

## 1. INTRODUCTION

- 1.1. These terms and conditions of Service (“**Agreement**”) govern the legal relationship between RedSMS and its Users [and incorporate the provisions of the policies] and contain provisions that disclaim, limit and exclude the liability of RedSMS to you and that indemnify RedSMS against claims and damages that it may suffer as a result of your conduct. For the avoidance of doubt, RedSMS is the service name of the SMS solution provided by Optilead.
- 1.2. Please read these terms and conditions carefully.

## 2. INTERPRETATION

- 2.1. The following provisions shall have effect for the Interpretation of this Agreement:
  - 2.1.1. Words denoting the singular number only shall include the plural and vice versa, words importing persons include bodies corporate and non-corporate and any reference to a gender includes the other gender.
  - 2.1.2. The clause headings are for convenience only and shall not be taken into account in its construction or interpretation.
  - 2.1.3. 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.
  - 2.1.4. 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.

### 2.2. Definitions

- 2.2.1. In this Agreement, the following words or expressions shall have the following meanings unless the context otherwise requires:

‘**Applicable Laws**’ means all laws, regulations, codes of practice and standards applicable from time to time including but not limited to the Data Protection Legislation, Telecommunications Act 1984, the Communications Act 2003, the Code relevant to RedSMS and the Services, that may be issued from time to time.

‘**Carrier**’ or ‘**Network Operator**’ means any party licensed to install, operate and maintain a cellular telephony network including where appropriate an entity with whom RedSMS contracts with in order to deliver telephone calls or provide internet connectivity.

‘**Client Data**’ means any personal data which is transmitted by or on behalf of the User to, or is otherwise processed by, RedSMS.

‘**Code**’ means any Code of Practice (or like policy) issued by The Phone-paid Services Authority (or any body that shall replace it) and any other regulatory body approved by Ofcom relevant to the Services, that may be issued from time to time.

‘**Confidential Information**’ means information relating to one party (the “**Disclosing Party**”) which is, in accordance with, under or pursuant to this Agreement, made available to or otherwise obtained by the other party (the “**Receiving Party**”) including but not limited to all documents, data, software and any other information which is otherwise made available to or obtained by the Receiving Party by or from the Disclosing Party in any format, whether before on or after the date of this Agreement, including any information, analysis or specifications derived from, containing or reflecting such information and including information concerning financial affairs and finances of the Disclosing Party, the technology, technical processes, business, processes, procedures, Personal Data, know how business affairs, its customers, Prospects, employees and suppliers.

‘**Data**’ means any data that comes into the possession of RedSMS in the course of providing the Services, including static data provided to RedSMS together with any real-time data given to an End User or generated as part of an interaction between an End User and User.

‘**Data Protection Legislation**’ means the Data Protection Act 1998, from the 25th of May 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data.

‘**End User**’ or ‘**recipient**’ means any person, including both natural and juristic entities, who receives or is intended to receive any message sent by a User using the Services.

‘**Intellectual Property Rights**’ means copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trademarks, and all other industrial or intellectual property rights or trade secrets existing at any time in any jurisdiction and all rights that shall apply to them.

‘**Ofcom**’ means Office of Communications, the statutory telecommunications regulator, or its successor for material purposes.

‘**RedSMS**’ means the legal entity responsible for providing the Services.

‘**Services**’ means the SMS Messaging service “RedSMS”, provided by Optilead as described in Annex 2.

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

**'User'** shall mean any natural or legal person who makes use of any of the Services or who uses or visits the Website.

**'User Regulations'** means all Applicable Laws and all and any acts, statutes, law, by-law, rules, codes and regulations whether currently in force or otherwise which apply to the User and/or the User's area of business.

