

Mobile Services - Acceptable Use Policy

Introduction

This Acceptable Use Policy forms part of your Application and the Standard Customer Agreement (“SFOA”) if you have requested in your Application that we supply you with Commander Australia Limited ACN 082 384 343 (“Commander”) Mobile Services.

This Acceptable Use Policy are terms of your SFOA which may impose limits in specific circumstances on your use or termination of a Mobile Service, including for network integrity, commercial, operational or legal reasons.

1. You are responsible for all Content and information that you access using the Mobile Services and Mobile Premium Service. We do not monitor Content, and the Content you access using our Mobile Services is not our responsibility. You are also responsible for any Content or material that you place, disseminate, access or host via any medium using the Mobile Services and Mobile Premium Service. This includes but is not limited to Content in or on emails, chat rooms, discussion groups, discussion forums, instant messaging, SMS, MMS and web pages. If you provide Content using the Internet Services it is your responsibility to comply with any applicable Mobile Services Industry Association Codes and any other applicable laws.
2. You must not place or host, via any medium using the Mobile Services and Mobile Premium Service, material that is classified, or would likely to be classified, as RC (Refused Classification), MA 15+, R 18+ or X. You must not place or host, via any medium using the Mobile Services and Mobile Premium Service, material that is classified, or would be likely to be classified, as R unless access to the Content is subject to a restricted access system as determined by the Australian Broadcasting Authority (“ABA”) and Australian Communication and Media Authority (“ACMA”). You must ensure that you clearly identify material that is unsuitable for minors and you must ensure that a restricted access system is in place to prevent minors from gaining access to material that is classified, or would be likely to be classified, as MA and R.
3. You are responsible for and must pay the cost of all telecommunications and Internet access charges incurred when using the Mobile Services, including usage by third parties without your consent.
4. You are responsible for all equipment and software necessary to access the Mobile Services as well as for the security and integrity of your data, including accounts and passwords.
5. Your use of the Mobile Services and Mobile Premium Service is your responsibility and entirely at your own risk.
6. You are responsible for your actions when using the Mobile Services and Mobile Premium Service. You are responsible for complying with any usage policies, rules and regulations that apply to the Mobile Services or any network content you access using the Mobile Services and Mobile Premium Service.
7. You must not use the Mobile Services so excessively as to disadvantage other users. If we inform you that you have been using the Mobile Services at what we consider is an excessive level and you continue to do so, we may suspend or remove any part of the Mobile Services without notice to you.
8. You are responsible for providing, configuring or maintaining any equipment or computer software which you need to access the Mobile Services and Mobile Premium Service, as well as for the security and integrity of your data (in particular you are responsible for protecting your Mobile Equipment from unauthorised third parties using your hardware or software) except where we have agreed in writing that it shall be responsible for providing and managing certain equipment.

9. You are also responsible for ensuring you have the appropriate mechanisms or procedures in place to protect your Mobile Service, Mobile Premium Service and Mobile Equipment from unauthorised usage.
10. You must take responsibility for distribution, publication and enforcement of this Acceptable Use Policy at your sites.
11. You indemnify and hold us harmless from all liabilities, damages, legal fees, claims, actions, proceedings and expenses arising out of or in any way connected to the use of the Mobile Services, Mobile Premium Service and Mobile Equipment by you or any other person using your membership identification and password.
12. You must notify us immediately of any change to your e-mail address provided and other contact details.
13. You must not permit any other person, other than adult members of your household or others with your express permission and under your personal supervision, to use your username and password to access the Mobile Services, Mobile Premium Service and Mobile Equipment. You accept responsibility for all aspects of use of the Mobile Services, Mobile Premium Service and Mobile Equipment by all persons using your username and password.
14. You must not use or authorise the use of the Mobile Services, Mobile Premium Service and Mobile Equipment for any activities which breach any laws, infringe a third party's rights, or breach any standards, Content requirements or codes promulgated by any relevant authority including activities which will require us to take remedial action under any applicable industry code. You must not use or authorise the use of the Mobile Services and Mobile Premium Service for illegal activities or fraudulent activities. You must not use or authorise the use of the Mobile Services, Mobile Premium Service and Mobile Equipment for any activities that contravene any laws, including the *Crimes Act (NSW)*, the *Telecommunications Act 1997 (Cth)*, *Criminal Code Act 1995 (Cth)*, *Privacy Act 1988 (Cth)*, *Criminal Law Consolidation Act 1935 (Cth)*, *Telecommunications (Interception) Act 1979 (Cth)*, or any other State, Territory or Commonwealth law that may apply.
15. You must not use the Mobile Services, Mobile Premium Service or any computer system or network accessed using the Mobile Services and Mobile Premium Service in any way that interferes with other users or defames, harasses, menaces, restricts or inhibits any other user from using or enjoying the Internet Services including, without limitation:
 - (a) creating or transmitting Content, information, data or software of any kind which contains viruses or other malicious elements including Trojan horses, computer worms or spy software of any kind;
 - (b) monitoring Content, data or traffic on any network or system if you do not have the authorisation of the owner of the network or system to do so;
 - (c) forging any TCP -IP packet header, any part of the header information or an e-mail source address in an email or newsgroup posting;
 - (d) providing false user information to us or other users;
 - (e) gaining access to a person's private information (or attempting to do so);
 - (f) disobeying the rules of any content provider newsgroup, forum, e-mail mailing list or other similar group;
 - (g) using another content provider or site's mail server to mail without the express permission of the site;
 - (h) forwarding or propagating chain letters or malicious e-mail;
 - (i) inappropriate posting of the same or similar messages to one or more newsgroups (including by excessive cross-posting or multiple-posting);

