



These General Terms and Conditions are applicable if you signed up for MessageBird's Services (including through any of its Affiliates) on or after 28 February, 2022 and before 03 May 2023. If you signed up for MessageBird's Services (including through any of its Affiliates) before 28 February, 2022, archived Terms and Conditions are available [here](#). If you signed up on or after 03 May 2023, MessageBird provides Services under these [General Terms and Conditions and associated provisions](#).

# General Terms and Conditions

## Introduction

Thanks for choosing MessageBird! Our mission is to make communicating with a business as easy as talking to a friend, and that starts right here. Please review these Terms and Conditions (referred to as these "**Terms**") carefully, as they form a part of the legal agreement between you and us in regards to the Services we offer. In these Terms, we refer collectively to these Terms, the [Data Processing Agreement](#), the Documentation, [Product Specific Terms](#), any applicable [Service Level Agreement](#) ("**SLA**") and applicable Order Form(s) (as defined below) as the "**Agreement**." The Agreement sets out the full terms of the legal agreement between you and us in relation to the Services we offer.

The terms "**you**," "**your**," or "**Customer**" refer to you, and the terms "**we**," "**us**," "**our**," or "**MessageBird**" refer to the MessageBird contracting entity listed in Section 15 (Contracting Entity), unless otherwise stated on your Order Form. You or MessageBird may also be referred to individually as a "**Party**" and together as "**Parties**" in these Terms. An "**Affiliate**" means any entity that directly or indirectly controls, or is controlled by, or is under common control with the Party specified. For purposes of this definition, "**control**" means direct or indirect ownership of more than fifty percent (50%) of the voting interests of the subject entity or the power to direct the management and policies of the subject entity.

## 1. Your Account

**1.1 Account Creation.** You will be asked to create an account in order to use the Services. In order to create an account to use the Services, you must (a) be legally able to represent the company or business contracting our Services; and (b) review and accept this Agreement on its behalf. To create an account, you will be asked to provide your email address and/or phone number, and create a password. You agree to (a) provide true, current, and complete information when creating an account; and (b) keep that information true, current, and complete during your use of the Services.

**1.2 Affiliate Accounts.** If any of your Affiliates want to use the Services, (a) each Affiliate must accept these Terms individually and create their own account, which may require a separate Order Form; or (b) you may allow your Affiliates to use the Services without entering into a separate Order Form by providing such Affiliate(s) a login ID, password, and/or API key to access and use the Services. If you provide Affiliate(s) with access to your account, this Agreement applies to each Affiliate, and you are directly and primarily

responsible for all access to and use of the Services by your Affiliates. In such case, references in these Terms to you includes a reference to your relevant Affiliates.

## **2. Our Services**

**2.1 Services.** The “**Services**” means all products and services provided by us or our Affiliates that are (a) ordered by you under any applicable ordering document (including applicable documentation made available to you through a Site online, or otherwise) between the Parties that specifies pricing and other commercial terms (“**Order Form**”); or (b) used by you. The Services are designed and intended for commercial use only and are not intended for personal or private individual use. As our Services are business oriented, you should understand that our Services do not provide access to emergency services or emergency service providers including the police, fire departments, or hospitals, or otherwise connect to public safety answering points. You should ensure that you have separate access to those services using your regular communication channels such as phone or mobile.

**2.2 Our Affiliates.** Our Affiliates may provide the Services, or a portion thereof (including but not limited to ancillary services, such as billing), to you in accordance with these Terms and any applicable Order Form(s). We will (a) be responsible for the Services our Affiliates provide and (b) not be relieved of our obligations under these Terms if our Affiliates provide the Services or a portion thereof. Where this Agreement refers to obligations you owe to us and obligations we owe to you, we may exercise our rights and entitlements and discharge our obligations through our Affiliates.

**2.3 Changes to the Services.** From time to time, we may change the features and functions of the Services. If we do, we will use reasonable efforts to notify you of such changes, such as posting an announcement on our website or sending you an in-application notice or email. We agree such changes to the Service will not materially diminish the overall features or functionality of the Services. Your continued use of the Services following the posting or notice of the changes will constitute your acceptance of such changes. If you do not agree to such changes, you must stop using the Services immediately. If applicable law requires us to give you specific notice of any such change, we will notify you in accordance with Section 12 (Changes to These Terms).

