

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, the Data Protection Addendum, other relevant industry standards and codes and certain third-party Network Operator and Platform Operator terms and conditions where expressly provided for in this document.

Please read these terms and conditions carefully.



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This Agreement was updated on 15 July 2024.

We have made changes in our Terms and Conditions to reflect improvements in our operations, specifically to include provisions for the use of new rich messaging products with the BulkSMS Services. The updates to the clauses of our Terms and Conditions can be read [here](#).

For previous versions [click 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 Processing 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 21.1 of this agreement;

“End user” or **“recipient”** means any person, including both a natural or juristic entity who receives or is intended to receive any message sent by a User using the Services;

“Message” refers to all forms of electronic messages that may be sent or received using the Services, including but not necessarily limited to by means of SMS or RCS;

“Network Operator” means any party licensed to install, operate and maintain a cellular telephony, mobile data or other telecommunications or Internet network;

“Platform Operator” means a third party who makes a messaging or communications platform or service available to BulkSMS for Users to use as part of the Services, including but not limited to any message formatting or aggregation platform or service;

“Premium Rated Service Numbers” means a premium rated number used in the provision of the Services, where the charge for a premium rated number to an end-user is higher than the standard rate;

“RCS” means Rich Communications Services, a protocol for sending rich content messages over Wi-Fi and mobile data connections and used for the transmission of RCS Business Messages (RBM);

“Service Credits” means units of credit allocated to a User’s account by BulkSMS and that are redeemed or redeemable by making use of the Services;

“Services” shall mean and include all products and services offered or provided to Users by BulkSMS including, but not limited to, messaging services, software and other applications referred to in paragraph 16.2;

“SMS” means a short message service protocol for transmitting text messages;

“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 any 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 all genders.
- 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 as well as the terms and conditions of all relevant industry codes and Network Operator and Platform Operator terms, conditions and policies incorporated herein.
- 3.2. Should a User not agree to all the general 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. Should a User not be able to comply with any third-party Platform Operator terms, conditions and policies incorporated herein, the User should not make use of any Services that make use of any such third-party platforms.
- 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 Service Credits 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 or different types of Services and which mobile devices are compatible with different types of Services. Changes may occur as to which networks or devices are covered or compatible from time to time.
- 4.3. Without derogating from the foregoing provisions, any changes to these terms and conditions, including to any linked documents expressly incorporated by reference into these terms and conditions, shall be 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. Applicable Laws, Codes and Additional Terms

- 5.1. Users acknowledge that certain applicable laws, regulations, third-party terms, conditions, policies and codes of conduct (hereinafter collectively referred to as “Applicable Laws and Additional Terms”) may apply to certain Services or to the receipt of provision of certain Services in certain territories and jurisdictions. A list of such Applicable Laws and Additional Terms that are of application to specific Services or to certain territories and jurisdictions is available at www.bulksms.com/company/additional-laws-and-applicable-terms.htm. Users undertake to familiarize themselves with such Applicable Laws and Additional Terms and to comply therewith when making use of the relevant Services. Failure by Users or their End-Users to adhere to such Applicable Laws and Additional Terms may result in a suspension or termination of some of all of the Services to such Users and End-Users without limiting any other right of BulkSMS in such circumstances. The provisions of this paragraph shall operate in conjunction with the Acceptance Usage terms recorded in paragraph 7 below.
- 5.2. Users acknowledge in particular that use of the Services for purposes related to gambling activities may be prohibited in certain territories.

6. The Services

- 6.1. Message transmission 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 messages is largely dependent on the effective functioning of Network Operators’ communications networks, network coverage and the message recipient’s mobile handset and operating system. BulkSMS does not and cannot guarantee the availability of any Service, the delivery of any messages or the compatibility between any message or content format and any particular mobile handsets or mobile operating systems. In particular, RCS messaging is only available on Android devices.
- 6.2. Network Operators and Platform 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.
- 6.3. 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.
- 6.4. 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 or by such other means as BulkSMS may reasonably determine from time to time for different types of message services.
- 6.5. BulkSMS shall have the right to withhold, terminate or suspend the provision of Services to the User at any time, without any liability to Users or any third party other than as provided for in the BulkSMS Service Credits and Refunds Policy available at www.bulksms.com/company/service-credits-and-refunds-policy.htm, including in relation to the termination and closure of inactive accounts:”
 - 6.5.1. For new accounts, where there has been no purchasing activity for more than six (6) months, or
 - 6.5.2. For existing accounts, where there has been no account activity for more than two (2) years.
- 6.6. Ordinary mobile terminated SMS messaging services may be terminated by the User at any time. Incoming numbers, including long numbers, short codes and Premium Rated Service Numbers used for the transmission of SMS messages, 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.

