



SELLIGENT MARKETING CLOUD SPECIFIC TERMS “SMS MESSAGES”

(22/06/2018)

SPECIFIC TERMS FOR “SMS MESSAGES”
AS APPLICABLE UPON ORDERING BY THE CLIENT OF “SMS MESSAGES”
(Online as of June 22, 2018)

1. Definitions

Unless otherwise defined herein, any defined term shall have the meaning ascribed to it in the Agreement.

“**Charges**” means the Selligent’s charges for the Services as set forth in the concerned Sales Order.

“**Client**” means the Client and any End Users.

“**Client Materials**” means any records or data that is not used in the provision of the Services, but which is uploaded by the Client onto Selligent systems including (without limitation), the Platform together with any third party hosting services used by Selligent from time to time;

“**Commencement Date**” means the effective date of the Sales Order pursuant to which the SMS Message Service is subscribed to.

“**Customer Data**” means all data or information submitted by or on behalf of the Client for the purpose of performing the Services, or generated and used by the Services, including personal data or other identifying or branding elements of Client or its customers to enable performance of the Services.

“**Deliverables**” means all reports, products and materials developed or produced by the Partner or Selligent in relation to or arising out of or incidental to the Services in any media, including (but not limited to) computer programs, software, data (and data analysis and databases), information, diagrams, reports and specifications.

“**Document(s)**” includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form, including electronic communication and email.

“**End-User(s)**” means the employees of the Client permitted to use the Services in accordance with these Specific Terms.

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Included Materials**” means all data created as a consequence of the provision of the Services, including (without limitation) logs of when a message or a response is sent or received and any information necessary to enable the Client to send, receive or process a message or URL link as part of the provision of the Services, to the exclusion of Customer Data.

“**Message Segment**” shall mean 140 octets of content data (i.e. 160 GSM characters), or 70 Unicode characters.

“**Partner**” means any service provider of Selligent’s choice with whom Selligent has entered into a partner agreement pursuant to which Selligent is entitled to resell to its own clients services that allow the sending of SMS Message, it being specified that Selligent is an “authorised reseller” of the Services but not an agent of such partner for any purpose.

“**Platform**” means the combination of computer hardware and software owned by the Partner which allows SMS Message services to be delivered.

“**Selligent Databases**” means any databases created by Selligent or the Partner in relation to, arising out of or incidental to the provision of the Services to the exclusion of Client Materials and Customer Data.

“**Selligent Equipment**” means any equipment, including tools, systems, cabling or facilities, provided by Selligent, the Partner or any of their subcontractors and used directly or indirectly in the supply of the Services.

“**Services**” means the services to be provided by Selligent under these Specific Terms as set out in the relevant Sales Order.

“**Service Level(s)**” (in relation to the Services) means the performance standard(s) outlined in Schedule 1 – Service Level Agreement.

“**Specific Terms**” means these specific terms and its schedules.

“**Term**” means the period referred to in clause 10.

“**Writing**” (or any cognate expression) includes a communication by fax or email but excludes SMS. If email is used, delivery and read receipts may be required as confirmation of delivery.

Use of the Services

The Client shall only use the Services and Deliverables as expressly provided for in these Specific Terms. Without prejudice to the generality of clause 2.1, the Client shall not:

use the Services for any illegal activity including (without limit) use for any illegal, immoral or in any manner in violation of applicable laws and codes or regulatory requirements of the appropriate jurisdiction (including any laws and regulations that apply to electronic marketing or advertising), and promptly notify Selligent of any such use which it becomes aware of; or

attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Services and/or Deliverables (except to the extent as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties); or

attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services and/or Deliverables (except to the extent as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties); or

circumvent any of the technical limitations of the Services and/or Deliverables, or decompile or otherwise reconstruct the Services and/or Deliverables; or

distribute or transmit any viruses or any materials through the Services that:

(i) are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(ii) facilitates illegal activity, depicts sexually explicit images or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability; or

(iii) constitute any other illegal activities.

collect or harvest any information or data from the Services and/or Deliverables or attempt to decipher any transmissions to or from the Services and/or Deliverables; or

access all or any part of the Services and/or Deliverables in order to build a product or service which competes with the Services and/or Deliverables; or

(except as expressly set out in these Specific Terms) use the Services and/or Deliverables to provide services to third parties or allow third parties to use the Services and/or Deliverables.

