

ESP SALON & SPA SOFTWARE: Bulk- SMS Services User Agreement

| Unit 310, 128 Strand Street, Cape Town | **Sales:** 0860 104 090 | **Support:** 086 110 6203 | **Fax:** 021 425 6346 | sales@esponline.info | www.esponline.info | ESP Reg. No. CK 94/06980/23| VAT No. 4390165324

A. COMPANY DETAILS	
Company Name	
Trading As	
Address	
VAT Number	
Business Tel	
Business Fax	
Cell Phone	

B. Sms Pricing

Flat fee of R200 Exc. Vat per a month, this will be collected on the 20th of every month.

You will be charged R0.19 Exc. Vat per a Sms, this will be collected on the 10th of every month.

C. SMS Safety Threshold

For your protection and ours, please select your Sms Bundle.

Note you will only be charged for the sms's that you send out.

The Bundle is a safety Threshold.

Sms Bundle	
SMS 200	
SMS 500	
SMS 1000	
SMS 2000	
SMS 5000	
SMS 7500	

1.-INTERPRETATION

In this agreement the following terms have the following meanings:

"Supplier" – Evolutionary Service Provider (ESP)

"Customer" - The party subscribing to ESP Services

"Short Message Services" or "SMS" - 160-character text message that is sent to or from a cellular phone.

"Service/s" - The method of sending SMS messages used by the Customer

"GSM Network" - The GSM Cellular Network over which the SMS will be delivered.

2. AGREEMENT TERMS

2.1 The terms set out below will apply to the provision of services purchased by the Customer.

2.2 The Customer shall not be entitled to withdraw from this agreement, for a period of 30 days from the date upon which the Customer signs it.

2.3 This agreement shall continue until terminated by either the Supplier or Customer on one Calendar month's written notice to the other.

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3. THE SMS SERVICE

- 3.1 The Customer shall restrict all SMS Messages to 160-characters. All SMS Messages submitted that are longer than 160-characters will be truncated to 160-characters.
- 3.2 Any SMS messages included in a term contract cannot be accumulated in one particular month and carried over for use in another month, i.e. any SMS messages unused at the end of each month will expire.

4. PRESENTATION OF BILLS AND PRICING

- 4.1 The Customer will be charged for all messages submitted to the Supplier for delivery.
 - a) Bundle Rates will be collected every month in advance.
 - b) Out of Bundle Rates will be collected every month in arrears.
- 4.2 The Customer will pay a refundable deposit if a higher Safety threshold is requested as per Section C. The deposit will be refunded if the customers account is fully settled upon termination of this agreement as section 2.3 (The deposit is calculated by deducting the standard threshold from the required threshold and the remainder is then charged at R 0.28 excl Vat per sms)
- 4.2 Pricing excl VAT are for all SMS's sent to a mobile number inside the Republic of South Africa. International rates will apply to international numbers.
- 4.3 The charges for Services may be changed on one month's notice by the Supplier to the Customer.

5. CUSTOMER ACKNOWLEDGEMENT

The Customer agrees to abide by all applicable local and international laws and regulations and is solely responsible for all acts or omissions that occur under his account or password, including the content of your transmissions through the Service. By way of example, and not as a limitation, the Customer agrees that:

- 5.1 The Customer is responsible for the content and accuracy of any SMS sent on their account
- 5.2 The Customer will adhere to an appropriate code of conduct when utilizing the Service/s.
- 5.3. Sending of unsolicited advertising material, illegal content, unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature is not permitted and may, at the sole discretion of the Supplier, result in the immediate termination of the Service/s.
- 5.4 The Customer will not create a false identity or forged phone number, or otherwise attempt to mislead others as to the identity of the sender or the origin of the message.
- 5.5 The Customer shall present proof of a Recipient's consent to the delivery of SMS.
- 5.6 The Customer will not harvest or otherwise collect information about others, without their consent.
- 5.7 The Customer will not transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity.
- 5.8 The Customer will not defame or slander any person, or infringe upon any person's privacy rights.
- 5.9 The Customer will not transmit any material that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs.
- 5.10 The Customer will not interfere with or disrupt networks connected to the Service or violate the regulations, policies or procedures of such networks.
- 5.11 The Customer will not attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means.
- 5.12 Should the Supplier receive any complaints from Recipients regarding the receipt of unsolicited SMS, the Supplier will notify the Customer thereof. Similarly, should the Customer receive any complaint from any Recipient regarding the receipt of any SMS, the Customer will immediately notify the Supplier
- 5.13. The persistent abuse of the sending of unsolicited SMS's by the Customer or the omission to notify the Supplier of any complaint referred to above may, at the sole discretion of the Supplier, result in immediate termination of the Service/s.
- 5.14 The Customer will not interfere with another Member's use and enjoyment of the Service or another entity's use and enjoyment of similar services.
- 5.15 Any activity that ESP believes could subject it to criminal liability or civil penalty or judgment will result in immediate termination of the Service/s.

