database (as the case requires).

### The OPTN Product

2. As part of our service, we may make OPTN technology (the "OPTN product") available to you. In respect of this, you agree:
  - a) your rights are limited to a non-transferable, non-exclusive licence to access and use the OPTN product for the sole purpose only of enabling us to electronically send your SMS messages to end users;
  - b) you may not do or allow anything to be done in respect of the service (including OPTN product and our website) which is not expressly licensed by these terms (for example use or deal with the source code or develop, modify or enhance the OPTN product);
  - c) the licence applies for one named individual employed by you, to whom we may assign a login password.
  - d) Our licence to you does not include any licence in respect of any databases (including of information pertaining to end users), all rights in which remain solely with us.

### Our Website

3. As part of our service, we will permit you to access the website designated by us from time to time for the sole purpose of you giving us the text of SMS messages for us to send to end users in accordance with the procedures we notify to you from time to time. You agree to access such website only through your named, authorised employee.

### Your Obligations

4. You agree that you will comply (and our obligations are subject to you complying) with our processes and policies concerning use of our service (including the OPTN product and our website) from time to time. These may be posted at [www.optn.co.nz](http://www.optn.co.nz) or otherwise notified by us to you. Without limiting this, you will -
  - a) refer to us and our trade marks only in the manner and in accordance with the conditions specified by us from time to time;
  - b) only make use of our service via the employee authorised by you for that purpose;
  - c) not use or involve or permit the use or involvement of our service in or for any unlawful or unreasonable activity;
  - d) not use or involve or permit the use of involvement of us or our service for any purpose that may:
    - result in the sending of harassing, unsolicited or unauthorised communications to any person;
    - menace or harass any person or cause damage or injury to any person or property;
    - be or be regarded by a reasonable person as offensive, defamatory, obscene, sexually explicit, abusive or in violation of any local law or regulation;
    - infringe, disparage, impair or dilute the value of our or anyone's else's intellectual property rights;
    - result in the misuse of a third party's confidential information;
    - constitute an infringement or the commission of an offence against any law, standard or code;
    - involve sending or receiving any communications which might cause damage or injury to any person or property;
    - expose anyone (including you and us) to a risk of any legal or administrative action including prosecution under any law;
  - e) ensure information given to us, our dealers and any other person in connection with our service is accurate, correct and complete;
  - f) use our service without annoying and without interfering with anyone else's use of the service;
  - g) take reasonable care to prevent any security mechanisms (including passwords) we provide to you being disclosed to anyone else;
  - h) immediately notify us on becoming aware of any loss or theft or unauthorised use of any such security mechanisms;
  - i) provide such assistance to us as we reasonably request in connection with our service;
  - j) not do or permit anyone else to do anything reasonably likely to impair, interfere with or damage any aspect of our service or its availability or bring it into disrepute;
  - k) not tamper with or hinder the operation of our service or make unauthorised modifications to it;
  - l) not represent (by act or omission) that we created, endorse, have reviewed, or are in any way involved in the production of any information sent using our service;
  - m) not use our service to impersonate another person or entity;
  - n) not use or access any information held by us concerning any end user;
  - o) accept sole responsibility for compliance with the law regarding electronic messages (including legislation concerning spam). Without limitation, you will not allow us to send any message to any person whom you know has not subscribed to our service in the manner required by us from time to time or whom you know has unsubscribed from our service;
  - p) comply with such privacy directions as we reasonably require from time to time. Without limitation, you comply with and will inform end users of our privacy policy. These may be posted at [www.optn.co.nz](http://www.optn.co.nz) or otherwise notified by us to you and
  - q) accept and comply with any limits specified by us concerning the numbers of messages to be sent via our service.

### Prices and Payment

5. You agree that the price to be paid for our service, the manner of payment and the times for payment are the price and times as advised by us at the date of acceptance of the order.
6. All prices are in New Zealand dollars.
7. If we do not receive your payment 7 days of the due date, you agree to pay us interest requested by us. This will be on any amount outstanding and calculated on a daily basis from the due date of payment to the actual date of payment. The rate of interest shall be that rate which is three percent per month during the time that payment is overdue
8. If we become entitled to terminate the agreement constituted by these terms because of your breach or because you become subject to any form of insolvency administration or if for any other reason we are of the reasonable opinion that you may be unable to fulfil your obligations to us, then (without limiting our other remedies) you agree that all amounts which we may charge in respect of our service

<sup>1</sup> "our" "us" and "we" refer to OPTN Limited.

<sup>2</sup> "You" and "your" refer to a person recognized by us as an OPTN participating merchant.

<sup>3</sup> End users are those to whom we agree to provide our message delivery service and who have elected to receive SMS messages from you via use of the OPTN gateway or other permission based facilities.