**2.4 Account Suspension.** While we have no obligation to screen or monitor any content or communications, we may suspend your account(s) immediately if, we reasonably determine: (a) that you or any users of your Customer Application (as defined below) have materially breached any part of this Agreement, including our Product Specific Terms and any limitations included in an Order Form or on a Site; (b) that our provision or your or another user’s use of the Services is prohibited by applicable law or regulation or the terms of any third-party providers; (c) there is any use of the Services by you or any users of your Customer Application that in our judgment threatens the security, integrity, or availability of the Services; or (d) that your account information is untrue or incomplete. If we suspend your account due to your actions or omissions pursuant to this Section 2.4 or Section 4 (Fees and Payment Terms), we will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you may incur as a result. You will remain responsible for the Fees (as defined below) during any suspension.

**2.5 Maintenance and Downtime.** Our Services may become temporarily unavailable: (a) to perform scheduled or unscheduled maintenance, modifications, or upgrades; (b) due to hardware failures, power outages, or failures of third-party providers; (c) to mitigate or prevent the effects of any threat or attack to the Services or any other network or systems on which the Services rely; or (d) as required for legal or regulatory reasons. We will make a reasonable effort to notify you in advance of any scheduled Services unavailability.

Except as provided for in an Order Form, on a Site, or SLA, we will have no liability for any damages, losses (including loss of data or profits), or any other consequences incurred as a result of unavailability of Services or the failure to provide notice of unavailability.

**2.6 Beta Products.** You may be permitted to use our Service free of charge, or we may invite you to test out products or features of our Services that are not generally available to all of our customers or to the public (collectively, “**Beta Products**”). We are not obligated to provide Beta Products to any customer or to our general customer base and may choose to discontinue a Beta Product at any time.

**2.7. SLA.** Some Customers may have the right to claim service credits in accordance with the SLA if an SLA Eligible Service (as defined in the SLA) does not meet the relevant uptime specified in the SLA. However, Beta Products are inherently less mature than other functionalities and so they, and any Services provided for free, are explicitly excluded from any SLA commitments.

### **3. Responsibilities**

**3.1 Our Responsibilities.** We will (a) make the Services available to you in accordance with (i) the Agreement, including any applicable Order Form(s), and (ii) any publicly available technical documentation for such Services (“**Documentation**”) made available to you through MessageBird’s or an Affiliate’s web domain (“**Site**”); (b) maintain a written and comprehensive information security program (“**Security Overview**”), a summary of which is available [here](#) (or is otherwise available on request in respect of the Services of our Affiliates); and (c) provide the Services in accordance with all laws applicable to our provision of the Services to customers generally (i.e. without regard to your particular use of the Services).

**3.2 Your Responsibilities.** You agree to use the Services only in accordance with how the Services have been made available to you by us, these Terms and any applicable Documentation, Order Form(s), documentation on the Site, and applicable law. You will be solely responsible for (a) all use of the Services under your account, including prohibited acts such as reverse engineering, copying, disassembling, decompiling, or modifying, copying or creating derivative works of any part of the Service; (b) all acts, omissions, and activities of anyone who accesses or otherwise uses any Customer Application (defined below); (c) any data and other information or content submitted by you or for you (or by a user of your Customer Application) under the Agreement and processed or stored by the Services (“**Customer Data**”); and (d) all applications, web domains, devices, and communication channels owned or controlled by Customer or owned or controlled by third parties and made available by Customer to its actual users which access, use, interact with, or depend on the Service (each, a “**Customer Application**”). You will not transfer, resell, lease, license, or otherwise make available the Services to third parties (except as specifically permitted under the Agreement to allow users to access to the Service via a Customer Application). You agree to provide prompt and reasonable cooperation regarding information requests we receive from law enforcement, regulators, or telecommunications providers. You are responsible for preventing unauthorized access to or use of the Services through your account and will notify us promptly of any such unauthorized access or use. We will not be liable for any loss or damage arising from unauthorized use of your account. You will not use our Services or permit them to be used to transmit inappropriate content, such as content that (i) is unsolicited; (ii) violates any legal, regulatory, self-regulatory, governmental, statutory, or telecommunication network operator’s requirements or codes of practice; (iii) is pornographic, abusive, racist, obscene, offensive, threatening, harassing, defamatory, discriminatory, misleading or inaccurate; (iv) is harmful, including but not limited to hate speech; or (v) encourages violence, discrimination or illegal, unethical or immoral actions. We may remove any inappropriate content from the Services and/or suspend your access to the Services without

prior notice and without any liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you may incur as a result.

#### **4. Fees and Payment Terms**

4.1 **Price Quotations.** Unless explicitly specified otherwise, all price quotations are non-binding and may be adjusted if other or additional information is provided.

