

## MessagePixels LLC - MPNews Service Agreement

**IMPORTANT - READ CAREFULLY: THIS AGREEMENT CONTROLS THE USE OF THE SERVICES PROVIDED BY MESSAGEPIXELS LLC AND CONTAIN SIGNIFICANT RESTRICTIONS AND LIMITATIONS ON RIGHTS AND REMEDIES, AND CREATE OBLIGATIONS ON ANYONE WHO ACCEPTS THIS AGREEMENT. YOU SHOULD READ THIS AGREEMENT CAREFULLY BEFORE AGREEING TO THESE TERMS AND USING THE SERVICE.**

This MPNews Service Agreement (“**Agreement**”) is a legal agreement between licensee (“**you**”) and **MessagePixels LLC** for the hosted MPNews service (the “**Service**”), which includes the MPNews computer application and online access to MPNews at [www.newsgrouphosting.com](http://www.newsgrouphosting.com).

If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the complete authority to enter into this agreement on behalf of your company. If you are using the service as an individual, you represent that you are over the age of 18.

You are responsible for this account and each user accessing the service by means of a valid public or individual account established by you, including, if you are a corporation, all employees of your corporation. If you do not have the authority, or if you do not agree with these terms and conditions, you may not use this service.

By accessing and using the Service, you agree to be bound by the terms of this Agreement.

- 1. Grant of Rights.** MessagePixels LLC hereby grants to you limited, non-exclusive, non-transferable worldwide rights to use the Service subject to the terms and conditions described in this Agreement and payment of all applicable Service fees. This Grant shall be for the period of months you selected when ordering the Service (“**Term**”) which shall not be less than one (1) month and will be automatically renewed for successive Terms of the same number of months unless terminated by either party according to this Agreement.
- 2. Service Use and Restrictions.** Your rights and obligations with respect to the use of the Service are described at [www.messagepixels.com](http://www.messagepixels.com) and are based on the level of Service you chose when ordering the Service. You may not (a) sublicense, transfer, assign, sell, rent or lease any portion of the Service; (b) reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the MPNews software or create derivative works from the MPNews software or Service; (c) disclose the logins and passwords received from MessagePixels LLC or share the Service with third parties to expand the number of users who may access the Service; or (d) create Web “links” to the Service or “frame” or “mirror” content on any other server or wireless or Internet-based device in an attempt to expand the number of users who may access the Service.
- 3. Service Availability.** MessagePixels LLC will provide you with use of the Service, including a browser interface, Web-based administration, and data transmission, access and storage, for the edition you selected. MessagePixels LLC makes no guarantees as to the continuous availability of the Service or of any specific feature(s) of the Service. MessagePixels LLC will inform you of any significant changes to the Service or terms and conditions of this Agreement that it may make from time to time.

The Service may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. MessagePixels LLC is not responsible for any delays, delivery failures, or other damage resulting from such problems.

- 4. Your Responsibilities.** You are responsible for all activity occurring under your user accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify

MessagePixels LLC immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (ii) not impersonate another MessagePixels LLC User or provide false identity information to gain access to or use the Service.

