



# Information Guide: Terms & Conditions

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## Kapow SMS Gateway

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# Terms and Conditions

## 1. ACCEPTANCE OF TERMS

Cygnnet Internet Services Ltd. operators of the Kapow SMS Gateway ("Kapow") provides its wireless messaging and other services to you (the "Service"), subject to the following Terms of Service ("TOS"), which may be updated by Kapow, and/or its subsidiaries, parents, affiliates, officers, directors, agents, etc. (collectively, "Kapow") from time to time without notice to you. Please read them carefully. By using the Service you agree to be bound by the TOS.

You understand and agree that the Service is provided "AS-IS" and that Kapow assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications. Unless explicitly stated otherwise, any new features that augment or enhance the current Service, including the release of new Kapow properties, shall be subject to the TOS.

Cygnnet Internet Services Ltd, operators of the Kapow SMS Gateway Service guarantee availability of the Service, the website and the email delivery servers 99.99% of the time.

You can review the most current version of the TOS at any time at:

<http://www.kapow.co.uk/docs/Kapow%20SMS%20Gateway%20Terms%20and%20Conditions.pdf>

## 2. ACCESS TO THE SERVICE

In order to use the Service, you must obtain access to the World Wide Web, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, you must provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device.

## 3. YOUR REGISTRATION OBLIGATIONS

In consideration of your use of the Service, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Kapow has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Kapow has the right to suspend or terminate your account and refuse any and all current or

future use of the Service (or any portion thereof). Kapow is concerned about the safety and privacy of all its users.

#### **4. Kapow PRIVACY POLICY**

Registration Data and certain other information you provide to or through the Service is subject to our Privacy Policy.

i) We comply with the Data Protection of the countries in which we operate.

ii) We reserve the right to access and disclose your personal data to comply with applicable laws and lawful government requests, to operate our systems properly or to protect our users. We also reserve the right to disclose individually identifiable information to third parties where a complaint arises concerning your use of our service(s) and that use is deemed inconsistent with this terms and conditions document.

iii) We apply this Privacy Policy to the Kapow website and the products and Services affiliated with it. And will not sell or supply your details (or sending data) to third party companies.

#### **5. MEMBER ACCOUNT, PASSWORD AND SECURITY**

You will receive a username and password upon completing the Service's registration process. You are responsible for maintaining the confidentiality of these account details, and are fully responsible for all activities that occur under your account. You agree to immediately notify Kapow of any unauthorised use of your account or any other breach of security. Kapow cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 5.

#### **6. MEMBER CONDUCT**

You agree that you will only use Kapow in a manner that is consistent with the TOS and in such a way as to ensure compliance with all applicable laws and regulations.

You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials ("Content"), are the sole responsibility of the person from which such Content originated. This means that you, and not Kapow, are entirely responsible for all Content that you upload, send by SMS or otherwise transmit via the Service. Kapow does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will Kapow be liable in any way for any Content, including, but not limited to, for any errors or

omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content transmitted via the Service.

You agree to not use the Service to:

- a. transmit any Content that is unlawful, harmful, threatening, abusive, harassing, menacing, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable. Please notify us by writing to :

Email : [info@kapow.co.uk](mailto:info@kapow.co.uk)

of any material contained in the Kapow service that you believe infringes these rules.

- b. harm minors in any way
- c. impersonate any person or entity, including, but not limited to, a Kapow official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity
- d. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service
- e. upload, send by SMS or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements)
- f. upload, send by SMS or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party
- g. upload, send by SMS or otherwise transmit any unsolicited or unauthorised advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation
- h. upload, send by SMS or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment
- i. interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service
- j. intentionally or unintentionally violate any applicable local, national or international law
- k. "stalk" or otherwise harass another, or

- I. collect or store personal data about other users.

You acknowledge that Kapow does not pre-screen Content, but that Kapow and its designees shall have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is available via the Service. Without limiting the foregoing, Kapow and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

You acknowledge and agree that Kapow may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to (a) comply with legal process (b) enforce the TOS (c) respond to claims that any Content violates the rights of third-parties, or (d) protect the rights, property, or personal safety of Kapow, its users and the public. You understand that the technical processing and transmission of the Service, including your Content, may involve (a) transmissions over various networks, and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

## **7. INDEMNITY**

You agree to indemnify and hold Kapow and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable legal fees, made by any third party due to or arising out of Content you submit, post to or transmit through the Service, your use of the Service, your connection to the Service, your violation of the TOS, or your violation of any rights of another.

## **8. NO RESALE OF SERVICE**

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Service, use of the Service, or access to the Service without the prior agreement of Kapow.

## **9. GENERAL PRACTICES REGARDING USE AND STORAGE**

You acknowledge that Kapow may establish general practices and limits concerning use of the Service. You agree that Kapow has no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Service. You acknowledge that Kapow reserves the right to log off accounts that are inactive for an extended period of time. You further acknowledge that Kapow reserves the right to change these general practices and limits at any time, in its sole discretion, with or

without notice.

## 10. MODIFICATIONS TO SERVICE

Kapow reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) having given you 30 days written notice. You agree that Kapow shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

## 11. TERMINATION

You agree that Kapow, in its sole discretion, may terminate your account (or any part thereof) or use of the Service, and remove and discard any Content within the Service, for any reason, including, without limitation, for lack of use or if Kapow believes that you have violated or acted inconsistently with the letter or spirit of the TOS. Kapow may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this TOS may be effected without prior notice, and acknowledge and agree that Kapow may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that Kapow shall not be liable to you or to any third-party for any termination of your access to the Service.

## 12. KAPOW'S PROPRIETARY RIGHTS

You acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that Content presented to you through the Service maybe protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorised by Kapow, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part. You agree not to modify Kapow software or web requests in any manner or form, or to use modified versions, including (without limitation) for the purpose of obtaining unauthorised access to the Service. You agree not to access the Service by any means other than through the interfaces that are provided by Kapow and its partners for use in accessing the Service.

### 13. DISCLAIMER OF WARRANTIES

All information provided on Kapow's web site is provided 'as is' with all faults without warranty of any kind, either expressed or implied. Kapow and its suppliers disclaim all warranties, expressed, or implied including, without limitation, those of merchantability, fitness for a particular purpose and noninfringement or arising from a course of dealing, usage or trade in practice.

### 14. NOTICE

Notices to you may be made via either telephone, SMS, email or regular mail. The Service may also provide notices of changes to the TOS or other matters by displaying notices or links to notices to you generally on the Service.

### 15. GENERAL INFORMATION

The TOS constitute the entire agreement between you and Kapow and govern your use of the Service, superseding any prior agreements between you and Kapow. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software. The TOS and the relationship between you and Kapow shall be governed by the laws of England. The failure of Kapow to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred. The section titles in the TOS are for convenience only and have no legal or contractual effect.

### 16. VIOLATIONS

Please report any violations of the TOS to our Customer Services team.