



**Versitec 2000 Ltd & Mkodo Ltd**  
**Joint Standard Terms and Conditions**  
**Non Premium Rate Services**

## **TERMS & CONDITIONS - GENERAL**

### **1 Definitions**

In this Agreement the following definitions apply:

"Affiliate" means a subsidiary of a party or its ultimate holding company or any subsidiary thereof ("holding company" and "subsidiary" having the meanings given in section 736, 736A and 736B of the Companies Act 1985).

"Agreement" means an agreement for Services to which these Terms and Conditions are a Schedule together with all other applicable Schedules.

"Company Background Rights" means any and all Intellectual Property Rights that were created or used by the Company prior to the Commencement Date or which are created independently of the delivery of the Services.

"Company Foreground Rights" means any and all Intellectual Property Rights that arise or are created in the course of the provision of the Services, save for Client Foreground Rights.

"Client" means the Client as defined in the Agreement.

"Client Background Rights" means any and all Intellectual Property Rights which were created or used by the Client prior to the Commencement Date or which are created independently of the delivery or the receipt of the Services including Intellectual Property Rights embedded in Client Content.

"Client Content" means any information provided by the Client for onward transmission or interactive processing by Versitec 2000/Mkodo as part of the Services; or information entered in the body of an interaction by the Client's customers and the associated mobile phone number or email address as part of the Services (provided the Client has paid for the Services).

"Client Customer Data" means certain data held by the Client concerning its customers including mobile telephone numbers of which the Client owns the Client Background Rights.

"Client Foreground Rights" means any and all Intellectual Property Rights which derive after the Commencement Date from the Client's own business process or from its computer hardware, software or systems.

"Company Data" means certain data that will arise in the course of the Versitec 2000/Mkodo's provision of the Services of which Versitec 2000/Mkodo will own the Company Foreground Rights. This includes prefix and service centre identifier information.

"Intellectual Property Rights" means all copyright (including rights in computer software), patents, trade marks, trade secrets, registered and unregistered design rights, database rights and topography rights, all rights to bring an action for passing off, all rights to apply for protection in respect of any of the above rights and all other forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

"Platform" means the Mobile Application Services Platform, and associated systems and network connections owned and operated by Versitec 2000/Mkodo or by suppliers or partners of Versitec 2000/Mkodo, which will be used to provide the Services to the Client.

"Services" means the consultancy or managed or other services of Versitec 2000/Mkodo agreed to be provided to the Client in the Agreement in accordance with the terms of the Agreement.

"Term" means the period that this Agreement is effective in relation to the Services supplied by the Company to the Client as may be extended in accordance with the Agreement or as may be mutually agreed in writing.

## 2 The Services

1. Versitec 2000/Mkodo will provide the Services as described on signed Sales Order forms in accordance with this Agreement from the purchased modules expire or this Agreement is otherwise terminated in accordance with its provisions.
2. Versitec 2000/Mkodo sells the right to use application modules for up to a pre-selected number of interactions in the given time period. The module price includes the right to use the technology, the associated service, standard support and reporting.
3. An interaction is a one way communication with the Versitec 2000/Mkodo platform, whether inbound or outbound, mobile message or email.
4. Versitec 2000/Mkodo will provide these Services on receipt of a written request with appropriate payment until the packaged interactions purchased have been consumed or have expired.
5. Modules with packaged interactions of 1000 or less, and all Inform module levels, expire after one month from module activation date if not consumed. Modules with packaged interactions from 1001-5,000,000 expire after 6 months from the module activation date if not consumed. Expiry takes place at midnight on the last day of the month period.
6. Once packaged interactions have been consumed or have expired, Versitec 2000/Mkodo will stop provision of the Services until receipt of a written request for purchase of further interactions and until appropriate payment has been made.
7. When Versitec 2000/Mkodo has received a written request that the Client wishes to keep a campaign live if all interactions purchased are consumed, all subsequent interactions used in the next four weeks or to the end of the campaign (whichever is the earliest) will be charged at best price for the volume. Versitec 2000/Mkodo will invoice for these interactions at the end of the four weeks or at the end of the campaign (whichever is the earlier); such invoices to be paid by the Client within 14 days of receipt. Should the campaign continue for longer than four weeks then the Client is required to purchase a further module block to keep the campaign live.
8. Versitec 2000/Mkodo will use reasonable efforts to provide a 24x7 service subject to the following conditions:
  - Versitec 2000/Mkodo has the right from time to time to deactivate the Services for maintenance reasons and in order to implement changes and upgrades.
  - In the case of planned maintenance Versitec 2000/Mkodo shall provide 3 working days advance notice to the Client.
  - In the case of emergency and un-planned maintenance, Versitec 2000/Mkodo shall provide as much advance notice to the Client as is reasonably possible and use reasonable efforts to schedule work so as to minimise the impact on the Client's business.
  - The Client recognises that the provision of the Services is subject to the ongoing provision of services from the network operators under the expected commercial and service level terms. Versitec 2000/Mkodo cannot be held responsible for the impact of sudden changes or removal of service imposed by the network operators but will take all reasonable endeavours to lessen any negative impact and pass on any positive impact to the Client.

