Wireless Application Service Provider Association

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Clickatell
Information Provider (IP):	Green Green (not a WASPA member)
Service Type:	Airtime recharge service
Complainant:	Vodacom
Complaint Number:	#8348
Code Version:	8.0
Advertising Rules Version:	2.3

Complaint

Vodacom, one of South Africa's largest mobile networks, is the complainant in this matter. The complaint concerns a Green Green (not a WASPA member) airtime and electricity recharge service ("the service") which Clickatell, a WASPA member, operates. Vodacom appears to have initiated an investigation into the service in response to complaints it has received from subscribers:

> Vodacom would like WASPA to investigate an airtime recharge service offered by a company called Green-Green and they are using Clickatell for billing. We have received numerous complaints from subscribers claiming that funds have been deducted by Green Green from their bank accounts without their consent. Clients receive unsolicited SMSes that read as follows \"Congrat\'s, #field1# user y\'ve one R30 #field1# airtime. Reply YES to confirm & receive your Bonus R30 voucher @ R7.50,T&C\'s apply, dial *120*2000# to view or stop\". If the subscriber selects \"YES\", money (R151-00) is deducted from their bank accounts the following day. We then contacted Clickatell and they sent us information on how the service operates and we were not happy with a lot of things. We subsequently sent them feedback on 4 December 2009 and to date we have not received any response from Clickatell or Green Green. On the same day, we suspended the service and to date the service is not active on Vodacom\'s side. Would you kindly assist us in investigating the matter and advise us on what decision needs to be taken. For now we will keep the service suspended until we receive the results of the investigation and adjudication of

WASPA. I am more than willing to share with you the information we received from Green Green with regards to their service.

Vodacom has suspended the service on its network and has not reinstated it. Vodacom has also asked a series of questions about aspects of the service, which questions have been answered in correspondence which forms part of my brief. This correspondence is fairly detailed and rather than repeat it, I have annexed the salient correspondence to this report as follows:

1. **Annexure "A"** – a letter from Vodacom to WASPA dated 18 December 2009 recording questions presented to the SP on or about 4 December 2009;

2. **Annexure "B"** – a letter from Green Green to Nicolene Visser dated 2 December 2009; and

3. **Annexure "C"** – a letter from Green Green's legal advisor, Dominic Cull of ellipsis (Mr Cull is also a WASPA Adjudicator and has not, to my knowledge, played a roll in this complaint's consideration and determination) recording Green Green's responses to Vodacom's questions. This letter is marked "Without Prejudice" but I do not believe that marking this letter as such precludes me from referring to it for the purposes of this report.

I have also been furnished with copies of the service's terms and conditions as well as the *120 Green Green Recharge Service Contract. Copies of both documents are annexed to this report and marked Annexures "**D**" and "**E**" respectively.

Sections of the Code considered

I have reviewed this complaint in the context of version 8.0 in order to determine compliance with the Code as this was the prevailing version of the Code at the time the complaint arose. Having regard to the issues raised in this complaint, I have also considered other sections of the Code, which are pertinent.

I have therefore considered the following sections of the Code which appear to be pertinent to this matter:

Code version 8.0

Code version 8.0
2.23. A **"subscription service"** is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.
4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.
4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.
4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.
4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.
5.2.1. Any commercial message is considered unsolicited (and hence spam) unless: (a) the recipient has requested the message; (b) the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.
5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.
6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.
6.2.4. Pricing contained in an advertisement must not be misleading. If multiple

Code version 8.0
communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.
11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.
11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

I have highlighted the provisions of the Code which I quoted above and which I believe are germane to the complaint.

Sections of the Advertising Rules considered [if applicable]

Not considered.

Decision

This complaint is fairly complex and troubling, as are the underlying legal issues. Having reviewed the correspondence and documentation which has been filed with WASPA, it is clear that there are a number of challenges facing the service although some of these challenges relate to the service's compliance with legislation outside the scope of this report. Aspects of the service appear to be in violation of the provisions of the Consumer Protection Act, No. 68 of 2008, particularly those provisions relating to direct marketing and contract renewals.

Privacy

Limiting myself to the WASPA Code, the primary area of concern with the service is privacy and the protection of users' personal information. It appears that a significant number of Green Green's customers were contacted using a database of personal information which Green Green or its agents had compiled over several years:

> As stated in the email sent to Vodacom on 14 December 2009, the Green Green client information database has been established over a period of seven years through the operation of the Green Green call centre. This call centre provided telemarketing and other services on behalf of mobile network operators, banks and the insurance industry. Green Green has furthermore historically provided data services to the insurance industry.
>
> Green Green has therefore collected the information contained in its database through its contractual agreements with its customers and those to whom it has sold such customers' products.
>
> Green Green have been advised that there are no specific statutory provisions relating to the retention of the original consent for the obtaining of the information in our database, outside of the voluntary provisions set out in the Electronic Communications and Transactions Act 25 of 2002. Nor is there any explicit prohibition on the selling and purchase of such information. Green Green have, however, also been previously advised that our failure to retain such consent will create evidentiary problems when facing an allegation of a breach of the provisions of the WASPA Code of Conduct relating to unsolicited commercial communications.
>
> In the circumstances Green Green are unable to identify any illegality in the manner in which the customer's MSISDN was obtained and retained. To the extent that the collection and retention of the MSISDN was in breach of the WASPA Code of Conduct Green Green have taken and are taking proactive steps to address this.
>
> The correct procedure to be followed in the event that the customer believes the SMS to be unsolicited would be for the customer to lodge a complaint with WASPA in respect of a breach of section 5.2.1 read with section 5.3.1 of the Code of Conduct.

I have no information before me about how long the service has operated but it appears from Green Green's response that its database has been compiled using data and personal information gathered from a range of "telemarketing and other services on behalf of mobile network operators, banks and the insurance industry." The implication is that the database contains aggregate data from multiple callers over seven years who made use of the call centre for purposes that did not necessarily relate to the service itself.

