


**COMPANY INFORMATION**

 You may also complete this form online at [www.amicell.co.za](http://www.amicell.co.za)

Company Name

Registration Number

VAT Number

**COMPANY CONTACT DETAILS**

Contact Person

Email Address

Cell Phone Nr

Telephone Nr.

Address

Code

**DIRECTOR / MEMBER / PARTNER**

Full Name

ID Number

Telephone Number

Designation

**RESOLUTION:** The Company / Subscriber enters into a 30 Day Notice Service Agreement with AmiCell SMS for the use of the Service as specified in the Terms and Conditions or on a Pre-Paid basis without a Notice period. Any subsequent additions / upgrades will be subject to the certification of an additional Service Agreement or Amendment.

**COSTS**

Local SMS Cost

R 0,25 (Excl. VAT)

(160 Characters Each)

Monthly Account Service Fee

R 69,00 (Excl. VAT)

(Charged Monthly in Arrears) **OR**

Pre-Paid Ad-hoc Re-Charge Fee

R 29,00 (Excl. VAT)

(Applicable with Every Re-Charge)

**PAYMENT METHOD** (Mark with X)

*SMS to International Roaming Recipients will be charged at International Rates.*

Monthly Debit Order *(Recommended)*

*Complete and Certify the Debit Order Mandate - Page 2 of this Agreement.*

Monthly EFT

*A Credit Application is Required and will be forwarded to the email address provided above.*

Pre-paid

*Re-Charge as Required. No Monthly fees applicable*

**USER INFORMATION**

Send SMS Delivery Logs

*Daily*

*Weekly*

*Monthly*

*Divert Replies to Email*

Username

Email

Mobile

Username

Email

Mobile

Username

Email

Mobile

*(Additional Email Addresses can be requested free of charge via an Email to support@amicell.co.za)*

**DECLARATION:** The Company warrants that all the information contained in this Service Agreement is true and correct and by its signature hereto, it acknowledges entering into a Service Agreement with AmiCell SMS as per the AmiCell SMS Standard Terms and Conditions as provided for and as set out in this Schedule. The Company / Subscriber acknowledges and agrees to hold it self bound to the terms and conditions as applicable upon it. The Company/Subscriber further acknowledges that pending AmiCell SMS's written acceptance hereof it shall have no claim against AmiCell SMS arising out of this Service Agreement application.

THE AUTHORIZED SIGNATORY further warrants full authority to enter into this Service Agreement on behalf of the Company/Subscriber.

**FOR AND ON BEHALF OF THE COMPANY / SUBSCRIBER**

**FOR AND ON BEHALF OF AMICELL SMS**

Print Name


Signature


Date

Print Name


Signature


Date

**A. AUTHORITY / MANDATE : PAPER / ELECTRONIC**

Given By	<i>(Name of Account Holder)</i>
Address	
Contact Nr.	
Amount	Variable – Subject to Monthly Subscription and SMS Usage
	Date
Bank Name	Branch Name and Town
Branch Nr.	Account Number
Account Type	Current (cheque)      Savings      Transmission <i>(Mark with X)</i>

**TO:**                      **AmiCell SMS (Pty) Ltd**                      **ADDRESS:**                      540 Bridgefield, 75 Leander Rd, Olympus, Pretoria

Abbreviated Short name to be used: **AMICELLSMS** (Refer to contract reference number \_\_\_\_\_ “the Contract Ref. Nr”)  
(Office Use)

I/We hereby authorize Netcash (Pty) Ltd to issue and deliver payment instructions to your banker for collection against my/our abovementioned account at my/our abovementioned bank on condition that the sum of such payment instructions will not differ from my/our obligations as agreed to in the Contract Reference Number.

The individual payment instructions so authorized must be issued and delivered on the date when the obligation in terms of the Agreement is due and the amount of each individual payment instruction may not differ as agreed to in terms of the Agreement.