## 3 Pricing and Payment Terms

1. The Services shall be provided at the pricing set out in the Sales Order and referenced proposal (if applicable).
2. Versitec 2000/Mkodo will submit invoices in the agreed currency and the Client shall make payment of each invoice prior to account activation or continuation of account activity or within thirty (30) days from the date thereof or, whichever date is the earliest.
3. All amounts payable under the Agreement are exclusive of any value-added, excise and customs, use, turnover and other taxes and duties. The Client will pay all such taxes and duties assessed by any authority in connection with the Agreement. This provision does not apply to any taxes for which

the Client is exempt, provided the Client has furnished Versitec 2000/Mkodo with a valid tax exemption certificate.

4. Versitec 2000/Mkodo reserves the right to charge interest and debt collection charges on outstanding balances in accordance with our statutory rights under the Late Payment of Commercial Debts (Interest) Act 1998.
5. The operators and aggregators reserve the right to introduce new or varied charges on four weeks written notice. Versitec 2000/Mkodo reserves the right to pass these changes on to the Client at four weeks notice. The Client is entitled to cancel the service should the proposed terms be unacceptable.

#### **4 Client Commitments**

1. The Client undertakes the following:
  - to attempt to attach only to the nominated network addresses notified to them by Versitec 2000/Mkodo in relation to the Services;
  - to take responsibility for keeping access to the Services secure and for the sole use by the Client
  - to nominate an account manager and secondary contact to act as a Co-ordinator for use of the Services provided by Versitec 2000/Mkodo under this Agreement;
  - to ensure that the Co-ordinators and other Client team members follow the support and administration procedures notified to them by Versitec 2000/Mkodo from time to time;
  - to accept responsibility for charges arising from all attempted receipt or distribution of interactions; for avoidance of doubt, this includes but is not limited to, attempted broadcast of messages that are invalid, that are sent repeatedly in a short timeframe to the same number, or are sent for delivery to invalid mobile phone numbers/email addresses;
  - to use the Services for its proper and lawful purpose only and in accordance with such reasonable instructions as Versitec 2000/Mkodo may from time to time notify to the Client.
  - to take responsibility that the use and publicity of the Services for its business purposes comply with all relevant regulations and Codes of Practice. The Client is solely responsible, for example, for compliance with laws that regulate competitions when it runs a prize draw using the Services.
  - to provide Versitec 2000/Mkodo with one month's written notice prior to sending outbound interactions to a country outside of the UK.
2. Without limitation, the Client undertakes not to use the Services or permit the Services to be used for:
  - sending any communication which is defamatory, offensive or abusive or of an obscene or menacing nature; or
  - the persistent sending of messages without a reasonable cause or for the purpose of causing annoyance, inconvenience or distress to any person; or
  - the re-distribution of content which it does not own the rights to re-distribute; or
  - the distribution of material to prefixes from countries where the material is considered to be prohibited or offensive; or
  - the sending of unsolicited messages; or
  - the sending of misleading messages, or
  - criminal purposes; or
  - sending messages that contravene industry and regulatory Codes of Practice, rights, consents, authorisations, licences or permissions or that may bring the Versitec 2000/Mkodo or network operator services into disrepute; or
  - sending of messages in a format capable of causing damage to a mobile phone.
3. Without limitation, the Client undertakes not to send messages using an Originator name that is misleading in that it can be confused with a trademarked brand, unauthorised personal contact or in any way makes the receiver of the message believe that the message is from any party other than the Client.

## 5 Confidentiality

For the purpose of this Agreement, "Confidential Information" shall mean all inventions, drawings, software, data, specifications, processes, testing procedures, customer information and all other technical, business and other information and material relating or belonging to either of the Parties or their customers which is or has been disclosed by one Party to the other either directly or indirectly, including, but not limited to, the following:

- information relating to either Party's planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, methods of processing and operational methods;
- policyholder data, customer lists, sales, profits, customer data and information, organisational restructuring, new business initiatives and financial information;
- information that describes either Party's products, including actuarial calculations, product designs and how such products are administered and managed;
- information that describes either Party's product strategies, tax interpretations, tax positions and treatment of any item; and
- confidential information of third Parties with which either Party conducts business.

