

**TONIC DESIGNS PRINT UK LIMITED (“Tonic Designs”)  
COMPANY REGISTERED IN ENGLAND WITH NO 3712724  
80 PARK DRIVE, GRANGE PARK, LONDON N21 2LS**

Overview – Tonic Designs is to provide a bulk text messaging and/or billing payment service to the Client.

The client is responsible for information used in the messaging and billing systems.

These include Contact Lists and for content including text, pictures, sound and or video for WAP mobile telephone users\*

Tonic Designs is to facilitate the sending, receiving and premium rate messages through an agent (a gateway provider) for messages sent or services provided and charged by the Client.

**A. Services to be provided by Tonic Designs**

- (i) provide the operation of an sms delivery system, known as an sms console
- (ii) provide the operation of a billing service through [sms on mobile/ cellnet\*] telephones (“the billing service”)
- (iii) upon receiving confirmation that the advice has been accepted to institute the operational facilities to provide the sms console or billing service
- (iv) to monitor and maintain the sms console or billing service, introduce enhancements to the service as agreed in writing from time to time with the Client
- (v) to provide an online verification service to record the receipt by the user of the Client’s services and the for billing services, the gross sums of money due for such services and records those payment that have been received by Tonic Designs from a gateway provider.
- (vi) Tonic Designs shall keep the Client informed at regular intervals concerning the operation of the sms console billing service and provide such other inTonic Designs at the Client may reasonably require
- (vii) Account to the Client for the cost of messages sent and the sum received from the gateway provider less any commission ( set out below ) on a monthly basis

**B. Payment and Commission (for billing services)**

- (i) Tonic Designs shall deduct from any sum received from the gateway provider a commission for the services it provides to the Client details of which are set out in the Appendix attached to this letter. Such Appendix may be amended at any stage by Tonic Designs giving the Client not less than 14 days notice in writing.
- (ii) Tonic Designs shall notify the Client within five working days (which expired on the said last working day. For the purposes of clarity for this agreement a working day shall mean a day when the banks are open for normal business in the City of London) of the last working day of each calendar month of the total amount received from the gateway provider for Client services during the previous monthly period, which the Client shall then invoice to Tonic Designs. Tonic Designs shall make every reasonable endeavour within three working days of receipt thereof, either by cheque or electronic payment, to make payment of the sum received from the gateway provider less its commission. Time for payment shall not be of the essence.
- (iii) Tonic Designs shall keep all monies it receives from the gateway provider, less any commission for which it is entitled, in a separate clients’ account

(iv) In the event that for any reason Tonic Designs does not receive any due amounts from a service provider, Tonic Designs shall not have any liability whatsoever to the Client.

#### C. Refunds

(i) If the Client wishes Tonic Designs to make a refund it shall forthwith notify Tonic Designs in writing providing full details of the user and the relevant amount. Tonic Designs shall not under any circumstances make or deal with any refunds without the express written notification of the Client. Unless otherwise agreed in writing with Tonic Designs all refunds shall be paid within three working days. Refunds can only be made to the person from whom funds were originally received. [ any refund made shall not be included in the calculation of any commission to be paid to Tonic Designs under paragraph B above]

#### D. Costs and Expenses

(i) In addition to the payment of a commission referred to in paragraph B above, the Client shall also reimburse Tonic Designs for all costs and expenses it may incur in providing the billing service. Unless otherwise agreed in writing with the Client, Tonic Designs shall be entitled to deduct such expenses from monies held in the clients account referred to in B above. Where insufficient funds are held in this account, the Client shall upon demand from Tonic Designs forthwith pay to Tonic Designs the amounts requested

#### E. Obligations on the Client

(i) the Client shall establish, update and maintain accurate and complete registration\* details

(ii) the Client shall make its best endeavours to keep and maintain confidential any and all passwords. Where it knows, believes or has reason to believe that any such confidentiality has been compromised it shall forthwith inform Tonic Designs by email on [support@formatie.com](mailto:support@formatie.com) or at such other address as Tonic Designs may from time to time notify to the Client.