Green Green's response suggests a view that users' privacy rights have not been violated given the voluntary nature of the privacy provisions in the Electronic Communications and Transactions Act, No.: 25 of 2002 ("ECT Act"). The company

has communicated its efforts to bring the service into line with the anticipated Protection of Personal Information Act ("PPI Act"). Assuming I have reflected the company's view correctly, I must disagree.

This view that users' right to privacy is given content almost entirely by the ECT Act and, eventually, by the PPI Act (as the applicable statutory provisions) is, I submit, incorrect. As the Code points out in section 4.2.1, users enjoy a Constitutional right to privacy. The right to privacy contained in section 14 of the Bill of Rights is fairly general and is both informed by and applies to a pre-existing body of privacy law, largely at common law. The right to privacy includes a concept of informational privacy, which incorporates such elements as the right to determine what personal information is collected and used for which purposes. The right protects reasonable expectations of privacy, which are affected by informed consent to personal information collection and processing, among other things.

WASPA is subject to the Constitution and the Bill of Rights in particular. This means that WASPA must, within its relatively narrow scope, apply the law to its determinations, where appropriate. This particular complaint concerns users' personal information, which has been used as the basis for the service's database. The right to privacy has a very real bearing on this complaint.

Green Green has contended that its users have consented to its use of their personal information to market the service and points to an apparently low rate of complaints. Green Green has also advised WASPA that it does not have records of users' consents and, instead, points to its contract with users. Neither the contract or the terms and conditions which I have annexed to this report address collection and processing of personal information in any meaningful way and are particularly unhelpful as indicators of users' consent to having their personal information aggregated across multiple services, companies and several years to serve as a marketing database for the service. It is also instructive to note that the PPI Act will change the current direct communications paradigm from an opt-out model to an opt-in model and I submit that WASPA members should bear this in mind even at this early stage in the PPI Act's development.

Green Green's terms and conditions further incorporate fairly complicated provisions which have the effect of rendering confidential personal information as not confidential where the personal information is submitted in such a way that the

confidential nature of the personal information is not "stated clearly on the relevant web pages or other interfaces whereby such information is submitted." These complicated provisions require fairly careful readings to make much sense of them and given lay users' reluctance to read the terms and conditions, let alone grasp these intricacies, I am concerned that these terms and conditions make unreasonable inroads into users' rights to privacy.

Spam

It was not clear from the documents in my brief whether all of the service's users specifically opted in to the marketing communications they received enticing them to make use of the service. The implication of Green Green's responses to Vodacom suggest that it regards users' initial personal information "contributions" to its database as consent which it further regards as having been extended to the service's marking communications.

This raises the spectre of spam, particularly in the context of section 5.2.1 of the Code. At least a portion of the marketing communications sent to users appears to fall within the scope of section 5.2.1(b) of the Code, in which case those messages constitute spam. I also question to what extent the service's users have either requested marketing communications relevant to the service prior to signing up for the service or have explicitly consented to a third party organisation (perhaps the "mobile network operators, banks and the insurance industry" Green Green cited as its sources or catalysts for its databases) supplying their personal information to Green Green? Absent these consents, marketing communications sent to those users will also constitute spam and making use of their personal information may well be a violation of their rights to privacy and of section 4.2 of the Code.

The sms messages sent to users came under Vodacom's scrutiny. The initial message Vodacom queried and which queries Green Green responded to through Mr Cull was as follows:

1. "Congrat's, #field1# user y've one R30 #field1# airtime. Reply YES to confirm & receive your Bonus R30 voucher @ R7.50,T&C's apply, dial *120*2000# to view or stop".

a. Why does the message say "Congrats"? What competition/ draw did the customer enter?

> No competition or draw was entered into. The recipient of the message has responded to a promotional offer which provides them with R30 airtime as a sign-up bonus.

The contract which Green Green supplied WASPA with sets out a number of charges for various items and attendances. A schedule of sms messages and related charges similarly set out a series of charges levied at different frequencies. This fee structure is not very well represented in this initial message. The wording of this message is ambiguous and potentially misleading and does not appear to be compliant with the imperatives in sections 4.1.1 and 4.1.2 of the Code.

Subscription service

Finally, the complainant referred WASPA to section 11 of the Code, which deals with subscription services. Although the service has a recurring administrative fee, I don't believe that the service falls within the intended ambit of a subscription service.

Conclusion

The service appears to have a relatively low complaint rate (Mr Cull cited 0.02% to 0.03%) so it appears that the vast majority of the service's users are satisfied with the service.

At the same time the privacy implications for the service, which I outlined above, are a cause for great concern. Users may generally be very happy with the service but they retain the right to be informed about what their personal information is used for and to have their consent obtained to do so. The PPI Act points to a change in the approach to informed consent and opt-in as a necessity. The service does not appear to be aligned with these imperatives and, consequently, with section 4.2 of the Code.

That said, existing users have presumably had an opportunity to opt-out of the service and have elected not to do so, for the most part.

Sanctions

The service breaches several provisions of the Code, which I have referred to above. The SP is ordered to sent a reminder message to all of the service's users which access the service using the SP's infrastructure in the format of a reminder for a

USSD service reminding them of their recurring costs and affording them an opportunity to opt-out of the service.

The SP may not permit new users (any person who does not make use of the service as of the date this report is communicated to the SP) to be added to the service unless it is satisfied that those users have consented to their personal information being collected and processed for the purposes of marketing the service to them.

The SP is required to ensure that the initial message sent to new users is amended to remove the ambiguity in the words and terms "y've one" and "Bonus" such that recipients reasonably understand that they have not participated in a competition and won a prize.

"A"

From: Tebogo Segola <Tebogo.Segola@vodacom.co.za>
Subject: **Re: [WASPA.complaints] WASPA Code of Conduct Complaint #8348**
Date: 18 December 2009 8:07:18 AM SAST
To: "complaints@waspa.org.za" <complaints@waspa.org.za>
Cc: Tracy Maluleka <Tracy.Maluleka@vodacom.co.za>
Reply-To: "complaints@waspa.org.za" <complaints@waspa.org.za>
4 Attachments, 187 KB

Dear Sir/ Madam,

Attached herewith is additional information relating to the complaint lodged. Below are the issues that I raised with the WASP (Clickatell) on 4 December 2009 and I am still waiting for a reply:

1. "Congrat's, #field1# user y've one R30 #field1# airtime. Reply YES to confirm & receive your Bonus R30 voucher @ R7.50,T&C's apply, dial *120*2000# to view or stop"
a. Why does the message say "Congrats"? What competition/ draw did the customer enter?
b. Where and how do you obtain the customer details? Saying that you use a database is not detailed enough. We need more information.
c. How is the service advertised?
d. Why do you use "one" instead of WON?
e. The "Bonus R30 voucher" is a bonus on what? This is not clear.
f. *120*2000# USSD code belongs to Flash Media. Are you in partnership with them on the service? Do some of the services get billed by Flash Media?

