



SELLIGENT MARKETING CLOUD SPECIFIC TERMS “SMS MESSAGE”

(08/12/2020)

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**SMS Message – Specific Terms applicable upon ordering of SMS Message
Service by the Client**
(Online as of December 8, 2020)

IT IS AGREED AS FOLLOWS:

(A) Under the Agreement between the parties, the Client wishes to use Selligent to send SMS messages from the Software.

(B) Selligent has therefore established a partnership with the subcontractor So Mobile, which offers Selligent and its clients services which make it possible to send text messages (the '**SMS Service**').

In view of the above, the following has been agreed.

A. Subject & commercial conditions

Agreed service:

- **Type of activity(-ies) concerned:** sending of SMS¹, to mobile telephone numbers via the SMS Service.
- **Unsubscribe requests:** Selligent will send the unsubscribe requests received (STOP replies) in real time to the Client– an automated procedure will be developed for this purpose. The Client undertakes to take into account these unsubscribe requests within 48 hours (CNIL obligation) in its client base. The Client agrees that Selligent and its subcontractors have the right to filter when sending files to the SMS Service for new posts.
- **Geographical area (s) for message dispatch:** METROPOLITAN France and International.

The telephone numbers must be in international format (i.e. '336xxxxxxx' or '337xxxxxxx' for SMS addressed to metropolitan France), with no spaces or space characters. All numbers which do not meet the criteria above (i.e. incorrect format, landlines, etc.) will be invoiced but the message will not be delivered.

Prices:

- **Set-up costs²** : See Sales Order.
- **SMS price at destination** : See Sales Order.
- **24/7 support:** The procedure for contacting the Support service is set out in the SLA for the SMS Service (see Annex 1). The assistance Services will be invoiced in accordance with the terms of the Agreement. The Client must send all assistance requests to Selligent and may under no circumstances contact Selligent's subcontractor.

In order to avoid misunderstandings: the Client is aware of what was agreed in Article 6 below ('Price and payment conditions') between the Parties concerning amendments to prices

B. Contractual terms

Article 1 Subject

The subcontractor of Selligent, SO MOBILE, operates turn-key software solutions which can be used to send and receive SMS between business applications and computer and remote telecommunication terminals, which accept this type of technology via its platform. Pursuant to these Specific Terms, Selligent makes available to the Client these software solutions and its services, hereinafter referred to as '**Services**', in the context of sending SMS campaign(s) from files provided by the Client, in accordance with the arrangements set out in these Specific Terms, as recognised and accepted by the Client.

Article 2 Definitions

'**Opt-in Base**' refers to the Opt-in base of mobile telephone numbers collected by the Client with a view to running campaigns.

'**Campaign**' refers to the sending of SMS messages to an Opt-in Base by means of networks of various Operators.

'**Intellectual property rights**' refers to (i) patents; (ii) copyrights (including, among other things, property rights relating to all securities, computer codes, themes, subjects, characters, concepts, models, animations, sounds, operating modes, moral rights and all related documentation) and the rights concerning databases (excluding traffic data recorded by Selligent and its subcontractors during the implementation of these Specific Terms); (iii)

¹ The following shall be excluded from this addendum: MMS(+) and SMS+. There will be no incoming traffic routing from end users (any unsubscribe requests received will be transferred to the Client in the file format).

² This set-up is invoiced only once, i.e. whenever the service is activated for the Client.

registered or unregistered trade names; (iv) domain names; (v) registered or unregistered designs; (vi) all submissions and requests, renewals and extensions of the rights referred to above in points (i), (ii), (iii), (iv) and (v); other information containing or constituted by technical, operating, financial, marketing data and data planning the activity of the Parties, and (vii) all the rights concerning commercial image and packaging, trade secrets, know-how and other intellectual property rights recognised by national, foreign or international law, or by treaties and conventions in force in any part of the world.

'Working day' refers to all days other than Saturday, Sunday and obligatory statutory holidays on the territory of metropolitan France.

'Dedicated number' or **'Dedicated short number'** refers to the number of the Operator allocated to SO MOBILE on behalf of a certain Client, for the designated SMS Service³.

'Shared number' or **'Shared short number'** or **'Alias'** refers to the number of the Operator allocated to SO MOBILE, which can in turn allocate it to several clients, including the Client itself for the designated SMS Service⁴.

'Opt-in' refers to the User's consent to receive messages. This consent is given when the User collects his mobile telephone number.

'Party': Selligent and/or the Client, where appropriate.

'Platform' refers to the software and technology, the licence for which is granted by Selligent to the Client and to which it subscribes, used to deliver standard SMS messages sent by the Client to targeted users on wireless networks, where the Client has subscribed.

'Operator rules' refers to the detailed summary annexed to these terms under the heading 'Operator Conditions applicable at local level', setting out the rules issued by the Operators, applicable to the WAP Invoicing Service and/or the SMS/MMS Premium or Standard Service on the Territory concerned.

'Platform Service' refers to the SMS standard connection service provided by Selligent and its subcontractors by means of the Platform and connections with Operator.

'SMS Service' refers to the service made available by the Client to disseminate messages to end users via the Service Platform.

'Short Message Service (SMS)' refers to the GSM telecommunication standard allowing users to receive or send abbreviated messages of an alphanumeric (one hundred and sixty (160) characters), binary (one hundred and forty (140)-bytes) or unicode (70) characters) nature to a GSM telephone.

'End user(s)' refers to all subscribers to the Operator networks.

Article 3 Contractual documents

These Specific Terms complete the Agreement of which they form an integral part. All the contractual documents which form part of the Agreement shall apply to the SMS Message Service, except in the case of a derogation under these Specific Terms. These Specific Terms may be completed by the Operator Conditions applicable at local level and/or by Technical Documents and/or by any Special Conditions.

The Client will be notified by Selligent of any additional documents mentioned here to the present Specific Terms and these documents (as well as any change made to them) shall take effect on the date indicated in the e-mail notification. Where the Client cannot accept these additional (amended) conditions, it shall lose its right to use the SMS Service. Where it continues to use the SMS Service, the additional (amended) conditions shall automatically apply and shall form an integral part of the Agreement.

Article 4 SMS Service Offer

The SMS Service provides the Client with a unique entry point for the exchange of various types of messages (SMS) with mobile telephone users. Subscription to the SMS Service is effective upon signature of the Order Form for the SMS Service Message. After signature, Selligent makes the technical connections available to the Client as quickly as possible.

³ At the time of the signing of the Order Form for the SMS Message Service, the Dedicated Number or Dedicated Short Number Service will not yet be activated. Where the Client expresses the need for such services, the Parties will agree on the contractual and operational arrangements and will sign an Order Form setting out the agreed arrangements.

⁴ At the time of the signing of the Order Form for the SMS Message Service, the Shared Number, Shared Short Number or Alias Service will not yet be activated. Where the Client expresses the need for such services, the Parties will agree on the contractual and operational arrangements and will sign an Order Form as an additional clause to this addendum setting out the agreed arrangements.

Article 5 Specific features of the SMS SO MOBILE Service

5-1 Selligent and its subcontractor cannot be held liable for any refusal or delay in the validation of any SMS Service by the Operators or regulatory authorities.

5-2 Distribution outside metropolitan France

Selligent can propose a specific supplementary offer of connection to the Client, to allow it to send only SMS messages at a single price per country. This offer does not involve the allocation of a specific short number (dedicated or shared) for the Client. The associated traffic and invoicing are measured and calculated separately for the Client thanks to the creation of a dedicated technical account for the Client.

The Client agrees that this offer will be updated regularly and that it must check the technical availability of access to a given country in the territory before using its connection. The Client acknowledges and accepts that adult services are prohibited under this offer.

5-3 Conditions of use of the SMS Service

The Client defines the distribution list in line with its Opt-in Base and the message content, and programmes the distribution of messages for each campaign. The Client can qualify or filter its Opt-in Base of end users on the basis of criteria, the choice and implementation of which are its sole and entire responsibility.

The Client acknowledges that it has been informed that it is strictly prohibited to use any selection criteria which would directly or indirectly reflect racial origin, political, philosophical or religious opinions, trade union membership, morals or sexual orientation. The Client undertakes to use the SMS Service in accordance with the national legislation in force, prohibiting all content which:

- is violent, threatening, offensive, vulgar, obscene, injurious, abusive, defamatory, illegal, amounting to harassment or prejudicial to respect for human dignity or to equality between men and women;
- is xenophobic, racist or anti-Semitic in character;
- violates public order in any way;
- encourage the commission of crimes and offences;
- promotes weapons, narcotic substances, gambling, medicinal and pharmaceutical products, prostitution (active and passive soliciting);
- constitutes advertising to minors for pornographic services or content;
- mislead by usurping the name or corporate name of other persons or businesses.

The Client acknowledges that it has been informed that the duration of each Campaign depends on the volume to be distributed, the bandwidth available from Operators, and any other technical and/or operational constraint. The protection of end users also requires respect for the hours at which messages can be sent, i.e. exclusively during working hours as defined by the local legislation of the country concerned by the Campaign. Consequently, the Client acknowledges and agrees that the effective duration of a Campaign may exceed the duration which it had initially planned.

The Client uses this service exclusively for sending SMS. Sending SMS/MMS with adult content or promoting adult services is strictly prohibited.

If an end user contacts Selligent, Selligent will inform the Client (the intervention by Selligent will be invoiced at the current rates for the Project Services in the Agreement).

Article 6 Price and conditions of payment

6-1 The price and invoicing policy of Selligent are set out in these Specific Terms and in the Sales Order. However, Selligent may at any time integrate the change in prices for SMS invoiced by So Mobile to Selligent into the prices for SMS invoiced by Selligent to the Client, respecting a notice period of at least 15 days for SMS sent in metropolitan France and at least 5 days for SMS sent internationally. Any change in prices will be notified by Selligent to the Client in writing. Where the Client cannot accept these amended prices, it shall lose the right to use the SMS Service and is entitled to terminate these Specific Terms (see Article 14-2). If it continues to use the SMS Service, the amended prices will automatically apply.

6-2 Selligent will invoice the Client in accordance with the Agreement. Selligent is entitled to de-activate the distribution of SMS and/or to block access to the SMS Service for as long as the Client does not meet its contractual commitments, and the Client will be solely responsible for any consequences resulting from this block or de-activation, without the possibility of appealing against Selligent.

Article 7 Obligations of Selligent

Selligent undertakes to ensure by commercially reasonable means the constant quality and continuity of the SMS Service, as provided for in Annex 1.

Selligent undertakes to perform its obligations by all commercially reasonable means. Selligent and its subcontractors shall not be liable for messages directly distributed by the Operators to end users. Selligent does not guarantee the full reliability of the dispatch and storage of messages which may be subject to interruptions in the service for Operators due, for example, to:

- a breakdown in the messaging infrastructure of the Operator or in the connection, except in the case of error or negligence on the part of Selligent relating to such infrastructure;
- radio telephony interferences caused by atmospheric conditions;
- interferences in wave propagation;
- de-activation of the number allocated to a recipient of the messages;
- the fact that the recipient is outside the coverage zone of the Operator;
- fraud;
- saturation of the SIM card memory.

Article 8 Obligations of the Client

8-1 General provisions

The Client must comply with:

- all the applicable laws, standards and rules issued by a government of competent authority, and all regulations or codes in force in the sector,
- all the instructions and policies of the Operators which will have been notified to it by Selligent or which will be amended in the local Operator Conditions integrated into these Specific Terms.

In particular, where Selligent and its subcontractors are not directly connected to the Operators in the country in which the end user is located, the Client undertakes to respect the rules applied by the local Operators concerned, rules which will be communicated to it by Selligent. In cases where the Client subscribes to an SMS Service outside France, Selligent will communicate all information of use for the correct provision of the SMS Service.

8-2 Protection of end users

In particular, the Client must check that all advertising and/or promotional material published by the Client complies with current legislation and standards.

The Client acknowledges that spam is strictly prohibited and that the prior agreement of the end recipient is required (Opt-in) for the reception of any type of message or product, except where the recipient's contact details have been obtained directly from him under the conditions set out in Article L34-5 of the Post and Electronic Communications Code.

Each end user must be able to easily cancel the agreement previously given, with immediate effect (Opt-out). Selligent will be entitled to request at any time proof of the end user's prior agreement, except if the recipient's contact details have been obtained directly from him under the conditions set out in Article L34-5 of the Post and Electronic Communications Code. If such proof is not provided, within 20 days following the request, Selligent will be entitled to suspend the SMS Service provisionally, or to terminate these Specific Terms with immediate effect.

8-3 Content of the messages:

Any Client wishing to send SMS messages from or to other EU Member States or non-member countries must check that:

- the content of all the messages complies with the legal and regulatory provisions of the country. The Client must not handle any messages of a violent or pornographic nature or of any other nature which may be considered as contrary to public order.
- any obligation to communicate or prior authorisation possibly required concerning the transfer and processing of nominative information has been respected vis-a-vis the national authorities responsible for the protection,

processing and circulation of personal data and for the protection of private life in the telecommunications and electronics sector in each geographical distribution and reception zone for the messages in question.

- The content of the messages does not infringe the intellectual property rights of one of the Parties or of any third party.

The Client acknowledges and accepts that the supply of certain SMS Services may be subject to regulatory authorisation of the Operators concerned, in particular with regard to marketing messages (where necessary, Selligent undertakes to inform the Client).

Article 9 Confidentiality

Each of the Parties must protect confidentiality and avoid disclosing the confidential information of the disclosing party with the same degree of caution as they would practice with their own confidential information and, in any case, with all reasonably necessary caution. For as long as the confidential information is not made public in accordance with these Specific Terms, the confidentiality obligation shall remain in force.

The term '**Confidential Information**' refers to all provisions of these Specific Terms, the written information exchanged by the Parties, before and/or after the signing of the Order Form for the SMS Message Service concerning the negotiations between the Parties for the supply of services of any other information concerning the activity of one of the Parties – whether or not it has been marked or designated in any other manner as being confidential. Each of the Parties undertakes not to use the confidential information of the disclosing party outside the framework of these Specific Terms and of the uses authorised by that party for their duration.

Each of the Parties receiving confidential information from the other Party acknowledges that such information shall under all circumstances remain the property of the Party which communicated it.

The communication of confidential information is authorised only for the benefit of legal representatives, agents, suppliers, providers or subcontractors of the Parties provided that they need such information to perform the tasks expected of them.

The Parties undertake to inform persons to which the information is transmitted of its confidential nature.

They also undertake to have any suppliers, providers or subcontractors sign a confidentiality commitment under conditions similar to those to which they hereby subscribe, given that the Parties are guarantors for compliance with this confidentiality obligation by the persons referred to in this paragraph.

The obligations above do not apply to the confidential information which: (a) move into the public domain by any means other than an infringement committed by the recipient Party; (b) is usually communicated by the disclosing party to third parties without any restriction on its communication; (c) the recipient party has received from a third party without this disclosure having been in violation of a confidentiality obligation or restriction concerning its communication; (d) was in the possession of the recipient party before it was communicated by the other party, with the recipient party able to prove this; (e) was developed independently by the staff of the recipient party, with no access to the similar confidential information obtained from the other party; or (f) must be revealed following an ordinance or request from a judicial, government or regulatory authority as part of an action, suit, procedure, complaint or any other means under applicable legislation, given that the disclosing party must first inform the other party as soon as possible of the communication request in order to allow it to ask for safeguard measures to protect the confidentiality of the information concerned.

Article 10 Intellectual property

Unless otherwise provided, these Specific Terms do not grant or imply a licence, licence authorisation or authorisation to transfer any intellectual property rights between the parties.

Article 11 Usage Licence

The Platform and SMS Service were developed and protected by Selligent and its subcontractor SO MOBILE. Any sub-licence granted to the Client by Selligent for software and/or an application included in the SMS Service shall be limited to use of the services in accordance with these Specific Terms.

Selligent uses software and other security devices to protect the SMS Service from malware. This guarantee does not mean that the SMS Service is constantly guaranteed, fully free of malware.

The Client will strictly follow the instructions and recommendations of Selligent for the use of the SMS Service. It will not circumvent authentication by the user or the security of the SMS Service or of any other host, network

or related account. The Client is the sole party responsible for the use it makes of the SMS Service and Selligent cannot be held responsible for the content of the information in the SMS Service.

The Client undertakes:

- not to disassemble or decompile the SMS Service or any of its components, attempt to undertake reverse engineering or to discover its source codes by any means;
- not to develop software packages or a service by copying the characteristics of the Service;
- not to use the SMS Service in an abusive manner (or in any way which would overburden or damage the SMS Service or undermine its smooth functioning) or which has an unfavourable influence on the use of the SMS Service by other clients of Selligent;
- not to transfer the (benefit of the) Specific Terms to any third party without the prior written authorisation of Selligent;
- not to become involved in any form of distribution of the SMS Service whatsoever;
- not to help or authorise any third party to perform one of the operations referred to in the previous paragraphs.

Article 12 Duration

These Specific Terms are concluded for the duration of the Agreement and will be renewed in accordance with the terms of the Agreement.

These Specific Terms shall enter into force on the date of signature by the two Parties of the Order Form for the SMS Message Services.

Article 13 Suspension

Selligent reserves the right to immediately (partially) suspend the SMS Service at its discretion by informing the Client in the following cases: (i) in the event of a specific request by an Operator or (ii) in the event of total or partial non-compliance by the Client with these Specific Terms or with the provisions specific to the sending of SMS to end users, or (iii) in the event of non-compliance by the Client with the rules set out by the Operators, or (iv) in the event of use of the SMS Service by the Client likely to compromise the normal functioning of the SMS Service or of complaints concerning the SMS Service used by the Client which may disturb public order or contravene French laws and regulations and which cause prejudice to Selligent and its subcontractors or (v) in the event of suspension of the contract between Selligent and its subcontractor SO MOBILE, regardless of the reason. Selligent must inform the Client of such suspension as quickly as possible, indicating the grounds. Selligent shall authorise renewed access for the Client to the SMS Service once the cause for the suspension has been corrected or removed.

Article 14 Early termination

14-1 Selligent reserves the right to terminate completely or in part (e.g. on one operator or country) the connection offered to the Client and/or these Specific Terms after prior notification sent to the Client in the event of 1) withdrawal of a connection of the subcontractor SO MOBILE by an Operator, or 2) cancellation of authorisation granted to the Client by an Operator for use of its network or portal, or 3) withdrawal by the Operators, or the local authorities or regulatory authorities of service numbers attributed to the subcontractor SO MOBILE, or 4) infringement by the Client of one of the clauses of these Specific Terms, or 5) complaints concerning problems encountered with the SMS Service of the Client as defined in Article 13 or 6) termination of the contract between Selligent and its subcontractor SO MOBILE, regardless of the reason. Termination may take effect immediately or, where appropriate, on the date indicated in the notification.

In the event of a warning addressed by Selligent to the Client following default of payment concerning these Specific Terms, if the Client does not remedy this situation within eight (8) days from the date of the warning, Selligent will be entitled to terminate the SMS Message Service with immediate effect.

14-2 The Client will be entitled to terminate, fully or in part, the SMS Message Service, 1) in the event of a change to the price policy imposed by one or more Operators or proposed by Selligent for SMS, a change refused by the Client, within five (5) days from the date of notification of the change sent by Selligent 2) in the event of withdrawal by the Operators, or the local or regulatory authorities of the service numbers attributed to the

subcontractor SO MOBILE of Selligent. Termination will take effect two weeks after this notification of termination sent by the Client (to avoid any misunderstanding, if the Client continues to use the SMS Service during the termination period, the amended prices will possibly apply depending on their date of entry into force).

In the event of a warning addressed by the Client to Selligent following a violation of these Specific Terms, if Selligent does not remedy the violation within thirty (30) days from the date of warning, the Client will be entitled to terminate the SMS Message Service with immediate effect.

Article 15 Guarantees

15-1 The Client declares and guarantees to Selligent and its subcontractor SO MOBILE that (i) it possesses and has obtained the licence for all the intellectual property rights relating to the content in the SMS Service; (ii) it will not commit any acts which may cause prejudice to the right to privacy or to intellectual property of third parties; (iii) it will respect all the laws and regulations of any competent authority with jurisdiction over implementation of these Specific Terms; (iv) it will not commit any act or omission which may undermine the intellectual property rights of Selligent and its subcontractor SO MOBILE.

In the interests of clarity, payment of the royalties generated by the intellectual property rights for content will be the exclusive responsibility of the Client vis-à-vis holders of intellectual property rights, irrespective of their nature, as for any payment due to third parties and resulting from the exercise of ancillary rights and rights to privacy.

15-2 Selligent guarantees to the Client that it has the right to conclude these Specific Terms and to grant the licences provided for herein.

Selligent will ensure the defence of the Client against legal proceedings initiated by any third party against it, claiming that the use of the SMS Service by the Client, in accordance with the provisions of these Specific Terms, constitutes an infringement or misuse of a patent claim, copyright or right to commercial secrecy, and Selligent will pay the damages (or the amount of any settlement accepted by Selligent) which the Client will be finally required to pay as a result of the legal proceedings. This obligation on Selligent will not apply if the presumed infringement or misuse results from use of the SMS Service in relation with any other platform or any other product or service, activities or the use without licence of the SMS Service in violation of these Specific Terms. Nor will this obligation on Selligent apply if the Client does not inform Selligent in writing and in due time of a dispute of this type. However, the lack of information or late information from the Client does not exempt Selligent from its obligations resulting from this article, except where Selligent suffers prejudice because the Client has not informed it or informed it late. Selligent is authorised to fully ensure the defence and any other settlement of the dispute when this settlement does not involve a financial obligation or obligation to recognise liability imposed on the Client. If the Client rejects the defence offered by Selligent, or does not cede total control of the defence to the lawyer appointed by Selligent, the Client releases Selligent from the obligations of this article. The Client must cooperate reasonably during the defence of such proceedings and may be represented, at its expense, by a lawyer reasonably suitable for Selligent. Selligent explicitly reserves the right to discontinue such defence to any legal proceedings where the SMS Service is no longer accused of infringement or misuse, or is declared not guilty of an infringement or misuse of the rights of third parties. Selligent may settle any dispute by replacing the SMS Service with acceptable services which are equivalent in substance. The Client will take no actions in response to an infringement or misuse, or a presumed infringement or misuse of the SMS Service, which would undermine the rights of Selligent.

Where an action within the meaning of this article is brought or, in the reasonable opinion of Selligent, is likely to be brought, Selligent may, at its discretion and expense: (i) obtain for the Client the right to continue to use the SMS Service in accordance with the provisions of these Specific terms, or (ii) replace or modify the SMS Service so as to correct the infringement without significantly reducing the functions. If the above possibilities cannot reasonably be implemented, Selligent may terminate the SMS Message Service.

The provisions of this article detail the sole, exclusive and full responsibility of Selligent and its licensors and suppliers vis-à-vis the Client and constitute the sole recourse of the Client with respect to an infringement or illicit appropriation of the intellectual property rights of a third party.

Article 16 Liability – Indemnities

16-1 Indemnities

The Client shall release Selligent and its subcontractor SO MOBILE from all liability in the event of a complaint filed by third parties against Selligent and SO MOBILE which results from the use of the SMS Service by the Client. The Client shall release from all liability Selligent, SO MOBILE, their associated companies, their directors, managers and employees for any complaint, action, charge, expense (including lawyer fees), loss, damage, fine, all monetary damages or any claim from and/or incurred by Selligent and/or SO MOBILE or against/by any third party following use by the Client of the SMS Service SMS, for an infringement by the Client of these Specific Terms, an effective or presumed violation of the intellectual property rights of Selligent and/or SO MOBILE or an infringement by the Client of any law or right of third parties resulting from the use by the Client of the SMS Service.

In particular, the Client must reimburse Selligent and SO MOBILE for all damages such as, in particular, indemnities, fines, charges, expenses, claims, legal fees, penalties, damages and interest due in the event of breach of the Operators' rules.

16-2 Limitation of liability

In addition to the limitations and exclusions from liability under the Agreement, Selligent excludes all liability vis-à-vis the Client and/or end users following:

- termination or suspension of the SMS Service, which would be effective under these Specific Terms;
- any damage suffered or incurred by the Client following the supply or interruption of supply of any SMS Service;
- any imprecise information sent to it by the Client concerning validation of the SMS Service of the Client by Operators;
- any abusive use and/or unauthorised disclosure of any identifier/password or secondary identifier/password, and in general any abusive use by the Client committed by the Client or by a third party on behalf of the Client, or outside the perimeter of the Client, including among other things, hacking, spy programmes and intrusion on the platforms of Selligent and SO MOBILE or into the IT systems of the Client, including the hosting centres on which the platforms of Selligent and SO MOBILE are hosted.

Article 17 Force Majeure

None of the Parties shall be held liability vis-à-vis the other Party for any delays or failure to implement these Specific Terms due to causes independent of their will including, among other things, governmental restrictions, legislation on currency or on the market, strikes, war, measures taken by the civil or military authorities, sabotage, operator network problems and/or host centre network problems, electricity cuts, epidemics, floods, earthquakes, fires, other natural catastrophes or any other circumstance, event or situation independent of the will of the Parties. In this case, the Parties agree to make every effort to provide a solution for the delay or non-implementation.

In order to enforce the provisions of this article, the Party invoking Force Majeure must inform the other Party in writing within five (5) working days of the occurrence.

Where the situation of Force Majeure continues for an uninterrupted period of more than two (2) months, the SMS Message Service may be terminated by one of the Parties with written notice of fourteen (14) calendar days, sent to the other Party.

Annex 1 - Agreement on the Level of Service & Assistance by Selligent for the SMS Message Service

Introduction

The purpose of this SLA is to define the level of service to be achieved by Selligent and the way in which to measure it for the SMS Service, governed by the provisions of the Agreement on the level of service and assistance concluded between the parties.

Management of third-party content which does not depend on Selligent is explicitly excluded from the SMS Service provided by Selligent.

The levels of service of the SMS Service are described in Section 1. Section 2 describes the levels of service, availability and channels of the Selligent assistance team.

Definitions

- **Planned maintenance** is defined by interventions scheduled on the Platform.
- The **RPO** (Recovery Point Objective) describes the acceptable quantity of data loss measured in hours or minutes after a critical failure.
- The **MTPD** (Maximum Tolerable Period of Disruption) is the time period after which a business process must be restored to a specific service level following an interruption.

Client Commitments

The Client understands that:

- The SLA shall apply only to the SMS Service made available to the Client. Selligent is not responsible for the configuration or correction of third-party software, or for equipment or communication. Selligent will not be required to provide assistance if this is made necessary following (a) negligence or poor use by the Client, (b) an amendment to the SMS Service by the Client or by a third party other than Selligent without the prior consent of Selligent, or (c) an infringement of these Specific Terms.
- Selligent shall make every effort to provide a solution or circumvention to the problem, within the deadline provided for in these Specific Terms. The obligations of Selligent concerning assistance constitute an obligation of means, and not a performance obligation.
- In the context of assistance, Selligent reserves the right to choose, assign or reassign its staff to the Client and also to subcontract the services partially or in full to qualified staff. The persons providing services on behalf of Selligent shall remain free to provide to third parties services similar to those which are subject to these Specific Terms.

Exclusions

The SLA shall not apply where the service levels are not respected owing to:

- factors outside the reasonable control of Selligent, in the event of *force majeure*;
- the inappropriate use of the SMS Service (i.e. use which does not comply with the documentation and/or provisions of these Specific Terms);
- a denial of service attack (DOS);
- actions taken with the explicit intention of creating a stoppage time (e.g. during an audit or evaluation of performance);
- any other factor referred to in these Specific Terms.

Escalation process

Any problem which may not be resolved by the normal assistance procedure must be escalated by e-mail to the Support Manager responsible for the Selligent assistance team. If this escalation does not result in a satisfactory response, the problem must be escalated to the Account Manager of the Client.

Levels of Service

(A) Level of availability

Objective of the level of availability = 97%.

This level of availability does not take account of the events detailed below:

- *force majeure* as defined in Article 18 above;
- planned interruptions that are strictly defined (maintenance scheduled between 00:00 and 06:00⁵, and amendments to the services which might lead to changes in the connection parameters);
- interruptions occurring in the network of Operators due to an incident or planned maintenance, caused solely by the Operators;
- interruptions and/or any incident occurring between the system of the Client and the software of the servers belonging to a third-party provider of the Client.

The level of availability for the month in question is measured by Selligent.

The level of availability corresponds to the number of minutes during which the SMS Service is available in relation to the total number of minutes for the month.

(B) Level of performance

Objective of the level of performance = 97 %.

In general, performance is defined by the capacity to deliver SMS services within a given time. Performance measures the response time between the arrival of a request from the Client on the Platform and the sending of the required page from the Platform.

The routing time on the operator networks and on the public internet for the query (and the response) is not taken into account when calculating performance.

All the parameters external to Selligent which may cause a drop in the level of performance (internet network, telecom operators, etc.) will be excluded from the calculation of the level of performance.

(C) Level of availability and performance

Each month, the level of availability and performance is calculated for the SMS Service. Selligent will take commercially reasonable means to achieve the levels defined above.

Planned Maintenance

All the programmed maintenance operators carried out in a month may not exceed a maximum duration of eight (8) hours (however, there is no limit to the number of programmed maintenance operators). Selligent shall make commercially reasonable efforts to ensure that the duration of interruptions is no longer than ½ hour and that the interruptions occur only between 00:00 and 06:00. Selligent reserves the right to leave these (duration & time window), provided that it informs the Client accordingly.

Selligent Assistance

Technical problems must be reported to the assistance team and are handled under the terms and conditions set out in Section 2 of the Agreement on the level of service and assistance concluded between the parties.

⁵ Selligent reserves the right to leave these conditions (duration & time window), provided that it informs the Client accordingly.