BULKSMS
TERMS & CONDITIONS

These terms and conditions govern the legal relationship between BulkSMS and its Users and incorporate the provisions of the BulkSMS Privacy Policy.

Please read these terms and conditions carefully.

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BULKSMS TERMS AND CONDITIONS - These terms and conditions govern the legal relationship between BulkSMS and its Users and incorporate the provisions of the BulkSMS Privacy Policy.

This Agreement was updated on 13 March 2023. For previous versions click here.

We have made changes in our Terms and Conditions to reflect improvements in our operations. The updates to the clauses of our Terms and Conditions can be read here.

1. Introduction

These terms and conditions govern the legal relationship between BulkSMS and its Users and incorporate the provisions of the BulkSMS Privacy Policy and the Data Protection Addendum.

TAKE NOTE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS THAT DISCLAIM, LIMIT AND EXCLUDE THE LIABILITY OF BULKSMS TO YOU AND THAT INDEMNIFY BULKSMS AGAINST CLAIMS AND DAMAGES THAT IT MAY SUFFER AS A RESULT OF YOUR CONDUCT.

Please read these terms and conditions carefully.

2. Interpretation

2.1.   The words and phrases listed below shall bear the following meanings in these terms and conditions, unless the context clearly indicates otherwise:

"BulkSMS" means the BulkSMS legal entity responsible for providing the Services to you in your territory, the BulkSMS legal entity with whom you contract for the provision of the Services in your territory is identified in the table under point 20.1 of this agreement;

"End user" or "recipient" means any person, including both natural and juristic entities who receives or is intended to receive any message sent by a User using the Services;

"Network Operator" means any party licensed to install, operate and maintain a cellular telephony network;

"Services" shall mean and include all products and services offered or provided to Users by BulkSMS including the software and applications referred to in paragraph 15.2;

"SMS" means a short message service provided by means of a text or data message to the cellular handset either on request of the handset User or via a pre-configured batch process;

"User" shall mean any natural or legal person who makes use of any of the Services or who uses or visits the Website; and

"Website" shall mean all websites published by BulkSMS entity including bulksms.com and shall include any page or part thereof.

2.2.   Any reference in these standard terms to the singular includes the plural and vice versa, any reference to persons includes both natural and juristic persons and any reference to a gender includes the other gender.

2.3.   Any clause headings inserted into these terms and conditions have been inserted for convenience only and shall not be taken into account in interpreting the terms and conditions.

2.4.   Words and expressions defined in any other part of these terms and conditions shall, for the purposes of that part, bear the meaning assigned to such words and expressions in that part.

2.5.   To the extent that any provision of this Agreement conflicts with any law, then to the limited extent of such conflict, such provision shall be severed from this Agreement without affecting the enforceability of the remainder of its terms.

3. Agreement

3.1. Persons using the Website or the Services for any reason whatsoever bind themselves and agree to these terms and conditions.

3.2. Should a User not agree to all the terms and conditions of this agreement or be unable to comply with these terms and conditions, the User should immediately cease using the Website and/or terminate the registration process.

3.3. You may not use the Website or the Services if you are not of a legal age to form a binding contract with BulkSMS.

3.4. Users agree that all terms and conditions herewith published shall be binding on the User and that should there be a contradiction between these general terms and conditions and any other product-specific or service-specific terms and conditions, the product-specific or service-specific terms and conditions shall prevail to the limited extent of such conflict.

3.5. BulkSMS reserves the right to refuse to accept and/or execute an order or request to do business or to render any Services without giving any reasons therefor. BulkSMS also reserves the right to cancel orders in whole or in part in BulkSMS's sole and absolute discretion.

4. Changes and Amendments

4.1. BulkSMS expressly reserves the right, in its sole and absolute discretion, to alter and/or amend any criteria or information set out in these terms and conditions or any information on the Website without prior notice and to update prices and rates quoted on its Website from time to time.

4.2. Users undertake to check the Website frequently and to acquaint themselves with the changes and/or amendments in the information supplied on the Website and, in this regard, Users undertake to check, at a minimum, these terms and conditions for any alteration thereto, including in respect of the prices and nature of any Services, prior to the conclusion of each new credit purchase or service order in respect of the Services governed by these terms and conditions. Users should regularly verify which networks are covered by the Services. Changes may occur as to which networks are covered from time to time.