2. "Please ensure funds available in ur account. A once-off debit registration of R151 2B processed #date#. The refence on ur bank will be GGR#ref#. Reply today with alt date if required".

a. Which "account" are you referring to?
b. How do you obtain the bank account details of the subscriber? There is nowhere in the process where you explain how bank details are obtained How/ where does the subscriber give consent for her bank account to be debited?

3. "A once-off debit of R90 2B processed 1Dec09 for Green Green. The refence on ur bank will begin S120 GGR. Please ensure funds available to avoid charges".

a. How many "once-off" debits happen on the subscriber bank account? The SMS at point 2 above was a once-off and the subsequent SMS is also a once-off? What are these once-off charges for?

4. Letter sent to Nicolene Visser on 2009-12-02

a. "All client information and account information and account data has been obtained via our call centre..." Please explain the process of obtaining client information in detail. Please send us the process flow.
b. Did you get consent/ permission to send Mrs Cook a promotional SMS or was this a Spam SMS? Please send us proof of this consent from Mrs Cook to receive promotional material from GreenGreen.
c. You mention that Mrs Cook misunderstood the message. What exactly did she misunderstand?
d. Please send us all the system logs relating to your interaction with Mrs Cook.

5. Document titled "*120 GreenGreen Recharge Service Contract"

a. What is a "Mobile Wallet" that gets debited? Please explain how this is obtained and how it fits into the recharge service.
b. 2.a and 2.b - You charge a subscriber R150 registration fee and R7-50 to "Reply to register". Why do you charge two registration fees? What are these registration fees for?
c. What does the "Monthly account fee" cover?
d. What is a "debit fee"? Do you charge a subscriber a debit fee every time they receive airtime?
e. Do you charge the "Airtime PIN order" fee on top of the debit fee? Please explain.
f. 3.b - Do you send reminders to subscribers before "automatically renewing" their contract? Please send us an example of a reminder message.

Many thanks.

Regards,
Tebogo

-----Original Message-----
From: tebogo.segola@vodacom.co.za [mailto:tebogo.segola@vodacom.co.za]
Sent: 17 December 2009 07:53 PM
To: complaints@waspa.org.za
Cc: Tebogo Segola

Subject: WASPA Code of Conduct Complaint #8348

Complaint #8348 (lodged via the WASPA website):

Full_Name: Tebogo Segola on behalf of Vodacom WASP Division

Cellular: 0929901197

Alternate_Contact_Number:

Email: tebogo.segola@vodacom.co.za

PhysicalAddress: 082 Vodacom Boulevard, Vodavalley, Midrand

PostalAddress: Private Bag X9904, Sandton

PostCode: 2146

Affiliations: I am employed by, or otherwise associated with one of WASPA\'s member companies

Affiliation_Information:

WASPName: GreenGreen recharge service operated by Clickatell and Flash Media

OtherID: Clickatell and FlashMedia

Code_Breached: Section 5 (5.2; 5.3)
Section 6.2
Section 11.1

Detailed_Description_Complaint: Vodacom would like WASPA to investigate an airtime recharge service offered by a company called Green-Green and they are using Clickatell for billing. We have received numerous complaints from subscribers claiming that funds have been deducted by GreenGreen from their bank accounts without their consent. Clients receive unsolicited SMSes that read as follows \"Congrat\'s, #field1# user y\'ve one R30 #field1# airtime. Reply YES to confirm & receive your Bonus R30 voucher @ R7.50,T&C\'s apply, dial *120*2000# to view or stop\". If the subscriber selects \"YES\", money (R151-00) is deducted from their bank accounts the following day. We then contacted Clickatell and they sent us information on how the service operates and we were not happy with a lot of things We subsequently sent them feedback on 4 December 2009 and to date we have not received any response from Clickatell or GreenGreen. On the same day, we suspended the service and to date the service is not active on Vodacom\'s side. Would you kindly assist us in investigating the matter and advise us on what decision needs to be taken. For now we will keep the service suspended until we receive the results of the investigation and adjudication of WASPA. I am more than willing to share with you the information we received from GreenGreen with regards to their service.

Tick_as_appropriate: Service provider has not resolved my complaint to my satisfaction

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

where_hear_about_waspa: Commercial Business Partners Department at Vodacom.

send: send

Sent by vc-41-192-255-122.umts.vodacom.co.za (41.192.255.122)

"This e-mail is sent on the Terms and Conditions that can be accessed by Clicking on this link http://www.vodacom.co.za/legal/email.jsp "

„This e-mail is sent on the Terms and Conditions that can be accessed by Clicking on this link http://www.vodacom.co.za/legal/email.jsp "

Letter to Nicolene Visser.doc (73,0 KB) 120 GreenGreen RECHARGE SERVICE CONTRACT.DOC (26,0 KB) GG_Terms_Conditions.doc (57,0 KB)

Sms process document.xls (31,0 KB)

2009-12-02

"B"

Knowledge Marketing

Dear Nicolene

Thank you for your email requesting information regarding the business of Green Green.

Please find my reply to your request below.

Your query is regarding ***Mrs Cook***,

Id; 4101220063087

Mobile; 27827460530 (Vodacom)

All client information and account data has been obtained via our call centre, after years of marketing a wide range of products ranging from financial, insurance, legal, mobile products and tax services.

We sent a promotional Sms to Mrs Cook (*see promotional Sms attached)* on the 24th of November to which she replied "yes".