<sup>4</sup> Namely, OPTN's software, third party data hosting relationships, third party Internet Service Provider and technology of our affiliated companies.

<sup>5</sup> "OPTN [*plus your participating merchant code*]"

<sup>6</sup> "OPTX [*plus your participating merchant code*]"

(whether legally demanded or not and whether then due) shall become immediately due and payable to us (including any sums pursuant to any credit arrangements between you and us).

9. You agree to make all payments in full, without deduction or set-off.
10. You agree to reimburse us for any expenses (including those pertaining to debt collection and legal services) we incur in reasonably seeking recovery of any amount from you.
11. We may restrict or suspend our service to you until we are satisfied that you have established a satisfactory payment history.
12. You acknowledge that we may be paid a fee by those facilities providers in respect of your or end users' use of our service.
13. You agree to pay us all indirect taxes (including any goods and services tax) in respect of supplies made under our agreement in addition to all other fees payable. Unless otherwise stated by us all prices quoted or charged to you exclude such taxes.

#### **Intellectual and Other Property**

14. You agree that all rights (including rights pertaining to copyright and confidential information) in relation to our service (including the OPTN product, our website and all information (including databases) concerning end users) are solely our property. You make such assignments of such rights as are reasonably necessary to give effect to this position.
15. If there is any actual or suspected or possible infringement of anyone's rights (including intellectual property rights) of relevance to our service (including its use by anyone) you will, immediately on becoming aware of this, promptly notify us in writing of all details known to you concerning that matter. You will act in accordance with our reasonable directions concerning any such infringement (including, if we request, join with us in taking such proactive or defensive steps as we require). You agree to accept sole liability for (and indemnify us against) all costs and expenses you or we incur in respect of any action we take or which we request you to take in respect of any such infringement where such action concerns information you provide, action you have taken or have requested us to take or other circumstances within your reasonable control.
16. If you request us to make or procure the making of any developments or enhancements to any aspect of our service (including the OPTN product, our website and any database concerning end users) all rights (including intellectual property rights) in the same are our property immediately on their creation.

#### **Limitations, Exclusions and Indemnity**

17. All terms (whether written, oral, express or implied) not expressly stated in these terms are excluded. Without limitation you agree that:
  - a) the OPTN product and our website are made available on an "as is" basis. We do not make any commitments about their content, fitness for purpose, functionality or performance;
  - b) any rights you may have as an authorised user under any law pertaining to trade marks are excluded;
  - c) we do not warrant that any messages intended from you to an end user will be successfully terminated or that any such termination will be fault free;
  - d) we do not make any commitments about any telecommunications carriers' sms services (including the availability of those services) or regarding information services (including their delivery to any end user, their regularity or their correctness or completeness). You are responsible for obtaining and maintaining the telecommunications services, including internet, necessary to access and use our service.
  - e) we do not make any commitments about the timing or manner of receipt of any messages from you;
  - f) we do not owe any obligation of confidence to you and
  - g) you accept the risk that our services may be interrupted due to circumstances beyond our reasonable control or due to the impact of scheduled or unscheduled technology maintenance and support. Without limitation, you agree that it is your responsibility to request information from us regarding the prospect of outages for maintenance purposes.
  - h) you agree that the service may have single points of failure resulting from the network infrastructure provided by the telecommunication carriers and in certain instances the delivery times for messages may be extended.
  - i) you agree that network congestion may occur from time to time and that the delivery of the message as a result cannot be guaranteed particularly at times when there is heavy public usage of a network
18. You agree that our liability to you for any circumstances (whether due to breach of contract, negligence or otherwise):
  - a) is limited (at our election) to our providing the service which is the subject of those circumstances to you again; paying for the cost of providing that service again or \$250 for any event or series of related events in any 12 month period and
  - b) excludes liability for loss of profits, loss of goodwill or any special, indirect or consequential loss.
19. The limitations and exclusions in the preceding clauses are for the separate benefit of us and our officers, employees and contractors and any provider of other services relevant to our service to you. They do not apply to the extent they would be void or unenforceable under or contrary to any law governing these terms.
20. You agree to indemnify and keep indemnified, us, our dealers, our contractors, our related companies, our end users and the employees and officers of the foregoing (the "indemnified") from and against any liability, loss, damage, costs or expenses incurred or suffered by any of the indemnified directly or indirectly from or in connection with:
  - a) any act of, representation made by or conduct of you or your employees or customers;
  - b) the storage, transmission, display, operation, failed operation or publication of communications by you or your employees or customers;
  - c) any breach of these terms by you;
  - d) the termination of our agreement because of a breach by you;
  - e) any fiscal liability imposed under any applicable law or arrangement relating to your use of our service (not being a penalty due to our wrongful act). Without limitation, you will pay us for any amount we consider is reasonably appropriate having regard to any charge by a telecommunications carrier or service provider relating to your use (including in investigating a complaint concerning use) of our service or which would not have been suffered or incurred by us had there not been non-compliance or suspected non-compliance by you with these terms;
  - f) any claim, action, demand, or proceeding by a third party caused or contributed to by you or your employees or any customers or
  - g) any access to or use or misuse of our service (including the OPTN product and our website but not including due to our wrongful act).