4.3. Without derogating from the aforegoing provisions, any changes to these terms and conditions, including to any linked documents expressly incorporated by reference into these terms and conditions, shall deemed to be binding on a User where a User continues to make use of any Services accessible via the Website following the changes being reasonably prominently published on the Website or otherwise reasonably drawn to the attention of the User.

5. The Services

5.1. Message delivery requests will be processed as soon as reasonably possible. BulkSMS shall make all reasonable endeavours to ensure uninterrupted and continued use of the Services, however the delivery of SMS messages is largely dependent on the effective functioning of Network Operators' cellular networks, network coverage and the SMS recipient's mobile handset. BulkSMS does not and cannot guarantee the availability of any Service, the delivery of SMS messages or the compatibility between any message or content format and any particular mobile handsets or mobile operating systems.

5.2. Network Operators may modify, enhance, develop or discontinue components of their services at any time without prior notice, in which event BulkSMS shall be entitled to modify, enhance, develop or discontinue affected Services to Users without notice.

5.3. BulkSMS shall use its reasonable endeavours to provide the User with advance notice of any modification, suspension or termination of its Services and shall endeavour to minimise the duration of any suspension thereof in so far as this is reasonably practicable.

5.4.   Messages shall be deemed to have been delivered when BulkSMS has sent the messages to the immediate destination that it is requested to send to, including, but not limited to, mobile telephone networks, SMTP or other servers. Confirmation of such delivery shall be confirmed by updating the message log records for your account.

5.5.   BulkSMS shall have the right to withhold, terminate or suspend the provision of Services to the User at any time, including the termination of inactive accounts where there has been no account activity for more than two (2) years. Where this Agreement or the provision of any Service is terminated by BulkSMS for any reason other than breach by the User or discontinuance of a Service by a Network Operator, BulkSMS shall refund all monies already paid in advance by the User for any unused terminated Service, except where paragraph 5.6 applies.

5.6.   Subject to the provisions of any consumer protection or other law of application to the Services, BulkSMS will not refund monies paid in advance by the User for the Services where those payments are older than six months. BulkSMS may consider a refund only in exceptional circumstances.

5.7.   Ordinary mobile terminated messaging services may be terminated by the User at any time. Incoming numbers, including long numbers, short codes and premium rated numbers must be leased for a minimum initial period of three months and thereafter one further months' notice must be given by the User in order to terminate the lease of any long numbers or short codes.

5.8.   BulkSMS shall provide, on request, service information to a recipient of message sent by a User utilising a standard rate shortcode for delivering messages in the United States of America. As per network rules and industry regulations, the following processes and procedures will apply for standard rate shortcode programs in the United States of America:

    5.8.1.   Should a recipient have received a message from a User sent via BulkSMS, and should a recipient no longer wish to receive such messages, the recipient may undertake any of the following:

        5.8.1.1.   Text STOP to 67082 to cancel.

        5.8.1.2.   Call the BulkSMS toll free number, supply their mobile number and ask to be blocked from receiving further messages.

        5.8.1.3.   Email BulkSMS with their mobile number and ask to be blocked from receiving further messages.

    5.8.2.   Customer Service Contact Information is as follows:

        5.8.2.1.   Toll free number: 1-877-260-3952

        5.8.2.2.   Email address: support@bulksms.com.

    5.8.3.   Should a recipient wish to receive more information via an SMS message, the recipient should send the word HELP to 67082.

    5.8.4.   The standard rate shortcode program service provider is BulkSMS, and the service supplied is for the delivery of one time passwords, activation codes and similar. Messages received on this program are typically recipient initiated and the frequency will depend on recipient requests, 1 message per request applies.

    5.8.5.   All messages sent via BulkSMS are standard rate programs and message and data rates may apply. There are no premium rate services.

6. Acceptable Usage

6.1.   Users acknowledge and understand that BulkSMS acts as a conduit for the provision of information and content. Users acknowledge that BulkSMS shall not be responsible or liable for any content transmitted

and that full responsibility for content shall rest on the User. Users shall observe all relevant legislation and regulations applicable in their jurisdiction and in the jurisdiction of all persons to whom they cause messages to be delivered. It shall be the sole responsibility of Users to familiarise themselves with all applicable laws, regulations and codes of conduct to which they may be subject and to ensure compliance therewith.

6.2.   Where a User would be deemed in terms of any applicable law to be a Responsible Party, Processor or Sub-Processor of, or in relation to, any Personal Data as contemplated in the Data Protection Addendum available here, the User shall be bound to comply with all relevant obligations imposed on a Responsible Party, Processor or Sub-Processor in terms of such applicable laws and in terms of the Data Protection Addendum. Users shall furthermore ensure that all usage of the Services and all messages, advertising, information and content produced or generated by a User for transmission or delivery by means of the Services shall comply with all laws and any relevant code of conduct to which BulkSMS itself subscribes and is bound in all territories where messages are sent by, or received from, the User including but not limited to the following laws and codes of conduct in the specific territories listed below:

6.2.1.   **European Union:** Directive 2002/58/EC, Directive 2000/31/EC, Directive 95/46/EC, Directive 93/13/EC, all national member state laws promulgated in terms thereof and, from 25 May 2018, the EU General Data Protection Regulation 2016/679 (GDPR).

6.2.2.   **South Africa:** the Electronic Communications and Transactions Act No. 25 of 2002, the Consumer Protection Act 68 of 2008, the Protection of Personal Information Act 4 of 2013, and the WASPA Code of Conduct available at www.waspa.org.za.

6.2.2.1.   BulkSMS is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. BulkSMS may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA web site: www.waspa.org.za.

6.2.2.2.   User shall not use the Services to (i) intentionally engage in illegal conduct, (ii) knowingly create, store or disseminate any illegal content, (iii) knowingly infringe copyright, (iv) knowingly infringe any intellectual property rights, or (v) send spam or promote the sending of spam.

6.2.2.3.   BulkSMS has the right to suspend or terminate the services of any User who does not comply with these terms and conditions or any other related contractual obligations.

6.2.2.4.   BulkSMS has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

6.2.3.   **United Kingdom:** the Data Protection Act 1998, available at www.ico.gov.uk, the Privacy and Electronic Communications Regulations, 26 May 2011 available at www.ico.gov.uk.

6.2.4.   **United States:** the Controlling the Assault of Non-solicited Pornography and Marketing Act (CAN SPAM) Act, the Telephone Consumer Protection Act and the Rules of the Federal Trade Commission relating to sending of unwanted commercial messages as well as the CTIA Messaging Principles and Best Practices available at www.ctia.org.

6.3.   Users shall not do, nor omit to do, anything that would result, directly or indirectly, in any breach by BulkSMS or by the User of any requirement or provision of any applicable legislation, regulations, code of conduct or network usage policies, failing which BulkSMS shall be entitled to immediately suspend or terminate the provision of Services to the User and the User shall have no claim of any nature against BulkSMS (including claims for re-imbursement, refund, compensation or damages). Users hereby indemnify BulkSMS against any fine imposed on BulkSMS or any damages suffered by BulkSMS as a result of any act or omission of a User that amounts to a breach of any law or code of conduct to which BulkSMS may be subject. Upon notification of any such fine or damages, Users agree to immediately pay the amount of such fine or damages to BulkSMS. Any amount not paid to BulkSMS within 24 hours of notification thereof shall accrue interest at the rate of 15,5% per annum.

6.4.   Users may not use, or knowingly allow others to use, the Services for any purpose that may bring BulkSMS's name into disrepute, or for any purpose that, in BulkSMS's sole and absolute discretion, is improper, immoral or undesirable.

6.5.   Users shall not permit, do, nor omit to do, anything which might have the effect of prejudicing or impeding the legitimate activities, interests or goodwill of BulkSMS nor any Network Operator.

6.6.   Users may not use the Services to send messages without reasonable cause nor for the purpose of causing annoyance, inconvenience or distress to any person.

6.7.   In the event of any transgression of any applicable law, regulation, code of conduct, or any provision of these terms and conditions, or in the event of any complaint being received by BulkSMS in relation to a User, then the User hereby acknowledges and agrees that BulkSMS may in its sole and unfettered discretion remove message recipient contact numbers from the database of a User and/or suspend or terminate Services to a User without prejudice to any other rights that it may have in law or in terms of these terms and conditions.