6. LIABILITY

- 6.1 The Customer agrees that ESP shall not be held responsible for any loss or damage arising from or consequential upon an act or default of the Customer whereby there occur errors in the coding of information, illegible information or documents; faulty, damaged, incompatible or incorrectly encoded computer media or data streams supplied; the late arrival or non-arrival of data; incorrect data, data out of sequence or in the wrong form or variations in data from that which ought to have been supplied.
- 6.2 ESP reserves the right to charge a reasonable fee for any necessary additional work done by ESP as a result of any matters listed in clause 6.1 above.
- 6.3 The Customer agrees that ESP shall not be liable in delict, contract, statute or otherwise for any indirect, special or consequential loss, damage, injury, expense including, but not limited to: loss of production, profits, revenue, goodwill, anticipated savings or other economic loss; wasted expenditure; contractual losses; or losses consequent upon loss or corruption of any data, stored programs or other software; howsoever arising, whether based on strict liability, caused by negligence, gross negligence or otherwise, and whether foreseeable or not.
- 6.4 This agreement shall be governed by the laws of South Africa, and both parties agree to submit to the jurisdiction of the courts of the Cape Provincial Division in the event that any proceeding shall be brought under the terms of this agreement.
- 6.5 This document contains the entire agreement between the Customer and ESP and shall not be capable of variation except as agreed in writing by an authorized representative of ESP.

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BANK DETAILS

COMPANY NAME _____

BANK _____ **BRANCH CODE** _____

BRANCH NAME _____ **Current Acc**

ACCOUNT NAME _____ **Savings Acc**

ACCOUNT NUMBER _____ **Transmission Acc**

I/We hereby request, "instruct" and authorise ESP to draw against my/our account with the abovementioned bank (or any other bank or branch to which I/we may transfer my/our account) the sum indicated (Plus V.A.T), "the amount necessary for payment of the monthly instalment due in respect of the abovementioned agreement" on the 10th and 20th day of the month commencing on the date of this authorisation and continuing (as the case may be). All such withdrawals from my/our bank account by ESP shall be treated as though they had been signed by me/us personally.

I/We understand that the withdrawals hereby authorised will be processed by computer through a system know as the Netcash Debit Order system , and I also understand that details of each withdrawal will be printed on my bank statement or on an accompanying voucher.

I/We agree to pay any bank charges relating to this debit order instruction. This authority may be cancelled by me/us by giving ESP one calendar months notice in writing, sent by prepaid registered post, but I/we understand that I/we shall not be entitled to any refund of amounts which ESP have withdrawn while this authority was in force if such amounts were legally owing to ESP. The outstanding amount at such time may be withdrawn until the balance owing to ESP is settled in full. Receipt of this instruction by ESP shall be regarded as receipt thereof by my/our bank (whichever it is or will be).

ASSIGNMENT:

I/We acknowledge that the party hereby authorised to effect the drawing(s) against my/our account may not cede or assign any of its rights to any third party without my/our prior written consent and that I/we may not delegate any of my/our obligations in terms of this contract/authority to any third party without prior written consent of the authorised party.

Signature as used for signing cheques		Assisted by (Where legally necessary)	
Date (dd/mm/yyyy)		Capacity	
Email address to be used			
Cell Phone Number			

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