An amount of R151 was deducted from Mrs Cook's bank account (*5014000xxxx*), according to the product's terms and conditions, on 30th October 2009.

Mrs Cook called our Call Centre on 2nd of November and requested cancellation due to the fact that she misunderstood the marketing message, and responded without reading the terms and conditions. The call centre agent agreed to refund Ms Cook by end November. (We have a refund policy of at least 15 days in order to wait for ACB clearance). The call centre agent cancelled her subscription immediately however. Our automated system send R30 airtime to all client payment received (including Ms Cook) on 14 November. We refunded on her with the remaining amount of R121 on the 30th of November. She phoned in yesterday to thank us for the refund and enquired why we only refunded her with R121 she was satisfied with the explanation and the outcome.

See the attached sheet which explains the sequence of our Sms campaign as well as the content of the messages. With reference to our messages I had a meeting with Mr Casper de Villiers from Clickatell at 10h30 on 1 December 2009 to discuss the content of our Sms's to ensure that we comply to the Waspa rules, he suggested a couple of changes which we will incorporate immediately. With reference to your question: How does a customer check how much credit they have left? Any active user may at anytime dial ***120***2000# from their handset to view their balance. The balance is always displayed above the recharge menu. The user may select to purchase any denomination of airtime from the service providers listed as long as the cost is covered by the balance available to them.

Lastly I attach a document describing the product and service costs as requested.

I have attached the terms and conditions for our product as well. These are available on our website and a shorter more concise version is accessible via the client's cell phone.

I hope this answers your queries and questions in full.

Regards

Danie Grobler

364 Victoria Road, Woodstock, Cape Town

364 Victoria Road, Woodstock, Cape Town

ellipsis regulatory solutions

"C"

12 January 2009

Vodacom (Pty) Ltd
WASP Division

Attention: Tebogo Segola
Per email: Tebogo.Segola@vodacom.co.za

CC. Tracey Maluleka
Per email: Tracey.Maluleka@vodacom.co.za

Without Prejudice

Dear Tebogo

VODACOM / GREEN GREEN (PTY) LTD t/a GREENGREEN

We refer to the above and previous communications between the various parties. We confirm that we act on behalf of the abovementioned on whose instructions we are sending this communication to you.

Our instructions are to provide Vodacom with a full set of replies to the queries raised by it on or about 4 December 2009 relating to the service provided by our client. These are set out below.

At the outset, however, we are instructed to make clear the following:

1. All new customer sign-ups for the service as offered by GreenGreen have been suspended pending the resolution of this matter and the taking of further legal advice.

2. Our clients accept that, notwithstanding having previously solicited and received advice from Clickatell with regard to compliance, certain aspects of the service which was the subject of the complaint may be non-compliant with provisions of the current version of the WASPA Code of Conduct and they are taking legal advice to ensure that these deficiencies are remedied prior to the service being provided to new customers.

3. The complaint which was forwarded to Vodacom is an isolated case. Currently a complaint rate of between 0.02% and 0.03% is experienced in respect of the service, with thousands of customers completely satisfied therewith.

ellipsis regulatory solutions cc
CK2004/113957/23
tel 021 701 2512 fax 086 540 4953 email dominic@ellipsis.co.za
unit c14 westlake square tokai / postnet suite #410, private bag x4, sun valley, 7985
member: dominic cull b.bus.sc. llb llm (ict law)

4. The complaint raised was resolved to the satisfaction of Mrs Cook.

5. GreenGreen has on a number of occasions engaged with Vodacom in good faith and provided information requested. It is not, however, clear on what basis Vodacom believes it is entitled to such information. Notwithstanding this and the fact that many of the queries raised appear irrelevant to the complaint raised with Vodacom, our client has nevertheless endeavoured to answer these on the basis that Vodacom has already suspended USSD and short code access, thereby in effect preventing the service from being offered to existing customers. Our client is accordingly suffering significant prejudice as a result of its inability to service its existing client base.

6. It is furthermore not clear to our client why Vodacom has elected to pursue the matter in this way when it is evident that it should have been dealt with by WASPA, which is the self-regulatory body established by the mobile network operators specifically for the purpose of dealing with complaints of this nature. Insofar as a complaint has been lodged with WASPA this will no doubt shortly be forwarded to our clients for detailed reply and the WASPA adjudicator will be entitled to request such further information relating to the service as he or she deems fit, prior to adjudication thereof.

<u>Responses to queries raised by Vodacom on 4 December 2009 (responses are differentiated from the queries through italicisation)</u>

1. “Congrat's, #field1# user y've one R30 #field1# airtime. Reply YES to confirm & receive your Bonus R30 voucher @ R7.50,T&C's apply, dial *120*2000# to view or stop”.

a. Why does the message say “Congrats”? What competition/ draw did the customer enter?

No competition or draw was entered into. The recipient of the message has responded to a promotional offer which provides them with R30 airtime as a sign-up bonus.

b. Where and how do you obtain the customer details? Saying that you use a database is not detailed enough. We need more information.

As stated in the email sent to Vodacom on 14 December 2009, the GreenGreen client information database has been established over a period of seven years through the operation of the GreenGreen call centre. This call centre provided telemarketing and other services on behalf of mobile network operators, banks and the insurance industry. GreenGreen has furthermore historically provided data services to the insurance industry.

GreenGreen has therefore collected the information contained in its database through its contractual agreements with its customers and those to whom it has sold such customers' products.

GreenGreen have been advised that there are no specific statutory provisions relating to the retention of the original consent for the obtaining of the information in our database, outside of the voluntary provisions set out in the Electronic Communications and Transactions Act 25 of 2002. Nor is there any explicit prohibition on the selling and purchase of such information. GreenGreen have, however, also been previously advised that our failure to retain such consent will create evidentiary problems when facing an allegation of a breach of the provisions of the WASPA Code of Conduct relating to unsolicited commercial communications.

In the circumstances GreenGreen are unable to identify any illegality in the manner in which the customer's MSISDN was obtained and retained. To the extent that the collection and retention of the MSISDN was in breach of the WASPA Code of Conduct GreenGreen have taken and are taking proactive steps to address this.

The correct procedure to be followed in the event that the customer believes the SMS to be unsolicited would be for the customer to lodge a complaint with WASPA in respect of a breach of section 5.2.1 read with section 5.3.1 of the Code of Conduct.

We understand that Vodacom have, presumably on behalf of the customer, lodged such a complaint, which will be resolved through the WASPA dispute resolution mechanisms.

c. How is the service advertised?

Consent-based marketing through the sending of promotional SMS messages.

d. Why do you use "one" instead of WON?

"One" is used because that is what is intended, i.e. the recipient will receive one (1) airtime voucher for the relevant network.

"Won" is not used because this meaning is not intended. As set out above, the SMS is not part of a competition, quiz or draw.

e. The "Bonus R30 voucher" is a bonus on what? This is not clear.

As set out above this relates to a promotional sign-up offer made by GreenGreen to the customer.

f. *__120__*2000# USSD code belongs to Flash Media. Are you in partnership with them on the service? Do some of the services get billed by Flash Media?

Flash Media Group (Pty) Ltd ("Flash Media") is a service provider to Imvelaphi Mobile (Pty) Ltd which is in turn a service provider to GreenGreen. Flash Media is not a partner on the service nor do services get billed by Flash Media other than in respect of USSD services where it has a revenue share with Vodacom.

2. "Please ensure funds available in ur account. A once-off debit registration of R151 2B processed #date#. The refence on ur bank will be GGR#ref#. Reply today with alt date if required".

a. Which "account" are you referring to?

The customer's bank account.

b. How do you obtain the bank account details of the subscriber? There is nowhere in the process where you explain how bank details are obtained. How/ where does the subscriber give consent for her bank account to be debited?

As stated in the email sent to Vodacom on 14 December 2009 the GreenGreen client information database has been established over a period of seven years through the operation of the GreenGreen call centre. This call centre provided telemarketing and other services on behalf of mobile network operators, banks and the insurance industry. GreenGreen has furthermore historically provided data services to the insurance industry.

GreenGreen has therefore collected the information contained in its database through its contractual agreements with its customers and those to whom it has sold such customers' products.

We are advised that there are no specific statutory provisions relating to the retention of the original consent for the obtaining of the information in our database, outside of the voluntary provisions set out in the Electronic Communications and Transactions Act 25 of 2002.

In the circumstances we are unable to identify any illegality in the manner in which the customer's MSISDN was obtained and retained. To the extent that the collection and retention of the MSISDN was in breach of the WASPA Code of Conduct we have taken proactive steps to address this.

Consent for the debiting of the customer's bank account is obtained through the agreement of the customer to the General Terms and Conditions governing GreenGreen's Service Agreements ("the General Terms"), a copy of which has previously been provided to Vodacom. Vodacom is referred to sections 2(b) and (c) of the General Terms which state that users of the service will be deemed to have registered for the service once they have, inter alia, SMSed YES to the relevant number and that such registration constitutes acceptance of the General Terms.

Section 8 of the General Terms sets out that service fees will be debited from the user's account on the date set out in the relevant service contract.

The customer replied YES to the promotional SMS message and was therefore deemed to have registered for the service and to have consented to, inter alia, the General Terms. This YES replky satisfies the banks' requirements in terms of establishing a debit order.

In the circumstance where GreenGreen does not have the bank account details of a customer these are obtained during the sign-up process directly from such customer.

3. "A once-off debit of R90 2B processed 1Dec09 for Green Green. The refence on ur bank will begin S120 GGR. Please ensure funds available to avoid charges".

a. How many "once-off" debits happen on the subscriber bank account? The SMS at point 2 above was a once-off and the subsequent SMS is also a once-off? What are these once-off charges for?

"Once-off" refers to the amount of the debit order which is determined by the Service Fees incurred by the user for a monthly period together with the minimum monthly airtime purchase of R90 (see section 1(a)(ii) of the 120 GreenGreen Recharge Service Contract ("the Service Contract")). The Service Fees are as set out in sections 2(b) to (f) of the Service Contract and will obviously vary from month to month.

These Service Fees are distinct from the registration fee referred to in point 2 above and set out in section 2(a) of the Service Contract.

4. Letter sent to Nicolene Visser on 2009-12-02:

a. "All client information and account information and account data has been obtained via our call centre..." Please explain the process of obtaining client information in detail. Please send us the process flow.

GreenGreen has set out the basis on which the client and account information was set out above together with its averment that such information was lawfully obtained and retained. The call centre sold products on behalf of third parties and in the course of doing so collected account and client information which it is contractually entitled to retain.

The "process flow" in respect of obtaining client information from Mrs Cooke was through the operation of the call centre in this manner.

b. Did you get consent/ permission to send Mrs Cook a promotional SMS or was this a Spam SMS? Please send us proof of this consent from Mrs Cook to receive promotional material from GreenGreen.

Please see the reply to 1(b) above.

c. You mention that Mrs Cook misunderstood the message. What exactly did she misunderstand?

Please refer to paragraph 4 of the letter to Nicolene Visser which clearly states that it was Mrs Cook who "requested cancellation due to the fact that she misunderstood the marketing message and responded without reading the terms and conditions".

GreenGreen cannot state on behalf of Mrs Cook what caused her confusion.

We wish to emphasise that Mrs Cook's statement was accepted at face value and that she was immediately refunded.

d. Please send us all the system logs relating to your interaction with Mrs Cook.

Please see the relevant annexure hereto.

5. Document titled "*120 GreenGreen Recharge Service Contract":

a. What is a "Mobile Wallet" that gets debited? Please explain how this is obtained and how it fits into the recharge service.

*As is stated in section 1(a)(iii) of the *120 GreenGreen Recharge Service Contract ("the Service Contract"), the "Mobile Wallet" simply refers to the customer's account with GreenGreen.*

The term "mobile wallet" or "virtual wallet" is well-known in mobile commerce as referring to an application which exists separately from an airtime account – see http://en.wikipedia.org/wiki/Mobile_payment.

b. 2.a and 2.b - You charge a subscriber R150 registration fee and R7-50 to "Reply to register". Why do you charge two registration fees? What are these registration fees for?

The registration fee covers the setting up of the service in respect of any specific customer so as to enable the customer to access the convenience of purchasing airtime or electricity through their mobile phone.

The R7.50 "Reply to register request via promotional registration short code" is the cost of the premium rate SMS utilising the short code which GreenGreen access through its relationship with Clickatell. Clickatell as a WASP accesses the relevant short code and associated fee structure through their revenue share agreement with, inter alia, Vodacom.

c. What does the "Monthly account fee" cover?

The "Monthly accounting fee" of R1 per month relates to the provision of billing services to customers.

d. What is a "debit fee"? Do you charge a subscriber a debit fee every time they receive airtime?

No. The debit fee relates to the processing of a debit order on the customer's bank account.

e. Do you charge the "Airtime PIN order" fee on top of the debit fee? Please explain.'

No, it is not charged on top of the debit fee which relates, as explained above, to the processing of debit orders. The Airtime PIN order fee of R0.75 covers the cost to GreenGreen of sending an SMS with a PIN number to a customer who has purchased additional airtime.

f. 3.b – Do you send reminders to subscribers before "automatically renewing" their contract? Please send us an example of a reminder message.

Under both the Service Contract and the General Conditions, GreenGreen is under no obligation to do so.

We trust that you will find the above to be in order in the sense that the queries raised have been fully answered. Should this not be the case then please contact the writer at your earliest convenience in order to discuss what further information is required and the basis upon which this is being requested.

Regards

Dominic Cull
Ellipsis
(sent electronically, the above intended as an electronic signature)

ellipsis regulatory solutions cc
CK2004/113957/23
tel 021 701 2512 fax 086 540 4953 email dominic@ellipsis.co.za
unit c14 westlake square tokai / postnet suite #410, private bag x4, sun valley, 7985
member: dominic cull b.bus.sc. llb llm (ict law)

GENERAL TERMS AND CONDITIONS
GOVERNING GREENGREEN SERVICE AGREEMENTS

1. PROVISION OF SERVICES

a. GreenGreen (Proprietary) Limited (hereafter referred to as "GreenGreen") contracts with its registered users (hereafter referred to as “you”) to provide the following Services:

   i. *120 AIRTIME RECHARGE

   ii. *120 ELECTRICITY RECHARGE

b. Once you have registered to use your Services, these may be accessed from your mobile phone via WAP and USSD and at various web sites that are owned by or affiliated to GreenGreen.

2. ACCEPTANCE OF TERMS AND CONDITIONS

a. Your use of the Services is subject to the General Terms and Conditions herein contained ("the General Terms") as well as to the terms of the Service Contract. If you do not agree with these General Terms or with the terms of the Service Contract, you should not use the Services.

b. By registering for the Services, as well as by utilising the Services, you acknowledge and agree that such registration and use shall constitute, and may lawfully be deemed to constitute, your acceptance of these General Terms and the terms of the Service Contract.

c. You will be deemed to have registered for a Service as soon as:

   i. You click “ACCEPT” on GreenGreen’s USSD interface for such Service on your mobile phone; or

   ii. You SMS “YES” to the number provided by GreenGreen for such Service

d. You will receive a System Passcode upon completing the Service registration process and account set-up procedures.

3. TERMS & SCOPE OF THE SERVICES

a. The Services wil be provided for the duration of the Service Period set out in the Service Contract.

b. The **principal components** of the Services are as set out in the Service Contract, details of which may be viewed by clicking on the following link:

   i. *120 RECHARGE SERVICE CONTRACT

roux 09/11/5 12:18 PM
Comment: Hyperlink to schedule

roux 09/11/10 5:20 PM
Comment: Name the contract

c. The Services may, at the discretion of GreenGreen, include further **optional components** which may be introduced from time to time, including, without limitation:

   i. the provision to you of pre-selected promotional material

   ii. service announcements, and

   iii. administrative messages.

d. Should you wish to do so, you may opt out of such optional components by dialing *120*2000# on your mobile phone and selecting OPT-OUT on the menu provided.

e. Unless expressly stated otherwise by GreenGreen, optional components and new features that may be introduced to augment or enhance the Services, whether delivered via mobile phone or through other distribution means, shall be subject to these General Terms.

4. AUTOMATIC RENEWAL OF THE SERVICE CONTRACT

a. At the expiry of each Service Period, the Service Contract concerned may, at the discretion of GreenGreen, be automatically renewed for a further Service Period, unless you give prior **Notice of Termination** to GreenGreen.

b. If your Service Contract is automatically renewed, the duration of the renewed Service Period, and the Service Fees due for such period, will be as set out in the Service Contract on the date of automatic renewal.

c. Despite the aforegoing, it is specifically recorded that GreenGreen is in no way obliged to renew your Service Contract automatically, and may decline to do so without notice to you.

5. NOTICE OF TERMINATION

a. You may terminate your Service Contract by giving Notive of Termination to GreenGreen by means of:

   i. Call the call centre 086 120 7827

ii. SMS 'STOP' to 37033

iii. Select 'OPT-OUT' on the USSD Menu

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Comment: Specify methods available

b. Termination of your Service Contract will be effective as from the end of the Service Period during which GreenGreen receives your Notice of Termination, and you will remain liable for the Service Fees in respect of such Service Period.

c. **NB**: If GreenGreen does not receive Notice of Termination during any particular Service Period, it may, in its discretion, automatically renew your Service Contract for a further Service Period, and you will be liable for the Service Fees for such further Service Period.

6. CONTENT RIGHTS AND OWNERSHIP

a. The information, data, text, software, music, sound, photographs, graphics, video, messages or other materials ("the Content") that may be distributed to you through the Services are protected by copyright, trademarks, service marks, patents and/or other proprietary rights and laws.

b. You may not distribute, modify, transmit or use the Content for any purpose other than your personal and non-commercial use, and you may not modify, reverse engineer, or create derivative works based on, the Content, whether in whole or in part, without GreenGreen's prior express written permission.

