



---

**MercurySend**  
**Service Agreement**

MercurySend LLC and ( \_\_\_\_\_ )

# TABLE OF CONTENTS

	Page
1. GENERAL DEFINITIONS .....	2-4
2. GENERAL TERMS.....	4
3. MERCURYSEND OBLIGATIONS .....	4
4. CUSTOMER'S OBLIGATIONS AND ACKNOWLEDGEMENT .....	5
6. INVOICING AND PAYMENT.....	6
6. SECURITY .....	6
8. TAXES AND DUTY.....	7
8. CONFIDENTIALITY.....	8
9. WARRANTIES .....	9
10. CUSTOMER'S INDEMNITY .....	9
12. LIABILITY OF MERCURYSEND .....	10
13. EVENT OF DELAY.....	11
14. TERMINATION .....	12
15. DISPUTE RESOLUTION .....	13
16. GENERAL .....	14
17. NOTICES .....	15
18. INTERPRETATION .....	16
SCHEDULE 1 .....	18
SCHEDULE 2.....	19

**MERCURYSEND LLC**  
**SERVICES AGREEMENT**  
**SIGNING PAGE**

**THIS AGREEMENT** is made on the \_\_\_\_\_

**BETWEEN**

**MERCURYSEND LLC - (MercurySend)**

**AND**

**INSERT CUSTOMER NAME – (Customer)**

Address details

- The Customer has read and understood the terms of this Agreement, including the General Conditions. The Customer agrees to be bound by the terms of this Agreement.
- This document is executed as an agreement by the parties

**EXECUTED by MercurySend LLC**

by being signed by those persons who are authorised to sign for the company:

..... Director

..... Full name

..... Usual address

..... Director (or Company Secretary)

..... Full name

..... Usual address

**EXECUTED by Customer Name**

by being signed by those persons who are authorised to sign for the company:

..... Director

..... Full name

..... Usual address

..... Director (or Company Secretary)

..... Full name

..... Usual address

**MERCURYSEND LLC**  
**SERVICES AGREEMENT**  
**GENERAL CONDITIONS**

**RECITALS**

- A MercurySend has developed the Services.
- B The Customer conducts the Customer's Business and wishes to resell the MercurySend Gateway Services to End Users.
- C MercurySend has agreed to provide, and the Customer has agreed to accept, the Services for the purpose of the Customer reselling the MercurySend Gateway Services, re branded Web URL, email domain and Outlook plug- in to On- Request, for End Users.
- D The parties wish to enter into this Agreement to give effect to their common intentions and to record the agreements made between them.

**THE PARTIES AGREE**

**1. DEFINITIONS**

In this document unless expressed or implied to the contrary:

**Agreement** means this agreement and includes the Signing Page, the General Conditions, and the Schedules;

**Authorisation** means any approval, authorisation, consent, exemption, licence, notarisation, registration or waiver, however described and any renewal of or variation to any of them;

**Business Day** means Monday to Friday excluding public holidays in the United States;

**Business Hours** mean 9 a.m. to 5 p.m. on Business Days;

**Commencement Date** means the date specified in Item 3;

**Confidential Information** means all information and materials, in any form, not lawfully in the public domain, in the possession of or under the control of the Receiving Party or to which the Receiving Party gains access at any time including the period preceding the signing of this Agreement:

- (a) concerning the Disclosing Party, its related entities or any business carried on by any of them;
- (b) concerning the terms and subject matter of this Agreement; or
- (c) which the Disclosing Party indicates to be confidential;

**Consideration** means any consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of Tax.

**Content** means the data (including messages, mobile phone and pager numbers and the identification of senders and recipients) sent to MercurySend by the Customer;

**Contract Price** means the amount that the Customer has paid or is payable to MercurySend under clause 6 of this Agreement for the 12 months preceding the incurring of the liability for which the indemnity is sought;

**Customer's Business** means the business specified in the Customer Name;

**Disclosing Party** means the party that discloses the Confidential Information to the Receiving Party under this Agreement;