(iii) the Client will at all times ensure that the content is lawful and does not contain ( or omit to contain ) any material which is reasonably likely to bring it or Tonic Designs into disrepute or breach any code or guideline set out by any relevant industry association or governmental body

(iv) the Client shall ensure that any restricted content\* aspects are suitable secure to reflect industry standards

(v) the Client is aware that Tonic Designs is reliant upon the Client to ensure that anything provided (or omitted to be provided) by the Client is compliant with legal requirements ( whether in contract, tort, crime or otherwise ) and does not offend any third party interests or intellectual property rights. In the event that Tonic Designs should suffer any costs, expenses, damages or loss howsoever arising from a failure by the Client to comply therewith, the Client shall forthwith upon demand indemnify and keep Tonic Designs indemnified therefore

#### E. General Provisions

(i) Tonic Designs shall not under any circumstances be responsible to the Client or any third party in the event that:

- a. Any of the services is affected by court order or legal process or any rule, regulation or guideline that is recommended in the telecommunications or electronic media industries
- b. Any failure howsoever arising from a breakdown of computer equipment or any server or electronic process
- c. For any act of force majeure; being any act of god, strike, lock out or any other reason beyond the control of Tonic Designs
- d. Any sums due hereunder to Tonic Designs shall be paid invoiced and paid by the Client in Pounds Sterling and in the event that for any reason the Client is affected by withholding tax or taxes, such sum shall be remitted to Tonic Designs which after payment of any such tax or taxes shall equal the amount due to Tonic Designs. Sums due to the Client shall be paid by Tonic Designs to the Client in Pounds Sterling and if in any other currency at the rate applicable at the date of payment less any payable conversion costs.

(ii) If a dispute should arise concerning the operation of this agreement which Tonic Designs or the Client are unable to resolve, either Tonic Designs or the Client may at any stage refer the dispute to an independent third party to be agreed by the Client and Tonic Designs (or in absence of agreement within one week of notice from Tonic Designs or the Client, to be appointed by the President for the time being of the Law Society of England and Wales ) who acting as expert and not arbitrator can to resolve the matter. Any decision made by such third party shall be made in writing and delivered to the Client and Tonic Designs.

#### F. Termination

- (i) this agreement shall become effective from the date it is executed by the Client and shall continue for a minimum period of twelve months and thereafter until the Client gives to Tonic Designs not less than one months notice in writing terminating the agreement
- (ii) within three working days of such termination Tonic Designs shall release all monies it holds on behalf of the Client to the Client or as it may in writing otherwise direct. Notwithstanding the foregoing in the event that Tonic Designs is owed any sums by way or commission or there is any expenses deductible, the sum remitted to the Client shall be the amount less such commission or expenses. Under no circumstances are any amounts, which may have been paid to Tonic Designs or deducted by Tonic Designs for past or future expenses refundable to the Client unless Tonic Designs otherwise agrees in writing with the Client

#### G. Warranties and Exclusions

- (i) During the course of this agreement Tonic Designs shall use its reasonably endeavours to provide the Client services without interruption. In the event that a fault occurs or a service is for any reason prevents in full or in part the proper operation of the Client service, Tonic Designs shall made every reasonable endeavour to resolve the matter at its own cost, but under no circumstances be liable to the Client for any indirect or consequential loss which the Client may suffer ( which shall include but not be limited to any loss of profits, damages, costs of expenses howsoever arising).
- (ii) Subject to the foregoing all other warranties, terms and undertaking, express or implied whether by statute, common law or custom are hereby excluded to the fullest extent permitted by the law
- (iii) Subject to any statutory provision to the contrary the maximum liability to Tonic Designs arising under this agreement for one or a series of connected

events shall be limited to an aggregate liability of £1,000

#### H. Notices and Law

(i) all notices required to be given under this agreement shall be in writing signed by an authorised director on behalf of the Client or Tonic Designs as the case maybe and such notice shall be sent by recorded first class post to the address set out at the top of this letter. Where email is used a copy of the email shall be sent by post and signed as aforesaid. All notices shall be deemed to be received two working days after the date of dispatch

(ii) This agreement shall be governed and construed in accordance with English Law and Tonic Designs and the Client agrees to submit to the non exclusive jurisdiction of the English Courts