Each indemnity in these terms is a continuing obligation, separate and independent from our or your other obligations and survives termination of these terms. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by these terms.

### **Suspension and Termination**

21. Without limiting any of our other rights or remedies under these terms and otherwise, we may terminate or suspend the provision of all or part of our service or terminate all or any part of our agreement with you immediately on notice to you at any time:
  - a) while payment of an invoice is overdue for a period of seven days;
  - b) if you breach any of these terms;
  - c) if you become or in our opinion may become subject to any form of insolvency administration;
  - d) if there is a change in any interests (including shareholding or management interests) which we reasonably consider are material to management or control affecting you;
  - e) if we consider that such action is appropriate to ensure compliance with any law, notice, direction, declaration, order, directive, judgment, code or standard;
  - f) if we consider that such action is appropriate having regard to an emergency or to the need to safeguard our service (including the OPTN product, our website, our end users or our reputation);
  - g) if we consider that either our service is being used indiscriminately for unsolicited marketing or contains offensive or illegal material.
22. You may terminate the agreement constituted by these terms within 14 days after our notice to you of a variation to these terms pursuant to the "Variations" clause below. Otherwise you may terminate the agreement constituted by these terms at any time on giving us not less than 60 days written notice.
23. If these terms are terminated for any reason, you must pay our all amounts invoiced to you in accordance with these terms which have not been paid at the date these terms is terminated. You agree that in no circumstances are we liable to make or give you any refund of any amounts you have paid.
24. On termination or suspension of all or any part of our service you agree to cease all direct or indirect use of the service (including use of the OPTN product and any access to our website for the purpose of the service) and to deliver to us (or at our request destroy) all media embodying any of our intellectual property.
25. Termination of our agreement will not affect the rights or obligations of you or us which have accrued prior to or accrue on termination or which by their nature are intended to survive termination.

### **Confidentiality**

26. You agree that all information of which you become aware concerning us and our business (including the OPTN product and end users) is solely our confidential information. You must not use or disclose this except with our consent; if the information becomes public knowledge or to the extent the use or disclosure is required by law, by the listing rules of any stock exchange or in connection with legal proceedings relating to these terms. Without limiting any other clause of these terms, you agree to deliver up to us all media embodying any of our confidential information which may be in your possession or under your power or control immediately on our request. You agree that a breach of this clause may cause us irreparable damage for which monetary damages would not be an adequate remedy and that accordingly the remedies to which we are entitled for your breach of this clause include equitable relief (including an injunction and specific performance).

### **Governing Law**

27. Where you are using our service from New Zealand, the laws of New Zealand apply to these terms and you submit to courts exercising jurisdiction in Auckland.

### **Invalidity**

28. If any part of these terms is void, voidable, illegal or otherwise unenforceable, the remainder of these terms shall not be affected.

### **Dispute Resolution**

29. You and we agree to negotiate in good faith in an endeavour to resolve any question or difference whatsoever which arises concerning our service. If negotiation does not resolve the issues either you or we may request the other to participate in mediation. All costs of any independent mediator will be shared equally between the parties.

### **Waiver**

30. Waiver of a breach of these terms, or of any rights created by or arising upon default under these terms can only be effected in writing and must be signed by the party granting the waiver. A breach of these terms is not waived by a failure to exercise, a delay in exercising, or a partial exercise of, any remedy available under these terms or in law or equity.

### **Force Majeure**

31. If a party is unable wholly or in part to perform any obligation (other than an obligation to pay money under these terms as a result of a force majeure event), that obligation is suspended so far as the party's ability to perform it is affected by that force majeure event.

### **Variation**

32. We may vary these terms (including the price for our service) at any time by giving you not less than one month's prior written notice. We may also vary these terms by giving you notice with immediate effect if in our opinion the variation is reasonably required as a result of any new regulatory or industry development.

### **Subcontracting**

33. We may subcontract any of our obligations under these terms to a third party without notice to you and without your consent.

### **Notices**

34. Any attempt we make to send you a message to the most recent electronic message address we have for you shall be deemed to be service by us of a valid notice on you, with effect immediately on our attempt at sending. Any requirement for us to provide "written" notice or to "sign" any notice shall be deemed to be satisfied by any electronic substitute for those acts which we nominate.

### **Assignment and Sublicences**

35. You agree that you cannot assign or license your rights under the agreement constituted by these terms. You acknowledge that we may assign all or part of our obligations or service to others and that your obligations under this agreement are also owed to any such assignees.