**End User** means a customer of the Customer to whom the MercurySend Gateway Services are resold;

**Event of Delay** means an event which renders a party unable to carry out the whole or any part of this Agreement for any reason beyond its reasonable control including but not limited to acts of God, acts of governments or governmental authorities, strikes or riots, acts of war or terrorism and any other causes of like nature;

**Government Agency** means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law;

**Initial Term** means the period specified in Item 4 starting from the Commencement Date;

**Insolvency Event** means any of the following events:

- (a) a party becomes insolvent;
- (b) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;
- (c) a party assigns any of its property for the benefit of creditors or any class of them (other than for the purposes of a solvent reconstruction);
- (d) the holder of an encumbrance takes any step towards taking possession or takes possession of any assets of a party or exercises any power of sale; or
- (e) a distress, attachment or other execution is levied or enforced against a party in excess of \$100,000.00;

**Item** means an item in Schedule 1;

**Message** means an SMS message sent via a mobile phone network or a pager message sent via a paging network from MercurySend to a number nominated by the End User;

**MercurySend Gateway Services** means the services described in Schedule 2;

**MercurySend System** means the hardware and software suite which runs the MercurySend Gateway Service;

**Monthly Support Fees** means the amounts specified in Item 6, which apply to a calendar month;

**Receiving Party** means the party that receives or is given access to Confidential Information from the Disclosing Party under this Agreement;

**Relevant Expense** has the meaning given to that term in clause **Error! Reference source not found.**;

**Schedule** means a schedule to this Agreement as amended or replaced at any time by agreement in writing of the parties;

**Security Identification** means all logon identity passwords and any other security code or devices used from time to time to access an internet service provided for MercurySend users.

**Services** means the services described in Schedule 2;

**Signing Page** means the page of this document signed by the parties;

**SMS** means a digital mobile phone Short Message Service message;

**Supplier** means the entity making a Supply to the Recipient;

**Term** means the Initial Term and any continuation of this Agreement;

**Usage Fees** means the amounts specified in Item 6;

## 2. TERM

This Agreement is for the Initial Term specified in Item 4 and will automatically terminate at the end of the Initial Term unless renewed in writing by the parties.

## 3. MERCURYSEND' S OBLIGATIONS

MercurySend must use its best endeavours to provide the Services to the Customer during the Term.

## **4. CUSTOMER'S OBLIGATIONS**

### **4.1 Restrictions on use of the Services**

The Customer must supply the MercurySend Gateway Services to its End Users on terms which prohibit those End Users from using the MercurySend Gateway Services:

- 4.1.1 to transmit any defamatory, offensive, abusive, indecent, menacing or harassing material;
- 4.1.2 in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort or otherwise to a third party, or any intellectual property rights owned or licensed by a third party; or
- 4.1.3 in connection with the commission of an offence against the laws of the United States of America, including without limitation defamation or contempt of Court, or contrary to any relevant regulation or code.

### **4.2 Resale**

The Customer may re-sell the MercurySend Gateway Services to its End Users.

### **4.3 Exclusivity**

The Customer acknowledges that:

- 4.3.1 the arrangements contemplated under this Agreement are exclusive; and
- 4.3.2 the Customer may not acquire services similar to the Services from other suppliers whilst a reseller of the MercurySend service.

## **5. CUSTOMER'S ACKNOWLEDGMENT**

The Customer acknowledges that while MercurySend will use its best endeavours to supply the Services, it does not guarantee delivery of Messages either in a timely manner or at all. The provision of the MercurySend Gateway Services may be affected by a range of factors including technical problems and telecommunications network coverage and availability which relies on third party services. Also, Messages may not be received where the recipient's mobile phone memory is full, out of service, or, phone plan does not allow. The Customer acknowledges that MercurySend does not make any warranties in respect of services provided by third parties. The Customer acknowledges a fee to receive messages by end users may apply by third party network carriers based on their particular phone plan, location, or otherwise and this is out of the control of MercurySend.



