

# APUG SMS CONDITIONS OF SERVICE



The terms and conditions set out below apply to the APUG SUPPLIER MANAGEMENT SYSTEM (APUG SMS) web-based questionnaire. The SUPPLIER accepts these terms at the time when the SUPPLIER first gains access to the web-based questionnaire using the unique log on details supplied in the APUG SMS introductory email or letter from ACHILLES.

## 1. Definitions

ACHILLES shall mean Achilles Information (Australia) Pty Ltd.

SUPPLIER shall mean a supplier, contractor or a service provider who wishes to register, or is registered on the APUG SMS.

SUBSCRIBER shall mean the companies registered as a USER of the APUG SMS.

APUG SMS is a common database operated by ACHILLES on behalf of SUBSCRIBERS in the Utilities industry.

INTELLECTUAL PROPERTY means all intellectual property rights including copyright (in any software, operational manuals and reports), neighbouring rights and all rights in relation to inventions (including any program, system, procedure, process, formula or method of production), patents, registered and unregistered trade marks, registered and unregistered designs, trade secrets and confidential information.

PARTIES to these terms and conditions means ACHILLES and the SUPPLIER. A PARTY to these terms and conditions means either ACHILLES or the SUPPLIER.

USER means a company having access to the supplier records.

## 2. General Terms

ACHILLES will provide to SUBSCRIBERS the entire information provided by the SUPPLIER through a specific questionnaire, by loading the information received from the SUPPLIER into the APUG SMS.

ACHILLES will confirm to the SUPPLIER in writing, within four weeks from receipt of the completed questionnaire, notification of the registration of the SUPPLIER'S information onto the APUG SMS, or notification of any amendments that may be required before the SUPPLIER'S information can be registered onto the APUG SMS.

ACHILLES will update the APUG SMS at least once a month.

Notwithstanding anything else in these terms and conditions ACHILLES shall not be liable for any failure in performing any of its obligations under these conditions if such failure is caused by circumstances beyond the control of ACHILLES, which shall include any Act of God, war, trade dispute, fire, flood, drought, tempest or any other abnormal weather conditions. In all cases ACHILLES liability is limited to the value of the standard information material required for registration on the APUG SMS.

The SUPPLIER binds himself to answer the questions in the questionnaire as accurately and completely as possible such that the completed questionnaire reflects the general status of, and the specific goods and or services offered by, the SUPPLIER at the specified time of completion of this questionnaire. The SUPPLIER is responsible for reviewing the accuracy of the data information entered on the APUG SMS questionnaire.

During use of the web-based questionnaire the SUPPLIER agrees to:

- i. Comply with ACHILLES reasonable requirements and directions as to use of the questionnaire;
- ii. Use the questionnaire in accordance with applicable law, including data privacy laws and communication regulations;
- iii. Not interfere with the proper functionality of the web site hosting the APUG SMS questionnaire.

The SUPPLIER agrees not to use the questionnaire to knowingly load, post or distribute any information that:

- i. infringes the INTELLECTUAL PROPERTY rights of any other person or entity;
- ii. is harmful, inaccurate, misleading, fraudulent, defamatory, obscene, offensive or otherwise illegal.

ACHILLES and the SUPPLIER shall use their reasonable endeavors to ensure that computer software viruses that may damage hardware, software or communication systems, are not knowingly created or introduced to the web site hosting the APUG SMS questionnaire.

The SUPPLIER agrees to maintain the confidentiality of the unique questionnaire log on, required by the SUPPLIER to gain access to the web-based questionnaire, issued by Achilles in the APUG SMS introductory letter or email. The SUPPLIER agrees to limit distribution of this log on to individuals in the SUPPLIER'S organisation who require access to this log on for the purpose of completing the questionnaire. In addition the SUPPLIER will notify ACHILLES immediately if it knows or suspects any misuse of, or breach of confidentiality relating to this log on.

In the course of completing the web-based questionnaire, the SUPPLIER may be asked to provide details of their financial information in their own local currency, along with the month and year to which the figures relate. SUBSCRIBERS will be able to search and view this information after it has been converted into various currencies other than the local currency entered by the SUPPLIER. In performing any such currency conversion calculations ACHILLES will apply either the daily foreign exchange rate corresponding to the last day of the applicable month, or the average rate during the 12 month period ending on the last day of the applicable month (whichever is applicable), as taken from the OANDA.com website (<http://www.oanda.com>).

If at any time any one of the provisions of these conditions becomes invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired. These terms and conditions shall continue in effect until amended or terminated by ACHILLES by written notice.

## 3. Indemnities

ACHILLES shall indemnify the SUPPLIER for any loss suffered by the SUPPLIER as a result of ACHILLES failure to comply with any applicable laws or regulations in providing the APUG SMS, subject to the limit stated below.

ACHILLES shall indemnify and keep indemnified the SUPPLIER, its officers, employees and agents against all and any liability, losses, damages, awards, claims, costs and expenses that they may sustain or incur arising from ACHILLES breach of any representations, warranties or obligations set forth under these terms and conditions, subject to the limit stated below.

The SUPPLIER shall indemnify and keep indemnified ACHILLES, its officers, employees and agents against all and any liability, losses, damages, awards, claims, costs and expenses that they may sustain or incur arising from SUPPLIER'S breach of any representations, warranties or obligations set forth under these terms and conditions, subject to the limit stated below.

Each PARTY'S aggregate liability to the other in respect of all claims (whether in contract or tort) shall not exceed US\$50,000. The PARTIES will not in any circumstances be liable for indirect, incidental or consequential loss or damage or loss of profits, loss of revenue or loss of anticipated savings. Such agreed limitations on the liability of either PARTY will not apply in respect of death or personal injury arising from the negligence of either PARTY, its employees, sub-contractors or agents or in respect of any claims based on fraud.

The web site hosting the APUG SMS questionnaire may provide links to other Internet sites. ACHILLES is not responsible for the availability or content of such other sites. The SUPPLIER'S accessing of any of these sites is entirely at the risk of the SUPPLIER.

#### **4. Subscription Fee**

Both SUPPLIERS and SUBSCRIBERS will contribute towards the administration cost of operating the APUG SMS. For registration in this database an annual non-refundable fee is payable by the SUPPLIER.

#### **5. Audits**

One or more of the SUBSCRIBERS registered as USERS of the APUG SMS is entitled, at its own discretion and cost, to audit the SUPPLIER for verification of information which is placed at ACHILLES' disposal for updating the APUG SMS. The SUBSCRIBERS have committed themselves to give reasonable notice to the SUPPLIER and ACHILLES in writing for an intended audit. The result of such an audit shall be presented to ACHILLES. If such an audit is refused by the SUPPLIER, or in the event material breaches of these terms and conditions or material misrepresentations are found, ACHILLES may decide to expel the SUPPLIER from the APUG SMS with immediate effect under the rules approved by the APUG Steering Committee.

#### **6. Ownership Rights**

The copyright and all intellectual property rights whatsoever of all computer programs, user manuals, ACHILLES sponsored web sites, questionnaires and other documentation in connection with the APUG SMS will remain vested in and be the property of ACHILLES. The intellectual property in the information and other material entered by the SUPPLIER onto the APUG SMS Questionnaire shall, at all times, remain vested in the SUPPLIER.

#### **7. Confidentiality**

ACHILLES and the SUPPLIER agree to keep in confidence for a minimum period of five years from the termination of these terms and conditions any information obtained under these terms and conditions and will not divulge the same to any third party, other than its own officers, employees or agents, without the prior written consent of the other PARTY.

ACHILLES shall use all reasonable endeavours to protect and safeguard the information provided by the SUPPLIER from loss, theft, destruction, third party intervention, "hacking" and the like from accidental disclosure and shall ensure all employees do likewise.

This provision shall not apply to:

- i any information in the public domain other than in breach of these terms and conditions;
- ii information that is either trivial or obvious or already in the possession of the receiving PARTY before its receipt from the disclosing PARTY;
- iii information received from a third party (other than a SUBSCRIBER) who is free to disclose the same;
- iv disclosure of information which is required by law or a regulatory body provided that always if such order or requirement arises, the PARTY proposing to disclose shall give to the other PARTY prompt written notice thereof;
- v information developed by one PARTY independent of the other;
- vi information disclosed to professional advisers, auditors, bankers or financiers provided a confidentiality undertaking is in force with at least the same terms as this clause.

ACHILLES agrees to ensure that each SUBSCRIBER undertakes similar terms of confidentiality before being allowed to access the APUG SMS.

#### **8. Law and Jurisdiction**

These terms and conditions shall be governed by the Law of the Commonwealth of Australia and the parties shall be subject to the exclusive jurisdiction of the Australian Courts.