- 6.7. BulkSMS shall provide, on request, service information to a recipient of SMS message sent by a User utilising a Toll Free Number (TFN) or a 10 Digit Long Code (10DLC) Application to Person (A2P) service for delivering messages in the United States of America and Canada. As per network rules and industry regulations, the following processes and procedures will apply to such A2P services in the above North American regions:
- 6.7.1. Should a recipient have received an SMS message from a User sent via BulkSMS, and should a recipient no longer wish to receive such SMS messages, the recipient may undertake any of the following:
 - 6.7.1.1. Text STOP in reply to the SMS message received to cancel.
 - 6.7.1.2. Call the BulkSMS toll free number, supply their mobile number and ask to be blocked from receiving further SMS messages.
 - 6.7.1.3. Email BulkSMS with their mobile number and ask to be blocked from receiving further SMS messages.
 - 6.7.2. Customer Service Contact Information is as follows:
 - 6.7.2.1. Toll free number: 1-877-260-3952
 - 6.7.2.2. Email address: support@bulksms.com.
 - 6.7.3. Should a recipient wish to receive more information about an SMS message, the recipient should email support@bulksms.com.
 - 6.7.4. The aforesaid A2P services are provided by BulkSMS for the delivery of one-time passwords, activation codes, marketing messages, and similar. Messages received on these services are sender initiated or recipient initiated, and the frequency may vary.
 - 6.7.5. All SMS messages sent via BulkSMS are standard rate programs and message and data rates may apply. There are no premium rate services.

7. Acceptable Usage

- 7.1. 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.
- 7.2. 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 at www.bulksms.com/company/data-processing-addendum.htm, 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 list of specific territories available at www.bulksms.com/company/additional-laws-and-applicable-terms.htm.
- 7.3. 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.

- 7.4. 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.
- 7.5. 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.
- 7.6. 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, or any Network Operator or Platform Operator terms, conditions or 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.
- 7.7. 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.
- 7.8. 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 or any Network Operator or Platform Operator.
- 7.9. 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.
- 7.10. 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.
- 7.11. 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.

8. Registration and Security

- 8.1. 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 will 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.
- 8.2. Users agree to notify BulkSMS immediately of any unauthorized use of their account(s) or any other breach of security.
- 8.3. 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.

- 8.4. 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.
- 8.5. 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:
 - 8.5.1. The full names and address of the complainant;
 - 8.5.2. The written or electronic signature of the complainant;
 - 8.5.3. Identification of the right that has allegedly been infringed or the law or code of conduct alleged to have been infringed;
 - 8.5.4. Identification of the material or activity that is claimed to be the subject of unlawful activity;
 - 8.5.5. The remedial action required to be taken by the service provider in respect of the complaint;
 - 8.5.6. Telephonic and electronic contact details, if any, of the complainant;
 - 8.5.7. A statement that the complainant is acting in good faith; and
 - 8.5.8. 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.
- 8.6. 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.
- 8.7. No BulkSMS account may be 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.
- 8.8. 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.

