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# CLEARCOURSE BUSINESS SERVICES LIMITED TRADING AS INSTAGIV

## TERMS OF SERVICE

### TERMS & CONDITIONS

You may present this system as your own on the understanding that as representatives of ClearCourse Business Services Limited you will only allow organisations registered as a charity with HMRC, Phone-paid Services Authority and the Charities Commission of England & Wales, The Office of the Scottish Charity Regulator, or the Charity Commission for Northern Ireland to register.

***This is a binding agreement enforceable by ClearCourse Business Services Limited. If you do not agree to the terms of this service agreement, do not indicate agreement with the statement on our web site registration form: "I agree to the terms and conditions." the registration process will terminate. You will not be given access to the service.***

### Your Responsibilities:

- i. You understand that use of any product or service that **(IG)** provide is subject to these terms and conditions. These terms and conditions may be amended from time to time. Minor changes will be notified via the Instagiv platform and continued use of services will be deemed to be your acceptance of amended terms. Major changes in terms in conditions will be notified to you by email. You will have 30 days' notice to query any major changes otherwise they will be deemed to be accepted.



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- ii. You are responsible for obtaining and maintaining all computer software, hardware and communications and any other equipment required to use the Service.
- iii. As the system is accessed via the internet, you are responsible for paying all third party access charges such as ISP or telecommunications incurred.
- iv. You will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the **(IG)** Software.
- v. You will not modify, translate, or create derivative works based on the **(IG)** Software and Service.
- vi. You will not rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the **(IG)** Software and Service.
- vii. You will not use the **(IG)** Software and Service for the benefit of a third party.
- viii. You understand and agree that the **(IG)** Software is proprietary. You agree not to publish or disclose to third parties any evaluation of the **(IG)** Software without our prior written consent.
- ix. You acknowledge that **(IG)** retains exclusive ownership throughout the world of all Software, any portions or copies thereof, and all rights therein. Upon termination of this Service Agreement for any reason, you will cease to use and have access to the Software.

In addition;

- i. You will not use the Software and the Service for creating or sending junk mail, spam advertising, or spamming in any form. By using the service you agree to abide by any applicable laws. Your messages must also clearly state the identity of the sender and how the recipient can opt out of receiving your messages.
- ii. You agree not to transmit or permit anyone to transmit any unlawful, harassing, libellous, defamatory, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable material of any kind.
- iii. You will only use the Software and the Service for lawful purposes, and in compliance with all applicable laws including, without limitation, copyright, trademark, patent, intellectual property, obscenity and defamation laws, whether statutory or common-law in nature.



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- iv. You will not use the Software and the Service for any unlawful activities.
- v. You agree to defend, indemnify and hold **(IG)** harmless against any claim or action that arises from your use of the Software and the Service in an unlawful manner or in any manner inconsistent with the restrictions and policies of this agreement.
- vi. You will not create or use a Sender ID which deliberately hides your identity, infringes copyright and/or trademarks, or attempts to disguise your message as from another party or organisation. Any person, business or organisation will have their service terminated immediately if it is found that any of the above has been breached.
- vii. You will not use the Software and the Service to compete against **(IG)**.
- viii. You are provided use of one or more keywords on our shortcode by prior arrangement in addition to the service described above. Use of the number is strictly monitored and activity is recorded. Neither keywords nor the shortcode are owned by you and **(IG)** reserve the right to withdraw any keywords, the use of the shortcode or any other part of the service without notice at any time if payment is not made for such services within the time periods agreed. Where part of or all of the services are withdrawn; we cannot guarantee that the same services can be provided after being withdrawn.
- ix. The dedicated short code can only be used as a Sender ID to enable two way messaging from your **(IG)** account. You are not permitted to use the **(IG)** platform with a SMS broadcasting service provided by a third party other than **(IG)** without prior arrangement. This will be classed as misuse and we reserve the right to terminate the service and your access to any account you hold with us immediately and may seek take legal action. All numbers sent through our systems are recorded to provide an accurate way for clients to opt in or out of receiving messages sent via our systems. By using a third party system you will be deemed to be attempting to override this facility.
- x. If we believe there has been misuse of any part of the system using the shortcode, **(IG)** reserve the right to contact any clients to gain information and/or statements. We have a legal responsibility under the regulations set out by OFCOM and Phone-paid Services Authority (the short code regulatory body) to protect a person or persons from attempted misuse of the services we provide. The only other time that **(IG)** will contact a client is at your request, or if there is a technical issue.