The Client shall indemnify and keep indemnified and defend at its own expense Selligent against all costs, claims, damages or expenses incurred by Selligent or for which Selligent may become liable to the extent such “claim” is caused by a breach of clause 2.2 or clause 3 by the Client.

The Client shall only use the Services and Deliverables for the Client’s own internal business purposes.

The Client shall have all required permissions to submit numbers to the Intelligent Query service.

The Client shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Services and Deliverables and notify Selligent promptly on becoming aware of any such unauthorised access or use.

Selligent warrants that the provision of the Services and their use by the Client in accordance with these Specific Terms and the instructions issued from time to time by Selligent will not infringe the Intellectual Property Rights of any third party, and Selligent shall indemnify and shall keep indemnified the Client against all claims, loss, damages, costs and expenses incurred by or awarded against the Client for claimed or actual infringement of a third party's Intellectual Property Rights arising from such use, except to the extent that such infringement is:

(a) caused to by the Client's use of the software in combination with software not supplied or approved in writing by Selligent;

based on use of any version of the software other than the latest version supplied by Selligent, if such claim could have been avoided by the use of such supplied version; or caused by the Selligent's use of the Client's Materials.

Rights in the Services

The Client acknowledges and accepts, that all Intellectual Property Rights, with respect to the Selligent Databases, Selligent Equipment, Included Materials and the Deliverables, but excluding the Client Materials, belong exclusively to Selligent and the Client does not acquire any right, title or interest in or to the same other than those expressly granted by these Specific Terms.

To the extent necessary, the Client shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that Selligent may consider necessary or desirable to perfect the right, title and interest of Selligent in and to its Intellectual Property Rights and Selligent shall bear the cost of doing so.

Supply of the Services

In consideration of the payment of the Charges, Selligent shall provide the Services to the Client from the Commencement Date for the Term in accordance with the Agreement, including these Specific Terms.

Client's obligations

The Client shall:

(a) promptly notify Selligent of any problem, issue or default with the Services;

promptly provide Selligent with such information, documentation and data that Selligent reasonably requests that is necessary in relation to its obligations under these Specific Terms; and cooperate with Selligent, or the Partner, in any manner reasonably requested by Selligent that is necessary to perform Selligent's obligations under these Specific Terms.

Change control

If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

Following the making of a request under clause 6.1, Selligent shall, within a reasonable time, provide a written estimate to the Client, detailing:

(a) the likely time required to implement the change;

any necessary variations to the Charges arising from the change;

the likely effect of the change on the Services; and

any other relevant impact of the change on these Specific Terms.

Where both parties agree (including where Selligent could find an agreement with the Partner in this respect) the change a change authorisation note shall be prepared. Signature of the agreed change authorisation note by both parties shall constitute a binding variation of these Specific Terms.

Until and unless a change authorisation note is signed by both parties:

(a) (unless otherwise agreed in writing), each party shall continue to carry out their obligations under these Specific Terms as if the request had not been made; and

Any discussions which may take place between the parties in connection with a proposed change shall be without prejudice to each other party's other rights under these Specific Terms.

Notwithstanding any other clause of these Specific Terms, Selligent may (from time to time) (a) replace the Partner by entering into a new partner agreement, and (b) change the Services provided it is strictly

required to comply with any applicable law, in both cases provided that Selligent provides a thirty (30) days prior written notification of such change to the Client.

Charges

The prices to be paid by the Client to Selligent for the Services are set forth in the relevant Sales Order. The Client will be charged per Message Segment submitted to the Platform. A message may consist of a number of Segments dependant on the number of characters and the choice of character set.

The prices will fluctuate, as the case may be, on a monthly basis. Pricing changes will take effect from the 1st day of the month following the fluctuation.

For the avoidance of doubt, the Client shall be liable for all charges incurred directly as a result of any Services being supplied as a result of any error on the part of Client including (without limitation) the creation of multiple Message Segments as a result of including Unicode characters in the message body.