Confidential Information shall not include:

- information which was in the public domain at the time of disclosure;
- information which, though originally Confidential Information, subsequently falls into the public domain through no fault of the Party or its Personnel receiving the Confidential Information, as of the date of its so falling;
- information independently created by the other Party (subject to reasonable evidence of that independent creation);
- information received by one Party from a third Party without any breach of any obligation of confidentiality owed to the other Party;
- information disclosed pursuant to a requirement of law, to the extent so required.

The Parties hereby agree, other than as permitted by this Agreement, to keep the Confidential Information in complete confidence and not to disclose the same to any third parties (except as set forth below), nor use it for any purposes other than for the performance of their respective duties under this Agreement (the "Specific Purposes").

Either Party may disclose the Confidential Information to its employees and to its Affiliates and such Affiliates' employees and to its sub-contractors and agents permitted under this Agreement but only to the extent reasonably necessary for the Specific Purposes and subject to the recipient being subject to obligations of confidentiality relating to that Confidential Information no less stringent than the requirements of this Clause.

The provisions of this Clause shall continue in full force and effect, notwithstanding the termination of this Agreement for any reason whatsoever, for a period of three (3) years from the date of disclosure.

Nothing in this Clause shall be deemed or construed to prevent either Party from disclosing the Confidential Information to any of its professional advisers, auditors, regulators and insurers provided that such disclosure is only to the extent necessary in connection with this Agreement. The disclosing Party shall take all reasonable steps to ensure that the Confidential Information is treated as confidential by such professional advisers, regulators and insurers and their employees or agents.

## **6 The Client's Facilities**

To the extent required by Versitec 2000/Mkodo, the Client will make available to Versitec 2000/Mkodo certain of its facilities including but not limited to remote access connections, computer resources, software programs, personnel, and business information as are required to perform the Services.

Versitec 2000/Mkodo agrees to comply at all times with the Client's rules and regulations regarding safety, security, and conduct, which shall have been drawn to the attention of Versitec 2000/Mkodo.

## **7 Warranties**

Each of the parties warrants and represents to the other that it has the right and power to enter into the Agreement and that anything it does or makes available to the other pursuant to this Agreement shall not be in breach of the Intellectual Property Rights of a third party.

## **8 Liability**

1. Versitec 2000/Mkodo and the Client shall be liable as expressly provided in the Agreement, but shall have no other obligation, duty or liability whatsoever in contract, tort (including negligence, breach of statutory duty and any other tort) or otherwise.
2. Nothing in the Agreement shall exclude or restrict Versitec 2000/Mkodo's or the Client's liability for death or personal injury resulting from its negligence.
3. Subject always to point 4 below, Versitec 2000/Mkodo's and the Client's liability for direct loss or damage whether in contract, tort (including negligence, breach of statutory duty or other tort) or otherwise arising out of or in connection with the performance or non-performance of its obligations under the Agreement and whether caused by its act or omission or that of its employees, agents or subcontractors, shall be limited to the aggregate in any calendar year of the charges paid by the Client to Versitec 2000/Mkodo under the Agreement or £250,000 whichever is the smaller.
4. Versitec 2000/Mkodo and the Client shall not be liable in contract, tort (including negligence, breach of statutory duty or other tort) or otherwise:
  - for any loss of revenue, business, anticipated savings or profits,
  - for any indirect or consequential loss howsoever caused or arising.
5. Except as expressly stated elsewhere in the Agreement, all representations, warranties, conditions and other terms, whether express or implied (by common law, collaterally or otherwise) are hereby excluded save in the case of wilful default or fraud.
6. Neither Versitec 2000/Mkodo nor the Client will be under any liability in the event that it is unable to perform any obligation under the Agreement or, in the case of the Versitec 2000/Mkodo, provide the Services to the Client because of any factor outside its control including but not limited to Act of God, inclement weather, flood or escape of water, lightning or fire, terrorist activity, industrial action or lockouts, default or failure of a third party, the act or omission of Government, any Regulatory body or other competent authority, war, military operations, riot, or congestion or non-operation of one or several or the operator networks or other action taken by one or several of the network operators, whether service provision or commercially based, that is beyond the control of the parties and that renders the provision of the Services non viable.
7. Versitec 2000/Mkodo will not be under any liability in the event that the Client uses the product incorrectly or runs interactive services without first testing that the rulesets created by the Client work as desired.
8. The provisions of this Clause shall survive the termination or expiry of the Agreement.
9. If Versitec 2000/Mkodo shall fail to meet any service level specified in the service description, Versitec 2000/Mkodo shall pay or credit such liquidated damages, as a genuine pre-estimate of the Client's damages and not as a penalty, for any loss or damage sustained by Versitec 2000/Mkodo resulting from such failure to meet such service level. Such a payment or credit shall be in full and final settlement of all the Versitec 2000/Mkodo's liability to the Client in respect of such failure, but without prejudice to the Versitec 2000/Mkodo's other liabilities and obligations under this Agreement. The maximum value of

payment or credit that may be awarded to the Client under this Agreement shall be equivalent to 100% of total sums paid for that specific module in that specific purchase order or sales order.

## **9 Intellectual Property Rights**

1. Ownership of all Company Background Rights and Company Foreground Rights shall vest in and remain with Versitec 2000/Mkodo, whereas all Client Background Rights and Client Foreground Rights shall vest in and remain with the Client.
2. Versitec 2000/Mkodo shall license to the Client the Company Foreground Rights and such parts of the Company Background Rights as are directly and unavoidably required by the Client in the provision of the Services on the basis set out in this Clause.
3. The Client shall license to Versitec 2000/Mkodo the Client Foreground Rights and such parts of the Client Background Rights as are directly and unavoidably required by the Company in the provision of the Services on the basis set out in this Clause
4. Any licence granted under this Clause shall be non-transferable, non-sublicensable, non exclusive and royalty free and shall be limited to the Term and shall be granted only for the purpose of fulfilling the licensee's obligations under this Agreement.
5. Neither party shall reverse engineer, decompile or disassemble any software comprised in the other party's Background Rights or Foreground Rights.

## **10 Data Rights**

Ownership of all Company Data shall vest in and remain with Versitec 2000/Mkodo, whereas Client Content and Client Customer Data shall vest in and remain with the Client.

## **11 Non-assignability**

Neither party may, without the other's prior written consent, transfer or assign its rights under this Agreement . Notwithstanding the foregoing, either party may, without the other's prior written consent, assign its rights hereunder to a parent corporation, provided the assigning party is a wholly-owned subsidiary of such parent, or to another wholly-owned subsidiary of such parent, provided that such assignee agrees to comply with all applicable provisions of this Agreement and the other party is given written notice of such assignment by both the assignor and the assignee within 14 days of such assignment.

## **12 Intellectual Property Rights Indemnity**

Versitec 2000/Mkodo will indemnify the Client and keep the Client fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use or possession of all or any part of the Company Background Rights, the Company Foreground Rights or methods of provision of the Services and any third party material, information and Intellectual Property Rights which are provided by Versitec 2000/Mkodo to the Client infringes the copyright or other Intellectual Property Rights of any third party, subject to the terms of this Clause.

The Client will indemnify Versitec 2000/Mkodo and keep Versitec 2000/Mkodo fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use or possession of all or any part of the Client Background Rights, the Client Foreground Rights and any third party material, information and Intellectual Property Rights which are provided by the Client to Versitec 2000/Mkodo infringes the copyright or other Intellectual Property Rights of any third party, subject to the terms of this Clause.

The following provisions shall apply to the indemnities referred to in this Clause when one party ("the Indemnified Party") wishes to enforce its rights against the other ("the Indemnifying Party"):

- The Indemnified Party shall promptly notify the Indemnifying Party in writing of any allegations of infringement of which it has notice and will not make any admission without the Indemnifying Party's prior written consent.
- The Indemnified Party, at the Indemnifying Party's request and expense, shall allow the Indemnifying Party, to conduct and/or settle any negotiations or litigation resulting from any such claim.

- The Indemnified Party shall, at the request of the Indemnifying Party, afford all reasonable assistance with such negotiations or litigation.

In the event that the use or possession of all or any part of the Company Background Rights, the Company Foreground Rights or methods of provision of the Services and any third party material, information and Intellectual Property Rights which are provided by Versitec 2000/Mkodo to the Client infringes the copyright or other Intellectual Property Rights of any third party, Versitec 2000/Mkodo, at no additional cost to the Client, shall use reasonable endeavours to:

- obtain for the Client the right to continue to use the infringing material;
- modify the infringing material so as to render it non-infringing; or
- replace the infringing material or infringing part thereof with a non-infringing alternative so as to ensure that the Services shall continue to be provided with the same functionality.

### **13 Suspension and Termination**

Versitec 2000/Mkodo may in its sole discretion suspend provision of the Services at any time in the event that:

- Versitec 2000/Mkodo is entitled to terminate the Agreement for any reason identified in this Clause; or
- Versitec 2000/Mkodo is obliged to comply with an order, instruction or request of the network operators, government or other competent authority;

The Agreement may be terminated prior to expiration or completion in accordance with the following:

- By either party in the event the other has failed to perform any material obligation required to be performed under the Agreement and such failure is not corrected with thirty (30) days from receipt of written notice advising of such failure from the other party, which notice shall make reference to this clause. For the avoidance of doubt three breaches in one month or a series of 3 of the same breaches in any twelve months shall be deemed to be a material breach of the Agreement; or
- By the Versitec 2000/Mkodo in the event that the Client uses the Services for the transmission of obscene, libellous, offensive Content or for any illegal purposes; or
- This Agreement shall terminate immediately if either party (being a company) presents a petition or has a petition presented by a creditor for its winding up, convenes a meeting to pass a resolution for voluntary winding up or enters into liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), enters into a voluntary arrangement with its creditors, has a receiver, administrative receiver or administrator of all or any of its undertakings or assets appointed, or is deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or (if an individual) presents or has presented against him a bankruptcy petition or (if a non UK national or corporation) shall suffer anything analogous to these matters to occur to him or it.

Upon termination or expiration of the Agreement each party shall deliver to the other all copies of all applicable Confidential Information of the other party within fourteen (14) days of such termination expiration or (at the option of the owner of the Confidential Information) a statement confirming that such copies have been destroyed.

### **14 Reference Customer**

Any public announcement regarding this Agreement and/or the subject matter of this Agreement shall be agreed in writing in advance by the Parties.

### **15 Data Protection**

Each party warrants that, in carrying out obligations under and in preparation for this Agreement, it shall, and shall procure that its relevant Affiliates shall, comply strictly with all requirements of this Data Protection Act 1998.

The Client warrants that the Client Customer Data which shall be made available to the Company pursuant to this Agreement shall not amount to personal data and that, if any other data is made available which amounts to personal data, in respect thereof the Client shall be the data controller and the Company the data processor.

Versitec 2000/Mkodo warrants that the Company Data which shall be made available to the Client pursuant to this Agreement shall not amount to personal data and that, if any other data is made available which amounts to personal data, in respect thereof the Company shall be the data controller and the Client the data processor.

Insofar as either Versitec 2000/Mkodo or the Client may act as data processor in respect of any data of which the other party is data controller it shall:

- take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- process personal data under this Agreement only in accordance with the other's explicit instructions.

For the purposes of this Clause, terms and expressions used shall have the meaning assigned to them in the Data Protection Act 1998.

## **16 Contract Management**

Each party shall appoint a representative who shall be responsible for co-ordinating that party's performance under this Agreement (a "Contract Manager"). Each party's Contract Manager shall be the other party's first point of contact in relation to matters affecting or connected with the performance of this Agreement.

Either party may on reasonable notice to the other at any time require a contract meeting to be held if an event, act or omission has occurred which that party reasonably believes affects the provision of the Services or the performance of the Agreement.

## **17 Dispute Resolution Procedure**

Any dispute that arises between the parties as to this Agreement or the performance of the parties' respective obligations under this Agreement, shall first be discussed, and if possible resolved, by the Contract Managers.

If the Contract Managers fail to resolve the dispute then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within 7 days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution ("CEDR") or such other similar body as is agreed].

The parties shall then submit to the supervision of the mediation by the CEDR or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for each party's right to seek interim relief in the courts, neither party may commence legal proceedings under the jurisdiction of the courts until 7 days after either party has given notice to the other of its refusal to continue such mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representative of each of the parties, shall remain binding on the parties.

The parties shall bear their own legal costs of this Dispute Resolution procedure, but the costs and expenses of the mediator and CEDR or similar body shall be borne by the parties equally.

## **General**

The Agreement, including all appended Schedules and Sales/Purchase Order Forms jointly signed during the Term and for Services provided during the Term, constitutes the sole and exclusive statement of the terms and conditions hereof and supersedes any prior discussions, writings, and negotiations with respect thereto.

Neither party shall have any liability or remedy in contract, tort or otherwise in respect of any representation, warranty or other statement (save as expressly stated in the Agreement) being false, inaccurate and/or incomplete unless it was made fraudulently or through wilful default.

The Agreement shall not be amended unless in writing signed by an authorised signatory of both parties.

No waiver of any provision of the Agreement by either party shall be effective unless made in writing. Any waiver made by such party of any term or condition of the Agreement shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.

The Agreement shall be governed by the laws of England, and the parties hereby submit to the exclusive jurisdiction of the English courts for the resolution of any dispute which may arise in connection herewith.

Any notice to be served on one Party by the other under this Agreement will be in writing and delivered by hand or sent by fax or e-mail (with a hard copy sent immediately thereafter by prepaid first class post) or by prepaid first class post to the address for such Party set out in the Schedule hereto or to such other address as such Party has for the time being notified (in accordance with this Clause) to the Party giving the notice. Notices will be deemed to have been delivered when received during the hours of 9am-5pm on any Business Day in the place of receipt. Where the day in the place of receipt is not a Business Day, notice will be deemed to have been delivered at 9am on the next Business Day in the place of receipt.

If any portion of the Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such deletion.

## **TERMS & CONDITIONS – Service Levels for SMS modules**

### **1. Mobile Terminated (“MT”) Services**

#### **a) Service Reach**

Where purchased, Versitec 2000/Mkodo will provide the Client the ability to reach at least 95% of all mobile phone prefixes on GSM carriers throughout the world (the ‘Reachable Prefixes’). Domestic reach only is assumed unless specifically agreed on a counter-signed Purchase Order or Sales Order.

#### **b) Message Throughput**

Versitec 2000/Mkodo will provide the Client with an onward delivery capacity into the GSM networks such that messages will be delivered to the GSM networks with an average (median) latency of less than 20 seconds and 98% of messages will be delivered to the mobile networks with a latency of less than 5 minutes (calculated over any 1 million consecutive messages)

#### **c) Message Delivery**

For the Contact module, Versitec 2000/Mkodo will use reasonable endeavours to deliver 95% of accepted messages to their intended destination within 5 minutes of processing the interaction from the Client, provided the destination prefix is a Reachable Prefix and a “Live Device”.

For the Inform module, the Versitec 2000/Mkodo platform supports an average of 2 messages per second.

### **2. Mobile Originated (“MO”) Services**

#### **a) Service Reach**

**Where purchased**, Versitec 2000/Mkodo will provide user-initiated "MO" access from 99% of European networks and 99% of European prefixes, 100% of U.K networks and 100% of U.K prefixes. Non-European networks can be specifically agreed on a counter-signed Purchase Order or Sales Order.

## **b) Message Throughput**

For standard MO, the nominal throughput will be 0.5 messages/second per receiving number.

For Rapid Text, the nominal throughput will be 10 messages/second.

## **3. Service Availability**

The Company will provide a 99.8% service up-time.

"Service Availability" shall be defined as:

- ◆ the availability of the user interface and
- ◆ the capability to send and receive interactions.

## **4. Service Level Conditions**

1. Service Level conformance is based on average metrics over a rolling 30 day period, with no more than 2 exceptions permitted under any service level category in any consecutive 3 months.
2. For the purpose of measuring Message Delivery performance, a 'Live Device' shall exclude any mobile device that is :
  - ◆ switched off
  - ◆ out of network coverage
  - ◆ barred
  - ◆ partially or completely unable to accept SMS messages
3. Breakdowns or long routing latencies in the Internet path from the Client to Versitec 2000/Mkodo shall not be considered as a loss of Service Availability if outside the reasonable control of Versitec 2000/Mkodo, providing the Versitec 2000/Mkodo service remains accessible to the Internet.
4. Planned downtimes notified and agreed verbally or in writing with the Client will not be considered as a loss of Service Availability.
5. The Client acknowledges that Versitec 2000/Mkodo is dependent on its GSM operator suppliers in meeting these targets and that Versitec 2000/Mkodo is not liable for failures in the Services due to factors outside its reasonable control, including those caused by failures or service interruptions in the operator networks.
6. Versitec 2000/Mkodo shall not be held responsible for any exceptions due to blocking by an operator of inbound or outbound messages that affects its connections with more than one mobile carrier.

## **Support Level**

The module price includes the following standard support level:

- ◆ Initial training: telephone training of one client operator, maximum of 1 hour duration
- ◆ Non-critical support issues (to a maximum of 1 hour per week): email support with acknowledgement within 2 hours of receipt of email and detailed response within 5 days.
- ◆ Business critical issues (issues causing direct impact on client's customer or revenue): email support with telephone escalation, acknowledgement within thirty minutes of receipt with detailed response within 1hour.
- ◆ Hours of cover: 9.00am to 5.30pm (UK time) Monday to Friday.
- ◆ The email support is [\*\*support@Mkodo.com\*\*](mailto:support@Mkodo.com)

Higher support levels are available.

# General Terms and Conditions for Premium and Non-Premium Services

## Premium Services

### Description.

A Premium Text Service – PSMS, is either a single or subscription based service to receive content or information.

All premium rate services are overseen by ICSTIS – [www.icstis.com](http://www.icstis.com)

Quoting directly from the ICSTIS guidelines on Premium SMS campaigns:  
<http://www.icstis.org/icstis2002/pdf/Guideline%2020.pdf>

*“The service provider must state clearly in all promotional material the likely charge for calls to each service. Prices must be noted in the form of a numerical price per minute, or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.”*

Also quoted from the guidelines any promotional material must clearly state (if not clearly apparent) contact details of the company 'running' the promotion. Versitec 2000 take this to be our customer – the brand running the quiz, ringtone, vote service...

*“For any promotion the identity and contact details of either the service provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly.*

*The identity means the name of the company, partnership or sole trader and the contact details must consist of one of the following:*

- a a full postal address including postcode, or*
- b a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services), or*
- c a telephone helpline number (to be charged at no more than UK national rate).”*

*The above information is mandatory for promotions for reverse-billed premium rate SMS, regardless of whether the promotion is advertised in print media, the Internet, television or via promotions sent by text message.*

If you require further information or explanation of PSM services please contact Versitec 2000 or icstis directly.

### Examples

In this section we illustrate a number of 'wording' examples that can be used in the promotional material of your PSMS campaigns.

It is worth noting that there are two types of Billing mechanism used currently, in the majority they are all Reverse Billed (Vodafone, Orange and O2) except T-mobile who provide a inbound billing service where the sent in text is set a the defined premium. In this case the subscriber does not incur a further cost of 'sending' in a subscribing text over the published cost of the service as is the case with Reverse Billed services.

### Example 1 – Ringtone Request

“Text your ringtone code to **89080**. The ringtone you have requested will be sent directly to your phone and the charge added to your phone bill or taken from your pre-pay balance.

Standard text rates apply to all messages sent into the service.”

### Example 2a – Quiz or Competition (no keyword required)

“Text your answer to **89080**. Each attempt will cost \$tariff and your standard text rates.”

e.g. Text **murry** to **89080**

### Example 2b – Quiz or Competition (with keyword)

“Text \$keyword and your answer to 89080. Each answer received will be charged at your standard text rates. Each reply will be charged at \$tariff directly to your phone.”

e.g. Text **quiz murry** to **89080**

### Example 3a – Subscription

“To subscribe to \$service Text **join** to **89080**. Standard text rates apply. Each received message will be charged at \$tariff directly to your mobile bill or pre-pay voucher. Service not available to subscribers on the T-mobile network.”

### Example 3b – Subscription – One off Payment (suitable for T-Mobile Networks)

“To subscribe to \$service Text **join** to **89080**. The service costs \$tariff and Standard text rates. This will be billed directly to your mobile phone if pre-pay or to your contract bill. You will then receive X messages.”

In each case, the \$tariff, \$keyword should be replaced with your campaign values.

## Non Premium Rates Services

### Description

Services which are not run at a premium and therefore are not 'self financing' such as brand promotions are not regulated by ISCTIS. However they are affected by the certain regulations notably the 1999 Telecommunications act (Data Protection and Privacy No. 2093)– specifically sections 21- 27

This document will not attempt to make a judgement or interpretation of the articles within this statutory instrument but advises that any campaign manager is familiar with the existence of the act and in particular the Data Protection and Privacy of the article No. 2093.

General working practices and policies.

The noted act defines certain responsibilities and mandatory processes that any service provided to the public must adhere to. This are relatively straight forward and quite obvious. Simplistically these are:

- Ⓞ Costs should be clearly stated
- Ⓞ Supplier should be clearly stated
- Ⓞ Intrusion is prohibited
- Ⓞ Data protection is complied with

Not all of these necessarily apply. For instance the Supplier details are only require if the message is 'unsolicited' and therefore not opt-in. Since Versitec 2000 does not work with companies creating unsolicited campaigns then this hardly applies. Further unsolicited or 'spam' based sendings to mobile terminals will be unacceptable under new European Legislation coming into force in August 2003.

The clear and obvious responsibility to the campaign provider is the cost of the service to the subscriber. For non-premium rate text services the generic: **“Standard Text Messaging Rates Apply”** text or a derivative of is deemed to be sufficient to provide the requisite “costs should be clearly stated” element of the instrument.

## Examples

The primary example noted earlier for all campaigns is:

### Example 1a – Standard message

Standard Text Messaging Rates Apply

### Example 1b - Alternative to standard message

Your standard text messaging tariffs apply.

General notes.

It is not deemed necessary on Mobile Campaigns to add “Ask Bill payer Permission” This is generally considered unnecessary with mobile calls as they are personal communication devices, however this is entirely a decision on the campaign manager.

When running quizzes, consult the section on Gaming.

When running a database collection campaign refer to the section on CRM/Clubs.

## Gaming

British Gaming Law is rather complex and is design to protect both the gamer and institutionalised gaming services (The Lottery for example).

In the Texting Market the all competitions must be either an 'opinion' or a 'game of skill', drawing a winner from a group of people who arbitrarily 'text in' is fraught with problems and should be avoided.

The safest process for revenue generating based competitions (with or without a draw) is to make them a game of skill. Fortunately the definition of skill is not clear and therefore can be open to interpretations.

The Text used in most campaigns successfully are of the manner:

“To win a our fabulous prize of ????????, Text your answer, A,B or C to: 89080.  
Standard Text Rates Apply and all entries cost £1.50 and will charged directly to your mobile.

Multiple attempts are allowed and will be billed at the same rate:  
Question.

Who Won the 1966 World Cup?

- A. Germany
  - B. England
  - C. France
- Answer A, B or C.

Full Terms & Conditions available on WWW.???????.com or writing to the competition organiser at  
Address line 1  
Address line 2  
Address City”

Derivatives of this may be used, applying the rules/suggestion noted earlier in this document.

## CRM/Clubs.

The practice of developing 'text' clubs is often a key element of mobile orientated campaigns. Within this section we outline some of the necessary steps and considerations you should make while developing your campaign

### Consent

Current legislation (within for example the Telecommunications act and Data Protection (DP) Act) prohibits the use and importantly the storage or personal data relating to a minor unless there is consent from the minors guardian. This consent unfortunately is not explicitly defined and again unfortunately no cases have tested the legislation or DP requirements which means that '*consent*' is open to interpretation.

Depending on how you or your legal council wish to interpret the meaning of consent, the following information may help to make a judgement you think appropriate for your campaign.

Consent is required for storage and use of any person (minor) under 16 years of age. In this section we are interested in holding the personal data in relation to a Text Club. The steps needed to ascertain consent are as follows:

1. Age of the subscriber
2. Request consent
3. Receive consent
4. Consent not received or rejected.

Clearly the first step before further personal data is collected is to request the age of the subscriber. Once the age has been collected a decision can be made. If under 16 the subscriber must be asked for a further level of consent. This can either be in the implied (see 1a below) or direct (see 1b below). Implied places the onus of consent on the subscriber, direct places the onus or responsibility on a guardian and uses the concept of the Act and DP legislation of 'best endeavour'.

1a. Implied consent placed the liability of consent proof on the subscriber, text in the manner of:  
***"To join this Text Club, you must have permission from Your Parent. If you have that permission reply back YES"***

1b. Direct consent is where you attempt to directly ask the Parent for their consent. This normally takes the form of either; the parent confirming through a call centre of letter consent (very high levels of consent failures), or asking the minor to ask their parents to text in a code from their mobile. This alternative process from 1a, demonstrates that you have attempted to obtain direct parental consent. Wording is generally of the form:

***"You are under 16, Please ask Your parents to Text this code XXYY1234 to 89080"***

**Which one to Use?**

**For the majority of campaigns the process through 1a is generally sufficient, however in the case where a company is very conscious of their brand and any possible issue's with in-proper consent then 1b has more traceability and a more proven route of 'attempt to obtain consent', for instance it could be argued that in 1a the minor just text back YES, considering they are a minor and have NO legal responsibility (in law) then the legal obligation is with the organisation trying to obtain consent! Therefore it may be more prudent to use this method.**

## **Disclaimer**

**All information within this document must be considered the opinion of the Author. In no way is it to be considered an authoritative article on either the Telecommunications Act, Data Protection Act or the Gaming Act. Consult your own legal council prior to implementing any Premium Rate services or any Club environments where minors maybe involved**