

Terms and Conditions

YOU AGREE TO BE BOUND BY THESE TERMS BETWEEN YOU ("THE CLIENT") AND wize mobile which sets out the terms and conditions ("Terms") governing your use of the wize mobile system and Services.

YOU MAY NOT USE THE WIZEMOBILE SERVICE(S) UNLESS YOU AGREE TO BE BOUND BY THESE TERMS. 1. Interpretation 1.1 In these Terms: 'data controller', 'data processor', 'data subject', 'personal data' and 'processing' shall have the meanings ascribed to them in the Data Protection Act 1998; "Agreement" means the Client's agreement to use the Services and pay the Charges subject to these Terms or as otherwise agreed in writing; "Charges" means wize mobile's charges for the Services as agreed between the parties in writing from time to time; "Client" is the legal entity to whom wize mobile are providing the Services pursuant to these Terms; "Intellectual Property" means any and all patents, copyrights (including future copyrights), design rights, trade marks, service marks, domain names, trade secrets, know-how, database rights, and all other intellectual property rights, whether registered or unregistered, and including applications for any of the foregoing and all rights of a similar nature which may exist anywhere in the world in or arising out of the wize mobile business model, the Material, the Trade Mark or the provision of the Services. "Material" includes, in addition to a document in writing, information, databases, computer software (including the Software), designs, drawings, pictures or other images (whether still or moving), the Site, sounds or any other record of any information in any form; "Services" means the provision of the wize mobile data processing services and Software, whereby (a) wize mobile provides the Software to manipulate the personal data collected, (b) wize mobile provides the facilities for the Client to send Multimedia Media Messages to data subjects who have expressly consented to the Client sending them such communication, (c) wize mobile provides facilities for the Client to export the personal data and such other services agreed between wize mobile and the Client from time to time or ancillary to the services detailed above; "Site" means wize mobile's web site from which the Services can be accessed. "Software" means wize mobile's data management, delivery and manipulation software which is made available for use by wize mobile to the Client over the internet as part of the Services; and "Trade Mark" means the " wize mobile" unregistered trade mark and logo and any future registration of either of these marks or any similar mark or application for registration anywhere in the world.1.2Any reference in these terms to 'writing' or related expressions includes a reference to email, communications via websites and comparable means of communication.1.3 Except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes all genders; words denoting persons include firms and corporations and vice versa.1.4 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates in that jurisdiction to the English legal term. 2. Supply of the Services 2.1 Subject to earlier termination and payment of the Charges in accordance with this Agreement, wize mobile shall provide the Services to the Client for the duration of this Agreement.2.2 wize mobile will not disclose any personal data to any business, organisation or individual without the Client's prior express consent, unless required or permitted by law.2.3wize mobile uses a third party to: host the application servers and to provide communication services. That third party undertakes to provide its services at or above industry standards. Accordingly, wize mobile does not warrant that the Services will be uninterrupted, error, bug or virus free or that the delivery or MMS will be without delay.2.4It may be necessary to temporarily suspend the Services from time to time to carry out maintenance of equipment; such suspensions will be limited. However, the Services may also be suspended (in whole or part) where wize mobile or the third party host is obliged to comply with an order, instruction or request of government, a court or other competent administrative authority or an emergency service organisation .2.5wize mobile process information about the Client in accordance with our privacy policy. By using the Site and service, the Client consent to such processing and warrants that all data provided by the Client is accurate.2.6Where the Site contains links to other sites and resources provided by third parties, these links are provided for the Client's information only. wize mobile have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. 3. Charges 3.1The Client shall pay the Charges for the Services in accordance with the payment terms agreed with wize mobile and with payment made in pounds Sterling.3.2wize mobile may alter the level of Charges or the Charges payment terms from time to time on not less than 30 days' written notice. Within 30 days of receiving such notice the Client may notify wize mobile in writing that it wishes to terminate this Agreement with effect from the date of any proposed change in the Charges. wize mobile may then either terminate this Agreement or withdraw its notice. If no such notice is received, the Client shall be deemed to have accepted the changes made by wize mobile.3.3All Charges quoted to the Client for the provision of the Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.3.4wize mobile will invoice the Charges each month on the last day of each calendar month.3.5Payment of the Charges may be made by cheque or bank transfer.3.6Subject to any separate agreement in writing between the parties from time to time, the Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set off or other deduction) to wize mobile within 14 days of the date of each invoice. Time for payment is of the essence.3.8No payment shall be deemed to have been made until wize mobile has received cleared funds.3.9If the Client fails to pay wize mobile any Charges due pursuant to this Agreement, then without limiting any other rights it may have, wize mobile shall be entitled under the Late Payments of Commercial Debts (Interest) Act 1998 to charge interest (both before and after any judgement) on the outstanding amount on daily basis from the due date until the outstanding amount is paid in full.3.10If the Client fails to pay within 14 days of the date of each invoice, wize mobile retain the right to disable the account until such time that any outstanding invoices have been settled. 4. Data, Data Protection & Indemnity 4.1The Client is the data controller in respect of any personal data that wize mobile processes in the course of providing Services. The personal data is derived from that provided by the Client and is not checked or monitored by wize mobile and, accordingly,