6.8.   Users acknowledge and agree that all messages sent may be stored and can be audited and reviewed by BulkSMS or any other person acting on behalf of BulkSMS at any time to ensure compliance with these terms and conditions and any applicable law, regulations or code of conduct.

7. Registration and Security

7.1.   To register to make use of the Services, a User must complete the registration process and must provide BulkSMS with up to date, complete and accurate information as requested by BulkSMS. Failure to provide accurate and complete information on registration may result in termination of the Services. A User may also be required to choose a Username and password. Users are responsible for maintaining the confidentiality of their Usernames and passwords and Users undertake not to divulge their Username and passwords to any other person. A User is entirely responsible for any and all activities that occur under its account and a User shall be strictly liable to make payment of all charges incurred under its account whether or not these charges are incurred by the User or any other person, authorised or unauthorised, intentionally or unintentionally, or as a result of any virus, hack or security breach.

7.2.   Users agree to notify BulkSMS immediately of any unauthorized use of their account(s) or any other breach of security.

7.3.   It is expressly prohibited for any person, business or entity to gain or attempt to gain unauthorised access to any page on this Website, or to deliver or attempt to deliver any unauthorised, damaging or malicious code to this Website. Any person who delivers or attempts to deliver any unauthorised, damaging or malicious code to this Website or attempts to gain unauthorised access to any page on this Website shall be held criminally liable and in the event that BulkSMS should suffer any damage or loss, civil damages will be claimed.

7.4.   In the event that a User wishes to replace a person/employee using a specific BulkSMS account of the User, and wishes to prevent the individual person from accessing the account, the account holder shall inform BulkSMS in writing of this change and change all details on the account accordingly. BulkSMS may refuse to act on the instructions of an account holder where the account holder fails to provide sufficient proof of its identity as the account holder and the authority of the person purporting to represent it in making such a request and BulkSMS shall have no liability to the account holder or the individual person where it refuses to act in the absence of such proof, nor where it acts in good faith reliance of any information submitted to it in support of any such request made by any person purporting to represent the account holder, including in respect of any claims for breach of privacy, security or confidentiality.

7.5.   In the event that a person wishes to lodge a complaint that a User has used the Services in any manner that infringes on the complainant's rights or the rights of another person, the complainant shall provide BulkSMS with a written notice setting out:

7.5.1.   The full names and address of the complainant;

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7.5.2. The written or electronic signature of the complainant;

7.5.3. Identification of the right that has allegedly been infringed or the law or code of conduct alleged to have been infringed;

7.5.4. Identification of the material or activity that is claimed to be the subject of unlawful activity;

7.5.5. The remedial action required to be taken by the service provider in respect of the complaint;

7.5.6. Telephonic and electronic contact details, if any, of the complainant;

7.5.7. A statement that the complainant is acting in good faith; and

7.5.8. A statement by the complainant that the information in the complaint is to his or her knowledge true and correct and an indemnity by the complainant in favour of BulkSMS for any misrepresentation of the facts or for wrongful suspension or termination of any Services by BulkSMS in response to the complaint.

7.6. Any person who lodges a notification of unlawful activity with a service provider knowing that it materially misrepresents the facts is liable for damages for any wrongful suspension or deactivation of services. Users acknowledge and agree that BulkSMS shall not be liable to the User or any other person for damages or other liabilities resulting from wrongful suspension or deactivation of services in response to any such notification.

7.7. No BulkSMS account may be is transferred from one person to another without the written consent of BulkSMS. Where BulkSMS consents thereto, the new person shall be responsible for updating all details on the account accordingly. If the Username is the former person's name or trademark, a new account must be opened.

7.8. In the event that a User forgets his or her password and/or his or her contact details used for password recovery has changed (e-mail address, mobile number) and he or she requests a password change, mobile number change or e-mail address change, BulkSMS will call or e-mail the existing contact telephone number or email address on the account. The User agrees that if there is no response or no confirmation of the above request, the User may be required to re-register. The User further agrees that if any person responding to the above contact confirms the request, then the request may be effected and a new password issued to such person and the User agrees that BulkSMS shall not be liable for any damages or breach of privacy, security or confidentiality resulting therefrom, including but not limited to where unauthorised persons have gained access to the Users email account or telephone.