9. Privacy

- 9.1. These terms and conditions shall be deemed to include the provisions of the BulkSMS Privacy Policy available at www.bulksms.com/company/data-processing-and-privacy-policy.htm. By accepting these terms, you recognize and agree to be bound by the provisions of BulkSMS's Privacy Policy.
- 9.2. 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.
- 9.3. 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.
- 9.4. Where, for the purpose of providing the Services to you, any BulkSMS Service acts as an Application Programming Interface ("API") for the purpose of specifying how different software systems should interact with each other, or where for that same purpose any BulkSMS Service interacts with other APIs, including third party APIs, we may pass and retrieve data, including personal information, between the different software systems and third parties that interact via those APIs.
- 9.5. Where we make use of third-party service providers to help us provide the Services to you, including for the purposes of retrieving or delivering information, records, notifications or other messages to you or any User's or for hosting or providing any component of our Services, we require such third parties to maintain the confidentiality of any personal information we provide to them for these purposes. Some of these third parties may be situated outside of your country and you consent to your personal data and that of any data subjects you provide to us being transferred cross-border so that we can provide the Services to you. In this regard, we engage only with reputed third-party service providers who have security and privacy policies and procedures providing at least the same level of protection as we do ourselves. You warrant that you have all necessary permissions to give us the above consent.
- 9.6. We may share data, including Personal Data, collected from Users of our Services with third-party service providers or consultants who require access to that data to perform their work on our behalf for the purpose of helping us deliver our Services. These third-party service providers or consultants are limited to only accessing or using this data to provide the services to us and must provide reasonable assurances that they will appropriately safeguard the data. We may also share non-personal or non-identifiable information, including website visitor information and account usage data with third party analytics service providers.
- 9.7. 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.
- 9.8. 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.
- 9.9. 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 see www.bulkSMS.com/company/data-processing-and-privacy-policy.htm.

- 9.10. 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.

10. Payment and Prices

- 10.1. BulkSMS charges are located online at www.bulkSMS.com/pricing. BulkSMS charges may also be provided as a schedule to any other format of these terms and conditions. Platform and Network Operator's charges for use of their platforms, networks and for SMS, RCS or other message services may differ in respect of individual operators and may be varied by operators from time to time and without prior notice to BulkSMS or its Users. BulkSMS may vary its charges for SMS, RCS or other message services from time to time and without prior notice to Users. In the event that a Network Operator introduces reciprocal charges for any particular types of messages, BulkSMS retains the right to increase the number of Service Credits needed per message, for that specific network and type of message.
- 10.2. Charges for certain Services and purchases are payable in advance. These include, but are not necessarily limited to:
- i. purchasing pre-paid Service Credits,
 - ii. the provisioning, set up, administration and/or rental of Application-to-Person (A2P) services,
 - iii. the provisioning, set up and administration of RBM Services,
 - iv. the provisioning, set up and administration and/or rental of SenderID Services and
 - v. the provisioning, set up and administration and/or rental of Premium Rated Service Numbers, short codes and long numbers.
- 10.3. Users are able to purchase Service Credits which shall reduce for each message sent using the Services. The number of Service Credits used per individual Service depends on the nature of the Service. In the case of messaging services, the number of Service Credits used by a message depends on the type, size and length of a message, the message destination, the messaging route used, Network Operator charges and any applicable Platform Operator charges. The number of Service Credits used per service or 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 Service Credit is inclusive of BulkSMS database hosting, User support and message handling costs. The refunding or expiry of Service Credits is detailed in our Service Credit and Refunds Policy, available at www.bulkSMS.com/company/service-credits-and-refunds-policy.htm, which shall be deemed to have been incorporated into these terms and conditions.
- 10.4. Loading of Service Credits: On the receipt of payment from a User, BulkSMS loads Service Credits to the User's account to reflect the transaction amount. The loading of Service Credits is immediate for approved credit card payments. For bank transfer payments, Service Credits are loaded to the User's account once the transaction has cleared in the applicable BulkSMS bank account. The successful loading of purchased Service Credits is confirmed by the reflection of the transaction and the Service Credits on the User's account.
- 10.5. 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. Any charges raised by a User's own bank when a User makes payment via a third-party payment services provider, such as Stripe, PayGate, Paypal and others, is for the User's account. Where a User makes payment from a card or bank account in a currency that is different from the currency of the country in which BulkSMS's receiving bank account is held, the User shall be liable for reasonable foreign exchange transaction fees which may be debited by BulkSMS against a User's Service Credit balance or charged by BulkSMS to the User at which the foreign exchange transaction is entered into.