7. USER-SUBMITTED INFORMATION

a. GreenGreen will treat Information, including personally identifiable contact information, which you submit to it as confidential only to the extent that

b. submitted by you via GreenGreen's web pages and other interfaces provided for accessing the Services, will be treated by GreenGreen as confidential only to the extent that such fact is stated clearly on the relevant web pages or other interfaces whereby such information is submitted. All other communications with, or submissions to, GreenGreen are, hereby agreed by you to be non-confidential.

c. GreenGreen expressly reserves the rights that it may, if it has *prima facie* grounds to believe that you are in breach of your "Obligations as User" as hereafter defined in these General Terms:

i. investigate your usage history, posted materials, IP addresses and related data;

ii. disclose such information to law enforcement bodies, regulators or other tird parties.

d. By posting text or other material at or through non-confidential portions or features of the Services, you thereby assign to GreenGreen all rights therein, including without limitation the right to use, reproduce, modify, publish, edit, translate, distribute, perform, and display such text and material alone or as part of other works in any form, media or technology, and to sublicense such rights.

e. Comments, feedback, suggestions and ideas which you submit to GreenGreen in connection with your use of the Services will become GreenGreen's sole property, and will be subject to disclosure and use by GreenGreen without an obligation to compensate you in any manner.

8. SERVICE FEES

a. Service Fees will be as set out in the Service Contract, as amended from time to time. All price references are in South African currency.

~~b.~~ On the dates set out in the Service Contract, whether as initially concluded or as automatically renewed, your preffered account will be debited with the Service Fees which were in effect on the date of your registration for the Services

roux 09/11/6 10:52 AM
Comment: Expand on this, which account

9. AMENDMENT OF TERMS OF SERVICES

a. GreenGreen reserves the right to vary these General Terms and/or the terms, including pricing terms, of your Service Contract at any time.

b. Should GreenGreen so amend these General Terms or your Service Contract:

   i. GreenGreen will provide notice, through the Service's mobile phone interface, that such an amendment has been effected, and will publish the terms and details of such amendment on its web page at www.GreenGreen.co.za;

   ii. You will be deemed to have received notice of an amendment on the first occasion that you access the Service's mobile phone interface providing such notice;

   iii. it will be your responsibility to ascertain the specific terms and details of such amendment, either by visiting GreenGreen's aforesaid web page or by calling the GreenGreen Call Center at 0861 207827.

roux 09/11/10 4:41 PM
Comment: Iwill this be practical?

c. you may terminate your Service Contract within thirty (30) days of receiving notice of an amendment to its terms or to these General Terms, and may thereby avoid being bound by such amendment;

d. A certificate by GreenGreen as to, respectively,

i. the dates on which a notice of an amendment was provided through a Service's mobile phone interface, and/or

ii. the first occasion on which you accessed the Service's mobile phone interface providing such notice

shall be *prima facie* proof of such date in any legal proceedings in which such dates become relevant.

e. Subject only to amendments as herein provided for, these General Terms, read together with the Services Agreement, constitute the entire agreement between you and GreenGreen with regard to the Services, and no amendment thereof shall, unless in writing and signed by both parties, be of any force or effect.

10. SUSPENSION OF ACCOUNT AND SERVICES

a. GreenGreen reserves the right to suspend or terminate your Service Contract, and to suspend your Services without prior notice or compensation to you, in any of following cases:

i. If GreenGreen has *prima facie* grounds to believe that you are in breach of your "Obligations as User", as hereafter defined in these General Terms;

ii. If your credit card or alternative payment method is invalid for any reason;

iii. If you charge back to your credit card or alternative payment method the fees due to GreenGreen;

roux 09/11/10 5:52 PM
Comment: combine these two terms, get formulation from client

iv. GreenGreen has reason to believe that your safety, or the safety of other users of the Service or the general public, is in jeopardy.

b. GreenGreen reserves the right to terminate your Service Contract, and to suspend your Services, in any event other than as set out above, provided that it shall upon so doing be obliged to refund to you:

i. for any Service Period that has not yet commenced, such Service Fees that you might have paid in advance;

ii. for any Service Period that has already commenced, a pro rata portion of your paid Service Fees.

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Comment: Note: I have amended original terms, which applied pro rata only to periods longer than a month, on grounds of equity

c. Except as expressly set forth above, GreenGreen's actions in exercising its rights hereunder shall not relieve you from your obligations under the Terms.

11. YOUR OBLIGATIONS AS USER

a. You understand and agree that you are fully responsible, and contractually liable, for all transactions performed and actions conducted on your account by means of your System Passcode, whether by you or by third parties.

b. You undertake to:

   i. take all steps possible for maintaining the confidentiality of your System Passcode;

   ii. immediately notify GreenGreen of any unauthorized use of your password, PIN or account or any other breach of security;

   iii. ensure that you log out of your account promptly at the end of each session.

c. You hereby indemnify GreenGreen, to the fullest extent permitted by law, against loss suffered by you, by third parties or by GreenGreen due to any failure on your part to maintain the confidentiality of your System Passcode.

d. You are solely responsible for any costs, such as third party charges by internet service providers or mobile phone networks, incurred in obtaining access to the Services, and for the provision and maintenance of all equipment necessary for you to access the Services.

e. You agree that you will not:

   i. access the Services by any means other than through the interface system provided by GreenGreen for accessing the Services;

   ii. disclose your System Passcode to a third party, nor in any manner permit a third party access to the Services;

   iii. engage in any manipulation of the Services for purposes other than as agreed upon;

   iv. violate, or attempt to violate, the rights of third parties by means of the Services,

   v. interfere with or disrupt any Service, any servers or networks connected to the Service or GreenGreen's websites,

   vi. contravene any requirements, procedures, policies or regulations of networks connected to the Service,

   vii. contravene any applicable local, national or international laws or regulations pertaining to your use of the Services,

viii. use the Services or GreenGreen's websites in a manner that infringes other parties' intellectual property rights, privacy rights or rights of publicity;

ix. introduce viruses or other harmful computer programming routines into the Services or GreenGreen's websites;

x. use any robots, spiders, or any other automatic devices or processes to monitor or copy any portion of the Services or GreenGreen's websites; or

xi. probe, scan or test the vulnerability of the Services or GreenGreen's websites, or breach the security or authentication measures thereof.

f. You agree that you will:

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Comment: Needs to conform with actual procedure on phone

i. provide accurate, current and complete information about yourself (the "Registration Data") as required on the Service's registration form;

ii. promptly update your Registration Data to keep it accurate, current and complete, by telephonically advising GreenGreen's Call Centre at 0861 207827 of any changes thereto.

g. By accessing the Services, you warrant that you are not in a country where the use of the Services is prohibited. You are responsible for compliance with the laws of your local jurisdiction regarding the use of the Services.

