SMsolutions Terms and Conditions:

Introduction:

These Terms and Conditions govern the Legal relationship between IRD Communications (Pty) Ltd trading as SMsolutions (hereinafter: SMsolutions) and you Hereinafter: the Subscriber.

Any Person using the Website or Platform or any of the Services provided by SMsolutions for any reason whatsoever bind themselves and agree to these terms and conditions.

SMsolutions will not be in any way liable for the content of any communications sent or transmitted using our Platform and the full responsibility of the Subscriber content shall rest on the Subscriber. The Subscriber must observe all relevant legislation and regulations applicable in their jurisdiction and in the jurisdiction of all persons with whom you communicate directly when using the Platform.

SMsolutions shall not be responsible for explaining and answering to any complaints that we receive from any relevant regulatory body resulting from the Subscriber's use of the Service. SMsolutions will forward any complaints to the Subcriber as soon as it is reasonably possible. The subscriber must follow the applicable complaint procedures and respond to each complaint within the timeframes specified by the relevant regulatory body and must forward a copy of the response to SMsolutions immediately. The subscriber will be liable for any fines and/or penalties imposed by any regulatory body against the Subcriber

Should a User not agree to all the terms and conditions of this agreement or be unable to comply with these terms and conditions, then the User should immediately cease using this Platform.

The subscriber or any of your employees or representatives may not use any of our services if you are not of a legal age to form a binding contract with IRD Communications (Pty) Ltd t/a SMsolutions or if you do not have permission from your employer to use their account on their behalf.

SMsolutions 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. SMsolutions also reserves the right to cancel orders in whole or in part in our sole and absolute discretion.

The terms and conditions are binding and the commencement date is upon registration through our online website or with assistance from our support team.

The Terms and conditions were revised on 5 July 2021. All subscribers are advise to regularly check these terms and conditions for any amendments or updates.

1) **Definitions:**

In these terms and conditions, unless the context otherwise requires, the following definitions shall apply:

"Chargeable Event" means the SMS sent by the subscriber/user from the SMsolutions platform which is subject to successful submit by SMsolutions to destination Network Operator.

"Network Operator" Means any company operating a GSM-based mobile telephone network, offering mobile telephone services to its subscriber base.

"Successful Submit" means SMsolutions accepts the SMS sent from the subscriber and submit the SMS for onward routing. SMsolutions shall return Successful submit to the subscriber to register that the SMS has been successfully submitted for routing.

"SMS unit" means the short text message sent to and from telephones on SMsolutions platform which text comprises of words or numbers of an alphanumeric combination up to one hundred and fifty eight characters (158) per SMS

"Subscriber content" Means any information, data or messages provided to SMsolutions by or on behalf of the subscriber, any Third Party Provider, or an End-User using Subscriber Services for transmission by SMsolutions to a Network Operator.

"Commencement Date" means the date upon registration through SMsolutions's online website for both "join us" and "try us" options.

"End-User" means any customer of the Subscriber who uses the Subscriber Services in order to receive Subscriber Content.

"SMsolutions Rights" means all intellectual Property Rights owned by or licensed to SMsolutions prior to or after the Commencement Date, including but not limited to those intellectual Property Rights involved in any aspect of SMsolutions Services Platform or any device, software or data used in connection therewith, including without limitation the SMsolutions data;

"Intellectual Property Rights" means all copyright (including but not limited to rights in computer software), patents, trademarks, trade names, trade secrets, registered and unregistered design rights, database rights and topography rights, all rights to bring an action for passing off any other similar form of intellectual property or proprietary rights, statutory or otherwise, whether registered or not and shall include applications for any of them. All rights to apply for protection in respect of any of the above rights and all other forms of protection of

a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the word;

"Subscriber" is the person, persons, company, partnership, proprietor, owner or individual who utilize SMSolutions to communicate with his/her/its customers or potential new customers and or "end users".

"Operator Network" means the infrastructure, software and hardware enabling a Network Operator to support wireless communications between and among subscribers and third parties.