- xi. Where the service is being used for Charity Donations, **(IG)** make a small charge on every donation received to cover costs of providing the service. It is the charities sole responsibility to claim any gift aid they are entitled to on their donations raised. No gift aid or similar benefit is claimed by **(IG)** in respect of any donation. All donations are subject to the normal network/aggregator fees. Operator Fee's may also apply. As these are third party fees they are subject to change and outside of our control.

## **Payment & fees relating to reverse billing services (Outpayments):**

- i. All monies relating to donations raised are paid approximately 60 days in arrears of the month end in which they were raised, and are subject to successful completion of the transaction with the mobile networks.
- ii. Each network operates different payment procedures in respect of out payment amounts. Out payments from T-Mobile and Virgin can be up to 90 days in arrears.
- iii. A report is available via your **(IG)** dashboard to check revenue generated, and any amount owed to you. We will send a remittance advice each month that you are due to receive an out payment indicating the amount receivable by you.
- iv. Your raised amount will accumulate monthly until it reaches or exceeds a £75 threshold. Should you wish to receive your outpayment if below this £75 threshold, you must notify us in writing and pay an administration fee of £10.00.

## **Marketing of Reverse Billing and Premium Rate services:**

- i. When offering a premium rate service, you must clearly state the charges that the customer will pay. This should consist of the reverse billed charge being applied and that the user will also pay one standard text message at that network rate.
- ii. Premium rate services must also clearly state who it is available to. This will normally be persons over the age of 16 or those with permission from the bill payer.
- iii. Incorrectly displaying the charges of the service, not displaying the charges, making the charges illegible or providing misleading information to customers may result in immediate termination of the reverse billing service without notice, and may result in action against you by Phone-paid Services Authority.



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**Subscription Services:**

- i. Where a reverse billed subscription service is provided to your clients, the message sent to the client must contain clear opt out instructions.

**Use of own data:**

- i. We provide a facility to upload your own data and numbers to the system. Any person added to the system should be sent a message informing them of the intended use of their personal data and details of the service you are providing and giving clear opt out instructions.
- ii. Where a customer requests to stop the service, a notification will be sent to your dashboard asking for their number to be removed, but the responsibility to ensure no more messages are sent to the client remains with you.

**Keywords:**

- i. Keywords are charged on a per keyword basis, as detailed by your account manager, notwithstanding special offers. Keywords cannot be changed or transferred once activated on the networks.

***You have additional responsibilities set forth elsewhere in this agreement.***

**Our Responsibilities:**

**i. What You Receive Under This Agreement:**

- (IG)** grants to you a non-sub licensable, non-exclusive and non-transferable license or right to use our service pursuant to the terms and conditions set forth in this agreement and as they may be modified on our website.
- (IG)** does not guarantee the continuous availability of the service or of any specific feature. **(IG)** will inform you via its website only of any significant



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changes to the Service or this Agreement. Should the system become inaccessible for whatever reason, we will endeavour to address the issue within 4 hours. Active Campaigns will continue uninterrupted with information being added should unexpected downtime occur, unless there is a fault with the Mobile Phone Operators or the Aggregator Provider, for which **(IG)** have no control, but attempts to recover data will be instigated in a timely manner, dependent upon circumstances.

- **(IG)** provide a built-in system to monitor the throughput of messages.
- **(IG)** cannot guarantee message delivery to the end user once the network has accepted your message as third party networks form part of the service. Reports are provided for you to identify why messages cannot be delivered and it is your responsibility to de-activate or quarantine undeliverable/problem numbers. Any message accepted by the network is chargeable.
- **(IG)** are not responsible for validating the numbers contained in your database or uploaded files, except for checking if each number has the correct number of digits or is input in the correct format.
- **(IG)** only provide the service for use in the United Kingdom, Northern Ireland, and The Isle of Man.