8. Privacy

8.1. BulkSMS will not intercept, monitor, copy or disclose any User messages or personal information about the User or the User's BulkSMS account, phonebook or MSISDN's, other than in the normal course of the use of the Services, without the User's prior permission unless BulkSMS believes in good faith that such action is necessary to conform to legal requirements, to co-operate or comply with legal process, investigations, summonses, subpoenas and the like, to protect and defend the rights, property or legally protectable interest of BulkSMS, the User or other third party, to enforce any of the provisions of these terms and conditions or to protect BulkSMS's business or reputation. The User agrees that BulkSMS may access its account and message contents for the purposes described above without notice and in order to respond to service or technical issues and that BulkSMS may communicate with the User from time to time for purposes including, but not limited to, communicating information regarding any updates, upgrades, notices, or other information.

8.2. A recipient of a message has the right to know the identity of the sender, and this will be disclosed on request to the recipient.

8.3. Users agree that BulkSMS may make use of website visitor and non-identifiable account usage data for statistical and analytical purposes. In providing its services, BulkSMS has implemented Google

Analytics services for its audience reporting and remarketing features. When making use of these services, BulkSMS does not process or share any data that allows any third party to identify any individual persons. In accepting these terms services, a user agrees that BulkSMS may use and share de-personalised data for the analytics purposes set out above.

8.4.   Users agree that they shall not violate any privacy laws, regulations or applicable codes of conduct relating to the protection of personal information of End Users including but not limited to names, addresses, email addresses, landline and mobile telephone numbers and shall not disclose the personal information of end users to any third party save without the express consent of the End User or where specifically required or permitted by law to do so.

8.5.   Where the personal data of any EU member state subject is transferred to BulkSMS in a non-EU member state for processing, or where the personal data of a subject of any state or union of states whose laws prohibit the transfer of personal data for processing outside of such state or union of states unless minimum protection measures are in place as determined by the provisions of the relevant laws, is transferred to BulkSMS for processing outside of such state or union of states BulkSMS shall ensure that adequate technical and organizational security measures are in place so as to comply with such laws and so as to provide a level of protection appropriate to the risks represented by the processing of such data and in order to protect such data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access or any other unlawful form of processing. For further information on BulkSMS's Privacy Policy please click here.

8.6.   Credit card details: At no time does BulkSMS collect or retain the credit card details of Users on its Website or in its systems. Credit card details are handled directly by the third-party payment gateways providers made use of by BulkSMS.

9. Payment and Prices

9.1.   Users are required to purchase credits which shall reduce for each message sent. The number of credits used per individual message depends on the message destination, the messaging route used, and Network Operator charges. The number of credits used per message is subject to change from time to time without prior notice and shall be indicated on the Website. Unless expressly indicated to the contrary in writing, the cost of a credit is inclusive of BulkSMS database hosting, User support and message handling costs.

9.2.   BulkSMS charges are located online at www.bulksms.com/pricing/ and may be provided as a schedule to any other format of these terms and conditions. Network Operator's charges for use of their networks and for SMS services may differ in respect of individual Network Operators and may be varied by Network Operators from time to time and without prior notice to BulkSMS or its Users. BulkSMS may vary its charges for SMS messages from time to time and without prior notice to Users. In the event that a Network Operator introduces reciprocal charges, BulkSMS retains the right to increase the number of credits needed per message, for that specific network.

9.3.   Manner of payment: Payment may be made via Visa, MasterCard, Diners or American Express Cards or by electronic bank transfer into the BulkSMS bank account, the details of which will be provided on request, or by cheque deposit where authorised by BulkSMS. Any charges raised by a User's own bank when making a payment is for the User's account.

9.4.   Loading of credits: On the receipt of payment from a User, BulkSMS loads credits to the User's account to reflect the transaction amount. The loading of credits is immediate for approved credit card payments. For bank transfer payments, credits are loaded to the User's account once the transaction has cleared in the applicable BulkSMS bank account. The successful loading of purchased credits is confirmed by the reflection of the transaction and credits on the User's account.