**'Website'** shall mean all websites published by RedSMS and shall include any page or part thereof.

### **3. FORMATION OF CONTRACT**

- 3.1. The parties acknowledge that no representations, warranties or statements made prior to concluding this Agreement forms any part of the Agreement, nor has induced the other party.
- 3.2. Any error, omission or typographical error in any quotation, offer, sales information, invoice, or document supplied by RedSMS (prior to the formation of, and exclusive of the information contained in, this Agreement) shall be subject to correction without liability.
- 3.3. Persons using the Website or the Services for any reason whatsoever bind themselves and agree to the terms and conditions of this Agreement.
- 3.4. Should a User not agree to the terms and conditions of this Agreement or be unable to comply with the terms and conditions of this Agreement, the User should immediately cease using the Website and/or terminate the registration process.
- 3.5. You may not use the Website or the Services if you are under eighteen (18) to form a binding contract with RedSMS.
- 3.6. Users agree that this Agreement shall be binding on the User and that should there be a contradiction between any terms and conditions herein 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.
- 3.7. RedSMS 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. RedSMS also reserves the right to cancel orders in whole or in part at RedSMS's sole and absolute discretion.

### **4. RESPONSIBILITIES AND OBLIGATIONS**

#### **RedSMS**

- 4.1. RedSMS shall provide the User with the Services, but RedSMS is not obliged to supply any additional services requested by the User.
- 4.2. RedSMS expressly reserves the right, in its sole and absolute discretion, to alter and/or amend any criteria or information set out in this Agreement or any information, including pricing information on the Website without prior notice.
- 4.3. Users undertake to check the Website frequently and to acquaint themselves with the changes and/or amendments in the information supplied on the Website including this Agreement in respect of the prices and nature of any Services, prior to the conclusion of each new credit purchase or service order in respect of the Services governed by this Agreement.
- 4.4. RedSMS may occasionally:
  - 4.4.1. change the technical specifications of the Services provided that any change does not materially affect the performance of the Services; or
  - 4.4.2. suspend the Services for operational reasons, Carrier issues or because of an emergency.
- 4.5. The User acknowledges that RedSMS's provision of the Services is reliant upon third parties and RedSMS shall not be responsible for any failure in the Services caused by a third party's actions or omissions.
- 4.6. RedSMS shall ensure that it complies with Applicable Laws in its provision of the Services.

#### **User**

- 4.7. User warrants that:
  - 4.7.1. it has all necessary approvals, permissions or authorisations for the Services. The User shall be responsible for the content, quality and delivery of the Services and for ensuring that these fully comply with the User Regulations. RedSMS may recover from the User all fines, claims or administrative expenses resulting from or charged by any regulatory body, or resulting from a breach of the User Regulations;
  - 4.7.2. where a breach or suspected breach of the User Regulations has occurred then the User shall provide RedSMS, upon written request, with information or material regarding the service offered to End Users in order to assist with its investigations. This information shall be provided within 5 working days of a request for the same;
  - 4.7.3. 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;
  - 4.7.4. it shall comply with all applicable laws, regulations, Network Operator requirements or applicable codes of conduct which may be applicable;