wizemobile cannot be held liable or responsible for the accuracy, contents or use of such personal data. The Client owns any personal data stored within wizemobile.

4.2 wizemobile contracts a third party to store data (including personal data) and back it up. Whilst that third party is obliged to carry out back-ups at regular intervals (at least daily), the Client must make its own interim back-ups of such data, particularly if it adds a significant amount of data over a short time period. wizemobile shall have no liability for any loss or damage, however caused, arising from any loss of such data.

4.3 It is a condition of this Agreement that the Client complies with all applicable data protection legislation (including, if located in the European Economic Area "EEA", any locally applicable legislation giving effect to EC Directive 95/46/EC, such as the provisions of the Data Protection Act 1998 or official guidance). In particular, the Client shall: (a) if located or operating in the EEA, ensure that it is notified under applicable legislation; (b) take appropriate organisational and technical measures against unauthorised or unlawful processing; (c) obtain express, specific and informed consent when obtaining the personal data from data subjects; (d) if located or operating in the EEA, only transfer personal data outside the EEA with, and only to the extent of, any express and informed written consent of the relevant data subject; and (e) permit wizemobile to audit its compliance with this clause 4.3 and shall provide access to all its premises and systems upon being given reasonable notice.

4.4 The Client shall fully indemnify and keep indemnified wizemobile against any losses, claims, fines, damage or expenses (including legal and professional expenses) of whatsoever nature (whether direct, indirect or consequential) arising as a result of or in connection with any breach of this clause 4 and/or any applicable data protection legislation.

5. Client's Obligations & Indemnity

5.1 It is essential that the reputation of the Services and the wizemobile brand remain undamaged accordingly, it is a condition of this Agreement and the provision of the Services by wizemobile that the Client does not (a) in the sole opinion of wizemobile, use the Services so as to bring the service into disrepute or otherwise bring the Services or wizemobile into disrepute; or (b) use the Services to send unsolicited, or unauthorised advertising, promotional material, 'junk messages', 'spam' or any other form of solicitation to any data subjects or third party; or (c) use the Services in a manner which is unlawful, harmful, threatening, abusive, harassing, tortuous, indecent, obscene, libellous, menacing or invasive of another persons privacy; or (d) use the Services in a manner which infringes the Intellectual Property, proprietary or personal rights of any third party, including data subjects; or (e) misuse the Site by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful; or (f) attempt to gain unauthorised access to the Site or Services, the server on which the Site or Services are stored or any server, computer or database connected to the Site or Services; or (g) attack the Site or Services via a denial-of-service attack or a distributed denial-of service attack.

5.2 It is a further condition of this Agreement that the Client agrees: (a) to comply, and to ensure that all use of the Services complies, in all respects, with all regulations, directions, codes of practice and other rules and guidelines, mandatory or otherwise, promulgated from time to time by regulators (collectively, 'Codes'); (b) that where wizemobile is advised in writing by a regulator that the Client is or has been in breach of any Code, wizemobile shall be entitled to act on any request or recommendation by the regulator for access to be barred to such Services as the regulator may specify for such periods as the regulator specify; (c) to provide all reasonable assistance to wizemobile in connection with wizemobile's compliance with any requirements or conditions which are at any time imposed by law or any regulator which are applicable to or affect the Services. (d) to provide the regulator with such information or material relating to the Services or a future service as the regulator may reasonably request in order to carry out any investigation in connection with the Services.