The Charges are exclusive of any applicable tax or duty, which shall be added to the sum in question.

The Client shall not be entitled by reason of set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to Selligent.

Selligent shall be entitled to suspend the supply of the Services, if any outstanding payments have not been received by the Client within fifteen (15) days following a written warning and request for such payment.

Interest shall be chargeable on all amounts overdue at a rate of 2,5 point above the EURIBOR 6 month rate plc from time to time in force commencing on the due date for payment until receipt by Selligent of the full amount. Such interested shall be compounded monthly.

Warranties

Selligent warrants and represents to the Client that:

(a) it shall provide the Services in a reliable and professional manner, namely taking into consideration the Service Level Agreement attached as Schedule 1; and

use of the Services by the Client in accordance with these Specific Terms does not infringe the Intellectual Property Rights of any third party.

The warranties set out in this clause 8, are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to these Specific Terms. Without limitation, Selligent specifically denies any implied or express representation that the Services will operate:

(a) in conjunction with any software or any third party services other than those that are expressly set out in these Specific Terms; or

uninterrupted or error-free.

The Clients warrants and represents to Selligent that it will:

(a) promptly carry out its obligations under these Specific Terms;

use only the Services in accordance with these Specific Terms;

Limitation of liability

This clause 9 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other Party in respect of any:

(a) breach of these Specific Terms;

representation statement or tortuous act or omissions (including negligence) arising under or in connection with these Specific Terms; or

any other liability whatsoever.

Nothing in these Specific Terms limits or excludes the liability of a Party for:

(a) death or personal injury resulting from negligence;

any damage or liability incurred as a result of fraud or fraudulent misrepresentation; or any other liability which is incapable of being excluded or limited by law.

Subject to clause 9.2, but without prejudice to indemnification obligations under clause 2.7, neither Party shall have any liability to the other (howsoever arising, including any liability in tort) under or in connection with these Specific Terms for any:

(a) loss of profits or anticipated savings;

loss of revenue;

loss or damage to reputation or goodwill;

and in each case whether direct, indirect, special and/or consequential loss or damage; or for any other indirect, special and/or consequential loss or damage.

Subject to clause 9.2, each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, in respect of:

(a) the indemnity in clause 2.7 shall be unlimited;

the indemnity in clause 2.3 shall in no event exceed the lesser of either the damage actually suffered or the greater of £200,000 and 200% of the Services fees invoiced by Selligent to the Client during the last twelve (12) months before the occurrence of the breach; and

all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with these Specific Terms shall in no event exceed the aggregate amount paid by the Client to Selligent under these Specific Terms in the twelve (12) months prior to the event giving rise to the claim.

The parties acknowledge that the restrictions on the liability of the other party contained in these Specific Terms are fair and reasonable in the circumstances.

Commencement and duration

These Specific Terms shall commence on the Commencement Date and shall continue (unless terminated earlier in accordance with clause 11) for the remainder of the Subscription Term of the Base Subscription Service ordered by the Client under the Agreement.

Termination and suspension

Without prejudice to any rights or remedies that have accrued under these Specific Terms, either party may (at any time) terminate these Specific Terms, and any Service governed thereby, with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of these Specific Terms and fails to remedy that breach within twenty (20) days after receiving a written notice to such effect and containing full particulars of the breach; or

the other party fails to pay any amount due under these Specific Terms on the due date for payment and remains in default no less than eight (8) days after being notified in writing by registered mail with acknowledgment of receipt to make such payment; or

the other party is dissolved, becomes insolvent, fails or is unable or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgement of insolvency; has a resolution passed for its winding up or liquidation; seeks or becomes the subject of the appointment of an administrative receiver or similar official in respect of its assets or enters into any arrangement or composition with its creditors.

The SMS Message Service may be terminated at any moment in time by Selligent subject to a thirty (30) days' notice in case of termination, for whatever reason, of the partner agreement between Selligent and the Partner.

The following provisions shall survive expiry or termination of this agreement: Clauses 2, 8 and 12.

Without prejudice to the above, Selligent is entitled to suspend the provision of the Services (i) upon the request by a Telecom Operator or a regulatory body or (ii) in case of use of the Services in breach of these Specific Terms.

