

agreement

Between

SOFT CRAFT SYSTEMS CC
CK1990/36869/23
("iMM")

and

iMM Domain Owner
(.the Customer.)

DEFINITIONS

1.1 In this Agreement, unless the context otherwise indicates, the following words and expressions have the following meanings:

1.1.1 "Agreement" means the agreement between iMM and the Customer set out in this document, together with any Order Forms or other annexures attached hereto from time to time, by agreement between the Parties;

1.1.2 "Commission" means a commission payment made to a Customer in consideration for the Customer procuring the incurrence by Users of Premium Rate SMS Charges;

1.1.3 "Commencement Date" means the date of acceptance of this Agreement by the Customer whether:

1.1.3.1 by physical signature of this Agreement by the Customer, in circumstances where this Agreement has been presented to the Customer in a hardcopy format; or

1.1.3.2 in circumstances where this Agreement has been electronically presented to the Customer during the Registration Process, by the Customer clicking on the "I Accept" icon

which appears at the end of the registration process;

- 1.1.4 "Customer" means any person to whom iMM has agreed to provide Services and whose details:
 - 1.1.4.1 appear on the face of this Agreement, where this Agreement has been presented to the Customer for acceptance in a hardcopy format; or
 - 1.1.4.2 have been provided to iMM during the Registration Process, where this Agreement has been presented to the Customer for acceptance in an electronic format;
- 1.1.5 "Customer Server" means any computer server used by the Customer from time to time in the normal conduct of its business;
- 1.1.6 "Customer Website" means any internet website used by the Customer from time to time in the normal conduct of its business;
- 1.1.7 "Fees" means the fees payable by a Customer in consideration for the provision of the Services, which fees shall be specified on the iMM Website and may be amended by iMM from time to time on 30 (thirty) days written notice to the Customers, which notice may be given on the iMM Website;
- 1.1.8 "iMM" means Soft Craft Systems CC (Registration Number: CK[=]), a close corporation duly incorporated according to the laws of the Republic of South Africa, of Suite 3, Rose Avenue Mews, 18 Rose Avenue, Kirstenhof, 7945, Cape Town, Western Cape, South Africa, fax number: +27217130977, trading as iMessage Instant Mobile Messaging;
- 1.1.9 "iMM Server" means the computer hardware and software used by iMM to provide the Services;
- 1.1.10 "imm sms keyword" means a unique keyword registered by a Customer on the iMM Website, which, once registered, may be sent (either alone or together with such other text as may be required in

the circumstances) by Users via SMS to a specific Shortcode;

- 1.1.11 "iMM Website" means the internet website which can be accessed using the universal resource locator: www.imessage.co.za;
- 1.1.12 "Intellectual Property Rights" means any and all intellectual property or other proprietary rights, including but not limited to copyright and rights in a design, trade mark, trade name or patent, in each case whether registered or unregistered;
- 1.1.13 "Link" means a hypertext link from a Customer Site to the iMM Website;
- 1.1.14 "Newsletter Mailing List" means the email mailing list maintained by iMM, which list contains the email addresses of those Customers who have agreed to receive news and information relating to iMM and the Services from time to time;
- 1.1.15 "Operator" in relation to any Customer or User means the operator of the mobile telephone network to which such Customer or User subscribes;
- 1.1.16 "Order" means any request for the provision of Services which is made by a Customer in the prescribed manner;
- 1.1.17 "Order Form" means any documentation, whether in an electronic or hardcopy format, styled as an order form and containing details of a Customer's Order (all hardcopy order forms shall, in order to be binding on the Parties, be signed by both Parties and shall be annexed to this Agreement);
- 1.1.18 "Parties" means iMM and the Customer, and "Party" means any one of them;
- 1.1.19 "Premium SMS Charge" means the charge payable by a User to his Operator, in respect of any SMS sent by such User to a Shortcode (a portion of the Premium SMS Charge paid by a User is paid by the relevant Operator to iMM as a commission, who in turn shares such commission with the Customer responsible for

procuring the incurrence by the relevant User of the Premium Rate SMS Charge);

- 1.1.20 "Prime Rate" means interest at the prime bank commercial overdraft lending rate charged by FirstRand Bank Limited to its best grade customers on an unsecured basis from time to time. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, which certificate shall constitute prima facie proof of the rate;
- 1.1.21 "Prohibited Service" means any gambling, betting, adult, sex or over 18 service or information offered by a Customer;
- 1.1.22 "Prohibited Keyword" means any imm sms keyword which incorporates an adult, sex or over 18 related word;
- 1.1.23 "Rands" means the currency of the Republic of South Africa;
- 1.1.24 "Registration Process" means the electronic process whereby a potential customer registers itself as a Customer by:
 - 1.1.24.1 clicking on the "Register with iMessage" icon on the homepage of the iMM Website;
 - 1.1.24.2 providing such information as may be requested and by taking such actions as may be required; and
 - 1.1.24.3 reading and accepting the terms of this Agreement by clicking the "I Accept" icon which appears at the end of the electronic version of this Agreement;
- 1.1.25 "Services" means the services to be provided by iMM to the Customer in terms of this Agreement, which services shall be specified on the iMM Website and may be amended by iMM from time to time on 30 (thirty) days written notice to the Customers, which notice may be given on the iMM Website;

- 1.1.26 "Shortcode" means a number, usually but not always 5 (five) digits long, which links the SMS functionality of the mobile telephone networks to the IMM Server and thereby facilitates the provision of the Services;
- 1.1.27 "SMS" means a service offered by Operators to their subscribers which allows their subscribers to send and receive short text messages using their cellphones;
- 1.1.28 "Standard SMS Charges" means the charge payable by a Customer to his Operator, in respect of any SMS sent by such Customer to a User's cellphone, which charges are stipulated on the IMM Website;
- 1.1.29 "Third Party Software" means software that is owned by parties other than IMM and which can be downloaded by a Customer from the IMM Website; and
- 1.1.30 "User" in relation to any Customer means any person to whom such Customer supplies goods or services by means of utilising the Services provided by IMM in terms of this Agreement;
- 1.1.31 "User Account" means an electronic record of the number of notional credits standing to the credit of a Customer, which record can be viewed on the IMM Website. The notional credits may be used by a Customer to purchase Services or may, subject to the provisions of clause 14, be converted into a payment in Rands.
- 1.2 Words importing the singular shall include the plural, and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include partnerships and bodies corporate, and *vice versa*.
- 1.3 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4 If any provision in this clause 0 is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is contained in this clause 0, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.

- 1.5 Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 0.
- 1.6 References to any statute or statutory provision includes a reference to that statute or statutory provision as may from time to time be amended, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it.
- 1.7 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.8 Save where clearly indicated to the contrary, expressions defined in this Agreement shall bear the same meanings in any annexure hereto unless such annexure contains an alternative definition for the expression.
- 1.9 The rule of interpretation that an agreement will be interpreted against the party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 1.10 Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 1.11 Should this Agreement be signed on a date that results in the use of any tenses herein being inappropriate, the terms shall be read in the appropriate tense.

2. **APPLICATION OF AGREEMENT**

- 2.1 This Agreement any terms specifically agreed in writing by IMM supersede any terms stipulated by the Customer in any negotiations or any course of dealing between IMM and the Customer.

- 2.2 The Customer acknowledges that there are no representations outside the Agreement that have induced it to enter into the Agreement. This Agreement constitutes the entire understanding between the Parties for the provision of the Services. All other terms and conditions express or implied by statute or otherwise are excluded to the fullest extent permitted by law.
- 2.3 Unless otherwise provided in this Agreement no modification of the Agreement shall be effective unless agreed in writing by a duly authorised representative of IMM.
- 2.4 IMM may from time to time amend this Agreement (including any Fees payable, or Services provided in terms of this Agreement) on 30 (thirty) days prior notice to the Customers, which notice may be given on the IMM Website. The Customer may terminate this Agreement by written notice at any time before the date on which an amendment comes into force. Should the Customer place an Order or continue to use any of the Services following the implementation of an amendment it will be deemed to have accepted and to be bound by the amendment.

3. **TERM**

This Agreement shall be valid and binding on the Parties as from the Commencement Date and shall continue indefinitely thereafter, unless terminated earlier in accordance with the termination provisions of this Agreement.

4. **OBLIGATIONS OF THE CUSTOMER**

- 4.1 The Customer shall not:
- 4.1.1 without the prior written consent of IMM, avail itself of the Services in order to allow it to provide Prohibited Services (the Customer shall notwithstanding any approval by IMM be solely responsible for ensuring that the Prohibited Service is provided in compliance with all regulations, codes of practice or legislation that may be applicable);
 - 4.1.2 without the prior written consent of IMM, register or attempt to register any Prohibited Keyword;

- 4.1.3 submit to IMM any Order that infringes or might reasonably be considered to infringe the Intellectual Property Rights of any third party;
 - 4.1.4 use the IMM Website, the IMM Server or any of the Services in any way that might reasonably be considered to infringe the rights of any third party, including but not limited to any conduct which constitutes trademark infringement, copyright infringement, passing off and/or defamation;
 - 4.1.5 reverse engineer, de-code or in any way disassemble any software provided by IMM in relation to the provision of the Services;
 - 4.1.6 use the IMM Website, the IMM Server or any of the Services to send, relay, upload, post or receive replies to any unsolicited or unauthorised communications, including, but not limited to, promotional material, junk mail, spam or chain letters;
 - 4.1.7 use the IMM Website, the IMM Server or any of the Services to communicate, reproduce, transmit, store or knowingly receive any material that is offensive, abusive, indecent, defamatory, obscene, menacing or in breach of confidence;
 - 4.1.8 advertise an imm sms keyword or any product or service which is offered through the use of an imm sms keyword in an unsolicited or unauthorised manner; or
 - 4.1.9 enter any incorrect or incomplete name, business name, address, email address or telephone number or any other false information on the Order Form or otherwise enter information intended to conceal the Customer's identity. The Customer further acknowledges that it is the Customer's responsibility to notify IMM of any changes to its details as soon as is reasonably practicable after such changes have been made and to ensure that those details provided to IMM are kept up to date.
- 4.2 In the event of any breach of the provisions of clause 4.1 by the Customer, IMM reserves the right, without prejudice to any of its

other rights in terms of this Agreement and/or in law, to forthwith withdraw, suspend or cancel the Services.

- 4.3 The Customer acknowledges that it is solely responsible for maintaining adequate insurance cover in respect of any loss or damage which it may suffer in relation to its use of the Services.
- 4.4 The Customer acknowledges that the internet is not a completely secure medium of communication, and, whilst IMM has taken steps to safeguard the security of some of the information which the Customer inputs on IMM's Website or sends to IMM via the internet, IMM is not and will not be responsible for any loss or damage the Customer may suffer as a result of the loss of the confidentiality of such information.
- 4.5 The Customer warrants, represents and undertakes that it will obtain all necessary licenses and consents it may required in relation to any imm sms keyword and any information or material transmitted or stored using the Services.
- 4.6 The Customer warrants, represents and undertakes that its imm sms keywords, any information or material transmitted or stored using the Services and any information or material linked to or referred to by way of the Services is not offensive, abusive, indecent, defamatory, obscene, menacing or in breach of confidence and does not infringe the Intellectual Property Rights of any third party or contain a virus or other hostile code, or constitute or encourage a criminal offence.
- 4.7 The Customer warrants, represents and undertakes that it will not, nor will it permit or authorise any other party to use the Services in breach of any law or regulation.
- 4.8 The Customer warrants, represents and undertakes that it will not, nor will it permit or authorise any other party to use the IMM Services in any way which is or may be detrimental to IMM interests.
- 4.9 The Customer warrants, represents and undertakes to abide by any limitations imposed by IMM from time to time by publication on the IMM Website and to keep secure any confidential information provided by IMM including but not limited to any passwords.
- 4.10 The Customer shall display the charges payable by Users on all advertising and similar material relating to any of its imm sms keywords.

5. OBLIGATIONS OF IMM

- 5.1 In the event that the Customer submits any Order or uses any or all of the Services in such a way as may in IMM's sole opinion expose IMM to the risk of legal or other proceedings or expose IMM to loss or damage of any kind, IMM reserves the right to refuse to process or to continue processing any Order, or to withdraw, suspend or cancel the Services, or take such other action as it in its absolute discretion sees fit.
- 5.2 IMM will comply with all applicable data protection legislation in relation to the personal details that the Customer provides on the Order Form. All information provided to IMM will be dealt with in accordance with IMM's privacy policy which can be found on IMM's Website. The Customer acknowledges that IMM is under no obligation to edit, review or modify information provided by or on behalf of the Customer. In order to maintain the integrity of the Services offered by IMM, IMM reserves the right to forward contact details to the police, or other regulatory authorities where requested to do so, IMM may also forward contact details where a complaint arises concerning the Customer's use of the Services and where that use is deemed by IMM to be inconsistent with this Agreement.
- 5.3 The Customer agrees, in the event that Third Party Software is made available to the Customer on the IMM Website and such Third Party Software is licensed to the Customer pursuant to separate terms ("Third Party Licenses"), that it has had the opportunity to review the Third Party Licenses and agrees to comply with them. In the event of a conflict between this Agreement and any provision contained in a Third Party License, the terms of the Third Party License shall prevail with respect to the applicable Third Party Software only, and in all other instances this Agreement will prevail.
- 5.4 IMM shall use its reasonable endeavours to obtain registration of an imm sms keyword where requested.
- 5.5 IMM does not warrant or guarantee that an imm sms keyword requested by the Customer will be registered or be capable of registration and the Customer should take no action in respect of the requested imm sms keyword until the Customer has been notified that the requested imm sms keyword has been registered.

- 5.6 IMM shall not, unless the circumstances require otherwise, send any general information regarding its business or its achievements or regarding the Services offered by IMM to any Customer who is not on the Newsletter Mailing List.
- 5.7 If required by the Customer IMM will provide forwarding services for imm sms keywords whilst they are registered to the Customer. IMM will not be liable if the Customer does not successfully receive any inbound imm sms keyword requests that have been forwarded to the Customer's web server or email address.
- 5.8 IMM shall, on receipt of an SMS from a User which incorporates an IMM SMS Mobile Domain Name (as well as such other text as may be required in the circumstances) that has been registered by a Customer, cause one or more of the following Customer specified events to occur:
- 5.8.1 an automated SMS reply, containing Customer specified text, is sent to the Users' cellphone (for the sake of clarity the User is billed the Premium SMS Charge in respect of the SMS sent by the User to the Shortcode and the Customer is billed the Normal SMS Charge for the SMS reply which the User receives from IMM);
 - 5.8.2 the automated forwarding of the text message received from the User to an email account, cellular phone or to a Customer Server;
 - 5.8.3 the automated forwarding of a standard email (previously defined by a customer) to an email address specified in a sms received from a user.

6. FEES

- 6.1 The Customer shall, in consideration for the provision of the Services, pay to IMM the Fees in Rands, plus any additional costs incurred by IMM in processing an Order, which have been approved by the Customer in terms of clause 6.4.
- 6.2 The Fees shall be paid by the Customer without set off, deduction or counterclaim.
- 6.3 The Customer acknowledges that the provision of the Services is conditional on IMM receiving payment of the Fees in full and in the event of non-payment of Fees or suspected fraudulent activity in relation to the payment of Fees by the Customer, IMM

reserves the right forthwith to withhold, suspend or cancel the Services.

6.4 The Customer acknowledges that occasionally unforeseen costs are incurred in processing Orders. IMM shall obtain the Customer's consent in writing or by email before incurring any additional costs.

6.5 Interest will be charged on overdue accounts at a rate of **2%** (two percent) above the Prime Rate. Such interest will be calculated on a daily basis from the date payment was due until the date payment is received (including any time following the entry of judgment) and will be compounded monthly.

7. UNAVAILABILITY OF SERVICES

If the Customer places an Order for multiple Services in circumstances where the relevant Fee is advertised on the IMM Website as a discounted Fee and one or more of the Services ordered is unavailable, IMM shall charge the Customer the advertised discounted Fee for the Services actually available.

8. CANCELLATION, REFUNDS AND CREDITS

8.1 If an imm sms keyword requested by the Customer is unable to be registered the Customer will be entitled to a refund of any Fees paid in relation to such Order or a credit against any future Order.

8.2 Subject to clause 8.1 and unless otherwise provided in this Agreement, the Customer shall not be entitled to any refund of Fees or a credit against any future Order.

9. TRANSFER OF IMM SMS KEYWORDS

9.1 Customers are not permitted to transfer imm sms keywords for a period of 30 (thirty) days following completion of the registration of the imm sms keyword.

9.2 IMM reserves the right to refuse to transfer an imm sms keyword where any monies are due from the Customer to IMM in respect of that imm sms keyword.

9.3 Where the Customer wishes to transfer the ownership of any of its imm sms keywords to a third party IMM will charge an administration charge of R50.00 (fifty rand) for effecting the transfer. IMM reserves the right to change this administration fee from time to time in its sole discretion, which change will be reflected on the IMM Website as soon as practicable in the circumstances.

9.4 In the event of a dispute regarding the ownership of or any rights to an imm sms keyword, IMM reserves the right to take any and all necessary action to protect itself including (without limitation) the right to de-activate and de-register an imm sms keyword or authorise the transfer of the imm sms keyword away from the Customer.

10. **RENEWAL OF IMM SMS KEYWORDS**

10.1 The Customer acknowledges that it bears the ultimate responsibility for renewing its imm sms keywords and the Customer accepts that IMM cannot be held liable if the Customer fails to renew any imm sms keyword before the expiry date of such name.

10.2 IMM does not warrant or guarantee that the imm sms keyword which a Customer requests to be renewed will be renewed, or will be capable of renewal and the Customer should take no action in respect of any imm sms keyword until such time as it has been notified that the requested imm sms keyword has been renewed.

10.3 Any imm sms keyword not renewed by its expiry date will be de-activated. Once an imm sms keyword has been de-activated it cannot be renewed and will have to be re-registered.

10.4 A de-registered imm sms keyword may be registered by any other person.

11. **SERVICE LEVELS**

11.1 Whilst IMM undertakes to use reasonable endeavours to provide the Services promptly following receipt of a Customer's order, it is possible that restrictions in the availability of resources may lead to a delay.

11.2 Whilst IMM undertakes to use reasonable endeavours to maintain an acceptable level of security, it cannot give any

guarantee regarding the security of material hosted on the IMM Server or the Customer Server.

- 11.3 Whilst IMM undertakes to use reasonable endeavours in the provision of the Services, it does not guarantee that the provision of the Services will be error-free or uninterrupted.
- 11.4 IMM may from time to time have to suspend the Services for the purpose of repairing, maintaining or improving the IMM Server and in such circumstances IMM undertakes to notify the Customer as far in advance as possible and to endeavour to keep the period of suspension to the minimum length of time necessary to carry out such works.
- 11.5 In light of this clause 11 the Customer accepts that the Services are not intended to be used in circumstances where fail-safe performance is required.
- 11.6 IMM reserves the right to suspend or modify the Services if the Customer's continued use of the Services is determined, at IMM's sole discretion, to be detrimental to the running of the IMM Server or to the use of the Services by any other Customer.
- 11.7 IMM reserves the right to monitor the Customer's use of the Services and shall be entitled at all times and without notice to refuse to provide the Services if IMM in its sole discretion believes the Customer's use of the Services contravenes any part of this Agreement.
- 11.8 Where IMM proposes to take action pursuant to this clause 11 it shall notify the Customer of its action as soon as possible.
- 11.9 The Customer acknowledges that providing the Services to the Customer does not amount to IMM's approval of the Customer's use of the Services or material stored or transmitted during the Customer's use of the Services and shall not under any circumstances constitute a waiver of any of IMM's rights or the Customer's obligations under this Agreement.
- 11.10 On termination of the Agreement, howsoever arising, IMM shall be entitled to immediately stop access to the Services and to remove all material stored by the Customer for use with the Services and also to post an appropriate notice to any of the Customer's Users regarding the non-availability of the Customer's services.

11.11 The Customer shall be solely responsible for making and maintaining its own back-ups of any material or usage logs stored or used within the Services and acknowledges that IMM cannot be held responsible for the consequences of any loss of such material or usage logs.

12. THE SERVICES

12.1 The Customer is required to prepay for all SMS's that it anticipates sending, by purchasing notional credits from IMM, which credits will be reflected in the Customer's User Account.

12.2 IMM may, if any amounts are owing to it by the Customer, withhold Commission payments to the Customer and may suspend the provision of Services (including Commission earning Services) to the Customer.

12.3 The Customer will be charged and will have credits deducted from their User Accounts based on SMS's sent rather than SMS's successfully delivered to a User's cellphones. All IMM figures and records related to SMS's sent, SMS's successfully delivered and costs of SMS's sent are final and binding upon the Customer and are the sole determining factor in calculating the amount to be charged to the Customer.

12.4 IMM will charge the Customer on a time and material basis, using the daily rates specified on the IMM Website, or on an as agreed basis for any bespoke development or consultancy work carried out on behalf of the Customer. Full payment for such work will be due upon delivery of the work or on completion of agreed milestone events. IMM reserves the right to retain copyright and all other Intellectual Property Rights and other proprietary rights over any software developed for the Customer ("**Developed Software**") and to reuse it for other purposes and to resell it to other Customers. This right does not extend to any Intellectual Property Rights or other proprietary rights that are owned by the Customer and which are incorporated into the Developed Software.

12.5 IMM retains the right to publicise globally using any method it sees fit that it supplies Services to the Customer. This includes, but is not limited to, publicising that IMM provides bulk SMS services, services which allow the Customer to receive a commission for procuring the incurrence of Premium SMS Charges, imm sms keyword registration and usage and bespoke development and consultancy services.

- 12.6 The Customer shall fully comply with the applicable guidance, recommendations, regulations, sanctions and codes of practice issued from time to time by IMM during the term of this Agreement. The Customer shall also comply with all other prevailing regulations, codes of practice, legislation and applicable laws. The Customer shall incorporate into any agreement with any third party which is in any way related to the Services provided to the Customer by IMM, provisions which have the effect of imposing substantially the same obligations on that third party as are imposed on the Customer by any regulatory body.
- 12.7 IMM shall, in the event that it receives from any regulatory body written notice of a breach of any regulations, codes of practice, or legislation by a Customer which relates to a service which is offered by the Customer by means of its use of the Services, be entitled to take all necessary action to comply with any and all sanctions imposed on IMM by such regulatory body in writing. IMM may in this regard pass on any imposed fines to the Customer which the Customer hereby agrees to pay in full. Any breach by a Customer of any regulations, codes of practice, or legislation which relates to a service which is offered by the Customer by means of its use of the Services, shall also be considered to be a breach of this Agreement which allows IMM to terminate this Agreement with immediate effect and with no further notice. Further IMM may either suspend or terminate this Agreement where it suspects that the Customer has breached any regulations, codes of practice or legislation. IMM will give reasonable notice of suspension or termination if the notice period will not in any way further harm IMM or its other Customers or put IMM or its other Customers in an increased position of risk.
- 12.8 The Customer agrees, in the event that IMM becomes the subject of any investigation by any regulatory body regarding a service offered by the Customer, to comply with all requests made in writing for information to help such regulatory body carry out its investigation. Failure by the Customer to reasonably assist IMM under this clause will be considered a breach of this Agreement which allows IMM to terminate this Agreement with immediate effect and with no further notice.
- 12.9 Unless otherwise advertised on the IMM Website, Shortcodes are only available for the following mobile network operators:
- 12.9.1 Vodacom;

12.9.2 MTN; and

12.9.3 Cell-C.

12.10 IMM reserve the right to de-register any imm sms keyword assigned to a Customer if any part of this Agreement is breached by the Customer or upon termination of this Agreement for whatever reason.

12.11 If IMM incurs any charges relating to receipt of SMS's sent by Users to any of its Shortcodes then IMM reserves the right to pass these charges on to the Customer who will be liable to pay them immediately. This clause shall survive the termination of this Agreement.

12.12 IMM may from time to time offer guidance and information to the Customer regarding applicable regulations, codes of practice or legislation. This advice is offered in good faith based on IMM's current knowledge and must not be used without seeking independent professional advice. IMM shall not be responsible for any misguidance or incorrect information.

13. **COMMISSION**

13.1 All Commission payments shall be made in the first instance by crediting the Customers' User Account with notional credits. A Customer may at any time:

13.1.1 use these notional credits to purchase additional Services; or

13.1.2 request that these notional credits be converted into a payment in Rands. Such conversion shall take place at the rate specified on the IMM Website, and in accordance with the terms and conditions specified in clause 14.

14. **PAYOUT RULES**

The following terms and conditions apply to any payment contemplated in clause 13.1.2:

14.1 a service fee of R20.00 is payable to IMM in respect of any such payment requested by a Customer ("**the Service Fee**");

- 14.2 where a Customer requests a payment, they must specify the amount which they required to be paid out ("**Requested Amount**");
- 14.3 the Rand value of the notional credits in the Customer's User Account must be greater than the sum of the Requested Amount and the amount of the Service Fee;
- 14.4 on receipt of a request for a payout, IMM shall reserve in the User Account that number of notional credits which are equivalent, once converted into Rands, to the sum of the Requested Amount and the Service Fee, for a period of 90 (ninety) days ("**Reserve Period**").
- 14.5 The Customer may not use any of the reserved notional credits during the Reserve Period.
- 14.6 IMM shall, on expiry of the Reserve Period, delete the reserved notional credits from the Customer's User Account and shall pay the Requested Amount to the Customer by electronic bank transfer into a bank account specified by the Customer in writing.

15. **INDEMNITY**

The Customer shall indemnify IMM and shall keep IMM fully indemnified from and against all liability, claims, costs, losses, loss of profits, expenses, loss related to any business interruption and any other pecuniary or consequential loss (including reasonable legal costs and expenses) suffered or incurred by IMM as a result of:

- 15.1 access to and/or use of the Services by the Customer;
- 15.2 any information, data or material produced, transmitted or downloaded by the Customer;
- 15.3 any breach by the Customer of any of the provisions of this Agreement or of any law, code or regulation relating thereto or to the internet;
- 15.4 any registration or attempted registration of an imm sms keyword that infringes Intellectual Property Rights or which causes a claim that Intellectual Property Rights have been infringed;

15.5 any material delivered or displayed when an imm sms keyword is used that infringes Intellectual Property Rights or which causes a claim that Intellectual Property Rights have been infringed.

16. **LIMITATION OF LIABILITY**

16.1 IMM warrants to the Customer that the Services will be provided using reasonable care and skill.

16.2 Except as set out expressly in this Agreement, IMM excludes all conditions, terms, warranties and representations (other than fraudulent representations) in relation to the whole or part of the Services whether imposed by statute or operation of law or otherwise, including, but not limited to, implied warranties or conditions of accuracy, completeness, satisfactory quality and fitness for a particular purpose.

16.3 Whilst IMM makes no attempt in this Agreement to limit its liability for death or personal injury arising from its negligence, in no circumstances shall IMM be liable in contract, delict (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, for:

16.3.1 any increased costs or expenses;

16.3.2 any loss of profit, business, contracts, revenues, or anticipated savings;

16.3.3 the consequences of any failed or unsuccessful imm sms keyword registration or of failed or undelivered SMS's;

16.3.4 any claims that the imm sms keyword registered or requested by the Customer to be registered by IMM on behalf of the Customer infringes Intellectual Property Rights;

16.3.5 any claims that any material delivered or displayed when an imm sms keyword is used infringes Intellectual Property Rights;

16.3.6 the consequences of any software bugs, errors or interruption in the Services;

16.3.7 any failure of email or email forwarding, including, without limitation, non-receipt and mis-routing;

- 16.3.8 any failure of internet forwarding, including, without limitation, non-receipt and mis-routing;
 - 16.3.9 any changes in any of IMM's facilities, operations, procedures, products or Services which render the Customer's equipment or software obsolete, or which results in such equipment and software requiring modification;
 - 16.3.10 any special indirect or consequential damage of any nature whatsoever, arising directly or indirectly out of the provision by IMM of the Services or the performance by IMM in terms of this Agreement;
 - 16.3.11 the consequences of any usage by the Customer or usage by the Users of a cellphone whilst driving a vehicle or in charge of any machinery. IMM does not condone the use of a cellphone in any way whilst driving a vehicle or in charge of any machinery;
 - 16.3.12 the consequences of any usage of the Services by a Customer or the Users that break or are suspected of breaking any applicable codes of practice, regulations, legislation or applicable laws.
- 16.4 Notwithstanding anything contained in this Agreement, IMM's liability to the Customer in contract, delict (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the Fees paid by the Customer for the Services.

17. SUSPENSION AND TERMINATION

- 17.1 Without prejudice to any of its other rights, either Party shall have the right to immediately terminate the Agreement and IMM may also suspend or restrict the Services to the Customer, if:
 - 17.1.1 the other commits any material or repeated breach of this Agreement and/or, fails to remedy any breach which is capable of being remedied within 14 (fourteen) days of receipt of a notice requiring it to remedy such breach. For the purpose of this clause a breach of clauses 3, 5 or 5.8.1 shall be deemed a non-remediable breach and IMM may immediately suspend or restrict the Services, without notice to a

Customer breaching these clauses. In the case of a suspected breach by the Customer IMM will take whatever steps it believes necessary to investigate and resolve matters;

- 17.1.2 the other Party is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of affecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of a relevant Party under the Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or judicial manager, administrator or similar officer appointed over its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the Party terminating means that the other may be unable to pay its debts.
- 17.2 IMM may at any time, and without being required to provide a reason, require the Customer to forthwith destroy any and all of IMM's intellectual property or proprietary information and/or materials in its possession and remove all Links to the IMM Website from the Customer Site. Such action will not in itself terminate this Agreement and IMM may in its sole discretion subsequently allow the restoration of Links to the IMM Website from the Customer Site.
- 17.3 The Customer may at any time, and without being required to provide a reason, remove any or all Links to the IMM Website from the Customer Site. Such action will not in itself terminate this Agreement and the Customer may in its sole discretion subsequently restore Links to the IMM Website from the Customer Site.
- 17.4 The Customer may, subject to clause 17.7 and subject to there being no outstanding fees owed by the Customer to IMM, terminate this Agreement by giving 1 (one) months' written notice to IMM at any time. Similarly, IMM may terminate this Agreement by giving 1 (one) months' written notice to the Customer at any time.
- 17.5 IMM may immediately terminate this Agreement if IMM in its sole discretion believes that the Customer Site or any material on the

Customer Site in any way breaches the terms of this Agreement or otherwise harms IMM in any way.

17.6 On termination of this Agreement, howsoever arising, IMM may require the Customer to forthwith destroy any and all of IMM's intellectual property or proprietary information and/or materials in its possession and remove all Links to the IMM Website from the Customer Site.

17.7 IMM may terminate this Agreement immediately without notice and may cancel any Services and imm sms keywords if the Customer has registered an imm sms keyword free of charge. From time to time IMM may offer the chance to register a free imm sms keyword and this is done in good faith that the Customer will not abuse or cybersquat the imm sms keyword in any way or use it to break the Intellectual Property Rights of third parties. IMM may in its sole discretion decide if a Customer is abusing or cybersquatting an imm sms keyword or using it to break the Intellectual Property Rights of third parties and will not enter into discussions with the Customer regarding this matter.

18. **PROPRIETARY RIGHTS**

The Customer acknowledges that all title, rights and interest attaching to or embodied in the IMM Website, the IMM Server or the Services shall remain with IMM and/or its suppliers and that the Customer shall not under any circumstances obtain any such proprietary rights.

19. **FORCE MAJEURE**

Neither Party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of Government or State, war, civil commotion, insurrection, embargo, labour disputes of whatever nature and any other reason beyond the control of either Party. If either Party is unable to perform its duties and obligations under this Agreement as a direct result of the effect of one of those reasons, that Party shall give written notice to the other of the inability which sets out full details of the reason in question. The operation of this Agreement shall be suspended during the period in which the reason continues. Forthwith upon the reason ceasing to exist, the Party relying upon it shall give written advice to the other of this fact. If the reason continues for a period which substantially affects the commercial intention of this Agreement, the Party not claiming relief under this clause 19 shall have the right to terminate the Agreement upon giving 7 (seven) day's written notice of such termination to the other Party.

20. **ASSIGNMENT**

20.1 The Agreement is personal to the Customer and the Customer's rights may not be assigned, sub-licensed, ceded, delegated or transferred in any way without the express written consent of a duly authorised representative of IMM.

20.2 IMM shall be entitled to assign, sub-license, cede, delegate or transfer its rights and obligations in terms of this Agreement in whole or in part on written notice to the Customer.

21. **SEVERABILITY**

Each provision of this Agreement excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of those provisions is held inapplicable or unenforceable in any circumstances, and shall remain in force notwithstanding the termination of the Agreement howsoever occasioned.

22. **NO WAIVER AND NO PARTNERSHIP**

No waiver by IMM shall be construed as a waiver of any preceding or succeeding breach of any provision. Nothing in this Agreement creates a partnership between the Parties in any shape or form.

23. **ELECTRONIC SIGNATURE**

If this Agreement has been presented electronically to the Customer for acceptance during the Registration Process then full and legally binding acceptance of this Agreement is implied by the Customer clicking on the "I Accept" icon which appears at the end of the electronic version of this Agreement.

24. **NOTICES**

Any notice or other documents given under the Agreement shall be given in writing and in English and shall be deemed to have been duly given on the date of dispatch if hand delivered or sent by registered, express, airmail or other fast postal service, or by telex, facsimile or other electronic media including e-mail to the last known physical address or e-mail address of the Party to whom the notice is addressed. To prove the giving of notice or other document it shall be sufficient to show that it was dispatched.

25. **GOVERNING LAW**

The validity, construction and performance of this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa and the Parties hereby submit to the jurisdiction of the South African Courts.