- (j) sending unsolicited or unwanted e-mail, SMS, MMS or other electronic communications to individuals or individual business accounts;
 - (k) soliciting e-mail for any other address other than that of the user, except with the full consent of the owner of the referred address;
 - (l) making lewd, obscene, threatening, abusing or defamatory remarks or inciting hatred to any other person or group; or
 - (m) in general, breaching generally accepted standards of Internet and mobile service etiquette.
16. You must not store, post or transmit or cause to be stored, posted or transmitted any material of any kind which violates or infringes upon the rights of any other person, including material which is an invasion of any privacy or publicity rights or which is protected by copyright, trademark or any other proprietary right, or derivative works with respect thereto, without first obtaining permission from the owner or relevant right holder.
17. You must not use the Mobile Services and Mobile Premium Service to obtain unauthorised access to or make unauthorised modifications to any computer, system, network or information, including, without limitation:
- (a) accessing or using any data, systems or networks;
 - (b) probing, scanning or testing the vulnerability of a system or network;
 - (c) breaching any security or authentication measures for a system or network; or
 - (d) attempting to gain access to the account of any other user.
18. You must not use the Mobile Services and Mobile Premium Service in a manner that may interfere with the technical operation of the Mobile Services, Mobile Premium Service or any other computer, system or network. You must not attempt to interfere with the regular workings of our systems or network connections. We may override any attempt by you to specify a particular traffic routing pattern.
19. You must not impair the ability of other people to use our systems, the Mobile Premium Service or the Mobile Service.
20. You must not use the Mobile Premium Service and Mobile Services as a staging ground to disable other systems.
21. You are responsible for obtaining advice about whether your use of the Mobile Services and the Mobile Premium Service involves activities which breach any laws, infringe a third party's rights, or breach any standards, Content requirements or codes promulgated by any relevant authority, including any relevant industry association.
22. You acknowledge that:
- (a) we are not responsible for the Content of the Mobile Premium Service and Mobile Services;
 - (b) Mobile Services and Mobile Premium Services are not necessarily a secure and confidential method of communication and you transmit data and calls at your own risk;
 - (c) use of the Mobile Services and Mobile Premium Service, including any Content you may obtain through or on the Mobile Services and Mobile Premium Service, is at your sole risk;
 - (d) the Mobile Services and Mobile Premium Service are provided without warranties of any kind, either express or implied, unless such warranties are legally incapable of exclusion;
 - (e) you have not relied on our skill, judgment or any representation by us whatsoever in deciding whether the Mobile Services and Mobile Premium Service are fit for any particular purpose;

- (f) we are not responsible for any unsolicited or unwelcome information disseminated via the Mobile Services and Mobile Premium Service to you or the consequences of you receiving such information; and
 - (g) except as specified in writing, we do not warrant that the Mobile Services and Mobile Premium Service will be available continuously or free of faults.
23. We reserve the right to modify, suspend or remove any part of the Mobile Services and Mobile Premium Service at our sole discretion, without notice to you, at any time, including without limitation where it is necessary to do so for the efficient operation of the network or where the Mobile Services and Mobile Premium Service are or have been used in an unreasonable manner.
24. We reserve the right to automatically disconnect you without notice and at any time, including where it is necessary to do so for the efficient operation of the network. We may also prevent, suspend or terminate your access to the Mobile Premium Service in certain circumstances, including in response to notices issued by ACMA under the Mobile Premium Services Determination.
25. You acknowledge that we do not check the content of information and Content available from the Mobile Services and Mobile Premium Service and that we are not liable for loss or damage that you or anyone else suffers as a result of using this information and Content including, but not limited to, any damage to, or loss of, data caused by a virus or similar program.
26. To the maximum extent permitted by law, we will not be liable in any way for any loss or damage suffered by you through use of the Mobile Services and Mobile Premium Service, or our failure to provide the Services. Our liability for negligence, breach of contract or contravention of any law as a result of our failure to provide the Mobile Services or for any problems with the Mobile Services, which cannot be lawfully excluded, is limited, at our option and to the maximum extent permitted by law, to resupplying the Mobile Services or any part of it to you, or to paying for resupply of the Mobile Services or any part of it to you. We must comply with any Industry Code to which we subscribe or by which we are bound.
27. To detect and deal with breaches of this Acceptable Use Policy, we may take the following actions:
- (a) cooperate with other mobile service providers to control unacceptable user behaviour;
 - (b) give details of users who are suspected of breaking any laws in connection with the Mobile Services and Mobile Premium Service to the police and to other law enforcement agencies;
 - (c) implement technical mechanisms to prevent behaviour that breaches this Policy (for example, which block multiple postings before they are forwarded to their intended recipients); and
 - (d) exercise any rights we have under our agreement with you. Such rights include the right to suspend or terminate your use of the Mobile Services and Mobile Premium Service.
28. We may take any other action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them.
29. We may monitor your use of the Mobile Services and Mobile Premium Service to ensure your compliance with this Policy. In conjunction with relevant law enforcement agencies we may investigate any misuse of the Mobile Services and Mobile Premium Service by you. If your use of the Mobile Services and Mobile Premium Service results in loss to us or other users, we may require you to pay compensation.
30. You can report a suspected breach of this Acceptable Use Policy by sending an email to customerservice@commander.com.