12. DISCLAIMERS

a. You understand and agree that the Services are provided on an "as is" and "as available" basis, and that GreenGreen shall incur no liability if you were to suffer loss as a consequence of any failure of the Services whatsoever .

b. GreenGreen expressly disclaims all warranties, whether express, tacit or implied, as to the quality of the Services or their suitability for any particular purpose. Specifically , and without limitation, GreenGreen makes no warranty that:

i. the Services will be uninterrupted, reliable, timely, secure, or error free;

ii. the Services will meet your requirements;

iii. the quality of any products, services, information, or other material purchased or obtained by you through the service(s) will meet your expectations, and

iv. any errors in any software or content will be corrected.

c. GreenGreen expressly disclaims all warranties, whether express, tacit or implied, as to the quality, content, suitability or safety of **third-party sites or resources** accessed

through or by means of the Services, and shall incur no liability if you were to suffer loss as a consequence of accessing such sites or resources.

d. GreenGreen expressly disclaims all warranties, whether express, tacit or implied, as to the quality, content, suitability or nature of products, goods or services which are advertised or promoted by means of the Services.

e. You understand and agree that any transactions which you may conclude with advertisers introduced to you by means of the Services will be directly between you and such advertisers, that GreenGreen will not be a party to such transactions, and that GreenGreen shall incur no liability if you were to suffer loss as a consequence of transactions concluded with advertisers.

f. No advice or information, whether oral or written, which you may obtain from GreenGreen or its agents, shall create any warranty not expressly stated in these General Terms.

13. LIMITATION OF LIABILITY

a. GreenGreen shall in no event be liable for direct, indirect, incidental, special, consequential or exemplary damages, any loss of actual or anticipated profits (including loss of profit on contracts), revenue, business, opportunity, anticipated savings, use of money, goodwill, reputation, use, data or any other intangible losses (even if GreenGreen has been advised of the possibility of such damages), resulting from:

   i. the use or the inability to use any service;

   ii. the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Services;

   iii. unauthorized access to or alteration of your transmissions or data;

   iv. expiry or used status of prepaid vouchers 10 days after vending

   v. statements or conduct of any third party on or through any service; or

   vi. any other matter relating to the Services.

b. Without limiting the foregoing, GreenGreen's total liability arising pertaining to the Terms and the Services shall in no event exceed 100% of the aggregate amounts paid or payable by you to GreenGreen for the Services.

14. INDEMNITY BY USER

a. You agree to indemnify, defend and hold harmless GreenGreen, its subsidiaries, affiliates, officers, agents and employees, from any claims which may be brought by third parties arising from your use of the Services.

15. NOTICES

a. Will be displayed on our website or once when you log on to the service.

16. TRADEMARK INFORMATION

a. The "GreenGreen" trademark and all other logos, trademarks, service marks and product and service names associated with GreenGreen and/or the Services (the "GreenGreen Marks")are owned by GreenGreen or its affiliates or vendors. You agree not to display or use in any manner the GreenGreen Marks without prior permission from GreenGreen.

17. GOVERNING LAWS & JURISDICTION

a. The construction and validity of the Terms and the relationship between you and GreenGreen shall be governed by the laws of the Republic of South Africa.

b. You agree that the agreement between GreenGreen and you, as governed by these General Terms, will come into effect at the time and place of the acceptance by GreenGreen of your application to use the Services.

c. GreenGreen shall be entitled, in its sole discretion, to institute any legal proceedings which may arise out of use of the Services in any Magistrate's Court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court in respect of the cause of action. Despite the aforegoing, nothing herein shall limit the right of GreenGreen to proceed against you in any other court of competent jurisdiction.

18. INTERPRETATION

a. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms shall remain in full force and effect.

*120 GREENGREEN RECHARGE SERVICE CONTRACT

1. THE SERVICES - PRINCIPAL COMPONENTS

a.

AIRTIME RECHARGE: Green Green will, at your instruction via Green Green's USSD interface for such Service -

i. acquire a pre-paid airtime package as stipulated by you, or as available ("the Airtime") from the mobile phone network stipulated by you ("the Network"),

ii. cause the Airtime to be credited to your mobile phone number's account with the Network,

iii. debit your account with Green Green (your "Mobile Wallet") with the minimum cost of R90 per month of Airtime, as well as with such of the Service Fees hereafter set out as may be applicable

b.

ELECTRICITY RECHARGE: Green Green will, at your instruction via Green Green's USSD interface for such Service –

i. acquire a pre-paid electricity package as stipulated by you, or as available ("the Electricity") from the relevant electricity supplier ("the Supplier"),

ii. cause the Electricity to be credited to your stipulated account with the Supplier,

iii. debit your account with Green Green (your "Mobile Wallet") with the cost of the Electricity, as well as with such of the Service Fees hereafter set out as may be applicable

2. SERVICE FEES

a.

Registration fee	R150.00

b.

Reply to register request via promotional registration shortcode	R7.50

c.

Monthly accounting fee	R1.00

d.

Debit fee [per transaction]	R2.99

e.

Airtime PIN order via SMS	R0.75

f.

Miscellaneous correspondence (e.g.PIN request, or resend PIN) [per SMS]	R0.75

3. SERVICE PERIOD

a.

The Services are provided for successive Service Periods, each of one calendar month, as from the date of first payment of your Service Fees.

b.

As set out in the GENERAL TERMS AND CONDITIONS, Green Green may, at the end of each Service Period, automatically renew this Service Contract for a further Service Period.

4. GENERAL TERMS AND CONDITIONS

a.

The terms of this Service Contract are subject to the terms of the General Terms And Conditions Governing Green Green Service Agreements.