



**THIS AGREEMENT** is made the

**1 BETWEEN**

(1) BMS Solutions Limited (Company Number 6213 700) whose correspondence address is at Regus House, Victory Way, Admirals Park, Dartford, Kent. ("BMS")

(2) (Company Number ) whose correspondence address is at

. ("The Customer")

**2 WHEREAS**

(A) BMS owns and operates a text messaging platform that provides network services that is linked to the mobile telephone networks (the Platform.)

(B) The Customer wishes to make use of certain features of the Platform relating to the tracking alert services within the UK and BMS is willing to offer the SMS Facility to the Customer on the terms and subject to the conditions of this Agreement.

No variation of the terms of this Agreement shall have effect unless by written instrument signed by a duly authorised representative of each of the parties. This Agreement is to the exclusion of all other written or verbal representations, statements, understandings, negotiations, proposals or agreements made in relation to the SMS Facility prior to the Commencement Date

**3 DEFINITIONS**

"Access Date" means the date on which the SMS Server is ready to be accessed by the Customer.

"Agreement" means the BMS Standard Bulk SMS Service Contract, the BMS Standard Bulk SMS Service Charges and the BMS Standard Bulk SMS Terms and Conditions.

"Internetworking Fees" means any fee imposed by a destination network for sending an SMS.

"Public Networks" means any network including but not limited to the Internet or mobile telephone networks.

"Regulatory Body" means any regulatory body whose function it may be (amongst other things) to enforce and administer any codes of practice including without limitation ICSTIS and the Advertising Standards Authority.

"RPI Percentage" means the percentage increase in the UK Index of Retail Prices (All Items) maintained by the Central Office of Information.

"Service User" means a person who is connected to a mobile telephone network.

3.2 Words and phrases used in this Agreement shall have unless the context otherwise requires the definitions used as set out in the Conditions.

**4 AGREEMENT**

BMS Solutions Ltd hereby agrees to provide to the Customer with SMS credits for the purpose of tracking alerts which are subject to the conditions outlined within: Schedules 1 & 2.

**5 DURATION**

This Agreement shall commence on the Commencement Date and (subject to earlier termination in the

**Bodyshop Management Solutions Limited**



manner hereinafter provided) shall continue in force for a minimum period of 12 months. BMS will activate this service upon receipt of initially set-up and cost and direct debit mandate.

- 5.2 An initial one-month trial shall be given to the customer during such time the customer may choose to cancel this agreement by notifying BMS by phone or in writing. Termination of this agreement during the initial trial period will result in all costs incurred by BMS being deducted from the set-up fee as outlined within schedule one.
- 5.3 If this Agreement is to be terminated following the initial one month trial the customer default of its obligations shall pay a sum (by way of agreed compensation for BMS's loss of revenue by reason of such early termination and not as a penalty) equal to the total SMS Facility charge detailed in Schedule 1 ("Total Charges") which would have been payable under the terms of this Agreement, PROVIDED ALWAYS that this Clause 12.

## **6 TRANSMISSION OF SMS TEXT MESSAGES**

- 6.2 Delivery of SMS text messages (SMS)  
The Customer acknowledges that BMS delivers SMS messages via major telecommunications companies and mobile network providers and can therefore only influence the delivery with respect to transmission of SMS messages within the technical constraints imposed by the abovementioned providers. SMS messages submitted via the BMS SMS Server will be transferred to the addressed mobile recipients within seconds or minutes, provided that the recipient's phone is switched on and located in an area covered by his subscribed mobile network provider. The Customer acknowledges that, depending on the recipient's mobile service provider, it may not be possible to transmit the SMS message to the recipient successfully, particularly if the provider does not support SMS delivery at all.

## **7 CUSTOMER OBLIGATIONS**

- 7.2 The Customer shall ensure that no person other than the Customer gains access at anytime to the SMS Facility.
- 7.3 The Customer shall at all times throughout this Agreement comply with BMS's directions issued from time to time regarding or relating to any Short Message and associated services of the Customer and/or the SMS Facility.
- 7.4 Without prejudice to BMS's rights under this Agreement the parties hereby expressly agree that any breach of any of the provisions of this service shall entitle BMS to bar access to the SMS Facility and/or to cease to convey any Short Message or associated services in whole or in part at any time and without notice and BMS reserves the right to regard any breach of any of the provisions of this service.