9.5.   Payment security: Users acknowledge that BulkSMS makes use of secure third-party payment gateways including Moneybookers, PayGate, PayPal, Stripe, WorldPay and such others as may be disclosed on the Website from time to time and Users acknowledge and agree that BulkSMS shall not be liable for any

losses arising from the use of any third-party payment gateways whatsoever.

9.6. Cooling-off periods: BulkSMS shall comply with any cooling off periods prescribed by law. The cancellation of an order by a User will attract an administration fee of up to 7% of the total transaction amount.

9.7. Without prejudice to any other right that it may have in law, BulkSMS shall have the right to suspend or disable the operation of any User account and the provision of services to any User where payment of all charges have not been made in full by the due date, or where BulkSMS reasonably suspects that payment has been made or effected by fraudulent means.

10. User Warranties and User Obligations

10.1. Users warrant that:

10.1.1. recipients of any commercial messages have a recent prior commercial relationship with the User and would reasonably expect to receive marketing communications from the originator and/or recipients have either requested the receipt of messages from the User or consented thereto;

10.1.2. they shall comply with all applicable laws, regulations, Network Operator requirements or applicable codes of conduct which may be applicable in their jurisdiction and the jurisdiction of all persons to whom they cause messages to be delivered;

10.1.3. they shall include their own contact details and identifying particulars in their messages to ensure that complaints are directed at them and not at the Network Operator;

10.1.4. they shall not send unlawful, abusive, harassing, threatening or obscene messages to any End User or any other person or persons, including both natural and juristic entities; and

10.1.5. they shall not engage in any fraudulent act by means of or in connection with any of the Services nor in connection with payment therefor.

10.2. Any subscription service for which an End User is debited or billed on a repeated basis without expressly confirming each individual transaction, individual programme or application administered by a User to an End User must be offered on an "opt-in basis." In addition, each User must also offer a convenient, easy-to-use and conspicuous method for an End User to opt-out from any subscription service, individual programme or application.

11. Breach

11.1. Where a User breaches any of these terms and conditions, including terms relating to payment of any amount due to BulkSMS then, without prejudice to any of its legal rights, BulkSMS shall be entitled to, amongst other things, to cancel its agreement with the User, to suspend or terminate the provision of services to the User, to suspend, disable or terminate the User's account/s, to sue for specific performance by the User, to claim damages and/or to retain any monies already paid by the User in respect of services not utilised by it as damages resulting from such breach and to set off any claims that BulkSMS may have against the User from any other amounts due to the User by BulkSMS.

11.2. Where a User account is suspended or terminated due to any breach of these terms and conditions, BulkSMS reserves the right to also suspend or terminate all other accounts registered by, or on behalf of such User, as well as suspend or terminate any account registered by any other person or persons whom BulkSMS, in its sole and unfettered discretion, believes is affiliated with the User concerned.

12. Limitation of Liability, Warranties and Indemnities

12.1. **THE USER HEREBY INDEMNIFIES AND HOLDS BULKSMS HARMLESS AGAINST ANY AND ALL DAMAGES, LIABILITIES, FINES AND RISKS THAT MAY FOLLOW FROM THE TRANSGRESSION OF THESE TERMS AND CONDITIONS.**

12.2. **BULKSMS SHALL NOT BE LIABLE FOR ANY DAMAGE, LOSS OR LIABILITY OF WHATSOEVER NATURE ARISING FROM THE USE OR INABILITY TO USE THE WEBSITE OR THE SERVICES OR ANY CONTENT PROVIDED FROM AND THROUGH THE WEBSITE.**

12.3. Furthermore, BulkSMS makes no representations or warranties, implied or otherwise, that, amongst others, the content and technology available from the website are free from errors or omissions or that the Services will be 100% uninterrupted and error free.

12.4. These terms and conditions together with any other contractual documents expressly referenced in these terms and conditions contain all of the terms of agreement between the User and BulkSMS.

12.5. The Website and the Services are supplied on an "as is" basis and are not supplied to meet the User's individual requirements. To the fullest extent permitted by law, BulkSMS disclaims all representations and warranties relating to the Services (whether express, implied and statutory, including but not limited to the warranties of merchantability and fitness for a particular purpose). It is the sole responsibility of the User to satisfy itself prior to entering into this agreement with BulkSMS that the Services and the Website will meet the User's individual requirements and be compatible with the User's hardware and/or software and message recipient handsets and devices.