5.3 The Client will keep its password and other access details for use with the Services confidential and restricted to those members of staff who need to know such details and shall ensure all such staff are aware of the confidential nature of such information and treat it accordingly. The Client shall notify wizemobile immediately it believes that such information is no longer secret. The Client is solely responsible for all activities that occur under the Client's password or account.

5.4 The Client shall fully indemnify and keep indemnified wizemobile against any losses, claims, fines, damages and expenses (including legal and professional expenses) of whatsoever nature (whether direct, indirect or consequential) arising as a result of or in connection with any breach of this clause 5 and/or any applicable legislation.

6. Ownership & Use of the Intellectual Property Rights

6.1 The Client acknowledges and wizemobile warrants that is the proprietor of the Intellectual Property in the Services and Materials.

6.2 wizemobile hereby grants to the Client a personal, non-exclusive and non-transferable licence to use the Materials and Trade Mark for the duration of this Agreement for its own business purposes and strictly on these Terms.

6.3 Use of the Materials is on the following terms: (a) "use" of the Materials shall be restricted to use over the internet and for the purpose of utilising the Services only; (b) the Client shall have no right to copy, translate, reproduce, adapt, reverse engineer, decompile, disassemble, create derivate works or modify the Materials in whole or part except as permitted by law; (c) the Client shall have no right to sell, rent, lease, transfer, assign or sub-licence the Materials to any third party; (d) the Client shall have no right to make any representations, warranties or guarantees with regard to the Materials or wizemobile; and (e) the Client acknowledges that the Materials will not be treated as goods within the meaning of the Sale of Goods Act 1979.

6.4 The Client undertakes not to do or permit to be done any act which would or might jeopardise affect or invalidate any registration of the Intellectual Property, or application for registration, nor to do any act which might assist or give rise to an application to remove any of the Intellectual Property from an official register or which might prejudice the right or title of wizemobile to the Intellectual Property.

6.5 All use of the Intellectual Property by the Client shall be for the benefit of wizemobile and the goodwill accrued to the Client arising from its use of the Intellectual Property (but no greater or other goodwill) shall accrue to and be held in trust by the Client for wizemobile which goodwill the Client agrees to assign to wizemobile at its request and own cost at any time, whether during or after the term of this Agreement.

6.6 The Client shall use the Trade Mark in the form stipulated by wizemobile from time to time and shall observe any reasonable directions given by wizemobile as to colours and size of the representations of the Trade Mark and their manner and disposition on the Client's products, packaging, labels, wrappers and any accompanying leaflets, brochures or other material. The Client shall be responsible for ensuring that all other requirements relating to labelling, packaging, advertising, marketing and other such matters are complied with.

6.7 The

use of the Trade Mark by the Client shall at all times be in keeping with and seek to maintain its distinctiveness and reputation as determined by wizemobile and the Client shall cease any use to the contrary as wizemobile may require.6.8The Client shall not use any mark or name confusingly similar to the Trade Mark in respect of any of its goods or use the Trade Mark as part of any corporate business or trading name or style.6.9The foregoing obligations as to Intellectual Property rights shall remain in full force and effect notwithstanding any termination of this Agreement.6.10The Client shall as soon as it becomes aware thereof give wizemobile in writing full particulars of any use or proposed use by any other person, firm or company of a trade name, trade mark or get up of goods or mode of promotion or advertising which amounts or might amount either to infringement of wizemobile's rights in relation to the Intellectual Property or to passing off.6.11If the Client becomes aware that any other person, firm or company alleges that the Trade Mark is invalid or that use of the Trade Mark infringes any rights of another party or that the Trade Mark is otherwise attacked or attackable the Client shall immediately give wizemobile full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.6.12wizemobile shall have the conduct of all proceedings relating to the Intellectual Property and shall in its sole discretion decide what action if any to take in respect of any infringement or alleged infringement of the Intellectual Property or passing off or any other claim or counterclaim brought or threatened in respect of the use or registration of the Intellectual Property. The Client shall not be entitled to bring any action relating to the Intellectual Property in its own name.6.13The Client undertakes to indemnify and keep indemnified wizemobile against all losses, claims, fines, damages and expenses (including legal and professional expenses) of whatsoever nature (whether direct, indirect or consequential) arising as a result of or in connection with any infringement (whether actual or alleged) by the Client of any Intellectual Property.

7. Confidentiality

7.1 Subject to clause 7.2, neither party shall disclose at any stage to any third party any information relating to the other party including information relating to (a) Intellectual Property, software (including the Software), materials (including the Materials), products, systems, operations, processes, plans or intentions, product information, know how and market opportunities; and (b) business, identity and affairs and the business, identity and affairs of its directors, officers, employees, customers and potential customers, suppliers, agents, or subcontractors and the like, which comes into the possession of the other party. These Terms are also confidential.7.2The provisions of clause 7.1 shall not apply to any information which (a) is in or enters the public domain other than by a breach of clause 7.1; or (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of its receipt; or (c) is obtained from a third party who is lawfully authorised to disclose such information and is provided to the receiving party without any obligation of confidentiality; or (d) is authorised in advance for release by the disclosing party.7.3 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

8. Wizemobile's Warranties and Liability

8.1 wizemobile warrants to the Client that the Services will be provided using reasonable care and skill.8.2Nothing in this Agreement shall limit or exclude either parties' liability for death or personal injury howsoever caused or for fraud.8.3wizemobile shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Material which is incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form.8.4Without prejudice to clause 8.2 and save as expressly provided in these Terms, wizemobile shall not be liable to the Client by reason of any representation (unless fraudulent), or any duty at common law, or under the express terms of this Agreement, for (a) loss of profit, (b) loss of revenue, (c) loss of savings or anticipated savings, (d) loss of data, (e) loss of use of software or data, (f) loss or waste of management or staff time, (g) any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of wizemobile, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client.8.5Without prejudice to clause 8.2, the entire liability of wizemobile under or in connection with this Agreement shall not exceed the amount of the Charges received by wizemobile from the Client in the preceding 12 months.8.6The entire risk as to use and performance of the Services and Materials or the information therein or derived therefrom is with the Client. Accordingly, wizemobile does not warrant that the Services or Materials will meet the Client's requirements. Except as expressly stated in this Agreement, the Services and Materials are provided on an "AS IS" basis only. Accordingly and to the maximum extent permitted by applicable law, wizemobile hereby disclaim all warranties and conditions, whether express, implied or statutory, regarding the Services and Materials, including, but not limited to, any warranty of merchantability, satisfactory quality or fitness for a particular purpose and non-infringement of third party rights.8.7Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of certain liability. Accordingly, some of the warranties, limitations and exclusions may not apply to the Client.

9. Force Majeure

Neither party shall be responsible to the other party in circumstances where some or all of the obligations under this Agreement cannot be performed due to circumstances outside the reasonable control of the defaulting party, including an Act of God, change in legislation, fire, explosion, flood, accident, strike, lockout or other industrial dispute, war, terrorist act, riot, civil commotion, failure of public power supplies, failure of communication facilities, default of suppliers or sub-contractors, or the inability to secure computer processing facilities (including those of the necessary quality or security), obtain materials or supplies and, in all cases, the inability to do so except at increased prices (whether or not due to such causes). However, if such circumstances persist for more than 28 days, the non-defaulting party may terminate this Agreement and all Charges due to wizemobile up to the date of termination shall become due.

10. Suspension and Termination

10.1 wizemobile may suspend the provision of Services to the Client if payment of any Charges is overdue (whether or not disputed by the Client).10.2wizemobile may suspend the provision of Services to the Client if their account remains inactive for a period of 13 months or more (whether or not disputed by the Client).10.3wizemobile may suspend the Services (or any part thereof) at any time without notice if in the sole opinion of wizemobile the use of the Services by the Client damages, or threatens, to damage the security or stability of the Site, Software, or services provided by wizemobile to other clients and this shall include any use of the MMS delivery services by the Client.10.4wizemobile may suspend or terminate (at wizemobile's sole discretion) this Agreement (and Services)

forthwith on giving written notice if: (a) notwithstanding sub-clause (b) below, the Client breaches its obligations under clauses 4.3, 4.4 or 5.1 to 5.4 inclusive; or (b) if the Client commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 14 days after being required by written notice so to do; or (c) if the Client becomes insolvent or bankrupt, enters into an arrangement with creditors, has a receiver or administrator appointed or its directors or shareholders pass a resolution to suspend trading, wind up or dissolve the company other than for the purposes of amalgamation or reconstruction or it ceases, or threatens to cease, trading.

10.5 Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to at law or under this Agreement and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including the warranties and indemnities contained in this Agreement.

