

Yellow Connect™ Agreement

This Agreement governs the use of the Services by you.

1. Definitions

In this Agreement:

“Advertising Order Form” means the Advertising Order Form in respect of the Services that accompanies this Agreement;

“Campaign” means a promotion that is set up pursuant to this Agreement that has a start and end date;

“Initial Lead Credit” means the first Lead Credit (minimum \$100) you agree to purchase to put in your Lead Credit Account as soon as it is set up;

“Initial Term” means the term set out on the Advertising Order Form;

“Keyword” means words, numbers or a combination of letters and numbers allocated by us to clients who subscribe to use the Services for use in Campaigns;

“Lead” means an individual interaction between a User and the Service as a result of one of your Campaigns;

“Lead Credit” means amounts that you put in your Credit Account;

“Lead Credit Account” means the account we will set up for you in which we will hold Lead Credit on your behalf;

“Per Lead Fee” means the prices for Leads as set out in the Schedule of Fees;

“Schedule of Fees” means the schedule that sets out the various fees for the Services, as amended from time to time. The current Schedule of Fees accompanies this Agreement and is available at www.yellowpagesgroup.co.nz;

“Services” means the service we provide you pursuant to this Agreement, including amongst other things:

- providing you with the ability to set up Campaigns to be promoted to your customers;
- the ability for a User to text a Keyword to a Yellow™ Shortcode and receive an automatic response by text;
- the ability for a User to text a Keyword to a Yellow Shortcode and receive information by email; and
- the possibility that we will promote your Campaigns using the Yellow Network without charging you for such promotion (other than an additional Per Lead Fee in respect of Leads received as a result of that promotion),

(and “the Service” means the combination of system and personnel through which we provide the Services);

“Subscription Charge” means an amount for your subscription to the Services for the relevant period (subject to any agreed discount in respect of the Initial Period) as set out on the Advertising Order Form;

“User” means a person that interacts with the Service (whether by text, by email or otherwise);

“Yellow”, “we” or “us” means Yellow Pages Group Limited together with each of its subsidiaries and holding companies (as those terms are defined in the Companies Act 1993), their respective directors, employees, contractors and everyone else for whom any such company is responsible;

“Yellow Network” means the Yellow range of advertising products (for example the Yellow vouchers website);

“Yellow Shortcodes” means numbers notified to you by Yellow to be used as part of Campaigns for Users to send Texts to in order to get a set response; and

“you” means the party identified as the customer on the Advertising Order Form.

2. Setting Up Campaigns

In anticipation of your subscription starting, we will send you an email attaching a copy of the template that you need to use to set up Campaigns. To set up a Campaign, you need to complete this template and send it back to us by email (to the email address identified for this purpose). We can't set up Campaigns immediately, and it may take up to five working days. No Campaign can start until your subscription has started.

Once your Campaign has been set up we will send you an email confirming the details. We will also provide you with a sample Text or email where relevant to confirm the details of the Campaign have been input correctly. You are responsible to ensure that any Campaign we set up matches your expectations and that you are happy with the details.

Once a Campaign is set up, we may promote it using the Yellow Network if you have “opted in” to such promotion. This would be in addition to any advertising promoting the Campaign that you have purchased from us. Any Leads received as a result of such additional promotion by us will incur an additional Per Lead Fee (see the Schedule of Fees for details). If you “opt in” to us promoting your Campaigns, you will be deemed to have provided us with all necessary consents to use your brands and other intellectual property for the purposes of such promotion.

3. Keywords

We may allow you to reserve Keywords before you sign the Advertising Order Form. However, we will lapse any such reservation if you do not sign up within seven days.

At any one time, a Keyword / Yellow Shortcode combination can only be allocated by us to one client subscribing for the Services. We will endeavour to reserve your preferred Keywords for you, but cannot give any guarantees. We reserve the right to not reserve a Keyword that you have requested for any reason (including because it is offensive, defamatory or we consider that it may breach the intellectual property of a third party).

Subject to the parameters in the next paragraph, at any one time we will only allow you to reserve up to 5 “dormant” Keyword / Yellow Shortcode combinations (i.e., ones are not used in Campaigns that are pending or active). If you wish to reserve a new Keyword / Yellow Shortcode combination but have exceeded this limit, you will need to either release, or establish a Campaign that uses, one of your dormant Keyword / Yellow Shortcode combinations.

You must actively use the Keywords / Yellow Shortcode combinations you have been allocated. If you have reserved a Keyword / Yellow Shortcode combination that you do not use for two months, we will notify you by email that you risk losing it. If, following such notification, you haven't used that Keyword / Yellow Shortcode combination for a further month, we will remove it from your allocation. Otherwise, you will be able to retain your Keyword / Yellow Shortcode combinations until your subscription terminates. When your subscription terminates they will be free to be allocated by us to any other client.

4. Your obligations regarding your customers and your Campaigns

You agree that, in respect of any Campaign you set up:

- You will ensure that it matches your expectations and that you are happy with the details;
- You will actively promote that Campaign;
- You will not promote the Campaign outside of the Campaign start and end dates (or you may be liable for the cost of the response messages sent to users during this period);
- You will ensure that you have adequate Lead Credit during the period of the Campaign.
- You will ensure that any promotional material (whether hardcopy or not) that you use to promote any Campaign makes it clear to potential Users the amount that they will be charged for sending a Text;
- You will not use the Services for any illegal purposes or in a way that is in breach of, or causes us to be in breach of, any law (including particularly the Unsolicited Electronic Messages Act 2007 and the Telecommunications Information Privacy Code 2003); and
- You will ensure that no content is sent to Users, or communicated or transmitted in any way associated with the Services, that is unlawful, damaging to computer systems, obscene, harmful, threatening, defamatory or hateful.

5. Our rights regarding your customers and your Campaigns

We reserve the right at all times to terminate your subscription and delete any content regarding your Campaigns for any reason we consider appropriate, including but not limited to violations of this Agreement or law, distribution of inappropriate or defamatory material or use of the Services in a way that is not solely for bona fide business purposes. We may request that you provide us with written evidence or confirmation of your ability to use any brand or trading name in your Campaign.

6. Fees, payment and reporting

The fees that you will be obliged to pay us for the Services comprise:

- the Subscription Charge, which is payable in respect of the Initial Period and then in respect of each subsequent period; and
- an amount equal to the relevant Per Lead Fee multiplied by the number of Leads generated as a result of your Campaigns (noting that the amount of the Per Lead Fee will vary for different Leads and that the details of the Per Lead Fees are set out in the Schedule of Fees).

The Subscription Charge will be payable upon the commencement of the Initial Period (or subsequent period, as applicable). We will deduct the Per Lead Fee from Lead Credit in your Credit Account as soon as the first Lead takes place. We will send you an invoice in respect of the Subscription Charge and the Initial Lead Credit once your subscription starts. Any invoices issued pursuant to this Agreement must be paid by the 20th of the following month.

To the extent that you receive the benefit of a discount on your Subscription Charge in respect of the Initial Period, you will be required to pay the full Subscription Charge for any future periods.

We will send you a report that shows the number of Leads during each month, the Lead Credit that has been deducted from your Lead Credit Account and the opening and closing balance of your Lead Credit Account.

7. Lead Credit Account and Topping up

We will set up your Lead Credit Account once the Advertising Order Form has been signed. You will purchase the Initial Lead Credit upon your subscription commencing and we will apply it to your Lead Credit Account (once it has been set up). We will not initiate any Campaign until you have purchased the Initial Lead Credit.

You can purchase additional Lead Credit at any stage during the term of this Agreement (in minimum increments of \$50). We will endeavour to contact you when your lead credit is running low (for example by sending you an email), but you must ensure that your Lead Credit Account is always appropriately topped up.

You are responsible for keeping confidential any PIN number or password used by or allocated to you. We may assume that any request or instruction we receive is authorised by you if it is accompanied by suitable verification (for example, your billing account number, PIN number or password).

We may disable any of your Campaigns if you run out of Lead Credit in your Lead Credit Account. We will not allow your Lead Credit Account to go into overdraft. We will restart any Campaign that we disable if you purchase some further Lead Credit (this may take five working days). We may permanently disable your Campaigns and reallocate your Keywords if you do not purchase further Lead Credit within 20 working days of the earlier of either (a) being notified by us about the level of your Lead Credit Account (see above); or (b) your Lead Credit Account running out of Lead Credits.

Lead Credit in your Credit Account will not earn interest. We will refund you an amount equal to any Lead Credit in your Credit Account when this Agreement terminates, although we will be entitled to deduct an administration fee of \$50 and/or other monies you owe us. We will not refund Lead Credit if you have a balance of less than \$10 (after all deductions) or if the Schedule of Fees specifically excludes refunds.

8. Term and cancellation

Your subscription will be for the Initial Term. We will refund you the Subscription Charge if you cancel your subscription during the first five working days after you sign the Advertising Order Form. You can cancel your subscription at any time after that, but you will not be refunded the Subscription Charge.