12.6. Users agree to hold BulkSMS harmless and indemnify BulkSMS fully against any claim by any third party, including message recipients or End Users, as a result of any system failure, message corruption, interruption or termination of services, unsolicited direct marketing, harassment, emotional disturbance, inappropriate or obscene content, breach of privacy or breach of data security, provided that none of the aforegoing result from BulkSMS's own gross negligence or fraudulent acts or omissions.

12.7. Users indemnify and hold BulkSMS harmless against all reasonable damages, awards, penalties or legal costs claimed or imposed by any party as a result of any action, commission or omission by the User that constitutes a breach or contravention of any legislation, regulations, code of conduct or network provider codes or practice or acceptable usage policies.

12.8. In the event of any litigation between BulkSMS and the User, the successful party shall be entitled to recover their reasonable legal costs incurred by it in enforcing its rights on an attorney and client scale.

12.9. Users further indemnify and hold BulkSMS harmless against any reasonable claims, actions or damages from any party as a result of the fraudulent or unauthorised use of the User's Username and password or loss thereof.

12.10. Without derogating from the aforegoing, in no event shall BulkSMS be liable for any damages whatsoever, including but not limited to any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, or the cost of procurement of substitute goods and services, arising out of or related to the use, inability to use or unauthorised use of the Website or the Services, whether such damages arise in contract, delict, under statute, in equity, at law or otherwise.

12.11. Notwithstanding the aforegoing provisions and without derogating therefrom or limiting their application in any way, in the event that a User has a valid claim against BulkSMS arising from any Services provided under these terms and conditions then the User's claim shall be limited to payment of an amount equal to the amount paid for the Services that are the subject of the claim in the month prior to any such claim arising.

13. General

13.1. The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of these terms and conditions is found to be unenforceable or invalid, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall not be affected by such unenforceability or invalidity and shall remain enforceable and applicable.

14. Disclosure of Information

14.1. The full name and legal status of BulkSMS is Celerity Systems (Pty) Ltd, company registration number 2000/005883/07. The BulkSMS legal entity with whom you contract for the provision of the Services in your territory is identified in the table under point 20.1 of this agreement.

14.2. These terms and conditions apply to all websites operated by BulkSMS including bulksms.com and shall include any page or part thereof.

14.3. Company directors: Dr Pieter E. Streicher, Richard J. B. Simpson.

14.4. Physical address for receipt of legal service is: 1st Floor Marriott Hotel (Crystal Towers), Cnr Century Boulevard and Rialto Rd, Grand Moorings Precinct, Century City, Cape Town, 7441, South Africa. The physical address for the BulkSMS legal entity outside of South Africa with whom you contract for the provision of the Services in your territory is identified in the table under point 20.1 of this agreement.

14.5. Main business: BulkSMS is a business in the Mobile Application Service Provider industry that provides business messaging services and solutions, including SMS messaging and other messaging solutions.

14.6. Taxes/currencies/payment methods: The User shall be liable to make payment of any and all value added tax, general sales tax or other taxes applicable to the services in the User's own jurisdiction and at the applicable rates. The transaction currency shall be the national currency specified at the time of transacting based on the BulkSMS legal entity within whom the User transacts. Unless expressly indicated to the contrary, all advertised or displayed prices are advertised and displayed exclusive of applicable taxes.

14.7. Records of transactions: Records of transactions may be obtained from BulkSMS on request, or online at the relevant Credit History page.

15. Proprietary Rights

15.1. All content, trademarks and data on this website, including but not limited to software, databases, text, graphics, icons, hyperlinks, private information, and designs are the property of or licensed to BulkSMS, and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights afforded to the User herein, all other rights to all intellectual property on this site are expressly reserved.

15.2. BulkSMS shall grant a User an individual, personal, non-sublicensable, non-exclusive and non-transferable license ("the License") to use its proprietary software and/or application service, in object code form only, and only in accordance with the applicable User documentation, if any, and only in conjunction with the relevant Services. The User may not, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to establish the source code or underlying ideas or algorithms of the software; modify, translate, or create derivative works based on the software/application; copy (except for archival purposes), rent, lease, distribute, assign, or otherwise transfer rights to the software/application; use the software/application for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels with regard to BulkSMS products and/or services. The User acknowledges that BulkSMS and its licensors retain ownership of all propriety applications, software, intellectual property and any portions or copies thereof, and all rights therein. Upon termination of the Services for any reason, this License will terminate and the User shall destroy and cease to use all software and applications in its possession. The software is provided and applications are offered "as is" and subject to the Service warranty

disclaimers and limitations of liability found elsewhere in these terms and conditions. It is the responsibility of the User to test the Services should they wish prior to entering into this agreement.