The payment instructions so authorized to be issued must carry the Contract Reference Number, included in the said payment instructions, and must be provided to identify the specific contract. The said Contract Reference Number should be added to this form in section E before the issuing of any payment instruction and communicated directly after having been completed.

I/we agree that the first payment instruction will be issued and delivered on \_\_\_\_\_ (date) and thereafter regularly between the 2<sup>nd</sup> and the 5<sup>th</sup> of each month. If however, the date of the payment instruction falls on a non-processing day (weekend or public holiday) I agree that the payment instruction may be debited against my account on the following business day; or Subsequent payment instructions will continue to be delivered in terms of this authority until the obligations in terms of the Agreement have been paid or until this authority is cancelled by me/us by giving you notice in writing of not less than the interval (as indicated in the previous clause) and sent by prepaid registered post or delivered to your address indicated above.

**B. MANDATE**

I/we acknowledge that all payment instructions issued by you will be treated by my/our abovementioned bank as if the instructions had been issued by me/ us personally.

**C. CANCELLATION**

I/we agree that although this authority and mandate may be cancelled by me/us, such cancellation will not cancel the Agreement. I/we also understand that I/we cannot reclaim amounts, which have been withdrawn from my/our account (paid) in terms of this authority and mandate if such amounts were legally owing to you.

**D. ASSIGNMENT**

I/We acknowledge that this authority may be ceded or assigned to a third party if the Agreement is also ceded or assigned to that third party.

Signed by \_\_\_\_\_ on this \_\_\_\_\_ day of (month) \_\_\_\_\_ (year) \_\_\_\_\_

SIGNATURE AS USED FOR OPERATING ON THE ACCOUNT \_\_\_\_\_

ASSISTED BY \_\_\_\_\_ CAPACITY \_\_\_\_\_

*FOR OFFICE USE*

**E. AGREEMENT REFERENCE NUMBER**

THE AGREEMENT REFERENCE NUMBER IS \_\_\_\_\_

# AmiCell SMS - TERMS AND CONDITIONS - EMAIL 2 SMS SERVICE AGREEMENT

## 1. DEFINITIONS

\*\* Unless the context otherwise indicates a contrary intention, the words herein below defined shall have the meanings assigned to them, and similar expressions shall bear corresponding meanings:-

1.1 Charges means the Hosting and SMS sending Charges and any other charges pertaining to the provision of the Service,

1.2 AmiCell SMS (Pty) Ltd means AmiCell SMS Registration Number 2022/752544/07, of 540 Bridgefield, 75 Leander Road, Olympus, Pretoria;

1.3 Network means the cellular telephony system operated by the Operator;

1.4 Services means the hosting of services on the SMS platform and Document / SMS sending, including, inter alia, additional Services, provided to the Company by AmiCell SMS.

1.5 Operator means any licensed cellular operator in South Africa;

1.6 Order means an Order placed by the Company on AmiCell SMS, as per the Service Agreement for the provision of Services;

1.7 Price List means that schedule on which the Charges are levied by AmiCell SMS to the Company.

1.8 Prime Rate means a rate of interest per annum which is equal to the First National Bank of South Africa Limited's published minimum lending overdraft rate of interest per annum plus 3% (three percent), compounded monthly in arrears and charged by such bank on the unsecured overdrawn current accounts of its most favored corporate clients in the private sector from time to time. In the case of a dispute as to the rate so payable the rate shall be certified by any manager or assistant manager of the said bank, whose decision shall be final and binding on the parties;

1.9 the Schedule means the SMS Service Agreement section of this Agreement to which these terms and conditions are attached or printed overleaf;

1.10 Company means that party whose particulars appear on the Schedule or his/her its successors or authorized assignees;

## 2 COMMENCEMENT AND TERMINATION

2.1 This Agreement shall commence on the date of signature of this Agreement and shall, subject to the provisions of clause 7, continue indefinitely, unless terminated:-

2.1.1 by AmiCell SMS, forthwith on written notice to the Company, in the event of the sub-license issued by the Operator in terms of which AmiCell SMS is given access to the Network Services is terminated for whatsoever reason.