## **6. INVOICING AND PAYMENT**

### **6.1 Usage Fees**

In consideration of MercurySend providing the MercurySend Gateway Services, the Customer will pay MercurySend the Usage Fees. If usage is deemed by MercurySend to be of insufficient volume, MercurySend reserves the right to cancel this agreement.

### **6.2 Monthly Support Fees**

In consideration of MercurySend providing the system support services specified in Schedule 2, the Customer will pay MercurySend the Monthly Support Fees. MercurySend will invoice the Customer for the Monthly Support Fees monthly in arrears.

### **6.3 Invoices and Time for Payment**

Invoices for any fees payable under this Agreement will be in a format and form agreed by the parties. The Customer must pay all amounts due under this Agreement within 30 days of receiving an invoice. If the Customer in good faith disputes for any reason any invoice rendered by MercurySend whether wholly or in part, the Customer will nevertheless pay in full the undisputed amount of the invoice in accordance with this clause. If the Customer withholds any amount in accordance with this clause it will provide MercurySend with details of the amount disputed and the reason(s) for the dispute and the parties will negotiate in good faith to resolve that dispute.

## **7. SECURITY IDENTIFICATION**

### **7.1 Security**

The Customer is responsible for keeping secure and protected from unauthorised use all Security Identification.

### **7.2 Deemed Authority**

The Customer agrees that MercurySend is entitled to treat any access by the use of the Customer's Security Identification as access with the Customer's authority and MercurySend is not required to verify that authority.

### **7.3 Unauthorised Access**

The Customer must notify MercurySend immediately if it becomes aware of any access to its Security Identification by unauthorised persons or any unauthorised access to information intended for the Customer.

## **8. TAX AND STAMP DUTIES**

### **8.1 Tax**

Except as otherwise provided by this Agreement, all Consideration payable under this Agreement in relation to any Supply is exclusive of TAX, Duties or Charges imposed or levied in the United States or Overseas in connection with this agreement or the Services.

**8.2** Any stamp duty, duties, taxes, including, state, local, city, or county taxes or of a similar nature (including fines, penalties, and interest) in connection with this agreement or any transaction contemplated by the Agreement must be paid by You. You agree that you are liable for any new taxes, duties, or charges imposed subsequent to the Commencement Date of in respect of this agreement.

### **8.3 Withholding Tax**

If a law, or regulation pursuant to a Law, requires You to deduct or withhold an amount on account of any tax or sales tax from any payment to MercurySend under or in connection with this Agreement; You must make the withholding or deduction; and the amount of the payment to MercurySend must be increased by such additional amount as is necessary to ensure that the amount received and retained by MercurySend (after taking into account All deductions and withholdings on account of tax) is equal to the amount that MercurySend would have received had the payment not been subject to any deductions or withholdings.

## **9. CONFIDENTIALITY**

### **9.1 Confidentiality of Content – MercurySend’ s Obligations**

Unless the law otherwise requires and except as required for the purpose of providing the Services under this Agreement, MercurySend must:

- 9.1.1 keep the Content confidential;
- 9.1.2 take reasonable steps to ensure that MercurySend’ s employees, contractors, agents and consultants do not disclose the Content to a third party or use or reproduce the Content in any form;
- 9.1.3 maintain proper and secure custody of the Content; and
- 9.1.4 not use or reproduce the Content in any form without the written consent of the Customer.

### **9.2 Confidentiality Security and Reproduction – Receiving Party’ s Obligations**

Unless the law otherwise requires and except as required for the purpose of performing its obligations under this Agreement, the Receiving Party must:

- 9.2.1 keep the Confidential Information confidential;
- 9.2.2 take reasonable steps to ensure that the Receiving Party’ s employees, contractors, agents and consultants do not disclose the Confidential Information to a third party;
- 9.2.3 maintain proper and secure custody of the Confidential Information; and
- 9.2.4 not use or reproduce the Confidential Information in any form without the written consent of the Disclosing Party.

### **9.3 Delivery or Destruction of Confidential Information**

The Receiving Party must immediately on the Disclosing Party’ s request in accordance with its rights under this Agreement:

- 9.3.1 deliver to the Disclosing Party all Confidential Information and all changes to, reproductions of, extracts from and notes regarding the Confidential Information, in any form; or
- 9.3.2 destroy the Confidential Information and, if it is the form of computer software, by erasing it from the magnetic media on which it is stored so that the Confidential Information is incapable of being revived; and
- 9.3.3 provide a statutory declaration to the Disclosing Party that all Confidential Information has been delivered or destroyed in accordance with this clause.

#### **9.4 Continuing Obligation**

This clause 9 will survive any termination of this Agreement.

### **10. WARRANTIES**

#### **10.1 Customer's Warranty**

The Customer warrants that it has not relied on any representations made by MercurySend which have not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by MercurySend.

#### **10.2 Parties' Warranties**

Each party represents and warrants to the others that neither its execution of, nor its exercise of its rights, or performance of its obligations under, this Agreement does or will:

- 10.2.1 contravene any applicable law to which it or any order of any Government Agency binding on it;
- 10.2.2 contravene any Authorisation or require that any Authorisation be obtained;
- 10.2.3 contravene any provision of its constitution.

### **11. CUSTOMER'S INDEMNITY**

#### **11.1 Indemnity**

The Customer indemnifies and keeps MercurySend, its officers and employees indemnified against liability for or in respect of any losses, expenses, damages and costs incurred by MercurySend, its officers and employees as a result of persons making any claim whatsoever against MercurySend arising out of the provision of the Services to the Customer, in so far as they are attributable to:

- 11.1.1 any breach of this Agreement by the Customer; or
- 11.1.2 any negligent or unlawful action of the Customer in the course of complying with its obligations under this Agreement.

#### **11.2 Limitation of Liability**

To the extent permitted by law, the Customer is not under any liability to MercurySend in respect of any consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit or indirect costs) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of the Services under this Agreement or the failure or omission on the part of the Customer to comply with its obligations under this Agreement.

## **12. LIABILITY OF MERCURYSEND**

### **12.1 Limitation of Liability**

To the extent permitted by law, MercurySend is not under any liability to the Customer in respect of any consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit or indirect costs) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of the Services under this Agreement or the failure or omission on the part of MercurySend to comply with its obligations under this Agreement.

### **12.2 Exclusion of Warranties**

Except as expressly provided to the contrary in this Agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this Agreement generally, are excluded.

### **12.3 Limitation of Warranties That May Not Be Excluded At Law**

Where any Act of Law implies in this Agreement any term, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such term, such term will be deemed to be included in this Agreement. However, the liability of MercurySend for any breach of such term will be, if permitted by that Act, limited, at the option of MercurySend:

12.3.1 to the supplying of the Services again; or

12.3.2 to the payment of the cost of having the Services supplied again.

### **12.4 Limitation of Indemnities**

Regardless of any other provision of this Agreement, MercurySends total liability to the Customer under any indemnities that MercurySend has given to the Customer under this Agreement must not exceed the Contract Price.

## 13. EVENT OF DELAY

### 13.1 No Liability for Delay or Failure

None of the parties will be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to an Event of Delay.

### 13.2 Obligations Suspended

If a delay or failure to perform obligations is caused by an Event of Delay, the performance of a party's obligations will be suspended.

### 13.3 Termination

If a party (**Affected Party**) is unable to perform an obligation under this Agreement due to an Event of Delay for a period exceeding 90 days, the other party may terminate this Agreement immediately by giving written notice to the Affected Party to this effect.

### 13.4 Consequences of Termination

If a party terminates this Agreement under clause 13.3 both parties will be regarded as discharged from any further obligations under this Agreement.

## **14. TERMINATION**

### **14.1 Termination by MercurySend**

MercurySend may terminate this Agreement immediately, if the Customer fails to pay any amount to MercurySend that the Customer is obliged to pay to MercurySend under this Agreement within 30 days of the date for payment of such an amount, by giving written notice to the Customer to that effect.

### **14.2 Termination by Either Party After the Initial Term**

Either party may terminate this Agreement at any time after the Initial Term by giving the other party 30 days notice in writing.

### **14.3 30 Day Unremedied Breach**

If a party commits a breach of this Agreement and the breach is not rectified within 30 days of written notice of the breach being served on the offending party by the aggrieved party, the aggrieved party may terminate this Agreement immediately by giving the offending party further written notice to that effect.

### **14.4 Insolvency Event**

14.4.1 If MercurySend suffers an Insolvency Event, the Customer may terminate this Agreement immediately upon giving notice in writing to MercurySend.

14.4.2 If the Customer suffers an Insolvency Event, MercurySend may terminate this Agreement immediately upon giving notice in writing to the Customer.

### **14.5 Termination by Mutual Agreement**

The parties may agree in writing to terminate this Agreement at any time.

### **14.6 Consequences of Termination**

14.6.1 If this Agreement is terminated for any reason, in addition to and without prejudice to any other rights, powers or remedies provided by law:

14.6.1.1 each party is released from its obligations under this Agreement except under clause 9; and

14.6.1.2 each party retains the rights it had against the other party in respect of any past breach.

14.6.2 If MercurySend terminates this Agreement under clause 14.1, 14.2, 14.3 or 14.4, it may retain any payments received from the Customer in addition to terminating this Agreement.

## 15. DISPUTE RESOLUTION

- 15.1 If a dispute arises out of or relates to this Agreement, or the breach, termination, validity or subject matter of it, or as to any claim in tort, in equity or under any domestic or international statute or law (**Dispute**), the parties agree to endeavour in good faith to settle the Dispute in the following manner:
- 15.1.1 A party claiming that a Dispute has arisen, must give written notice to the other party specifying the nature of the Dispute.
  - 15.1.2 On receipt of the notice specified in clause 15.1.1, the parties must within seven days of receipt of the notice or within such further period as the parties agree seek to resolve the Dispute.
  - 15.1.3 If the Dispute is not resolved within seven days or within such further period as the parties agree then the Dispute is to be referred to Mediation.
  - 15.1.4 The mediation must be conducted in accordance with applicable United States Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and which terms are deemed incorporated in this Agreement. Each party will bear its own costs in respect of the mediation. The costs of the mediator will be borne equally by the parties.
- 15.2 If the Dispute has not been resolved between the parties within 14 days of the conclusion of the mediation process, the parties are free to pursue other dispute resolution avenues.
- 15.3 Each party will continue to perform this Agreement notwithstanding the existence of a Dispute.
- 15.4 A party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the provisions of this clause 16, except to seek urgent interlocutory relief.



## **16. GENERAL**

### **16.1 Amendment**

This document may only be varied or replaced by a document duly executed by the parties.

### **16.2 Entire Understanding**

This document contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

### **16.3 Waiver and Exercise of Rights**

16.3.1 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

16.3.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **16.4 Assignment**

None of the parties to this Agreement may assign, novate or transfer any of its rights and/or obligations under this Agreement to another person without the written consent of the other parties. This consent must not be unreasonably withheld.

### **16.5 No Relationship**

No party to this document has the power to obligate or bind any other party. Nothing in this document will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this document will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

### **16.6 Survival of Indemnities**

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.

### **16.7 Enforcement of Indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.

## 17. NOTICES

### 17.1 Service of Notice

A notice or other communication required or permitted, under this document, to be served on a person must be in writing, in English, and may be served:

- 17.1.1 personally on the person;
- 17.1.2 by leaving it at the person's current address for service;
- 17.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 17.1.4 by facsimile to the person's current number for service; or
- 17.1.5 by Electronic Communication to the person's current email address for service.