15.3. Content from the Website may not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of BulkSMS.

16. Linking and Framing

16.1. Any third party site may link to this Website provided that such a link is directed at the home page of this Website. It is expressly prohibited for any person, business, entity or website to link to any page other than the home page of this Website, without the prior written approval of BulkSMS.

16.2. BulkSMS may provide links to the User only as a convenience and the inclusion of any link does not imply BulkSMS's endorsement of such sites.

16.3. Any linked third party websites, pages or advertisements that may be accessible from the Website, including content posted in social media or RSS feeds displayed on the Website are not subject to the control of BulkSMS. BulkSMS shall not be held responsible or liable (whether directly or indirectly) in any way for the contents, use, or inability to use or access any such third party websites, pages or advertisements and any use or reliance thereon shall be at the Users sole and exclusive risk.

16.4. It is expressly prohibited for any person, business, entity, or website to frame any page on this Website, including the home page, in any way whatsoever, without the prior written approval of BulkSMS.

17. Searching Technology

17.1. Apart from good faith search engine operators and use of the search facility provided on the Website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Website for any purpose whatsoever, without the prior written consent of BulkSMS.

17.2. The use of non-malicious search technology, such as 'web-crawlers' or 'web-spiders', to search and gain information from this Website is not permitted if such technology will result in slowing down this Website's server or copyright infringement of any data and information available from this website. Data and information may only be used as provided for in these terms and conditions. E-mail addresses, names, telephone numbers and fax numbers published on the Website may not be incorporated into any database, used for electronic or direct marketing or other similar purposes. No permission is given, nor is it implied, that information on the Website may be used to communicate unsolicited communications to BulkSMS notwithstanding that such information may be published as BulkSMS's contact information.

18. Applicable Law

18.1. These terms and conditions shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa and the South African courts shall have exclusive jurisdiction in respect of any disputes that may arise between the User and BulkSMS.

19. Entire Agreement

19.1. These terms and conditions constitute the entire agreement between BulkSMS and the User.

20. Contact Information / Domicilium Citandi Et Executandi

20.1.   If you have any questions, queries or wish to request permission to use any part of this Website, including, linking, framing, or searching, please contact us at the following address, which address shall be the address at which any legal notices or documents shall be required to be served:

Address: 1st Floor Marriott Hotel (Crystal Towers), Cnr Century Boulevard and Rialto Rd, Grand Moorings Precinct, Century City, Cape Town, 7441, South Africa.

Postal Address: P.O. Box 1263, Milnerton, 7435, South Africa.

Telephone: +27 (0) 21 528 3420 | **Telefax:** +27 (0) 21 552 2848 | **Email:** info@BulkSMS.com

Territory	Legal Entity	Physical address
South Africa	Celerity Systems (Pty) Ltd Co Reg No: 2000/005883/07	1st Floor Marriott Hotel (Crystal Towers), Cnr Century Boulevard and Rialto Rd, Grand Moorings Precinct, Century City, Cape Town, 7441, South Africa.
United Kingdom	Celerity Messaging UK Ltd, Co Reg No: 6356781	Basepoint Business and Innovation Centre, Metcalf Way, Crawley, West Sussex, RH11 7XX, United Kingdom
Africa (excluding South Africa), Australasia, Asia, Europe, Middle East, the Americas (North, Central and South) and Oceania.	Celerity Europe AG Co Reg No: CH-170.3.028.311-6	Bahnhofstrasse 21, 6300, Zug, Switzerland

1. CLIENT:

Name of Organisation:

Signature:

Name:

Designation:

Date Signed:

2. SERVICE PROVIDER:

Name of Organisation: **Celerity Systems (Pty) Ltd trading as BulkSMS.com**

Signature:

Name: **Richard Simpson**

Designation: **Director**

Date Signed: