

## EXHIBIT D: SELLIGENT SMS SPECIFIC TERMS

### "SMS SPECIFIC TERMS" FOR SELLIGENT CI APPLICABLE UPON ORDERING OF SMS MESSAGING SERVICES BY CLIENT

#### 1. ACCESS TO SMS SERVICES

The Application shall reside on one or more servers hosted and managed by Selligent and/or its contracted third-party(ies) that are accessible only as expressly prescribed by Selligent. Selligent or its contracted third-party(ies) may provide Client, solely for Client's own internal use, without access information (including without limitation URL(s), user name(s) and/or password(s)) to access the SMS Services. Selligent shall not be obligated to make any alteration, modification, customization or enhancement to the Application that is necessary or desired for Client's internal purposes.

#### 2. COMPLIANCE AND CONTENT

**2.1** Compliance. Client shall comply with all applicable laws, rules, regulations, directives, statements, and codes of practice, the MMA Guidelines, the Content Standards and all Carrier guidelines with respect to the Content Routing Services, text messaging in general and otherwise.

**2.2** Compliance Information. From time to time, Selligent may provide information to Client regarding matters related to compliance with laws, rules and regulations, the MMA Guidelines, the Content Standards and other industry guidelines. Client acknowledges and agrees that such information is (i) based solely upon Selligent and/or its contracted third-party(ies) prior experiences in providing the SMS Services generally, and (ii) Selligent and/or its contracted third-party(ies) do not represent or warrant the accuracy or completeness of such information and shall not have any liability whatsoever to Client or any Third-party relating to or resulting from the use of, or reliance upon, such information or any errors therein or omissions therefrom.

**2.3** Content Format. All messages must contain only characters within the standard GSM character set unless Selligent consents in writing to permit Client to send messages containing characters not within the standard GSM character set which messages. Selligent may amend the formats required for the SMS Services by providing reasonable advance notice thereof.

**2.4** Content Delivery Limitations. Selligent is not obligated to ensure the delivery of Content by Carriers to Subscribers, and Client agrees that the Selligent bears no liability to Client or any Third Parties in the event a Carrier does not forward Content to a Subscriber or for any failure to deliver any Content to Subscribers caused by circumstances beyond Selligent's control. Client acknowledges that Selligent makes no claims or guarantees on behalf of the Carriers regarding system availability, capacity,

actual line capacity, message through-put, response times or delivery, and that Selligent cannot control the Carrier's performance under their agreements with Selligent. Additionally, Client acknowledges that the time it takes to transfer a message to the Subscriber through the Carriers, and whether the intended recipient receives the message is dependent upon the conditions prevailing at the time of submission, including whether (i) the recipient has compatible equipment, (ii) the message is sent to the correct ten-digit telephone number, network entity identifier, or such other data (including the domain of the service, the correct Short Code and the correct code word) and/or messaging number(s), (iii) the device is turned on and within the area covered by the Carrier, (iv) the device has memory slots available for new messages, and (v) the intended recipient is a Subscriber.

**2.5** SMS Message Charges. Client will be charged (or, as applicable, Client's SMS message allowance or SMS message pre-paid allotment will be debited) for all SMS messages as follows: (a) for each mobile terminated ("MT") SMS message, either upon Selligent sending the SMS message from the Advanced Messaging Platform to the relevant Carrier for delivery or upon Selligent blocking the sending of the SMS message due to its noncompliance with this Agreement; and (b) for each mobile originated ("MO") SMS message, upon Selligent's receipt of the SMS message from the Carrier. Any SMS messages consisting of more than one hundred sixty (160) characters will be automatically split and concatenated by Selligent and Selligent will charge Client for each resulting part as a separate SMS message. For clarity, Client agrees that all of the foregoing shall apply irrespective of whether the SMS message is ultimately delivered to the Subscriber or otherwise.

#### 3. LIMITATIONS ON CONTENT

**3.1** Content Standards. Client agrees to adhere to the Content Standards, and any changes to the Content Standards required by the Carriers from time to time, and agrees that no Content shall violate the Content Standards. In the event Client fails to comply with the Content Standards, Selligent, in addition to all other remedies available to it at law and equity, may suspend the Content Routing Services.

**3.2** Blacklisted Numbers. Client acknowledges that some or all Carriers have implemented a "blacklist" that contains the mobile phone numbers for Subscribers that do not want to receive text messages. If and when Carriers provide this blacklist to Selligent, Selligent will provide the blacklist to Client, in which

case Client will not send any Content to any number on the blacklist.

**3.3** Content Disclaimer. Client agrees that Selligent and/or the Carriers, in their sole discretion, may reject sending all or part of any Content. Selligent will notify Client as soon as reasonably practicable if Content is being rejected by Selligent and the reasons for the rejection. Client agrees that Selligent will not be liable for rejection of any Content. Client is solely responsible for ensuring that the Content it supplies is accurate, complete and correct, and shall be solely responsible for all claims or liability arising from the distribution and publication of Content. Selligent shall have no obligation to read, proofread or correct any Content supplied by Client, nor shall Selligent have any responsibility for the accuracy, completeness or correctness of any Content supplied by Client, nor shall it have any obligation to read any Content to determine whether it contains Confidential Information.

**3.4** Filtering. Selligent reserves the right to filter or have filtered Content without the prior written permission of Client, without assuming any obligation to filter such Content, to ensure compliance with this Agreement, Selligent agreements with Third Parties (including Carriers) and applicable laws and regulations. Any blocked Content will be subject to applicable SMS message fees (or, as applicable, debit from Client's SMS message allowance or SMS message pre-paid allotment).

**3.5** Third-party Consents for Content. Client agrees not to send Content that requires a Third-party's consent unless it has obtained that consent in writing. Selligent may delay or suspend the delivery of any Content until Client has provided Selligent with evidence, reasonably satisfactory to Selligent, that Client is authorized to send the Content.

**3.6** Suspension. Selligent may, without terminating this Agreement and without any liability to Client or any Third-party, immediately suspend part or all of the SMS Services due to any of the conditions set forth below. Selligent will notify Client as soon as reasonably possible and if such suspension is a direct result of any action by Client, Client will take reasonable steps to fix such problems. The reasons for possible suspension include but are not limited to:

- (a) Selligent's reasonable belief that it is obligated to comply with an order, instruction or request of any court, administrative tribunal, governmental or regulatory body;
- (b) Maintenance or repair of the SMS Services;
- (c) Carrier request;
- (d) Selligent's belief that the Content and/or the use of the Content Routing Services or any part thereof is violating the law, the Content Standards, the MMA Guidelines or the terms of this Agreement;
- (e) Unauthorized or fraudulent use of the Content Routing Services, or if Client's use of the Content Routing Services is causing or may cause damage to the SMS Services or to a Carrier's system;

- (f) Any breach by Client of its obligations set forth herein; or
- (g) Failure of Client to pay any amount within agreed payment terms.

Client shall remain responsible for payment of all fees (including without limitation all subscription and other recurring fees) otherwise applicable to any period of suspension where the reason for such suspension is related to Client's actions or inactions.

#### **4. SUBSCRIBER OPT-IN/OPT-OUT MECHANISM**

Client agrees to comply with, and be solely responsible for compliance with, all "opt-in" and "opt-out" requirements for receiving messaging (including Content) under all applicable laws, Content Standards and MMA Guidelines. Client shall provide a short code response, website, and Client care email in which Subscribers can indicate to Client whether they wish to receive or cease receiving Content. For example, a response of "stop" to a text message would mean that the subscriber has "opted out" and should no longer receive text messages from Client. Client shall immediately comply with any Subscriber request to cease receiving Content. Client shall provide contact information (at a minimum an email address) for Client's Client service at the same time and in a noticeable location (i.e., on the same web page or in the same SMS) as Subscribers register for Client's messaging services. Client must include an obvious notice that "other charges may apply" at the same time and location (i.e., on the same web page or in the same SMS) as Subscribers register for Client's messaging services.

#### **5. CARRIER MANDATED CONTENT STANDARDS**

Carriers prohibit the sending of certain types of Content over their systems including, without limitation, the types listed below. Carriers also reserve the right to amend their list of prohibited Content at any time. Accordingly, Client may not submit Content to the SMS Services of any type listed below or of any type otherwise prohibited by the Carriers. Selligent reserves the right, in its sole discretion, to modify the list upon written notice to Client, including as required by any Carrier.

- Unlawful, obscene, profane, threatening, libelous, slanderous, defamatory or otherwise objectionable.
- Facilitates an illegal activity.
- Sexually explicit content or language.
- False, misleading or likely to mislead or deceive (including, without limitation, information relating to the source or the author of the message).
- Violates any intellectual property rights or any other rights of any person or entity.
- Invades any person's privacy.
- Unlawfully promotes or incites hatred (including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law).
- Contains any spamming or flooding element or any advertising, marketing or promotional materials or information, solicitations, chain letters, pyramid schemes, investment opportunities or schemes or other unsolicited messages, contents or information

except with the prior consent of Selligent, Carrier(s) and the Subscribers.

- Alcoholic beverage-related (beer, wine, liquor, etc.).
- Tobacco-related (cigarettes, cigars, pipes, chewing tobacco, etc.).
- Guns/weapons-related (firearms, bullets, etc.).
- Illegal drugs-related (marijuana, cocaine, etc.).
- Pornographic-related (adult themes, sexual content, etc.).
- Crime-related (organized crime, notorious characters, etc.).
- Violence-related (certain games, etc.).
- Death-related (funeral homes, mortuaries, etc.).
- Gambling-related (casinos, lotteries, etc.).
- Carrier competitor-related (e.g., providers of telecommunication services, providers of comparison shopping for telecommunications services, etc.).
- Involves a copy or parody of current or past Carrier products or services.
- Involves an implied affiliation, association or endorsement by, or favored status with, any Carrier.

#### **6. CHANGES IN SERVICES**

The SMS Services shall be subject to modification in a manner applicable to all Selligent Clients of the SMS Services, including as a result of changes made by the relevant Carrier(s). If any such change is made which has any effect on the rights and obligations of the parties hereunder, then (i) Selligent shall use commercially reasonable efforts to notify Client in writing of the relevant changes as soon as reasonably practicable, and (ii) such change shall be automatically binding on Client.

#### **7. SUBSCRIBER INFORMATION**

Client shall use and handle all Subscriber information subject to all laws, rules, regulations, codes, guidelines, and all MMA Guidelines and Carrier policies and directives in force from time to time applicable to confidentiality and personal data protection. Client understands and agrees that Carrier(s) shall exclusively own all information that they and their affiliates collect directly from Subscribers, from Subscriber's usage of Interactive Wireless Devices on the Carriers' networks or roaming partner networks, or from Carriers' web site including, without limitation, personally identifiable information, such as name, home and e-mail address, wireless telephone number and residential telephone number. Client shall not authorize or encourage any Third-party to collect any Subscriber information in connection with any of the Services contemplated by this Agreement. If Client collects any such Subscriber information, Client may only use such information to the extent necessary to deliver Content to Subscribers and thereafter must destroy such information. In no event may Client disclose Subscriber information to any Third-party.

#### **8. CLIENT INDEMNITY**

Client, at its own expense, will indemnify, defend and hold harmless Selligent, its affiliates, and their respective employees, representatives, agents, officers and directors against any claims, losses, liabilities, costs, expenses or damages (including reasonable attorney's fees) incurred by reason of any claim, demand, lawsuit or action initiated by Third Parties to the extent based on or relating to: (i) Client's use of the SMS Services; (ii) any breach by Client of any of its representations and warranties in the SMS Terms; (iii) an allegation that all or any part of the Content provided by Client, a message transmission by a Subscriber to Client or Client's use of any SMS Services violates

any local, state or federal law, rule, or regulation, the Content Standards and/or the MMA Guidelines.

#### **9. WARRANTIES**

- (a) Client warrants that: (i) it has the full power and authority to enter into this Agreement and upon execution and delivery by Client, this Agreement will constitute the legal, valid, and binding obligation of the Client, enforceable in accordance with its terms; (ii) the execution of this Agreement does not violate any other agreements or obligations to which it is a party; and (iii) it shall perform the obligations set forth in this Agreement. Client represents, warrants and covenants to Selligent that the Content (a) will not contain any material that is obscene, profane, libelous or defamatory; (b) will not violate or infringe any copyright, patent, trademark or trade secret or right of privacy or publicity or any other personal or proprietary right of Selligent or any Third Parties; (c) will comply with the law, Content Standards and MMA Guidelines; and (d) at the time of delivery to Selligent, will not contain any viruses, worms, trap doors, back doors, timers, clocks, counter or other limiting routines, instructions or designs. Client further represents and warrants that it will not use the Content Routing Services, or allow any Third Parties to use the Content Routing Services, in violation of the law, Content Standards or MMA Guidelines to engage in any spamming, mail-bombing, spoofing or any fraudulent, illegal, unauthorized or improper use.
- (b) Selligent warrants that: (i) it has the full power and authority to enter into this Agreement and upon execution and delivery by Client, this Agreement will constitute the legal, valid, and binding obligation of the Client, enforceable in accordance with its terms; and (ii) the execution of this Agreement does not violate any other agreements or obligations to which it is a party.
- (c) **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE APPLICATION AND THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER, AND SELLIGENT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS. CLIENT ACKNOWLEDGES AND AGREES THAT SELLIGENT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE QUALITY, RELIABILITY, TIMELINESS, OR SECURITY OF THE APPLICATION OR SERVICES AND DOES NOT REPRESENT OR WARRANT THAT THE APPLICATION OR SERVICES WILL BE ERROR-FREE, UNINTERRUPTED, FREE FROM UNAUTHORIZED ACCESS (INCLUDING THIRD-PARTY HACKERS OR DENIAL OF SERVICE ATTACKS), THAT THE CONTENT WILL BE KEPT CONFIDENTIAL OR THAT ALL OR ANY CONTENT WILL BE DELIVERED OR RECEIVED. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

## 10. GENERAL

In addition to any disclaimers and/or exclusions in the AGREEMENT, and notwithstanding any agreement to any limitation or cap higher than that stated in this section, the total and sole liability for the SMS Services shall be refund, or damages in the amount of total fees paid for the SMS Services, as applicable. Notwithstanding any agreement to the contrary in any other term, provision, section or addendum (schedule, exhibit, amendment or otherwise) of the AGREEMENT, Client is not entitled to refund of any prepaid but unused Fees for the SMS Services on any termination by Client for any reason, unless Client has terminated the SMS Services specifically for material breach by Selligent or its third-party service provider(s). The SMS Services and their related access and use information, as well as other confidential or proprietary information provided by a party in connection with the SMS Services is "Confidential Information" as defined in the AGREEMENT and is subject to the Confidentiality provisions therein. Client warrants that it has no ownership rights to the SMS Services and that Client will not: (i) resell, copy, transfer, reverse engineer, disassemble, decompile, create derivative works of, allow third-party access to, or otherwise misappropriate any SMS Services or related documentation; (ii) remove any proprietary notices or labels from the SMS Services; (iii) modify, translate, or create derivative works based on the SMS Services; or (iv) copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the SMS Services.

## 11. DEFINITIONS

**"Advanced Messaging Platform"** A scalable proprietary wireless platform developed, owned and managed by Selligent and/or its contracted third-party(ies) consisting of a core infrastructure and computer programs which performs the Content Routing Services, including all enhancements to the platform as may be made during the Term and provided generally to other Selligent Clients.

**"Carriers"** Providers of wireless messaging services to Subscribers via wireless telecommunications networks. The Carriers in the Territory with which Selligent and/or its contracted third-party(ies) maintain connectivity (including via Third-party service entities that provide network connectivity services for message delivery to and from Carriers ("Third-party Aggregators" or "Message Delivery Partners")). For purposes of this Agreement, the term "Carriers" shall include applicable Third-party Aggregators.

**"Content"** All data, information, and other content in any format (including text and image) either (a) provided by Client to be sent to Interactive Wireless Devices of Subscribers via the Advanced Messaging Platform or (b) sent to Client by Subscribers. Content includes SMS. For purposes of this Agreement, all Content shall be deemed Client's Content, for which Client is solely responsible.

**"Content Routing Services"** The services of routing Client's Content to Carriers via the Advanced Messaging Platform for forwarding on to Handset Users and/or of sending, or making available, to Client the Content sent to Client by Handset Users and received by the Advanced Messaging Platform from the Carriers. The Content Routing Services do not include the sending of any premium Content. Any premium Content-

related Content Routing Services will be performed pursuant to a separate addendum executed by the Parties.

**"Content Standards"** Standards which describe the types of Content that Client may not send to Subscribers and the means and circumstances by which Client may send Content to Subscribers. For purposes of this Agreement, the Content Standards include, without limitation, (a) Client's mandatory compliance with all Carrier Application Form filings (and/or other campaign/program representations made during any similar provisioning approval process) as approved by the respective Carriers, and (b) the Content Standards currently established by the Carriers as of the Effective Date which are set forth in Section 5 of these SMS Terms, and any additions, deletions or changes to such Content Standards that are hereafter announced by the Carriers from time to time.

**"MMA Guidelines"** The Mobile Marketing Association's Consumer Best Practices Guideline and Privacy Code of Conduct established from time to time, including as maintained at <http://www.mmaglobal.com/bestpractices.pdf>, which are incorporated herein by this reference.

**"SMS"** A short message service text message with up to one hundred sixty (160) characters (also, a "message").

**"Subscribers"** Any and all persons who have Interactive Wireless Devices capable of receiving Content and who have subscribed to send and receive Content via the Advanced Messaging Platform through the Carrier(s).