"Platform" means the mobile application services platform and any associated systems, network connections and interfacing capabilities, owned and operated by SMsolutions or by suppliers of SMsolutions, which is used to provide SMsolutions Services;

"Pre-Paid Charges" means an applicable amount payable to SMsolutions by the Subscriber in advance for SMsolutions services;

"Protocol Specifications" means the protocols to be used by the Subscriber to access SMsolutions services, as the Subscriber shall be notified of by SMsolutions from time to time.

"Service Interface" means the method to be used by the Subscriber to connect to the SMsolutions platform.

"Third Party" means any and all persons or entities not a Party of this Agreement.

"Third Party Provider" means any Third Party that has entered into an Agreement with the Subscriber

2. **Scope of the Terms and Conditions**

2.1   SMsolutions agrees to provide Subscribers with the SMsolutions services based on and subject to the terms and conditions.

2.2   SMsolutions will notify Subscribers of Network Operator Changes as soon as reasonably possible upon notification to SMsolutions from the Network Operators of any Network operator changes.

3.   **Commencement and Termination**

3.1   The Agreement shall commence on the date of successful lodgment of the Registration and payment of the first purchase of SMS units and shall continue for an unlimited period of time unless terminated:

3.1.1   If the Subscriber breaches any of the provisions of these terms and conditions and fail to remedy same breach within 7 (SEVEN) days thereof; or

3.1.2   If the Subscriber gives written notice to SMSolutions of its intentions to cancel the product. This notice from the Subscriber must be given to SMSolutions 30 (THIRTY) days in advance of the envisaged termination date.

3.2   SMSolutions may choose at any time and without notice to the Subscriber in any manner whatsoever, suspend access to the product by the Subscriber in the event of the following:

3.2.1   If the Subscriber fails to perform any of its obligations in terms of these terms and conditions;

3.2.2   If the Subscriber breaches any of the provisions of these terms and conditions;

3.2.3   If the Subscriber at any time exceeds the credit limit which SMSolutions in its absolute discretion may set and notify the Subscriber; and/or

3.2.4   If the subscriber ceases to make use of the system for a continuous period of 12 (TWELVE) months.

4.   **PRICE, PAYMENT AND SERIVCES**

4.1   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 SMsolutions database hosting, subscriber support, administration and message handling costs.

4.2   Payment security: Subscribers acknowledge that SMsolutions makes use of secure third party payment gateways and such others as may be disclosed on the Website from time to time and Subscribers acknowledge and agree that SMsolutions shall not be liable for any losses arising from the use of any third party payment gateways whatsoever.

4.3   SMsolutions Website allows you to create an account to use the SMSolutions services. You accept and agree that SMsolutions may cease provision of the Services, and/or terminate your account, delete your User content, cancel orders and/or prohibit your further use of the Website and/or services at its sole discretion, with or withour notice.

5.   **Charges by Debit Order or EFT**

5.1   If payment by Debit Orders is selected, the Subscriber agrees and authorizes SMSolutions to deduct by means of a Debit Order instruction all SMSolutions charges and fees from the Subscribers account as indicated on the Debit Order Application form. The SMS units will be added once the Debit Order has cleared.

5.2   SMSolutions will Top-Up the Subscribers account to ensure that the system has a minimum stock of SMS units at all times, if indicated on the Debit Order form by the subscriber (if required).

5.3   This Top-Up method is done by Debit Order, authorized by the Subscriber, and is submitted with each purchase daily.

5.4   The minimum value of the Top-up Debit Order is 100 (ONE HUNDRED) SMS units and only once these units have been used will the Top-up Debit Order be activated.

5.5   The Subscriber may increase or decrease its minimum stock level at any time by giving SMSolutions written notice to do so.

5.6   SMSolutions will not refund any decrease of SMS stock levels but will allow the usage of the product until the equivalent of the decreased stock level have been reached.

5.7   Should the Subscriber elect to make payment by way of an Electronic Funds Transfer (EFT), SMS units shall only be added once the payment reflects in the bank account of SMSolutions.

5.8   Smsolutions reserves the right to do credit checks on all subscribers as required ensuring that banking details are correct.

5.9   SMsolutions reserves the right to give over any unpaid accounts and act upon these outstanding account or if required to give over to the authorities to be blacklisted.

5.10   Suspension for non-payment. In the event that Due charges have not been paid by the subscriber or where SMsolutions reasonably suspects that payment has been made or effected by fraudulent means, then SMsolutions shall have the right to suspend or disable the rendering of SMsolutions services and block access to the subscriber account until full due payment has been made by the subscriber.

6.   **OBLIGATIONS OF THE SUBSCRIBER**

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

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

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

6.4   Subscriber represents and warrants to SMsolutions that:

6.4.1   It has the power and authority to enter into this agreement and to perform its obligations hereunder, including providing the Subscriber Content in the manner described in this Agreement;

6.4.2   It is under no contractual or other legal obligation, which shall in any way interfere with its full, prompt and complete performance of its obligations hereunder.

6.4.3   None of the Subscriber content, the subscriber services or the provision of the SMsolutions Services contravenes any applicable law, regulation or code

6.4.4   It will not use SMsolutions Services in a way which is fraudulent, unlawful or unauthorized

6.5   Subscriber shall conform to the Protocol Specifications for the relevant Service Interface as provided to the Subscriber by SMsolutions

6.6   Subscriber shall connect only to the Service Interface specified for Subscriber by SMsolutions using only the names and passwords provided to the Subscriber by SMsolutions.

6.7   The username and password will serve as your identification with regard to the Services provided by SMsolutions. Should your username and/or password's confidentiality been compromised, you are to notify SMsolutions immediately so that a new username and password may be issued to you. SMsolutioins accepts no liability for any transactions performed by third parties who come into the possession of your username and password.

6.8   The subscriber is permitted to use the Website and Services for lawful purposes only. Unauthorised use of this Website may result in termination of your Account, and/or you may be found guilty of a statutory and/or criminal offence and/or be liable for civil damages. The Services provided by SMsolutions are not available to minors and minors may under no circumstances create Accounts. By using Services provided by SMsolutions, you confirm that you are capable of entering into a binding agreement,

and you warrant that the information submitted by you in creating your Account is true and accurate.

6.9   The Subscriber is entirely responsible for all payments and any activities that occur on their account.

7.   **Message contents and anti-spamming policy**

Subscribers acknowledge and understand that SMsolutions acts as a conduit for the provision of information and content. Subscribers acknowledge that SMsolutions shall not be responsible or liable for any content transmitted and that full responsibility for content shall rest on the Subscriber. Subscriber 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 Subscriber to familiarize themselves with all applicable laws, regulations and codes of conduct to which they may be subject and to ensure compliance therewith.

7.1   Subscriber will be solely responsible for any legal liability arising out of the Subscriber Content and Subscriber Services (whether transmitted on its own or on any Third Party's behalf) If SMsolutions is notified or otherwise becomes aware of Subscriber Content which violates the requirements of these terms and conditions, SMsolutions may (but shall not be required to) investigate the allegations and determine, in its sole discretion, whether to remove or to request removal of such Subscriber Content from the Subscriber Services. If Subscriber refuses such request, SMsolutions may (but shall not be required to) in its sole secretion immediately block Subscriber Content, suspend Subscriber Services, or terminate registration. SMsolutions shall not be liable for any damages (including any consequential loss) incurred by Subscriber because of any action taken in accordance with this.

7.2   Subscribers shall ensure that its collection, access, use and disclosure of End-User information comply with all applicable foreign, federal, state and local laws, rules and regulations as they may be amended from time to time, laws governing marketing by telephone, direct mail, email, wireless text messaging, fax and any other method of communication (collectively, "Privacy Laws"). Subscriber shall at all times perform its obligations hereunder and make the Subscriber Services and Subscriber Content available in compliance with and in such a manner as not to cause SMsolutions to be in material violation of any applicable laws or regulations, including Privacy Laws.