## ii. **Warranty and Disclaimer.**

- The service is provided "as is" without warranty of any kind. **(IG)** disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose and noninfringement.
- **(IG)** does not represent or warrant that the service will be uninterrupted or error-free, that defects will be corrected, or that this site or the server that makes it available, are free of viruses or other harmful components. The **(IG)** system is a live cloud-based platform with continuous improvements being made at client request or through internal upgrades.



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**iii. Limitation of Liability:**

- (IG)** liability (including, but not limited to, liability arising out of contract, tort, strict liability, breach of warranty or otherwise), will be limited to the fees paid by you in the two (2) months prior to the act or omission that gave rise to the liability.
- (IG)** shall not be liable for loss or inaccuracy of data, loss of profits or revenue, or indirect, special, incidental or consequential damages (including the cost of any substitute procurement), foreseeable or not and even if **(IG)** has been advised of the possibility of such damages. Any material downloaded or otherwise obtained through the use of the service is at your risk.
- You will be solely responsible for any damage to your computer system or network, or loss of data that results from use of the service. Data recovery will be attempted under the proviso that **(IG)** is not responsible for data corruption from third party sources.

**iv. Support:**

- (IG)** or its designee shall provide e-mail support and also telephone support to paid service customers. It has no obligation to provide you with hard-copy documentation, upgrades, enhancements, modifications, or other support unless there is a separate written contract to that effect.

**v. Provision of Contact and Billing Information and Payment of Fees:**

- Your failure to pay a bill may be considered a breach of this agreement, and **(IG)** may terminate service as a result of your breach.

**vi. Passwords and Security.**

- You will choose all applicable passwords to use in connection with the Service.
- You are responsible for maintaining the confidentiality of your passwords and account.
- You are entirely responsible for any and all activities that occur under your account. You shall insure that you exit by form of 'Logout' from your account at the end of each session.
- You shall notify **(IG)** immediately of any unauthorised use of your account.
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- You may not allow any third party, related or unrelated, to use your account, unless they have been granted the use of the service as a Sub User. All Terms and Conditions still apply and it is your responsibility to ensure that your account is operated under these Terms and Conditions.
- **(IG)** cannot and will not be liable for any loss or damage arising from your failure to comply with these requirements.

**vii. Termination of Service.**

- Either party may terminate this Service Agreement by notifying the other party in writing at least thirty (30) days before the termination date.
- **(IG)**, in its sole discretion, may terminate your use of the Service if you fail to comply with this Agreement. No refunds will be given and any unused messages will be lost.
- You will pay in full for the Service up to and including the last day that a keyword is live on the system. To cancel the Service or change the type of service, you must contact us in writing or by closing all keywords through the “my account” area of the platform.
- **(IG)** will remove the data of an account after termination following full and final donations monies being processed.
- Upon expiration or termination of Service, you will immediately cease all use of the Service, including the **(IG)** Software and any documentation. Termination is not an exclusive remedy. All other remedies will be available. Your payment obligation will survive termination.
- You can at your own cost, request development changes specific to your needs, exclusive of regulatory requirements.
- Should you disagree with any of our terms and conditions, your sole and exclusive remedy is to discontinue the Service.
- A refund of fees may be paid if the account has been used correctly and we are notified in writing within 28 days of account inception. If **(IG)** terminate the service due to a breach of this agreement or any applicable laws governing use of such services, no refund of fees will be given.





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**viii. Third Party Links.**

- (IG)** may provide links to other internet sites or resources. We have no control over such sites and resources. You therefore agree that **(IG)** is not responsible for the availability and content of other internet sites or resources. You agree further that **(IG)** does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.
- You agree that **(IG)** shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

**ix. Non-Waiver of Additional Rights.**

- This Agreement is between **(IG)** and you. It is not for the benefit of any third party, whether directly or indirectly (including any user accessing the Service by means of an account established by you). The failure of either party to exercise any right provided will not be deemed a waiver of any further rights.