## **8 BMS'S OBLIGATIONS**

- 8.2 BMS shall on and from the Access Date use all reasonable endeavours to maintain the service 24 hours in every day on every day of the year but BMS shall not be liable (subject to Clause 15.3) for any failure to maintain the service in such manner whether this arises from a technical or other failure in the SMS Facility, the mobile operator Network or otherwise. BMS does not warrant that the SMS Facility or the mobile operator Network or BMS's Internet connection or any Public Network will be fault free or free of interruptions. BMS reserves the right from time to time to improve or alter the SMS Facility as it deems appropriate provided such changes do not substantially change the nature of the SMS Facility. Further BMS reserves the right to suspend the operation of the SMS Facility for the purposes of remedial or preventative maintenance or improvement of the SMS Facility provided that BMS shall use all reasonable endeavours to keep such suspension to a minimum.
- 8.3 The Customer acknowledges that the transmission rate of Short Messages may be governed by the mobile operator network and systems and other factors outside the control of BMS and therefore BMS gives no warranties or guarantees concerning the transmission rate of Short Messages.
- 8.4 If it deems appropriate the mobile operator or BMS shall promote its value added network services provided that the mobile operator or BMS as applicable hereby agrees not to promote or otherwise make reference in its published information to the services provided by the Customer without the written consent of the Customer which shall not be unreasonably withheld.
- 8.5 BMS shall accept fault reports by email to support@bms.co.uk or by telephone on +44 (0) 870 845 8141. There shall be no charge by BMS for receipt of support calls, and no limit on the number of support calls logged.

## **9 BILLING AND PAYMENT TERMS**

### **Bodyshop Management Solutions Limited**

BMS • Regus House, Victory Way, Admirals Park, Dartford, Kent, DA2 6QD  
Tel 0845 1234 051 • Fax 0845 1234 052 • info@bms.co.uk • www.bms.co.uk  
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#### 9.2 Billing

All charges, Charge rates, SMS costs and Inclusive monthly rates exclude VAT. Bills shall be paid in British Pounds Sterling. BMS requires the Customer to pay inclusive SMS's monthly in advance by direct debit. In this regard payment will be due on the Access Date and at monthly intervals from the Access Date thereafter. Any SMS usage allowed in addition to the inclusive amount will be charged at the end of the relevant monthly period and shall be subject to the charges specified in the BMS Standard SMS Service Charges outlined within schedule 2 of this Agreement. BMS reserves the right to change Charge rate plans, minimum billing amounts, Charge rate prices and Charge rate maturities. Because BMS cannot guarantee delivery of the SMS messages to recipients due to possible errors and outages on the part of mobile network providers, BMS does not refund undeliverable SMS messages to the Customer. For the avoidance of doubt, undeliverable messages are charged at the same rate as delivered messages.

Monthly Inclusive SMSs do not "roll-over" into the next month. At the beginning of each monthly accounting period, the Customers account balance will be reset according to the subscribed for Charge rate.

#### 9.3 Delay in payment

In the event of delayed payment, BMS reserves the right to bar the Customer's access to the SMS Server.

#### 9.4 Changes between Charge Rates

Changes to a higher or lower charge rate come into effect at the start of the following monthly billing period. Seven days notice before the next billing period is required to change to a different service plan.

### 10 **FORCE MAJEURE**

Neither the Customer nor BMS shall be liable in respect of any breach of this Agreement (other than failure to make payment of charges when due) due to any cause beyond its reasonable control including but not limited to Act of God, inclement weather, flood or escape or water, lightning or fire, industrial action, or lockouts, the act or omission of Government, any Regulatory Body or other competent authority, war, military operations, or riot, or congestion or non-operation of any of the relevant Public Networks. Notice of Force Majeure must be given to the other party and must include a description of the nature of the event of Force Majeure, its cause and possible consequences. The affected Party will promptly notify the other party of the termination of such event. It is agreed that the Customer's inability to use the SMS Facility or convey SMS messages to any Service Users by reason of failure of any equipment or services not provided by BMS shall not relieve it from payment of BMS's charges.