- 4.7.5. it shall include its own contact details and identifying particulars in its messages to ensure that complaints are directed to it and not to the Network Operator;
  - 4.7.6. it shall ensure that Services are not used by it for any illegal purpose, or for the transmission or offering of any information or services which are unsolicited, libellous, unlawful, abusive, threatening, harmful, defamatory, or in any way infringe the laws governing, but not exhaustively covering, copyright, intellectual property rights, trademarks, illegal pornography, or any other material that is slanderous or may cause offence in any way;
  - 4.7.7. it shall not engage in any fraudulent act by means of or in connection with any of the Services nor in connection with payment therefor;
  - 4.7.8. it shall cooperate with RedSMS in relation to any complaints, enquiries or investigations regarding the Services. The User shall, without limitation bear in full any costs of whatsoever nature incurred by RedSMS and associated with such complaints, enquiries or investigations, including, inter alia, any legal costs or fines levied by any regulator, trading standards authority, or Court with relevant jurisdiction, against RedSMS as a result of a breach of any User Regulations, being adjudicated against RedSMS, where such breach is the result, in whole or in part, of the failure of the User to abide by the User Regulations;
  - 4.7.9. it shall not use RedSMS's name, trademarks, or copyrights in any way that implies any approval or connection with the services or products offered by the User;
  - 4.7.10. it shall not under any circumstances use the facilities provided by RedSMS to harass or make unsolicited calls, or send unsolicited text messages to an End User;
  - 4.7.11. it shall ensure the End User will provide all necessary consents to ensure compliance with any relevant User Regulations in relation to the Services;
  - 4.7.12. it shall ensure the End Users have the ability to opt out of receiving any further calls, should they wish; and
  - 4.7.13. it shall not disclose any information to any third party that would allow that party to access or use the Services in any way.
- 4.8. User acknowledges and understands that RedSMS facilitates the provision of information and content and that full responsibility for content shall rest on the User and that RedSMS shall not be responsible or liable for any content transmitted by the User. User shall observe all relevant legislation and regulations applicable. It shall be the sole responsibility of User to familiarise itself with all applicable laws, regulations and codes of conduct to which it may be subject and to ensure compliance therewith.
- 4.9. User shall furthermore ensure that 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 legal and regulatory requirements to which RedSMS is bound in all territories where messages are sent by, or received from, the User, including but not limited to the following laws and codes of conduct in the specific territories listed below:
- 4.9.1. European Union: Directive 2002/58/EC, Directive 2000/31/EC, Directive 95/46/EC, Directive 93/13/EC, all national member state laws promulgated in terms thereof as well as the Mobile Marketing Association Code of Conduct available at [www.mmaglobal.com](http://www.mmaglobal.com);
  - 4.9.2. United Kingdom: the Data Protection Legislation, available at [www.ico.gov.uk](http://www.ico.gov.uk), the Privacy and Electronic Communications Regulations, 26 May 2011 available at [www.ico.gov.uk](http://www.ico.gov.uk) as well as the Mobile Marketing Association Code of Conduct available at [www.mmaglobal.com](http://www.mmaglobal.com).
- 4.10. User shall not do, nor omit to do, anything that would result, directly or indirectly, in any breach by RedSMS or by the User of any requirement or provision of any applicable legislation, regulations, code of conduct or network usage policies, failing which RedSMS 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 RedSMS (including claims for re-imburement, refund, compensation or damages). User hereby indemnifies RedSMS against any fine imposed on RedSMS or any damages suffered by RedSMS 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 RedSMS may be subject. Upon notification of any such fine or damages, User agrees to immediately pay the amount of such fine or damages to RedSMS. Any amount not paid to RedSMS within 24 hours of notification thereof shall accrue interest at the rate of [3% above the Base rate of the Bank of England] per annum.
- 4.11. User may not use, or knowingly allow others to use, the Services for any purpose that may bring RedSMS's name into disrepute, or for any purpose that, in RedSMS's sole and absolute discretion, is improper, immoral or undesirable.
- 4.12. User 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 RedSMS nor any Network Operator.

- 4.13. User may not use the Services to send messages without reasonable cause nor for the purpose of causing annoyance, inconvenience or distress to any person.
- 4.14. 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 RedSMS in relation to a User, then the User hereby acknowledges and agrees that RedSMS may at its sole 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 under this Agreement.
- 4.15. User acknowledges and agrees that all messages sent may be stored and can be audited and reviewed by RedSMS or any other person acting on behalf of RedSMS at any time to ensure compliance with these terms and conditions and any applicable law, regulations or code of conduct.