11. Effects of termination Upon termination of this Agreement for whatever reason: (a) there shall be no refund of any element of the Charges; (b) all unpaid Charges shall become immediately due (including on a pro rata basis where part of a periodic charge charged in arrears is due); (c) wizemobile will be under no obligation to retain any data (including personal data); and (d) the Client shall cease using the Materials.

12. Disputes

12.1 In the event of any dispute arising between the parties in connection with this Agreement, senior representatives of the parties shall, within 10 days of written notice being given by either party to the other, meet in good faith at a neutral venue of wizemobile's choosing in England in an effort to resolve the dispute.

12.2 Any proceedings relating to any dispute shall take place in England and be conducted in the English language.

13. Transfer and Sub-contracting

13.1 wizemobile may at its sole discretion assign, transfer, sub-contract or deal in any other manner with all or any of its rights under this Agreement or any part thereof to a third party.

13.2 The Client may not assign, sub-contract, sub-licence or otherwise dispose of this Agreement or any part thereof or purport to do the same without the prior consent in writing of wizemobile.

14. Communication & Notices

14.1 The Client hereby undertakes to have, and keep wizemobile informed of, a valid and regularly monitored contact email address, telephone number and registered company address for the duration of this Agreement. The Client will be deemed to have read notices sent to the contact email address supplied and wizemobile may act on that basis. Unless otherwise notified wizemobile's contact email address is info@wizemobile.co.uk.

14.2 A notice required to be given by either party to the other under these terms shall be given in writing and shall be given in person or addressed to the other party at its registered office, principal place of business or such other physical or electronic address as may at the relevant time have been notified pursuant to this provision to the party giving the notice (and clause 14.1 shall be effective) - save that notices or proceedings relating to a dispute shall be given in person or by post.

14.3 Any such notice shall be deemed to have been received: (a) if delivered personally, at the time of delivery; (b) if sent by post within the United Kingdom, 2 Business Days after posting; and (c) if sent by airmail 5 Business Days after posting; Providing that if deemed receipt occurs before 9am or after 5pm on a Business Day then the notice shall be deemed to have been given on the next Business Day. For the purposes of this clause on a "Business Day" means any day which is not a Saturday, Sunday or a public holiday in England and/or the place to which the notice is sent.

15. General

15.1 The Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and, supersedes any previous agreement or understanding whatsoever whether oral or written relating to the subject matter of this Agreement. Nothing in this clause 15.1 or any other provision in this Agreement shall operate to exclude or limit either party's liability for fraud.

15.2 wizemobile may at its sole discretion, change or modify the Terms or Services upon giving the Client 30 days' written notice of the same. Within 14 days of receiving such notice the Client may notify wizemobile in writing that it wishes to terminate this Agreement with effect from the date of any proposed change to the Terms or Services and wizemobile may then choose to alter the Terms or Service or withdraw the notice. If no such notice is received, the Client shall be deemed to have accepted the changes made by wizemobile.

15.3 Each party warrants to the other that they have the power and authority to enter into this Agreement and perform its obligations under this Agreement.

15.4 The Agreement shall not be deemed to create any partnership or employment relationship between the parties.

15.5 Save for any holding company, subsidiary or associated company of wizemobile and any proprietor of the Intellectual Property, a person who is not party to this Agreement shall have no rights (under the Contracts (Rights of Third Parties) Act 1999) or otherwise to enforce any term of this Agreement and the provisions of that Act are hereby expressly excluded. For the purposes of this clause, the words "subsidiary" and "holding company" have the meanings given to them by section 736 of the Companies Act 1985 (as amended).

15.6 No act, failure or delay to act, or acquiescence by wizemobile in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right or in any way prejudice any right of wizemobile under this Agreement, and no waiver by wizemobile of any breach of this Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver or relaxation whether partly or wholly of any of the terms or conditions of this Agreement shall be valid only if in writing and signed by or on behalf of wizemobile and shall apply only to a particular occasion and shall not be continuing and further shall not constitute a waiver or relaxation of any other terms or conditions of this Agreement.

15.7 If any provision of this Agreement is held by any court or other competent authority to be unlawful, invalid or unenforceable in whole or in part, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

15.8 The Agreement shall be considered to be a contract made in England and without prejudice to clause 12 English law shall apply in all respects to this Agreement and the parties agree to submit to the exclusive jurisdiction of the English courts.