7.3   Subscribers agree that Subscriber and its Third Party Providers will not offer or provide Subscriber Services, or use SMsolutions Services in a way that (Collectively "Spam SMS")

7.3.1   Transmit or allow to be transmitted any Subscriber Content that violates the requirements of any Network Operator through which Subscriber Content is transmitted;

7.3.2   Transmit or allow to be transmitted any Subscriber Content that is false, inaccurate, misleading, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy or racially, ethnically or otherwise objectionable;

7.3.3   Transmit or allow to be transmitted any Subscriber Content that harms minors in any way;

7.3.4   Transmit or allow to be transmitted any Subscriber Content that it does not have a right to make available under any law or under contractual relationships;

7.3.5   Transmit or allow to be transmitted any Subscriber Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights or rights of publicity or privacy of any party;

7.3.6   Utilize any unsolicited or unauthorized advertising, promotional materials, "junk mail", "spam" or any other forms of solicitation;

7.3.7   Violate any code or standards of practice published or endorsed by the GSMA Association or Mobile Marketing Association;

7.3.8   Interfere with or disrupt SMsolutions Services or servers or Network Operator Networks connected to the SMsolutions Services or disobey any requirements, procedures, policies or regulations of networks connected to SMsolutions Services;

7.3.9   Transmit or utilize any (a) viruses, worms or other code that might disrupt, disable, harm, erase memory, or otherwise impede the operation, features or functionality of any software, firmware, hardware, wireless device, computer system or network, traps, time bombs, or other code that would disable any software based on the elapsing of a period of time, advancement to a particular date or other numeral code that would permit any third party to interfere with any End-User personal information, or content causes disablement or impairment of SMsolutions or Network Operator services or equipment.

7.3.10 intentionally or unintentionally violates any applicable local, state, national or international law or any regulations having the force of law;

7.3.11 Collect or store personal data about End-Users in connection with the prohibited conduct and activities set forth hereunder.

7.4   Upon written request from SMsolutions, Subscriber shall as soon as practicable, with reasonable detail provide:

7.4.1   Evidence from Subscriber of compliance with this Section 6, and

7.4.2   Volume forecasts for use of SMsolutions Services, anticipated Subscriber support information and such other relevant information that SMsolutions may reasonably request concerning future Subscriber Services (provided that any forecast given will not be contractually binding and/or oblige the Subscriber to purchase and/or order SMsolutions Services)

7.5   The Parties agree to work together in good faith to establish Subscriber services and SMsolutions Services.

8.   Limitation of Liability

8.1   SMSolutions, its employees and/or Agents shall not be held liable, including but not limited to liability for negligence, for any loss or damage or injury whatsoever to the Subscriber irrespective of when or how and arising out of the services delivered by SMSolutions and otherwise, whether direct or indirect, consequential or contingent and whether foreseeable or not and in particular not to be held liable for financial loss or loss of profits, contracts, promotions, savings and goodwill.

8.2   Without detracting from any of the provisions of these terms and conditions, SMSolutions, its employees and/or Agents shall not be liable to the Subscriber for any loss or damage suffered by the Subscriber, whether same is direct or consequential, in the event that:

8.2.1   Errors or discrepancies in et information provided

8.2.2   Any unauthorized access of the Platform by third parties;

8.2.3   Any breakdown or failure of any equipment or medium of access to the Platform;

8.2.4   Any failure or unavailability of any of SMsolutions or any third parties facilities or systems resulting in the inability to process any transaction;

8.2.5   Any maintenance, alterations, modifications, upgrade or update of the Platform or any techonology, hardware or software modification that is required with regards to the Product;

8.2.6   The Cellular networks are interrupted or overloaded; Or recipient's handset if faulty, switched off or unreachable.

8.2.7   Such loss or damage was caused by any negligent act and/or omission on the part of SMSolutions, its employees and/or Agents; and

8.2.8   Any act of God.

9. **Roles and Responsibilities of SMSolutions**

9.1 Once the Subscriber registers with SMsolution and it binds itself to these terms and conditions, SMsolutions will:

9.1.1 Activate the Subscriber status on the system;

9.1.2 Provide online training and support as required by the Subscriber and shall use commercially reasonable efforts to make its technical personnel available to the Subscriber in order to assist in resolving any network problem within the targeted resolution period; and

9.1.3 Assist the Subscriber with any product-related queries which may arise.

9.2 SMsolutions shall notify the subscriber of scheduled maintenance of the SMsolutions Messaging Platforms or Network. SMsolutions will use commercially reasonable efforts to notify Subscribers of scheduled downtime outside its maintenance window.

10. **Assignment**

10.1 The Subscriber shall not cede, assign, transfer or delegate any of its rights or obligations in terms hereof to any third party without the written consent of SMSolutions.

10.2 SMSolutions shall be entitled to cede, assign, transfer, encumber or delegate any of its rights, title, interest or obligations in terms of this agreement to any third party without prior notice and/or consent from the Subscriber.

10.3 If, for any reason whatsoever, the consent of the Subscriber may be required, the Subscriber shall be deemed to have consented thereto in terms hereof.

11. **Value Added Tax**

The parties hereby acknowledge that all prices and service fees as well as price lists are exclusive of Value Added Tax

12. **General**

12.1 This agreement, the Services and the electronic communications and transactions conducted via the SMsolutions platform shall be governed by and be interpreted in accordance with the law of South Africa and the subscriber consents to the jurisdiction of the Magistrate's court in the event of any dispute. Any dispute regarding this Agreement or the Services that cannot be resolved between the Parties, shall however,

first be referred to confidential arbitration in terms of the rules of the Arbitration Foundation of South Africa prior to proceeding to Court. Access to the SMsolutions Platform and use of our services in territories or countries where this Platform or services contained on it is illegal is strictly prohibited. The Subscriber may not use this Platform in violation of South African export laws and regulations. Further the subscriber shall procure that any communications send by the Subscriber through the platform of SMsolutions shall in all instances comply with the local laws of the recipient of such communications and not constitute a violation of such recipient's rights.

12.2   The headings of the clauses in these terms and conditions are provided for convenience and ease of reference only and shall not be used to interpret, modify or amplify the terms and/or conditions.

12.3   Each provision of these terms and conditions is severable. If any of these terms and conditions becomes invalid, unlawful or unenforceable, and the term or condition shall be without effect, the remaining terms and conditions will not be effected and shall remain in force.

12.4   Words importing the singular shall include the plural and *vice versa*.

12.5   Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons and *vice versa* and any reference to the male gender shall include the female gender and *vice versa*.

12.6   Neither party may vary these terms and conditions unless the other party agrees to such variation and the variation is reduced to writing and signed by both parties.

12.7   The parties agree that these terms and conditions, including any relevant information upon the Registration pertaining hereto, contains all the terms and conditions between them.

12.8   The Subscriber confirms that all information upon the registration is both true and correct and should any information change the Subscriber will notify SMSolutions within 14 (FOURTEEN) days after change of said information.

12.9   Subscribers shall further comply with any relevant code of conduct for the wireless industry to which SMsolutions is subject to, including the Mobile Marketing Association Code of Conduct and the Wireless Applications Services Provider (WASPA) Code of Conduct located on http://waspa.org.za

13.   **Website and company information**

The following table contains further information on SMsolutions and represents the information that must be provided by SMsolutions to subscribers in compliance with

Section 43 of the Electronic Communications and Transactions Act. This section of the Website Legal Notice was last revised on 9 July 2014. Subscribers are advised to regularly check this section of the Website Legal Notice for any amendments or updates.

Enquiries: info@smsolutions.co.za

NO.	Description	Explanation
1.	The full name of SMSolutions;	IRD Communications (Pty) Ltd trading as SMsolutions, a company incorporated in terms of the Companies Act of South Africa.
2.	SMsolutions telephone number	Tel: 087 231 0111
3.	SMsolutions web site address and email contact address:	www.smsolutions.co.za www.smsmalls.co.za info@smsolutions.co.za
5.	Company Registration number	2013/018623/07
6.	The place of registration	South Africa
7.	The names of Directors	SM Potgieter; DL Potgieter; I Hawkins
8.	The physical address where SMsolutions will receive legal service of documents	25 Bee Bee Street The Willows Pretoria
9.	Description of the main characteristics of the products or services offered	Bulk SMS communication platform