4.2 **Fees and Billing Information.** You agree to pay all fees in accordance with the then current applicable rates from time to time available at <https://www.messagebird.com/pricing> (or as otherwise specified for the other Services of our Affiliates), unless otherwise specified in the applicable Order Form(s), documentation on the Site, or invoice (“**Services Fee**”). You will provide complete and accurate billing and contact information and notify us of any changes to such information. Customer’s use of the Services may be subject to certain usage limitations listed in the Order Form or in documentation on the Site (“**Limitations**”). If Customer’s use of the Services exceeds those Limitations, Customer will pay the applicable Overage Fee listed for such Service in the Order Form or as described on a Site. Overage Fees will be considered part of the Services Fee and will be invoiced or charged to the credit card or other payment information on file, as applicable, based on the Overage Billing Frequency stated in the Order Form or as listed in the customer’s portal. If the Overage Billing Frequency is not listed in the Order Form or in the Customer’s portal on the Site, the Overage Fees will be billed and due in accordance with Section 4 (Fees and Payment Terms) of these Terms.

4.3 **Add-ons.** Some features and services are offered as add-ons to the Services. If you add on a feature or service that has an additional fee, then you will be billed that additional amount with each billing cycle for as long as the add-on is active.

4.4 **Taxes.** All Services Fees are exclusive of any (a) applicable taxes, levies, duties, or other similar exactions imposed by a legal, governmental, or regulatory authority in any applicable jurisdiction, including sales, use, value-added, consumption, communications, digital services tax or withholding taxes; and (b) other indirect taxes, including any related interest and/or penalties and other government duties, as well as any other costs including transaction costs or bank transfer fees (collectively, “**Taxes**”). Taxes, other than withholding taxes, will be shown as a separate line item on an invoice. You are responsible for all Taxes associated with the Services and these Terms, excluding any taxes based on our net income (being corporate income tax), property, or employees. If you are exempt from any Taxes, you are responsible for providing us with a valid tax exemption certificate or a value added tax identification number (“**Tax Exemption**”). If Taxes should be accounted for under a reverse charge mechanism or similar procedure, it is your responsibility to provide us with a valid registration number. If for any reason the appropriate taxing authorities determine that you are not exempt from any Taxes and we pay such Taxes, we will invoice you, including any applicable interest or penalties imposed by the appropriate tax authorities. You may withhold or directly pay Taxes with your purchase of the Services if required to do so by applicable law, but we will not be responsible for the determination of, or the application of such Taxes. In no event will the Services Fees be decreased by any Taxes and/or fees of any nature owed by you in connection with your purchase of the Services.

4.5 **Surcharges.** All Services Fees are exclusive of any applicable government, regulatory, or communications service or telecommunication provider (e.g., carrier) fees or surcharges (collectively, “**Communications Surcharges**”). You will pay all Communications Surcharges associated with your use of the Services. Communications Surcharges will be shown as a separate line item on an invoice. Communications Surcharges may change at any time.

4.6 **Currency.** All Fees shall be paid in the currency specified in the applicable Order Form or otherwise as listed on the Site. If no currency is specified, Fees are in Euros. If any Fees are paid in a currency other than Euros, the amount of such payment shall be calculated according to the official exchange rate as listed on [www.oanda.com](http://www.oanda.com) on the day when payment is made.

4.7 **Prepaid Credit.** Unless otherwise specified in the Order Form or on the Site, any prepaid balance or credits you purchase will lapse if you do not use the balance or credit within one year after the purchase date. We are not obliged to refund any prepaid balance or credit.

4.8 **Payment Terms.** Payment obligations are non-cancelable and Services Fees, Taxes, and Communications Surcharges (collectively, "**Fees**") once paid, are non-refundable. Except as otherwise set forth in the applicable Order Form(s) and subject to Section 4.11 (Payment Disputes), you will pay the Fees due under these Terms in accordance with the following applicable payment method: (a) if you elect to remit fees using a credit card, you represent and warrant that you are authorized to use that credit card, that any and all Fees may be billed to that credit card, and that payment of such Fees will not be declined; or (b) if you elect to receive invoices and we approve you for the same, invoices will be sent to you at the frequency set forth in the applicable Order Form and you will pay the Fees due within fifteen (15) days of the date of the invoice.

4.9 **Late Payment.** If you fail to pay the Fees in a timely manner, we may (a) assess and apply a late fee of the lesser of 1.5% per month of the value of the applicable Fees or the maximum amount allowable by applicable law and/or (b) suspend the Services to all of your accounts until the Fees are paid in full.

4.10 **Collection Notices.** If you still fail to pay the Fees after we send you a notice via email, we may send overdue payment reminder notifications via alternate means of communication such as SMS and any other communication channels available using the contact information provided by you.

4.11 **Payment Disputes.** You must notify us in writing within fifteen (15) days of the date we bill you for any Fees that you wish to dispute, or you will not be able to bring a dispute. So long as you act promptly and cooperate with us to reach a resolution, we will not charge you a late fee or suspend the provision of the Services for unpaid Fees that are in dispute, unless we determine your dispute is not reasonable or brought in good faith. All undisputed fees remain due according to schedule.

4.12 **Affiliate Billing.** Our Affiliates may directly bill you (a) for the Services they provide; or (b) as a billing agent for us or another Affiliate of ours providing the Services.

## **5. Intellectual Property and Data**

5.1 **Ownership of the Services.** We, and or our licensors, as applicable, own and reserve all right, title, and interest, including without limitation, intellectual property rights, in and to the Services, the Documentation, and all modifications, extensions, customizations, scripts, or other derivative works of the Services and the Documentation. You may not without prior written approval reverse engineer, copy, disassemble, or decompile the Services, or remove any copyright, trademark or other proprietary rights notices contained in or on the Service.

5.2 **Our Data.** We own and reserve all intellectual property rights in and to any data that is derived from the use of the Services, including data that does not directly or indirectly identify you, your Affiliates, or users of your Customer Application, and, subject to applicable law, data that is de-identified and aggregated such that it does not identify the identity of you or users of your Customer Application to any third party ("**MessageBird Data**"). We grant to you a worldwide, limited-term, non-exclusive, non-transferable, royalty-free license during

the applicable Term to access and use the MessageBird Data solely for your use of the Services and in accordance with the Agreement.

**5.3 Your Data.** You exclusively own and reserve all intellectual property rights in and to each Customer Application and Customer Data. You grant us and our Affiliates the right to process Customer Data as necessary to provide the Services in a manner consistent with these Terms, the Data Processing Agreement, and our Privacy Statement. Your agreement to these Terms constitutes agreement to the terms of the [Data Processing Agreement](#), which is incorporated into these Terms as an Annex.

**5.4 Application License.** For the sole purpose of providing the Services, you grant us and our Affiliates a worldwide, royalty-free, non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display, and distribute, any Customer Data introduced by you or on behalf of you into the Services, such as, but not limited to, software or web applications you create in the course of using the Services.

**5.5 Feedback.** We appreciate any suggestions, recommendations, or feedback, but please note that they are entirely voluntary and we own and reserve all intellectual property rights in and to any feedback provided by you or any users of your Customer Application regarding the Services.

## **6. Confidentiality**

**6.1 Definition.** “**Confidential Information**” means any information or data disclosed by one Party (“**Disclosing Party**”) to the other (“**Receiving Party**”) that is marked as confidential or that should be reasonably understood to be confidential given the nature of the information and the circumstances surrounding disclosure (eg. Order Forms, Customer Data, pricing). Confidential Information does not include any information which: (a) is independently publicly available; (b) was rightfully known by Receiving Party prior to disclosure by Disclosing Party; (c) was lawfully disclosed to Receiving Party by another party not under any obligation or breach of confidentiality; or (d) is independently developed by or for Receiving Party without use of or reference to the Confidential Information of Disclosing Party.

**6.2 Use and Disclosure.** Unless agreed to in writing, Receiving Party will not (a) use any Confidential Information of Disclosing Party for any purpose other than fulfilling Receiving Party’s rights and obligations under the Agreement; or (b) disclose Confidential Information to any third party except for entities (eg. Affiliates, contractors, legal counsel) (collectively, “**Representatives**”) who have a “need to know” in order for Receiving Party to fulfill its rights and obligations under these Terms. Representatives will be bound to protect Confidential Information under the same terms of confidentiality as the Receiving Party, and Receiving Party will be responsible for any breach by Representatives of those obligations.

**6.3 Compelled Disclosure.** Receiving Party may disclose Confidential Information of Disclosing Party to the extent compelled by regulation, law, subpoena, court order or contractual obligations with telecommunications providers, provided (i) Receiving Party promptly gives Disclosing Party prior notice of the compelled disclosure to the extent legally permitted, (ii) Receiving Party discloses only the Confidential Information legally required, and (iii) Receiving Party provides reasonable assistance, at Disclosing Party’s sole expense, if Disclosing Party wishes to contest the disclosure.

## **7. Representations, Warranties, and Disclaimer**

**7.1 Your Representations and Warranties.** You represent and warrant that you have obtained all the necessary permissions or consents to deliver Customer Data to us for use and disclosure pursuant to this Agreement.

**7.2 Our Representations and Warranties.** We represent and warrant that the Services will perform materially as set out in the applicable Documentation. Our sole obligation, and your sole and exclusive remedy, in the event of any failure in this regard will be for us to, at our option, (a) take commercially reasonable efforts to correct the material failure; or (b) refund to you the Fees you actually paid for the time period during which the material failure affected the Services.

**7.3 Authority.** Each Party represents and warrants that it has the legal right and authority to enter into the Agreement, to perform its obligations under the Agreement, and to grant the rights and licenses described in the Agreement.

**7.4 Anti-Corruption and International Trade Laws.** Each Party warrants that it will comply with all anti-corruption, anti-money laundering, sanctions, export controls, and other international trade laws, regulations, and governmental orders of the United States of America, the United Nations, the European Union, the United Kingdom or any other relevant governmental authority ("**Trade and Anti-Corruption Laws**"), including obtaining all necessary licenses and/or government approvals. You will promptly notify us in writing of any actual or potential violation of Trade and Anti-Corruption Laws in connection with your use of the Services and will take all appropriate actions to remedy or resolve such violations, including any actions requested by us.

**7.5 Disclaimer.** Except for the warranties expressly provided in Section 7.2 (Our Representations and Warranties), (a) the Services are provided "as is"; and (b) to the fullest extent permitted by law, we disclaim all other warranties (express, implied, or statutory) including any implied warranty of merchantability, fitness for a particular purpose, or any warranties related to third-party telecommunications providers. You acknowledge the internet and telecommunication providers are inherently insecure. Beta Products are provided "as is" with no warranties and representations. If any part of this Section 7.5 is determined to be unenforceable such that warranties and representations cannot be excluded, then all such express and implied warranties will, to the greatest extent permitted by applicable law, be limited in duration for a period of thirty (30) days after the effective date of the Agreement, and no warranties or conditions will apply after that period.

## **8. Mutual Indemnification**

**8.1 Indemnification by Us.** We will indemnify you and your Affiliates and their respective officers, directors, and personnel (collectively, "**Customer Indemnified Parties**") on written demand against all damages, fines, penalties, settlement amounts pre-approved by us, costs, expenses, taxes, and other liabilities (including reasonable attorneys' fees) ("**Losses**") incurred or awarded against you in connection with any claim, action, demand, suit, or proceeding ("**Claim**") made or brought against Customer Indemnified Parties by an unaffiliated third party alleging that your use of the Services violate their intellectual property rights ("**Infringement Claim**"), and we will take all steps necessary to defend such Infringement Claim. In the event of an Infringement Claim, we reserve the right to (a) modify the Services to make them non-infringing; or (b) terminate the infringing Services and refund you any unused pre-paid fees. We will have no liability or obligation under this Section 8.1 with respect to any Infringement Claim to the extent arising from or out of (a) your use of the Services in breach of the Agreement; (b) the combination of our Services with other applications, products, or services where the Services would not by themselves be infringing; or (c) Beta Products or Services for which there is no, or you pay no, fee.

**8.2 Indemnification by You.** You will indemnify us and our Affiliates and their respective officers, directors and personnel (collectively, "**MessageBird Indemnified Parties**") on written demand against all Losses incurred or awarded against MessageBird Indemnified Parties in connection with any Claim by an unaffiliated

third party alleging or arising out of your or any users of your Customer Application (a) breach of Section 3.2 (Your Responsibilities); (b) infringement or misappropriation of such third party's intellectual property rights; or (c) violation of applicable laws, including applicable data protection laws (collectively, "**Customer Indemnifiable Claims**"), and you will take all steps necessary to defend such Customer Indemnifiable Claims.

**8.3 Indemnification Conditions.** As a condition of the foregoing indemnification obligations: (a) the indemnifying Party will assume exclusive conduct of the Claim (including litigation, settlement, and dispute resolution efforts); and (b) the indemnified Party will provide reasonable assistance in connection with the conduct of the Claim. The indemnified Party may appoint a non-controlling counsel to participate in the defense of the Claim at its own expense. The indemnifying Party will not settle any Claims for which it has an obligation to indemnify by admitting liability or fault on behalf of indemnified Party, nor create any obligation on behalf of indemnified Party, without indemnified Party's prior written consent, which will not be unreasonably withheld.

**8.4 Exclusive Remedy.** This Section 8 (Mutual Indemnification) states indemnifying Party's sole liability to, and indemnified Party's exclusive remedy against, the other Party for any third-party claims.

## **9. Limitation of Liability**

**9.1 Limitation on Indirect, Consequential, and Related Damages.** In no event will either Party have any liability related to the Agreement for any lost profits, revenues, goodwill or data, business interruption or indirect, special, incidental, consequential, or punitive loss or damages, whether an action is in contract or tort or otherwise and regardless of the theory of liability.