**5. CHARGES**

- 5.1. The User shall pay RedSMS for any Services in accordance with Annex 1

**6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. All Intellectual Property Rights in the Service shall remain vested in RedSMS.
- 6.2. RedSMS shall grant a User an individual, personal (without the right to sublicense), 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 RedSMS products and/or services. The User acknowledges that RedSMS and its licensors retain ownership of all propriety applications, software, intellectual property and any portions or copies thereof, and all rights therein. Upon termination of the Services for any reason, this License will terminate and the User shall destroy and cease to use all software and applications in its possession. The software is provided and applications are offered "as is" and subject to the Service warranty disclaimers and limitations of liability found elsewhere in these terms and conditions. It is the responsibility of the User to test the Services should it wishes prior to entering into this agreement.
- 6.3. Content from the Website may not be used or exploited by User for any commercial and non-private purposes without the prior written consent of RedSMS.

**7. TECHNICAL SUPPORT**

- 7.1. RedSMS shall provide the User with technical support, which RedSMS in its sole discretion shall consider necessary and appropriate. This will be done on a strictly reasonable endeavours basis, and is not legally enforceable as part of this contract.
- 7.2. In the event that the User becomes aware of any faults with the Services, it shall notify RedSMS as soon as is practically possible.
- 7.3. In the event of a fault being reported, RedSMS shall keep a log of faults. Progress and estimated time to fix shall be made available via the service status panel on RedSMS's web site at [www.RedSMS.co.uk](http://www.RedSMS.co.uk). This will be updated as often as is deemed necessary or as details change.
- 7.4. RedSMS reserves the right to charge on an hourly basis for any works undertaken at the User's request which is not associated with rectifying a technical fault, or where a technical fault is caused by the User or where the User has requested modifications to the Services.

**8. CONFIDENTIALITY**

- 8.1. Neither party shall during the life of this Agreement or thereafter disclose to any third party, or use for any purpose the Confidential Information gained in connection with this Agreement, nor the terms and payments due, but each of the parties may disclose to its officers and employees such information as may be required for it to fulfil its proper performance of its duties, and may be used in the proper exercise of its rights and obligations under this Agreement.
- 8.2. The obligations of confidence and restrictions on disclosure shall not apply in the following circumstances:
  - 8.2.1. where such information was already known prior to this Agreement, and it is acknowledged in writing by both parties this knowledge was known prior to this Agreement;
  - 8.2.2. where such information was already in the public domain. save as a result of a breach of this Clause 8.;
  - 8.2.3. where a third party, who did obtain the same from the disclosing party, disclosed such information to it lawfully; or

- 8.2.4. where the Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 8.3. RedSMS shall have the unconditional and irrevocable right to disclose the identity and address of the User in the event of any complaint received from any regulatory or governmental body, or Carrier, in connection with Services.
- 9. Privacy**
- 9.1. RedSMS will not intercept, monitor, copy or disclose any User messages or personal information about the User or the User's RedSMS account, phonebook or MSISDN's, other than in the normal course of the use of the Services, without the User's prior permission unless RedSMS 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 RedSMS, the User or other third party, to enforce any of the provisions of these terms and conditions or to protect RedSMS's business or reputation. The User agrees that RedSMS 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 RedSMS 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.
- 9.2. A recipient of a message has the right to know the identity of the sender, and this will be disclosed on request to the recipient.
- 9.3. User agrees that RedSMS may make use of website visitor and non-identifiable account usage data for statistical and analytical purposes. In providing its services, RedSMS has implemented Analytics services for its audience reporting and remarketing features. When making use of these services, RedSMS 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 RedSMS may use and share de-personalised data for the analytics purposes set out above.
- 9.4. User agrees that it 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.
- 9.5. Where the personal data of any EU member state subject is transferred to RedSMS in a non-EU member state for processing, RedSMS undertakes to ensure technical and organizational security measures that 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, accidental loss, alteration, unauthorized disclosure or access or any other unlawful form of processing. For further information on RedSMS's Privacy Policy please <http://www.redsms.co.uk/site/privacy.html> click here.
- 10. Breach**
- 10.1. Where a User breaches any terms and conditions of this Agreement, including terms relating to payment of any amount due to RedSMS then, without prejudice to any of its legal rights, RedSMS shall be entitled to, amongst other things, to cancel its agreement with the User, to suspend or terminate the provision of services to the User, to suspend, disable or terminate the User's account/s, to sue for specific performance by the User, to claim damages and/or to retain any monies already paid by the User in respect of services not utilised by it as damages resulting from such breach and to set off any claims that RedSMS may have against the User from any other amounts due to the User by RedSMS.
- 10.2. Where a User account is suspended or terminated due to any breach of these terms and conditions, RedSMS 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 RedSMS, in its sole and unfettered discretion, believes is affiliated with the User concerned.
- 11. LIMITATION OF LIABILITY**
- 11.1. The User accepts that RedSMS is in part reliant on the third party Carriers and the User shall not hold RedSMS liable in any way whatsoever for RedSMS's inability to provide service as a result of faults which are the responsibility of the Carrier.
- 11.2. The User shall be responsible at all times for maintaining the security of its and its End Users' data, and RedSMS shall bear no liability for the loss or damage in part or whole, of such data, to the extent that such loss or damage has been caused or contributed to by the User.
- 11.3. RedSMS 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.

- 11.4. Furthermore, RedSMS 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.
- 11.5. 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, RedSMS 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 RedSMS 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.
- 11.6. In the event of any litigation between RedSMS and the User, the successful party shall be entitled to recover its reasonable legal costs.
- 11.7. Without derogating from the foregoing, in no event shall RedSMS be liable for any damages whatsoever, including but not limited to any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, or the cost of procurement of substitute goods and services, arising out of or related to the use, inability to use or unauthorised use of the Website or the Services, whether such damages arise in contract, tort, under statute, in equity, at law or otherwise.
- 11.8. Subject to clause [11.11], RedSMS shall not be liable to the User, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- 11.8.1. loss of profits;
  - 11.8.2. loss of sales or business;
  - 11.8.3. loss of agreements or contracts;
  - 11.8.4. loss of anticipated savings;
  - 11.8.5. loss of damage to goodwill;
  - 11.8.6. loss of use or corruption of software, data or information;
  - 11.8.7. any indirect or consequential loss.
- 11.9. Except as otherwise stated the User's sole remedy for any breach of this agreement, shall at RedSMS's sole discretion be:
- 11.9.1. correction in a reasonable timescale of any fault; or
  - 11.9.2. replacement of service supplied.
- 11.10. REDSMS's maximum aggregate liability to the User, notwithstanding the foregoing provisions and without derogating therefrom or limiting their application in any way howsoever arising from or in connection with the performance or non-performance of the Services in any contract year (whether for breach of contract, breach of statutory duty, tort or otherwise and including under any indemnity) shall not exceed the greater of:
- 11.10.1. one thousand pounds (£1,000); and
- 11.10.2. an amount equal to the amount paid for the Services in the twelve months prior to any such claim arising.
- 11.11. Nothing in this Agreement limits or excludes RedSMS's liability for:
- 11.11.1. death or personal injury caused by its negligence;
  - 11.11.2. fraud or fraudulent misrepresentation; or
  - 11.11.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 11.12. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

## **12. INDEMNIFICATION**

- 12.1. The User hereby indemnifies and holds RedSMS harmless against any and all damages, liabilities, fines and risks that may follow from the transgression of any terms of this Agreement.
- 12.2. User agrees to hold RedSMS harmless and indemnify RedSMS fully against any claim by any third party, including message recipients or End Users, as a result of any system failure, message corruption, interruption or termination of services, unsolicited direct marketing, harassment, emotional disturbance, inappropriate or obscene content, breach of privacy or breach of data security, provided that none of the foregoing result from RedSMS's own gross negligence or fraudulent acts or omissions.
- 12.3. User further indemnifies and holds RedSMS harmless against any reasonable claims, actions or damages from any party as a result of the fraudulent or unauthorised use of the User's Username and password or loss thereof.
- 12.4. User indemnifies and holds RedSMS 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 User that constitutes a breach or contravention of any legislation, regulations, code of conduct or network provider codes or practice or acceptable usage policies.

12.5. User agrees to indemnify RedSMS and its parent, subsidiaries, affiliates, officers and employees from any claim or demand, including any made by a third party, arising out of:

12.5.1. the User's use of the Service;

12.5.2. a breach by the User of the conditions of this Agreement; and

12.5.3. negligence or misconduct by User.

12.6. RedSMS shall indemnify User for direct physical injury or death caused by defects in the software or services supplied to User.

### **13. DATA PROTECTION**

13.1. With respect to the parties' rights and obligations, User acknowledges that in relation to any Client Data User is a controller and RedSMS is a processor.

13.2. The parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations, however, for the avoidance of doubt User agrees that where RedSMS has satisfied a contractual obligation under this Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.

13.2.1. User warrants, represents and undertakes to RedSMS that it has lawful grounds for processing the Client Data.

13.3. The parties confirm that the details in schedule 1 are accurate and complete. Where RedSMS processes Client Data under or in connection with this Agreement, RedSMS shall:

13.3.1. save as required otherwise by law, only process such Client Data as is necessary to perform its obligations under this Agreement, and only in accordance with the User's documented instructions;

13.3.2. put in place appropriate technical and organisational measures to meet its own obligations under the Data Protection Legislation and which the User agrees are appropriate measures;

13.3.3. ensure RedSMS staff who will have access to Client Data are subject to appropriate confidentiality obligations;

13.3.4. be entitled to engage sub-processors to process Client Data subject to RedSMS ensuring that equivalent requirements to those set out in this clause are imposed on any sub-processor(s), RedSMS remaining fully liable to the User for the performance of the sub-processor's obligations and where applicable, providing to the User reasonable prior notice of any addition, removal or replacement of any such sub-processors;

13.3.5. have in place the appropriate technical and organisational security measures to protect the Client Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access. The User confirms that it has reviewed those security measures and concluded that they are appropriate.

13.3.6. notify the User without undue delay after becoming aware of any personal data breach involving Client Data, taking into account the nature of processing and the information available to RedSMS. The User confirms that it has reviewed RedSMS's breach notification policy, systems and guidance and concluded that they are suitable and adequate for the nature of the processing under this Agreement.

13.3.7. take appropriate technical and organisational measures, insofar as is possible, to assist the User in responding to requests for data subjects for access to or rectification, erasure or portability of Client Data or for restriction of processing or objections to processing of Client Data (but RedSMS will not itself respond to any such data subject request except on written instructions from the User). Furthermore RedSMS will, upon the request of the User, provide assistance to the User relating to the User's security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to RedSMS. RedSMS may charge the User its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the User with co-operation and assistance as required by this clause.

13.3.8. will make available to the User such information as the User reasonably requests and RedSMS is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by the User (or the User's appointed auditors), as is necessary to demonstrate RedSMS's compliance with the Data Protection Legislation. The User will give reasonable notice of any audit and will be fully liable for any associated costs (including those of RedSMS.)

upon expiry or termination of this Agreement, and/or if the Service Provider's account has not been accessed in twelve months, at the Service Provider's cost delete the Client Data to the Service Provider provided always that nothing in this clause shall oblige RedSMS to provide assistance which does not relate directly to the Services performed pursuant to this Agreement.

- 13.4. RedSMS shall inform the User in writing if, in RedSMS's opinion, an instruction from the User infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, the User acknowledges that:
  - 13.4.1. any information RedSMS provides is not legal advice or guidance in anyway whatsoever, and that RedSMS makes no warranty or representation regarding the information (express or implied); and
  - 13.4.2. this clause shall not relieve the User of its obligation to ensure that all instructions to RedSMS comply with all applicable legislation, including all Data Protection Legislation; and
  - 13.4.3. RedSMS may charge the User its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the User with co-operation and assistance as required by this clause.
- 13.5. Notwithstanding anything to the contrary in this Agreement, if any of the following occur:
  - 13.5.1. any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems RedSMS use to process the Client Data;
  - 13.5.2. any new, clarified or amended guidance or policies issued by a supervisory authority;
  - 13.5.3. any direction or instruction issued by a supervisory authority (whether relating to User or RedSMS in respect of the Services (including any processing of the Client Data), then any increased effort or costs incurred by RedSMS in association with the aforementioned shall be additionally chargeable to the User.
- 13.6. The User shall indemnify and keep indemnified RedSMS against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of: any breach of Data Protection Legislation by the User, or RedSMS acting in accordance with any instruction, policy or procedure of the User

#### **14. GENERAL**

- 14.1. This Agreement represents the entire understanding between the parties. No other prior arrangements, representations or understandings, orally or in writing have any validity.
- 14.2. This Agreement together with any other contractual documents expressly referenced in this Agreement contain all of the terms of agreement between the User and RedSMS.
- 14.3. Either party's rights and powers under this Agreement are not affected if it fails to or chooses not to enforce any of them at any time. If any part of this Agreement is not enforceable it will not affect the remainder.
- 14.4. Neither party shall be deemed to be in breach of this Agreement for any failure in performance caused by events outside of its reasonable control, to include, but not limited to any act of God, inclement weather, shortage of power, flood, drought, lightning, fire, lock-out, trade dispute, labour disturbance, act or omission of Government highway authorities, or a Carrier or other authority, war, military operations, or riot.
- 14.5. English Law applies to this Agreement. Both parties hereby submit to the exclusive jurisdiction of the English Courts.
- 14.6. The User shall not be entitled to assign, transfer, mortgage, charge or subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of RedSMS (such consent to be granted at RedSMS's sole discretion).
- 14.7. RedSMS shall be entitled to assign, transfer, mortgage, charge or subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement.
- 14.8. 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 to which all formal correspondence should be sent.  
Address:  
Optilead  
3 Balby Carr Bank  
Doncaster  
South Yorkshire  
DN4 5JT

**ANNEX 1 Pricing**

1. Users are required to purchase credits in advance, which are used when messages are sent. The number of credits used per individual message depends on the length of message, message destination, the messaging route used, and the relevant 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 RedSMS database hosting, User support and message handling costs.
2. RedSMS charges are located online at [www.redsms.co.uk](http://www.redsms.co.uk). Network Operators' charges for use of their networks and for SMS services may differ in respect of individual Network Operators and may be varied by Network Operators from time to time and without prior notice to RedSMS or its Users. As a result, RedSMS may vary its charges for SMS messages from time to time and without prior notice to Users. In the event that a Network Operator introduces reciprocal charges, RedSMS retains the right to increase the number of credits needed per message, for that specific network.
3. Unless expressly indicated to the contrary, all advertised or displayed prices are advertised and displayed exclusive of value added tax.
4. Payment methods include debit/credit card or electronic transfer where authorised by RedSMS as may be disclosed on the Website from time to time and Users acknowledge and agree that RedSMS shall not be liable for any losses arising from the use of any third party payment gateways whatsoever.
5. Cooling-off periods: RedSMS shall comply with any cooling off periods prescribed by law subject to any reasonable cancellation fees that may be imposed.
6. Without prejudice to any other right that it may have in law, RedSMS 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 has not been made in full by the due date, or where RedSMS reasonably suspects that payment has been made or effected by fraudulent means.
7. In the event that any sums due under this Agreement are not paid by the due date then the party to whom such sums are owed shall be entitled to charge interest at 2% over the base rate of Barclays Bank (or any other bank that the parties may agree from time to time) in force for the time being.

**ANNEX 2 The Services**

**RedSMS**

1. To register to make use of the Services, a User must complete the registration process and must provide RedSMS with up to date, complete and accurate information as requested by RedSMS. Failure to provide accurate and complete information on registration may result in termination of the Services. A User may also be required to choose a Username and password. User is responsible for maintaining the confidentiality of its Usernames and passwords and User undertakes not to divulge its Usernames 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.
2. User agrees to notify RedSMS immediately of any unauthorized use of its account(s) or any other breach of security, via telephone on 01302 571011, or via email on info@redsms.co.uk.
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 RedSMS should suffer any damage or loss, civil damages will be claimed.
4. In the event that a User wishes to replace a person/employee using a specific RedSMS account of the User, and wishes to prevent the individual person from accessing the account, the account holder shall inform RedSMS in writing of this change and change all details on the account accordingly. RedSMS 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 RedSMS 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.
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 RedSMS with a written notice setting out:
  1. The full names and address of the complainant;
  2. The written or electronic signature of the complainant;
  3. Identification of the right that has allegedly been infringed or the law or code of conduct alleged to have been infringed;
  4. Identification of the material or activity that is claimed to be the subject of unlawful activity;
  5. The remedial action required to be taken by the User in respect of the complaint;
  6. Telephonic and electronic contact details, if any, of the complainant;
  7. A statement that the complainant is acting in good faith; and
  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 RedSMS for any misrepresentation of the facts or for wrongful suspension or termination of any Services by RedSMS in response to the complaint.
6. Any person who lodges a notification of unlawful activity with a User knowing that it materially misrepresents the facts is liable for damages for any wrongful suspension or deactivation of services. Users acknowledge and agree that RedSMS shall not be liable to the User or any other person for damages or other liabilities resulting from wrongful suspension or deactivation of services in response to any such notification.
7. No RedSMS account may be transferred from one person to another without the written consent of RedSMS. Where RedSMS 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.

2. It is the responsibility of the main account holder to ensure a change of ownership for the account is communicated to Optilead/RedSMS. 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, RedSMS 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 RedSMS 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 User's email account or telephone. RedSMS shall make all reasonable endeavours to ensure uninterrupted and continued use of the Services, however the delivery of SMS messages is largely dependent on the effective functioning of Network Operators' cellular networks, network coverage and the SMS recipient's mobile handset.
3. RedSMS does not and cannot guarantee the availability of any Service, the delivery of SMS messages or the compatibility between any message or content format and any particular mobile handsets or mobile operating systems.
4. Network Operators may modify, enhance, develop or discontinue components of their services at any time without prior notice, in which event RedSMS shall be entitled to modify, enhance, develop or discontinue affected Services to Users without notice.
5. RedSMS 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. Messages shall be deemed to have been delivered when RedSMS 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.
7. RedSMS shall have the right to withhold, terminate or suspend the provision of Services to the User at any time. Where this Agreement or the provision of any Service is terminated by RedSMS for any reason other than breach by the User, dormant accounts or discontinuance of a Service by a Network Operator, RedSMS shall refund all monies already paid in advance by the User for any unused terminated Service.
8. Ordinary mobile terminated messaging services set on a scheduled or reoccurring basis may be terminated by the User at any time. Incoming numbers, including long numbers, short codes and premium rated numbers must be leased for a minimum initial period of three months and thereafter one further months' notice must be given by the User in order to terminate the lease of any long numbers or short codes.
- 9.
10. Any subscription service for which an End User is debited or billed on a repeated basis without expressly confirming each individual transaction, individual programme or application administered by a User to an End User must be offered on an "opt-in basis." In addition, each User must also offer a convenient, easy-to-use and conspicuous method for an End User to opt-out from any subscription service, individual programme or application.

#### **Linking and Framing**

11. 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 RedSMS.

12. RedSMS may provide links to the User only as a convenience and the inclusion of any link does not imply RedSMS's endorsement of such sites.
13. 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 RedSMS. RedSMS 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 User's sole and exclusive risk.
14. 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 RedSMS.

#### **Searching Technology**

15. 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 RedSMS.
16. 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.
17. 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 RedSMS notwithstanding that such information may be published as RedSMS's contact information.