### 17.2 Particulars for Service

- 17.2.1 The particulars for service of MercurySend are set out in Item 7.
- 17.2.2 The particulars for service of the Customer are set out in Item 8.
- 17.2.3 Any party may change the address or facsimile number for service by giving notice to the other parties.
- 17.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

### 17.3 Time of Service

A notice or other communication is deemed served:

- 17.3.1 if served personally or left at the person's address, upon service;
- 17.3.2 if posted within the United States to a United States address, two Business Days after posting and in any other case, seven Business Days after posting;
- 17.3.3 if served by facsimile, subject to clause 17.3.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 17.3.4 if served by Electronic Communication, subject to clause 17.3.5, at the time when the Electronic Communication comes to the attention of the addressee; and
- 17.3.5 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

## **18. INTERPRETATION**

### **18.1 Governing Law and Jurisdiction**

This document is governed by and is to be construed in accordance with the laws of Delaware. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Delaware and waives any right to object to proceedings being brought in those courts.

### **18.2 Persons**

In this document, a reference to:

- 18.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 18.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 18.2.3 any body, which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body, which most closely serves the purposes or objects of the first-mentioned body.

### **18.3 Joint and Several**

If a party consists of more than one person, this document binds them jointly and each of them severally.

### **18.4 Legislation**

In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **18.5 This Document, Clauses and Headings**

In this document:

- 18.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 18.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;
- 18.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 18.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document; and

18.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

## **18.6 Severance**

18.6.1 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

18.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

## **18.7 Counterparts**

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

## **18.8 Business Day**

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

## **18.9 Number and Gender**

In this document, a reference to:

18.9.1 the singular includes the plural and vice versa; and

18.9.2 a gender includes the other genders.



## SCHEDULE 2

### SERVICES DESCRIPTION

#### **MercurySend Gateway**

#### **Services:**

MercurySend will supply a web site for the use of End Users.

The web site will have the following functionality:

- (a) Database Creation;
- (b) Contact creation/sending;
- (c) Group creation/sending;
- (d) Pre-typed Messages;
- (e) Broadcast sending;
- (f) Mail Merge;
- (g) Message Log enquiries/reporting;
- (h) Booked/Recurring Message Sending; and
- (i) .NET interface.

MercurySend will use its best endeavours to deliver each message received from or lodged by the End User at the earliest possible opportunity to a mobile phone network for delivery to the specified device. MercurySend shall attempt to lodge the message up to 5 times until such time as the network either acknowledges successful receipt of the message from MercurySend or rejects the message.

SMS messages are restricted to 160 characters. Accordingly, MercurySend may send one or more SMS messages when it receives Content from the End User which exceeds the 160 character limit applicable to SMS messages.

MercurySend has sole discretion in its choice of network provider but in making such choice shall give consideration to the shortest path of delivery to the destination mobile device, the relative rates charged by network providers, service levels of the network providers and any factors that MercurySend considers relevant in delivering an optimal service to its customers.

All messages sent by MercurySend will be logged and those logs made available to the Customer and its End Users via the Customer branded website.

#### **System Support:**

MercurySend will endeavour to ensure that the MercurySend Gateway Services are available 24 hours a day, 7 days a week, with the exception of scheduled outages. MercurySend will give the Customer at least 24 hours notice of scheduled outages but makes no warranties as to uptime, response time or delivery speeds.

MercurySend will support the MercurySend Gateway System with upgrades and remedial and preventative maintenance.

**Support:****Business Hours Support**

MercurySend staff will be available to provide telephone support during Business Hours.

**After Hours Support**

MercurySend will provide a number for the Customer and its staff to contact MercurySend technical staff for support outside of Business Hours in the event of any service difficulty or issues.

**Email:** [support@mercurysend.com](mailto:support@mercurysend.com)

**ph:** 1800 44 22 721