**9.2 Limitation of Liability.** Our sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide an SLA Eligible Service (as defined in the SLA) is the receipt of a Service Credit (if eligible) in accordance with the terms of the SLA. To the greatest extent permitted by applicable law, neither Party's liability shall exceed the amounts paid or payable for the Services giving rise to the liability during the twelve (12) month period preceding the first incident out of which the liability arose, regardless of the theory of liability or whether the action is in contract or tort or otherwise. We will have no liability regarding (i) Customer Applications, (ii) Beta Products, or (iii) loss of or damage to Customer Data while in transit via the internet or a telecommunications network.

**9.3 Exceptions to the Limitation of Liability.** None of these limitations on liability apply to (a) your breach of Section 3.2 (Your Responsibilities); (b) your breach of Section 4 (Fees and Payment Terms); or (c) amounts payable pursuant to your obligations under Section 8 (Mutual Indemnification).

## **10. Publicity**

You grant us the right to use your name, logo, and a description of your use case to refer to you on our website, customer lists, or marketing or promotional materials, subject to your standard trademark usage guidelines expressly provided to us.

## **11. Term, Termination, and Survival**

**11.1 Term.** These Terms commence on the date you accept them (or, where an Order Form applies, on the date specified in the Order Form) and continue until all Order Forms or Services used by you on the Site entered into under these Terms have expired or been terminated.

**11.2 Order Form Term.** We will specify your subscription period to the Services in the applicable Order Form or in the customer portal on the Site (the "**Initial Term**"). Unless otherwise noted in the Order Form or on



the Site, subscriptions will automatically renew for additional successive periods of equal duration to the Initial Term (each, a “**Renewal Term**”, and together with the **Initial Term**, the “**Term**”) unless either Party gives the other notice of non-renewal at least thirty (30) days before the end of the Term. The applicable fee for any Renewal Term will be determined using the then-current list price applicable on the Site for such renewed Services unless different renewal pricing is specified in the Order Form.

**11.3 Termination for Material Breach and Other Grounds.** Either Party may terminate the affected Order Form(s) or Services used by you in the event of a material breach if, after providing written notice of the breach, the other Party does not remedy the breach within fifteen (15) days. In the event of your material breach, we may also (i) terminate the Agreement, (ii) close all of your accounts, and/or (iii) prohibit you from creating any new accounts. We may also terminate or suspend this Agreement or the provision of certain Services with immediate effect by notifying you in the event we have substantiated reason to believe that your use of the Services (a) would constitute a breach of third-party application terms (including those set out in the Product Specific Terms) or the terms of this Agreement; (b) is contrary to applicable laws, regulations, or public order; or (c) includes transmission of inappropriate content under Section 3.2.

**11.4 Termination for Insolvency.** Either Party may terminate this Agreement (and we may close your account) by written notice in the event the other Party becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, or liquidation.

**11.5 Refund or Payment upon Termination.** If you terminate these Terms because of our material breach under Section 11.3 (Termination for Material Breach), we will refund to you any prepaid Fees covering the remainder of the term of all Order Forms or Services used by you in the customer portal on the Site after the effective date of termination. If we terminate these Terms because of your material breach under Section 11.3 (Termination for Material Breach), you will pay us any unpaid Fees covering the remainder of the Term of all Order Forms or Services used by you in the customer portal on the Site. In no event will termination relieve you of your obligation to pay any Fees payable to us for the period prior to the effective date of termination.

**11.6 Consequences of Termination or Expiration.** Upon the effective date of termination or expiration of the Agreement or any Order Form: (a) all rights, licenses, and subscriptions granted to you under any affected Order Form and the Agreement will immediately terminate; (b) you will immediately cease all use of, and access to, your account and the relevant Services; (c) you will immediately either return or destroy (at our discretion) all MessageBird Data, our Confidential Information, and any user IDs that are in your possession; and (d) we will delete any of your Confidential Information or Customer Data stored by us within forty-five (45) days after the effective date of expiration or termination, unless a different statutory retention period applies or as necessary to prosecute or defend a legal claim, in which case we will only retain such information for as long as needed to resolve the claim or comply with applicable law. In the event of termination or expiration of an Order Form, (c) and (d) shall not apply to the extent the MessageBird Data, Confidential Information, user IDs, and Customer Data are still required in connection with the use of other Services than the terminated or expired Service(s). In the event Customer terminates this Agreement under Section 11.3 (Termination for Material Breach), we will reasonably cooperate to assist in your transition to another provider.

