

FORMATION PRINT AND DESIGN LIMITED (“Formation”)
COMPANY REGISTERED IN ENGLAND WITH NO 05271107
8 SMOKEHOUSE YARD
44-46 ST JOHN STREET
LONDON EC1M 4DF

Overview – Formation is to provide bulk text messaging and/or premium SMS billing payment and/or mobile web payment services to the Client, known as txt4ever, txt4everywhere and immedia24.

The client is responsible for information used in the messaging and billing systems. These include Contact Lists and for content including text, pictures, sound and or video for WAP mobile telephone users. Where personal information is stored The Client should be compliant with the relevant legislation, for example the Data Protection Act 1988 and have a published privacy policy.

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

A. Services to be provided by Formation

(i) provide the operation of an sms messaging system, known as an sms console

(ii) provide the operation of a billing service through [sms on mobile/ cellnet*] telephones (“the billing service”)

(iii) upon receiving confirmation in writing or via a website form, that the advice has been accepted to institute the operational facilities to provide the sms console or billing service

(iv) to monitor and maintain the sms console or billing service, introduce enhancements to the service as agreed in writing from time to time with the Client

(v) to provide an online verification service to record the receipt by the user of the Client’s services and for billing services, the gross sums of money due for such services and records those payment that have been received by Formation from a gateway provider.

(vi) Formation shall keep the Client informed at regular intervals concerning the operation of the sms console, billing service and provide such other information as the Client may reasonably require

(vii) Account to the Client for the cost of messages sent and the sum received from the gateway provider less any commission (set out on the console website) on a monthly basis

B. Payment and Commission (for billing services)

(i) Formation shall deduct from any sum received from the gateway provider a commission for the services it provides to the Client details of which are set out on the console website, or by written agreement. Such agreement may be amended at any stage by Formation giving the Client not less than 14 days notice in writing.

(ii) Formation shall notify the Client within five working days (which expired on the said last working day. For the purposes of clarity for this agreement a working day shall mean a day when the banks are open for normal business in the City of London) of the last working day of each calendar month of the total amount received from the gateway provider for Client services during the previous monthly period, which the Client shall then invoice to Ping Corp. Formation shall make every reasonable endeavour within three working days of receipt thereof, either by cheque or electronic payment, to make payment of the sum received from the gateway provider less its commission. Time for payment shall not be of the essence.

(iii) Formation shall keep all monies it receives from the gateway provider, less any commission for which it is entitled, in a separate clients' account

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

C. Refunds to The Client

(i) If the Client wishes Formation to make a refund it shall forthwith notify Formation in writing providing full details of the refund and the relevant amount.

Refunds will only be made where there has been a failure of service for a substantial period of time.

Formation shall not under any circumstances

make or deal with any refunds without the express written notification of the Client. Unless otherwise agreed in writing with Formation all refunds shall be paid within three working days.

Refunds can only be made to the person from whom funds were originally received. [any refund made shall not be included in the calculation of any commission to be paid to Formation under paragraph B above]

D. Costs and Expenses

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

E. Obligations on the Client

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

(ii) the Client shall make its best endeavours to keep and maintain confidential any and all passwords. Where it knows, believes or has reason to believe that any such confidentiality has been

compromised it shall forthwith inform Formation by email through the address published on the website or at such other address as Formation may from time to time notify to the Client.

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

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

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

D. General Provisions

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

a. Any of the services is affected by court order or legal process or any rule, regulation or guideline that is recommended in the telecommunications or electronic media industries

b. Any failure howsoever arising from a breakdown of computer equipment or any server or electronic process

c. For any act of force majeure; being any act of god, strike, lock out or any other reason beyond the control of Formation

d. Any sums due hereunder to Formation shall be invoiced and paid by the Client in Pounds Sterling and in the event that for any reason the Client is affected by withholding tax or taxes, such sum shall be remitted to Formation which after payment of any such tax or taxes shall equal the amount due to Ping Corp. Sums due to the Client shall be paid by Formation to the Client in Pounds Sterling and if in any other currency at the rate applicable at the date of payment less any payable conversion costs.

(ii) If a dispute should arise concerning the operation of this agreement which Ping

Corp or the Client are unable to resolve, either Formation or the Client may at any

stage refer the dispute to an independent third party to be agreed by the Client and

Formation (or in absence of agreement within one week of notice from

Formation or the Client, to be appointed by the President for the time being of the Law Society of England and Wales) who acting as expert and not arbitrator can to resolve the matter.

Any decision made by such third party shall be made in writing and delivered to the Client and Formation.

F. Termination

(i) this agreement shall become effective from the date it is executed by the Client and shall continue for a minimum period of twelve months and thereafter until the Client gives to Formation not less than one months notice in writing terminating the agreement

(ii) within three working days of such termination Formation shall release all monies it holds on behalf of the Client to the Client or as it may in writing otherwise direct. Notwithstanding the foregoing in the event that Formation is owed any sums by way or commission or there is any expenses deductible, the sum remitted to the Client shall be the amount less such commission or expenses.

Under no circumstances are any amounts, which may have been paid to Formation or deducted by Formation for past or future expenses refundable to the Client unless Formation otherwise agrees in writing with the Client

G. Warranties and Exclusions

(i) During the course of this agreement Formation shall use its reasonably endeavours to provide the Client services without interruption. In the event that a fault occurs or a service is for any reason prevents in full or in part the proper operation of the Client service, Formation shall made every reasonable endeavour to resolve the matter at its own cost, but under no circumstances be liable to the Client for any indirect or consequential loss which the Client may suffer (which shall include but not be limited to any loss of profits, damages, costs of expenses howsoever arising).

(ii) Subject to the foregoing all other warranties, terms and undertaking, express or implied whether by statute, common law or custom are hereby excluded to the fullest extent permitted by the law

(iii) Subject to any statutory provision to the contrary the maximum liability to Formation arising under this agreement for one or a series of connected events shall be limited to an aggregate liability of £1,000

H. Notices and Law

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

(ii) This agreement shall be governed and construed in accordance

with English Law and Formation and the Client agrees to submit to the non exclusive jurisdiction of the English Courts