**x. Effect of Invalidity of a Provision of This Agreement.**

- If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this agreement will otherwise remain in full force and effect and enforceable.

**xi. Non-Assignability of This Agreement.**

- This Agreement is not assignable, transferable or sub-licensable by you except with **(IG)** prior written consent.

**xii. One Year to Bring a Claim.**

- Both parties agree that any cause of action or claim arising out of, or related to this Service and this Agreement, must be filed with a court or other governmental agency having jurisdiction within one (1) year after the cause of action or claim arose. Otherwise, the cause of action or claim is barred.

**xiii. Sole Agreement of the Parties.**

- This Agreement is the complete and exclusive statement of the mutual understandings of the parties. It supersedes and cancels all previous or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All modifications must be in writing signed by both parties, except as otherwise provided herein. There are no oral agreements or side agreements of any type.



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**xiv. No Agency Created By This Agreement.**

- No agency, partnership, joint venture, or employment is created as a result of this Agreement. You do not have any authority to bind **(IG)** in any respect.

**xv. No Solicitor Fees or Costs Available.**

- In any action, complaint, administrative proceeding, informal complaint to any court or agency, to enforce rights under this Agreement, neither the prevailing nor the losing party will be entitled to recover costs and/or fees.

**xvi. Notices.**

- All notices must be in writing.
- A notice is deemed to have been given:
  - i. When received, if personally delivered;
  - ii. When receipt is electronically confirmed, if transmitted by facsimile or email;
  - iii. The day after it is sent, if sent by next-day delivery by recognised overnight delivery service; and
  - iv. Upon receipt, if sent by certified or registered mail, return receipt requested.

**xvii. Agreement in English.**

- This Agreement and all related documents have been prepared in English with the consent of the parties.

**xviii. Definitions**

The definitions below and any definitions used elsewhere in this agreement are binding upon the parties.

All references to **(IG)** mean ClearCourse Business Services Limited trading as InstaGiv Registered in the UK. Company no 06912469

1. The Service. The "Service" consists of a browser interface, data transmission, data access (as available) and, if applicable, data storage. The "Service" includes a website under the domain names instaGiv.co.uk and as controlled by **(IG)**.
2. You and Yours. "You" and "yours" means each user or customer accessing the Service by means of a valid account established by you. If you are entering into this agreement on behalf of your entity, the term "you" in this agreement means your



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entity and all of its directors, officers, managers, shareholders, employees, agents, members, or other personnel.

3. Unlawful Activities. "Unlawful activities" includes, but is not limited to, making direct or indirect threats of physical harm, engaging in any conspiracy of any type, violation of any UK law or ordinance, violation of any international treaty, storing, distributing or transmitting any unlawful material, or attempting to compromise the security of any networked account or site.
4. Internet Service Provider. "Internet Service Provider" or "ISP" is any entity which allows access to the internet or worldwide web.
5. "Sender ID" is who shows as the sender of any message on a person's mobile phone as a result of using the service as a broadcasting media.
6. **(IG)** Software submits messages from internet browsers via our own software to certain messaging servers that are designed to send messages to short messaging service compatible devices such as mobile phones and is proprietary.
7. The Agreement. The "Agreement" or the "Service Agreement" refers to the within electronic document which sets forth the rights of the parties in their entirety.
8. Our or We. "Our" or "we" refers to **(IG)**.
9. "Systems". "The Systems" consists of computer equipment including servers, telecommunications devices, internet connection devices and digital storage media.
10. "Text Message". Short Messaging System utilised by modern mobile communications devices to send plain text data to other device.
11. "Keyword" A keyword is a word which is chosen upon applying for the service. The keyword is used for a person or persons to register or "opt in" to the service by text message.
12. "Shortcode". Our service consists of a 5 digit shortcode to enable a person to communicate with our systems by text message using a keyword.
13. "Reverse Billing". A message delivered to a handset which charges the end user a predetermined amount for receiving the message.
14. "Premium Rate". A service that is provided to send 'Reverse Billing' Messages.
15. "Out-payments". Payments made to you from revenue generated by using Premium Rate Services