**11.7 Survival.** The terms of Section 4 (Fees and Payment Terms), Section 5 (Intellectual Property and Data), Section 6 (Confidentiality); Section 7.5 (Disclaimer), Section 8 (Mutual Indemnification), Section 9 (Limitation of Liability), and Section 13 (General) will survive any termination under Section 11 (Term, Termination, and Survival).

## **12. Changes to These Terms**

From time to time, we may update these Terms. If we make material changes, we will notify you, such as by posting an announcement on our website or sending you an in-application notice or email. To the greatest extent permitted by applicable law, the new Terms will take immediate effect, and your continued use of the Services following our posting or notice of the changes will constitute your acceptance of the updated Terms. If applicable law requires us to give additional notice in respect of some or all of our Services, changes will automatically take effect regarding your use of the relevant Services upon expiry of such notice period (unless you terminate during that period) or upon your earlier agreement to such changes. If you have a right under applicable law to terminate this Agreement upon receipt of such notice, you will not be charged a fee for early termination where you exercise that right under applicable law, but any fees previously paid by you are non-refundable and any fees owing continue to remain due and payable. We agree that changes to these Terms under this Section 12 will not materially diminish the protections under the Security Overview and/or the features or functionality of the Service.

### **13. Governing Law and Dispute Resolution**

**13.1 Governing Law.** Any dispute, claim, or controversy (“**Disputes**”) arising out of or related to this Agreement shall be governed by and construed in accordance with the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded, as is the application of title 7.1 and sections 6:89, 6:93, 7:408(2), and 7:411 of the Dutch Civil Code.

**13.2. Dispute Resolution.** Each Party agrees that the competent courts of Amsterdam will have exclusive jurisdiction to settle any Disputes arising out of or related to this Agreement.

**13.3. Class Action Waiver.** To the greatest extent permitted by applicable law, the parties agree that neither Party can bring a Dispute as a plaintiff or class member in a class action, consolidated action, or representative action.

### **14. General**

**14.1 Order of Precedence.** In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (a) the Data Processing Agreement; (b) the applicable Order Form or the customer portal on the Site; (c) Product Specific Terms; (d) any applicable SLA; (e) these Terms; and (f) the applicable Documentation.

**14.2 Relationship.** Each Party is an independent contractor in the performance of this Agreement and nothing in these Terms is intended to create or will be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. Neither Party has the authority to commit the other Party in any way and will not attempt to do so or imply that it has the right to do so. Nothing in these Terms is intended to prevent: (a) us from marketing, licensing, selling, or otherwise providing Services to any third party; and (b) you from obtaining services similar to the Services from a third party.

**14.3 Severability.** If a court of competent jurisdiction holds any provision of these Terms to be contrary to applicable law, that provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Terms will remain in full force and effect.

**14.4 Notices.** If you need to provide notice to us under these Terms, you may do so in writing via email to [legalnotice@messagebird.com](mailto:legalnotice@messagebird.com). Except as permitted in Section 12 (Changes to these Terms), if we need to provide notice to you under these Terms, we will do so in writing via email to the email address you designate in your account. It is your responsibility to keep all email addresses associated with your account current and

accurate.

**14.5 Force Majeure.** Except for the payment of Fees, each Party will be excused from any failure or delay to the extent caused by unavoidable events beyond its reasonable control such as natural catastrophes, laws, orders, regulations, directions or actions of governmental authorities, failure of telecommunication or digital transmission links, or failure of any third-party operating systems, platforms, applications or networks not under the Party's reasonable control. All Parties will take reasonable actions to minimize the consequences of these events. In addition, a Party will be excused from future performance under this Agreement, if (i) the other Party becomes, directly or indirectly, subject to sanctions or restrictive measures imposed by competent governmental authorities, or (ii) the performance of any aspect of these Terms would require that Party to engage in a transaction with a person, directly or indirectly, subject to such sanctions or restrictive measures.

**14.6 Waiver.** No failure or delay by either Party in exercising any right or enforcing any provision under these Terms will constitute a waiver of that right, provision, or any other provision. Any waiver must be in writing and signed by each Party to be legally binding. With the exception of the rights explicitly provided in this Agreement, each Party waives any rights to wholly or partially terminate or rescind this Agreement or to claim termination, rescission, or amendment of this Agreement, to the fullest extent permitted by applicable law.