- 10.6. Interest on late payments: Any amounts not paid to BulkSMS by the due date for same shall attract interest at a rate that is equal to the lower of 2% per month or the maximum statutory interest rate that may be charged to the User in the jurisdiction in which BulkSMS contracts with the User, such interest to accrue daily and be compounded monthly in arrears.
- 10.7. Payment security: Users acknowledge that BulkSMS makes use of secure third-party payment gateways including PayGate, PayPal, Stripe, 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.
- 10.8. 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.
- 10.9. 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.

11. User Warranties and User Obligations

- 11.1. Users warrant that:
 - 11.1.1. 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;
 - 11.1.2. they shall comply with all applicable laws, regulations, Network Operator and Platform Operator requirements and all relevant codes of conduct which may be applicable in their jurisdiction and the jurisdiction of all persons to whom they cause messages to be delivered;
 - 11.1.3. 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 or Platform Operator;
 - 11.1.4. 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
 - 11.1.5. 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.

12. Breach

- 12.1. Where a User breaches any of these terms and conditions, including terms relating to payment of any amount due to BulkSMS and any third party Network Operator or Platform Operator terms, conditions or policies then, without prejudice to any of its legal rights, BulkSMS shall be entitled, 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.

- 12.2. 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.

13. Limitation of Liability, Warranties and Indemnities

- 13.1. **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.**
- 13.2. **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.**
- 13.3. 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.
- 13.4. 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.
- 13.5. 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.
- 13.6. Users agree to hold BulkSMS harmless and indemnify BulkSMS fully against any claim by any third party, including message recipients, End Users, Network Operators or Platform Operators 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 foregoing result from BulkSMS's own gross negligence or fraudulent acts or omissions.
- 13.7. 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 Operator, Platform Operator terms, codes or policies including but not limited to acceptable usage policies.
- 13.8. 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.
- 13.9. 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.
- 13.10. Without derogating from the foregoing, 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, revenue, 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.
- 13.11. Notwithstanding the foregoing 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.

14. General

- 14.1. 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.

15. Disclosure of Information

- 15.1. The BulkSMS.com website is maintained by Celerity Systems (Pty) Ltd trading as BulkSMS.com, company registration number 2000/005883/07, whose office bearers are: Richard J. B. Simpson; Peter Reynolds, with physical address for receipt of legal service at: 1st Floor Marriott Hotel (Crystal Towers), Cnr Century Boulevard and Rialto Rd, Grand Moorings Precinct, Century City, Cape Town, 7441, South Africa.
- 15.2. These terms and conditions apply to all websites operated by BulkSMS including bulksms.com and shall include any page or part thereof.
- 15.3. The BulkSMS legal entity with whom you contract for the provision of the Services in your territory is identified in the table under point 21.1 of this agreement. 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 21.1 of this agreement.
- 15.4. Main business: BulkSMS is a business in the Mobile Application Service Provider industry that provides business messaging services and solutions, including SMS, RCS messaging and other messaging solutions.
- 15.5. 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.
- 15.6. Records of transactions: Records of transactions may be obtained from BulkSMS on request, or online at the relevant Service Credit History page.

16. Proprietary Rights

- 16.1. 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.
- 16.2. 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/or its licensors retain ownership of and all intellectual property rights to all applications,

software, short codes, long codes, Premium Rated Service Numbers and other proprietary materials or intellectual property made available to the User by means of this website or in the course of the provision of the Services, including any portions or copies thereof. 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.

- 16.3. 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.

17. Linking and Framing

- 17.1. 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.
- 17.2. 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.
- 17.3. 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.
- 17.4. 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.

18. Searching Technology

- 18.1. 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.
- 18.2. 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.

19. Applicable Law

- 19.1. Save where expressly provided to the contrary in terms of the Applicable Laws and Additional Terms that may be relevant to any particular Services, 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.

20. Entire Agreement

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

21. Contact Information / Domicilium Citandi Et Executandi

21.1. 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, Africa (excluding South Africa), Australasia, Asia, Europe, Middle East, the Americas (North, Central and South) and Oceania.	Celerity Messaging UK Ltd, Co Reg No: 6356781	Basepoint Business and Innovation Centre, Metcalf Way, Crawley, West Sussex, RH11 7XX, United Kingdom

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:

