

## **SMsolutions Terms and Conditions:**

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

Any person using the online interface services on the Website and the SMS gateway service which is facilitated by the Website or any of the Short Code services constitutes the acceptance of the Terms and Conditions of use contained in the terms and conditions and the obligation towards SMsolutions. This use of this website is binding to the Legal Notice and enforceable on all Subscribers in terms of sections 11(1) to 11(3) of the Electronic Communications and Transactions (“ECT”) Act 25 of 2002.

The terms and conditions are binding and the commencement date is upon registration through our online website by means of “join us” or “try us”

The Terms and conditions were revised on 15 June 2014. All subscribers are advise to regularly check these terms and conditions for any amendments or updates.

### 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 from SMsolutions platform which is subject to successful submit by SMsolutions to destination Network Operator.

“Network Operator” Means any company operating a GSM-based mobile telephony 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” 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 (158)

“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 world;

"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.

“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 SERVICES**

- 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 **Charges by Debit Order or EFT**

4.3.1 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.

4.4 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).

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

4.6 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.

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

4.8 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.

4.9 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.

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

4.11 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.

4.12 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 until full due payment has been made by the subscriber.

## 5. **OBLIGATIONS OF THE SUBSCRIBER**

- 5.1 Persons using the Website or the Services for any reason whatsoever bind themselves and agree to these terms and conditions.
- 5.2 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.
- 5.3 You may not use the Website or the Services if you are not of a legal age to form a binding contract with SMSolutions
- 5.4 Subscriber represents and warrants to SMSolutions that:
  - 5.4.1 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;
  - 5.4.2 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.
  - 5.4.3 None of the Subscriber content, the subscriber services or the provision of the SMSolutions Services contravenes any applicable law, regulation or code
  - 5.4.4 It will not use SMSolutions Services in a way which is fraudulent, unlawful or unauthorized
- 5.5 Subscriber shall conform to the Protocol Specifications for the relevant Service Interface as provided to the Subscriber by SMSolutions
- 5.6 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. **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.

- 6.1 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 discretion 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.
- 6.2 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.
- 6.3 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")
  - 6.3.1 Transmit or allow to be transmitted any Subscriber Content that violates the requirements of any Network Operator through which Subscriber Content is transmitted;
  - 6.3.2 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;
  - 6.3.3 Transmit or allow to be transmitted any Subscriber Content that harms minors in any way;
  - 6.3.4 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;

- 6.3.5 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;
- 6.3.6 Utilize any unsolicited or unauthorized advertising, promotional materials, "junk mail", "spam" or any other forms of solicitation;
- 6.3.4 Violate any code or standards of practice published or endorsed by the GSMA Association or Mobile Marketing Association;
- 6.3.8 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;
- 6.3.9 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.
- 6.3.10 Intentionally or unintentionally violates any applicable local, state, national or international law or any regulations having the force of law;
- 6.3.11 Collect or store personal data about End-Users in connection with the prohibited conduct and activities set forth hereunder.
- 6.4 Upon written request from SMSolutions, Subscriber shall as soon as practicable, with reasonable detail provide:
  - 6.4.1 Evidence from Subscriber of compliance with this Section 6, and
  - 6.4.2 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)
- 6.5 The Parties agree to work together in good faith to establish Subscriber services and SMSolutions Services.

## **7. Limitation of Liability**

7.1 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.

7.2 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:

7.2.1 Any maintenance or modifications is required with regards to the Product;

7.2.2 The Cellular networks are interrupted or overloaded;

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

7.2.4 Any act of God.

## **8. Roles and Responsibilities of SMSolutions**

8.1 Once the Subscriber registers with SMSolution and it binds itself to these terms and conditions, SMSolutions will:

8.1.1 Activate the Subscriber status on the system;

8.1.2 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

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

8.2 Assist in the planning of promotions and to attempt to keep the Subscriber up to date on the latest applicable market trends and other relevant news pertaining to the product.

8.3 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.

9. **Assignment**

- 9.1 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.
- 9.2 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.
- 9.3 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.

10. **Value Added Tax**

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

11. **General**

- 11.1 The Subscriber hereby consents to the jurisdiction of the Magistrate's court having jurisdiction over it in respect of any action by SMSolutions arising from these terms and conditions or the cancellation thereof and/or any other matter between the Subscriber and SMSolutions.
- 11.2 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.
- 11.3 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.
- 11.4 Words importing the singular shall include the plural and *vice versa*.
- 11.5 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*.
- 11.6 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.

- 11.7 The parties agree that these terms and conditions, including any relevant information on the Registration Form pertaining hereto, contains all the terms and conditions between them.
- 11.8 The Subscriber confirms that all information in the registration form is both true and correct and should any information change the Subscriber will notify SMSolutions within 14 (FOURTEEN) days after change of said information.
- 11.9 The parties agree that the agreement between them shall only be subject to the Consumer Protection Act 68 of 2008 insofar as it applies to the transaction, if at all.
- 11.10 The parties agree that the transaction between them is not tantamount to, nor can it be interpreted to constitute, an incidental credit agreement as defined in the National Credit Act 34 of 2005

12. **WASPA**

Subscribers are further required to familiarize themselves with the WASPA code of conduct and must adhere to all applicable laws and regulations governing the use this service.

[www.waspa.co.za](http://www.waspa.co.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](mailto: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 postal address and telephone number	P.O Box 36199 Menlo Park Pretoria 0102 Tel: 087 231 0111
3.	SMSolutions web site address and email contact address:	<a href="http://www.smsolutions.co.za">www.smsolutions.co.za</a> <a href="http://www.smsmall.co.za">www.smsmall.co.za</a> <a href="mailto:info@smsolutions.co.za">info@smsolutions.co.za</a>
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	Tentbridge Building Block B 183 Leonie Street Doringkloof Pretoria
9.	Description of the main characteristics of the products or services offered	Bulk SMS gateway Short Code service