5. **Your Data.** MessagePixels LLC does not attain ownership in any data, information or material that you submit to the Service in the course of using the Service ("**Your Data**"). You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use your data, and MessagePixels LLC shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of your data. MessagePixels LLC shall use reasonable efforts to protect your data behind a secure firewall system, to conduct regular data backups, and to provide data backup to you upon request (charges may apply). In the event this Agreement is terminated (other than by reason of your breach), MessagePixels LLC will make available to you a file of your data within 14 days of termination if you request in writing at the time of termination. You agree and acknowledge that MessagePixels LLC has no obligation to retain your data, and may delete your data, on the 15th day after termination. MessagePixels LLC reserves the right to withhold, remove and/or discard your data, without notice, for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use your data immediately ceases, and MessagePixels LLC shall have no obligation to maintain or provide any of your data.
6. **Ownership of Service.** You acknowledge that the Service is proprietary to and a valuable trade secret of MessagePixels LLC protected by applicable United States patent, copyright laws and other intellectual property laws and international treaty provisions. MessagePixels LLC and its third party licensors, if any, retain all title to and, except as expressly and unambiguously licensed herein, all rights and interest in (a) the Service; (b) the MessagePixels LLC trademarks, service marks, trade names and logos; (c) any and all copyrights, patent rights, trade secret rights and other intellectual property and proprietary rights throughout the world in the foregoing; and (d) any suggestions, ideas, enhancement requests, feedback, recommendations or other information you provide to MessagePixels LLC relating to the Service.
7. **Non-Payment and Suspension.** All fees are due in advance. MessagePixels LLC reserves the right to suspend Service and terminate this Agreement if your account becomes delinquent. If your use of the Service is suspended but not terminated, you will be obligated for and agree to pay fees for the balance of the full term.

MessagePixels LLC reserves the right to impose a reactivation fee in the event your account is suspended and you wish to continue the Service. You agree and acknowledge that MessagePixels LLC has no obligation to retain your data and that your data may be irretrievably deleted if your account is 15 days or more delinquent.

8. **Termination.** This Agreement and the Service continues in effect until (a) either party notifies the other party in writing at least thirty (30) business days prior to the date of the end of the current Term, effective upon the expiration of the then current Term; (b) a breach of your payment obligations; or (c) any use of the Service contrary to the terms and conditions of this Agreement. Any provision in this Agreement that when reasonably read is intended to survive the termination of this Agreement shall survive, including without limitation, the disclaimer of warranties and limitations on liability.
9. **Limited Warranty.** MessagePixels LLC warrants (a) that it has the right to grant the Agreement set forth herein; (b) represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision of this Service; and (c) that the Service will perform substantially in accordance with the online documentation under normal use and circumstances ("**Limited Warranty**").

EXCEPT FOR THE LIMITED WARRANTY DESCRIBED ABOVE, THE SERVICE AND SOFTWARE IS PROVIDED

“AS IS” WITHOUT WARRANTIES OR IMPLIED TERMS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE CONDITION OF THE SERVICE OR FITNESS FOR A PARTICULAR PURPOSE; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) ERRORS OR DEFECTS WILL BE CORRECTED; (E) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (F) ANY WARRANTY AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SERVICE, SOFTWARE, AND DOCUMENTATION REMAINS WITH YOU.

MessagePixels LLC’s entire liability and your exclusive remedy shall be an alternative download location or replacement of any media not meeting the Limited Warranty described herein if MessagePixels LLC is promptly notified. MessagePixels LLC does not warrant the functions contained in the Service will meet your requirements or that operation of the Service will be uninterrupted or error free.

**10. Indemnification.** If you receive notice of any claim that your use of any part of the Service directly infringes the rights of a third party in or to any patent, copyright, trademark or trade secret, or violates any other intellectual property right, MessagePixels LLC shall defend or settle any such claim, and shall indemnify and hold you harmless by paying any resulting costs and damages finally awarded to the third party by a court with respect to any such claim provided that you: (a) notify MessagePixels LLC in writing promptly upon becoming aware of the claim; (b) at MessagePixels LLC’s request and expense, give MessagePixels LLC such information and assistance as is reasonable under the circumstances; and (c) give MessagePixels LLC the right, at MessagePixels LLC’s sole discretion, to settle the claim at MessagePixels LLC’s expense. This indemnification does not extend to any claim based upon any alleged infringement arising from the combination of the Service with other elements not under MessagePixels LLC’s sole control such as any part of the Service that you or a third-party modify, content provided by the Service, or any specifications, designs or formulas that you incorporate. If you are prevented from using the Service because of an actual or claimed infringement, then at MessagePixels LLC’s option, MessagePixels LLC shall promptly either obtain for you the right to continue using the affected part of the Service, replace or modify the affected part of the Service so that it becomes non-infringing, or if none of the foregoing alternatives are possible after MessagePixels LLC’s commercially reasonable efforts, MessagePixels LLC shall remit to you a pro rata portion of the fee you paid (up to the suggested list price) for the Service calculated from the date that MessagePixels LLC provided the Service. THIS SECTION SETS OUT THE ENTIRE EXPOSURE OF MESSAGEPIXELS LLC AND YOUR SOLE REMEDY FOR INDEMNIFICATION HEREUNDER.