Your subscription will be automatically renewed for further periods of 12 months unless you give us written notice of your wish to cancel your subscription no less than five working days before the end of the then current term. Subsequent terms will each start on the anniversary of the day after the last day of the Initial Term.

Any Campaigns will end when your subscription ends.

9. No Guarantee

We do not guarantee that (a) you will receive any minimum level of Leads; (b) that the system will be available on a 24 hours / 7 days basis (it being acknowledged that Yellow may need to take the system down for maintenance, emergency circumstances and other reasons).

10. Intellectual property

We own all rights associated with the Keywords and Yellow Short Codes in the context of the Services and, by allocating them to you we grant you an exclusive non-transferable right to use them during the course of your subscription to the Services, subject to the terms of this Agreement.

We do not transfer to you any rights associated with the software or other intellectual property used in the provision of the Services. You may not disassemble, reverse engineer or decompile or in any other way interfere with that software.

You are responsible to ensure that no Campaign you set up infringes the rights of any third parties.

11. Liability

We will not be liable to you for any loss, expense or damage caused by or resulting from anything Yellow does or does not do, or delays in doing, whether or not it is contemplated or authorised by this Agreement. This exclusion applies whatever you are claiming for (including loss of profits or business) and however the liability arises or might arise if it were not for this clause. This exclusion does not prevent you getting a court order requiring us to perform our obligations under this Agreement. If you are ever entitled to compensation from us, or if we are ever liable to you and, for any reason, cannot rely on the exclusion of liability set out in this clause, the maximum combined amount we (taken together) will ever have to pay you is:

- \$100 for any event or for any series of related events; and
- a total of \$1,000 in any 12 month period.

12. Indemnity

You must indemnify Yellow against any loss, damage, liability or expense we incur, as incurred, which is directly or indirectly caused by, results from, or arises out of your use of the Services or otherwise out of this Agreement, other than any loss, damage, liability or expense we incur that arises solely as a result of our willful default or fraud.

13. Resolving disputes

If a dispute arises between the parties, either party may give the other written notice requiring that the dispute be determined in accordance with this clause 13. Following such a notice, the parties will enter into negotiations to resolve the dispute as soon as reasonably practicable. If the dispute has not been resolved within 20 working days of the giving of the initial notice, either party may refer the dispute to mediation, by written notice to the other (“Mediation Notice”). The mediation will be conducted as soon as possible in Auckland. If the parties can not agree on a mediator within 5 working days of the giving of the Mediation Notice, the mediator will be selected at the request of either party by the president for the time being of LEADR (Lawyers Engaged in Alternative Dispute Resolution) or its successor. The terms of reference for the mediation, if not agreed between the parties within 5 working days of the giving of the Mediation Notice, will be the model mediation terms suggested by LEADR.

14. Information about you and your business

You agree that we may collect information about you and your business. The information may be obtained from you and others, or generated from equipment used to provide our services when you and anyone else uses our services. You may ask to see information we hold about you, so long as we can readily retrieve it, and ask for any details that are wrong to be corrected. We may hold the information and share it with our related companies, with our officers, employees, contractors, partners, joint ventures, agents and customers, with collection agencies and with credit reference agencies, so as to provide services or information to you and others, send you bills, recover and report on money you owe and keep you informed of services available to you. Credit reporters may include credit checks and any defaults in payment to Yellow Pages Group in their databases and share this information with others who wish to conduct credit checks on you.

15. Transfer Of Rights And Responsibilities

You may transfer all (but not part of) your rights and responsibilities under any agreement you have with us to someone else so long as we have received the transferee's written acceptance of responsibility and given you our written consent.

16. Each Term Separately Binding

If for any reason any term cannot be enforced or relied on by you or any of us, all other terms remain binding.

17. No Waiver

No delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion. A waiver can only be in writing and applies only to the right and on the occasion specified in the waiver.

18. New Zealand Law Applies

All our services are provided in New Zealand and under New Zealand law. You may take legal action against us only in a New Zealand court.

19. Sending Bills and Notices

We will send bills and other notices to you either by post or by fax or to any email address you have designated for receiving bills and notices. You may send bills and other notices to us either by post or by fax. A notice sent by post will be assumed to be delivered 3 business days after it is posted. A notice sent by fax will be assumed to be delivered if a fax transmission receipt which records the correct transmission details is produced. A notice sent to a designated email address will be assumed to be delivered as soon as it is sent, unless it is sent after 5pm on a business day when it will be assumed to be delivered on the following business day.

20. Amendments to this Agreement

We may change this Agreement at any time by giving you one month's notice in writing.