**14.7 Assignment.** You may not assign, delegate, or otherwise transfer any of your rights or obligations under this Agreement, any applicable Order Form(s), or those contained in customer portal on the Site without our prior written consent. We may assign, delegate, or otherwise transfer any or all of our rights or obligations under these Terms, any applicable Order Form(s), or those contained in the customer portal on the Site. After any authorized assignment, delegation, or transfer, all Terms will be binding on successor entities.

**14.8 US Government Terms.** We provide the Services, including any related software and technology, for United States government end use solely in accordance with these Terms. If you (or any users of your Customer Application) are an agency, department, or other entity of the United States government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation, is restricted by these Terms. All other use is prohibited and no other rights other than those provided in these Terms are conferred.

**14.9 Injunctive Relief.** In the event of either Party's actual or threatened (a) breach of Section 6 (Confidentiality); or (b) violation of the other Party's intellectual property rights, the non-breaching Party is entitled to seek injunctive and/or any other available equitable relief, without waiving any other rights or remedies.

**14.10 Entire Agreement.** This Agreement represents the full and complete contract between the Parties, superseding all prior proposals, statements, or agreements.

**14.11 Microenterprises waiver.** If you are a micro-enterprise, small enterprise, or not for profit organisation and we provide you Services in the EEA or United Kingdom which are subject to the European Electronic Communications Code (and relevant national implementing measures transposing Directive (EU) 2018/1972 or equivalent provisions), to the greatest extent permitted by applicable law, you expressly waive your rights under the European Electronic Communications Code. This includes a waiver of the following: (a) a right to have a copy of this Agreement made available to you in a durable medium (other than this easily downloadable copy); (b) a right to have a summary of this Agreement (known as a "contract summary") provided to you; (c) a right, where we bill you on the basis of either time or volume consumption, to have a

facility to monitor and control the usage of such Services, including access to information to the level of consumption of your Services; (d) a right to be notified before any consumption limit included in your pricing plan is reached or when a Service included in your pricing plan is fully consumed; (e) in the event that we specify in our Order Form a minimum contract duration which is longer than the maximum statutory period applied to you under applicable law, a right to a shorter contract period; (f) a right to have all of the rights listed in (a) to (e) apply to all aspects of the Services you purchase from us as a bundle, even where applicable law does not apply those rights in (a) to (e) to all aspects of our Services; and (g) a right, if you subscribe to additional Services provided by us, not to have the original duration of your Agreement for other Services extended to reflect the the contract duration of the additional Services.

14.12 **Translations.** Our Agreement (including these Terms) is written in English. Any translated version is provided solely for your convenience. To the extent any translated version of our Agreement (including these Terms) conflicts with the English version, the English version takes precedence.

14.13 **Electronic Signature.** Your use of our Services indicates acceptance of this Agreement. If and to the extent that we enter into an Agreement with you that requires signature, each of us agree to the use of electronic signatures and that we will each be bound by them.

**15. Contracting Entity**

For all Customers with a contract prior to 28 February 2022, your contract remains with the legal entity with whom you contracted at that date on the terms and conditions applicable at that date. See our Archived page [here](#).

For all new Customers on and following 28 February 2022, your contract is with the following legal entities, unless otherwise specified in an applicable Order Form.

SERVICES	CONTRACTING ENTITY	CONTACT INFORMATION
All Services or any combination of Services other than those below	MessageBird B.V.	Trompenburgstraat 2C 1079 TX Amsterdam The Netherlands Attn: Legal
Email	MessageBird USA Inc.	9160 Guilford Road Columbia, MD 21046 USA Attn: Legal
Email Analytics	Email Data Source, Inc	9160 Guilford Road Columbia, MD 21046 USA Attn: Legal
Video	24sessions.com B.V	Hoogoorddreef 54-56, 1011 BE Amsterdam, The Netherlands
Push API Notifications Services	MessageBird UK Limited	Eighth Floor 6 New Street Square

		New Fetter Lane London, England EC4A 3AQ Attn: Legal
Email Template Design	MessageBird UK Limited	Eighth Floor 6 New Street Square New Fetter Lane London, England EC4A 3AQ Attn: Legal
If your place of residence or establishment is in Brazil, your contract for any and all of our Services will be with MessageBird Servicos Digitais Ltda.		

For purposes of the above, the defined term “**Email**” and “**Email Analytics**” means the corresponding Services listed to the right of such defined term in the following table, either individually or collectively depending on the Services you are purchasing:

<b>Defined Term</b>	<b>Services</b>
Email	The Email Services described in Section 4 and Section 8 of the Product Specific Terms
Email Analytics	Inbox Tracker Competitive Tracker Reputable Sender Program Deliverability Strategy Essentials Deliverability Strategy Basics Basic Audit Comprehensive Audit Strategic Competitive Report