**11. Limitation of Liability.** Because computer software is inherently complex and may not be free from errors, you are advised to verify results obtained from the Service. NEITHER MESSAGEPIXELS LLC NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY DEFECT IN THE SERVICE OR SOFTWARE, EVEN IF MESSAGEPIXELS LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS MEANS MESSAGEPIXELS LLC IS NOT RESPONSIBLE OR LIABLE FOR DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF DATA, LOSS OF ANTICIPATED PROFITS OR BENEFITS RESULTING FROM USE OF THE SERVICE OR LOSS OF USE OF THE SERVICE, NOR FOR DAMAGES OR COSTS INCURRED IN CONNECTION WITH OBTAINING SUBSTITUTE SOFTWARE OR SERVICE, CLAIMS BY OTHERS OR SIMILAR COSTS. IN NO EVENT SHALL MESSAGEPIXELS LLC’S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SERVICE OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS ACTUALLY PAID IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY SUCH LIABILITY.

MessagePixels LLC will have no responsibility under the Limited Warranty for any Service that has been modified or damaged by accident, abuse or misapplication. No employee, agent or representative of MessagePixels LLC, nor any third party, is authorized to make any warranty with

respect to the Service, except those expressly stated in this Agreement, and you may not rely on any such unauthorized warranty.

- 12. Local Laws and Export Control.** This Agreement gives you specific legal rights, and you may also have other rights, which vary. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so some of the above may not apply to you.

The Service may use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. You acknowledge and agree that the Service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining any necessary licenses to export or re-export.

- 13. Assignment.** This Agreement may not be assigned by you without the prior written approval of MessagePixels LLC but may be assigned without your consent by MessagePixels LLC to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

- 14. General.** This Agreement sets forth the complete agreement between you and MessagePixels LLC regarding your use of the Service, and supersedes any prior agreement, purchase order, confirmation, advertising, representation, or other communication. MessagePixels LLC has your permission to send you information regarding MessagePixels LLC's products and services, including via facsimile and e-mail. This Agreement may not be modified except by a written agreement signed by an authorized MessagePixels LLC representative. If any provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision, which conforms to applicable law and embodies as closely as possible the original intent of the parties. This Agreement will be governed by the laws of the State of Florida, U.S.A. without regard to the conflict of laws provisions thereof. The exclusive judicial forum for any action that may be brought to enforce this Agreement shall be in Florida in an appropriate state court in Pinellas County or federal court in Tampa.

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## Open Source Software

MessagePixels LLC has made use of the following Open Source software libraries within the Service software:

- [Bplusdotnet](http://sourceforge.net/projects/bplusdotnet/) (licensed under BSD License: <http://sourceforge.net/projects/bplusdotnet/>)
- [Lucene.Net](http://lucene.apache.org/java/docs/) (licensed under Apache License: <http://lucene.apache.org/java/docs/>)
- [Xindice](http://xml.apache.org/xindice/) (licensed under Apache License: <http://xml.apache.org/xindice/>)
- [GnuPGWrapper](http://www.gnu.org/copyleft/gpl.html) (licensed under GNU General Public License: <http://www.gnu.org/copyleft/gpl.html>)
- [XML-RPC.Net](http://www.xml-rpc.net/) (licensed under MIT X11 License: <http://www.xml-rpc.net/>)