General

Force majeure. Neither party shall in any circumstances be in breach of these Specific Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Specific Terms if such delay or failure results from events, circumstances or causes constitutive of force majeure.

Governing law. These Specific Terms shall be governed by and construed in accordance with English Law.

Schedules

Schedule 1 - Service Level Agreement

SCHEDULE 1 – SERVICE LEVEL AGREEMENT

1. Service Levels

The following service level targets are provided:

(a) Availability to submit messages to Inbox platform and process them – 99.9% Availability

Availability to submit messages to App Messaging platform and process them – 99.9% Availability

Availability to submit messages to the Partner's SMS platform and process them – 99.9% Availability

(i) The Partner's SMS platform is able to ingest 15,000 SMS/second from all customers and send 1200 SMS/second.

The Partner SMS platform is able for any one individual Customer to ingest 15,000 SMS/second and to send 500 SMS/second

Additional Service Levels may be defined in a Service Order

“Availability” is measured on a calendar monthly basis by using the following formula: (hours in month - hours platform not available + any hours of Scheduled Downtime) divided by (hours in month). Availability is measured each minute by the detailed availability logging system that The Partner has continuously in place.

“Scheduled Downtime” shall mean any maintenance on a platform of which the Client is notified 48 hours in advance in any event while it is Selligent's intention to inform about Scheduled Downtime 5 days in advance except for urgent changes.

(a) There will be no more than 2 scheduled maintenance events in a single calendar month. Any further scheduled maintenance will not be considered as Scheduled Downtime.

During Scheduled Downtime and unscheduled downtime, messages are queued and the Client can still broadcast messages to The Partner's platform.

Scheduled downtime is always held outside standard hours, typically early Sunday AM or midnight weekdays and typically last 15 to 30 minutes though it is possible it might last up to 2 hours maximum.

Client shall contact Selligent within 30 days of a failure to meet a service level standard in order to claim an applicable service level credit.

Support

Selligent commits to the Client on “Additional Support” scheme, as described below.

Conditions and exclusions

This SLA will enter into force from the date of the Commencement Date and will remain valid for as long as the Specific Terms unless otherwise agreed in writing between the parties.

Selligent will not be liable for the following:

(a) any failure to perform its obligations attributable to Mobile Network's Operators, any other telecommunications service provider or any regulatory body decision or policy;

force majeure as defined in these Specific Terms;

any failure to perform its obligations attributable to material or elements provided by the Client; and

any acts or omissions of the Client in breach of these Specific Terms.

Excluded from the measure of Availability are the following:

(a) Acts or omissions of the Client in breach of these Specific Terms; or

Downtime caused by any telecommunications service provider.

Service Levels details

Access to Platforms - See clause 1.1

Submission of SMS Messages from the platform to 3rd party suppliers – 99.9% Availability

Support details

When opening a case, the Client is invited to specify a Priority Level from P1 (Mission Critical) to P5 (Information) as defined in the table below.

Support will re-classify the case if the initial Priority Level is deemed unreasonable based on the urgency of the request.

Priority P1	Mission Critical	Software or product fault preventing the Client’s business from carrying out its normal operations
Priority P2	Severe Disruption	Software or product fault causing operating problems for the customer’s business and its normal activities
Priority P3	Problematic	Software or product failing on a regular basis or problems occurring within specific functions or facilities
Priority P4	Non Critical	Occasional software or product failures/problems that have a workaround which do not cause undue difficulty or disruption to the Client's business operations
Priority P5	Information	Software or product information on features and functionality (not product training)

The Additional Support SLA for a response and solution delivery from our support team is as follows below.

Priority	First considered response (i.e. human response).	Progress Update (from receipt of all relevant information)	Target resolution time
P1	1 hr	3 hrs	8 hrs
P2	2 hrs	8 hrs	24 hrs
P3	8 hrs	24 hrs	36 hrs
P4	24 hrs	24 hrs	1 week
P5	48 hrs	48 hrs	

The First considered response is measured by the difference between the time of case creation and the time of first human response.

The Solution Delivery time is measured by the difference between the time of case creation and the time of full resolution.