### 11 **LIMITATION OF LIABILITY**

11.2 BMS shall not be liable for damages resulting from delayed delivery or non-delivery of SMS text messages. Although BMS will make reasonable endeavours to provide the SMS Service 24 hours a day and 7days a week, BMS cannot be liable for any failure to provide the SMS Service howsoever occasioned. The Service, related services and all information, products and other content (including but not limited to third party information, products and content) included in or accessible from the bms.co.uk web site, are provided "as is" and are subject to change at any time without notice to the Customer. To the fullest extent permitted by law, BMS disclaims all representations and warranties (express, implied and statutory, including but not limited to the warranties of merchantability and fitness for purpose, and non-infringement of proprietary rights) as to the services and all information, products and other content (including but not limited to third party information, products and content) included in or accessible from this document or accessible from the bmsd.co.uk web site.

11.3 BMS does not exclude any liability for (i) death or personal injury attributable to the negligence of BMS, its employees or agents; or (ii) direct physical damage caused to the Customer's property and attributable to the negligence of BMS its servants or agents.

### 12 **DEFAULT**

12.2 Either party shall have the right at any time to terminate this Agreement immediately by giving notice to the other party if the other party:-

12.3 commits a breach of this Agreement and fails to remedy the breach within 21 days of receipt of a written notice to do so; or

12.4 commits a material breach of this Agreement; or

12.5 commits any act of bankruptcy.

### 13 **CUSTOMER SUPPORT**

#### Bodyshop Management Solutions Limited

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13.2 BMS shall accept fault reports by email to support@bms.co.uk, or by telephone on 0845 1234 051. There is no charge for support calls, and no limit on the number of support calls logged.

13.3 Faults cannot be repaired if circumstances beyond BMS's control prevent their repair. BMS shall use reasonable endeavors to ensure uptime of the SMS Service.

#### **14 DATA PROTECTION**

14.2 In its handling of data, BMS shall adhere to the Data Protection Act 1998 and any other relevant legislation as amended from time to time. This applies, amongst other things, to the registration, storage and passing on of Customer data.

14.3 The Customer acknowledges that SMS message content is transmitted unencrypted and that access by unauthorised third parties to mobile phone communications, including SMS delivery, is possible.

#### **15 THIRD PARTY RIGHTS**

15.2 The Contracts (Rights of Third Parties) Act 1999 shall not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation arising under or in connection with this Agreement and nothing in this Agreement shall confer on any third party the right to enforce any provision of this Agreement.

#### **15.3 ASSIGNMENT OF RIGHTS AND DUTIES**

15.4 BMS is entitled to assign this Contract to a BMS subsidiary without the approval of the Customer.

#### **16 PROPERTY**

16.2 All communication media and systems associated with the Bluesms.com website and any underlying services remain the property of BMS. By using the Service, the Customer does not obtain any rights for the infrastructure, content or software associated with the Service.

#### **17 JURISDICTION**

17.2 This Agreement and the performance of all obligations hereunder shall be governed according to English Law and the parties hereto hereby submit to the jurisdiction of the English Courts.

#### **18 INTERPRETATION**

18.2 If any term of this Agreement is held invalid, illegal or unenforceable, the remaining terms shall not be affected. You, the Customer, must comply with all laws, regulations, obligations and restrictions which apply to you. This Agreement may not be modified, except in writing signed by an authorised officer of BMS. No failure or delay in enforcing any term, exercising any option or requiring performance, shall be construed as being a waiver of that or any other right.

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### **Schedule 1**

Account set-up fee: £99

#### Package options:

**Option 1:** 150 Text messages - £29.99 per month

**Option 2:** 300 Text Messages - £47.99 per month

**Option 3:** 500 Text Messages - £64.99 per month

**Option 4:** 1000 Text Messages - £99.99 per month

Changes to a higher or lower charge rate come into effect at the start of the following monthly billing period. Seven days notice before the next billing period is required to change to a different service plan.

### **Schedule 2**

Additional credit charged at 25p per message.

All Charges exclude VAT.

### **Disclaimer**

In signing the BMS sales order you are accepting the terms and conditions of service for SMS.

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