2.2 Notwithstanding the use of agents or other intermediaries by AmiCell SMS, the Order by the Company is an offer made by the Company to AmiCell SMS and will be considered once received by AmiCell SMS. AmiCell SMS's acceptance of the offer (if it does accept) shall consist of provision of the services as indicated on the schedule and upon which commencement of service, this Agreement shall become binding between AmiCell SMS and the Company whether or not the Company was notified of the acceptance of the offer. The Company herewith expressly dispenses with notification of acceptance of the offer by AmiCell SMS.

## 3 SUPPLY OF SMS SERVICES

3.1 The Order placed by the Company is subject to AmiCell SMS's approval in its sole discretion. If AmiCell SMS does not approve the Order, it shall not be under any obligation to give reasons for its decision.

3.2 AmiCell SMS shall utilize its best endeavors to promptly comply with any provision of services as recorded in the Schedule, but shall not be liable to the Company in the event that such provision is delayed or cancelled, for whatsoever reason.

3.3 The Company agrees that open-end access is provided to the AmiCell SMS systems, and the Service configuration or How To is based on a Standard Specification, which is available on request.

3.4 The Company shall ensure that the Service is used according to the specification at all times to enable optimal functionality of the AmiCell SMS System and data accuracy.

3.5 The Company shall be responsible for obtaining all necessary approvals and authorities imposed by any competent authority and required for the purpose of any such provision of services ordered, and the Company hereby indemnifies AmiCell SMS against any claim or liability suffered by AmiCell SMS by reason of such approvals and authorities not having been obtained.

3.6 Upon commencement of this Agreement, and once the registration process is successfully completed, the Services will be activated and made available to the Company. Authorized Email Addresses will be assigned to the Service and Confirmed to the Company. The unique serial number and user name will be the only identifier by which AmiCell SMS will identify the Company whilst using the AmiCell SMS Service. The Company acknowledges that no further verification or authentication of the identity of the Company will be undertaken by AmiCell SMS and consequently, all activities concluded through the Internet and on the GSM network, which can be traced to the Company's account, shall be deemed to have been undertaken exclusively by the Company and the Company is therefore legally bound for all transactions resultant from such activities. It is therefore the Company's responsibility to ensure that access to/usage of the Services is restricted, and not subjected to negligent usage. The Company indemnifies AmiCell SMS against any claims, actions or damages as a result of the fraudulent or unauthorized use of the Company's username and password or loss thereof.

3.7 Due to the nature of the Services, AmiCell SMS cannot be held responsible for risks incurred through the use of the AmiCell SMS Service, as well as all risks associated with data security, privacy, availability and reliability of message processing and transmission. Thus, the Company is fully and exclusively liable for any and all risk resultant from the use of the AmiCell SMS Service.

3.8 The Company acknowledges that SMS messages are transmitted in an unencrypted format and as such AmiCell SMS cannot guarantee against eavesdropping of SMS messages at any stage.

3.9 The Company acknowledges and accepts that the provision of the Services may be enabled through AmiCell SMS's agreements with various Service providers and AmiCell SMS is therefore only able to act under the conditions imposed through such agreements. The delivery of SMS messages transmitted via the internet is subject to the availability and performance of the AmiCell SMS network, the Network Operators technical systems and networks and telephone networks and cannot be guaranteed by AmiCell SMS.

3.10 AmiCell SMS accepts no liability whatsoever for the Contents of the Information sent to the SMS Service. The cost for incorrect data is solely at the cost of the Company.

3.11 The Company undertakes to not send any unsolicited SMS Messages to Recipients that are not bound by an "opt in" agreement. Any claims from authorities will be the responsibility of the Company.

## 4. CHARGES

4.1 In consideration for the provision of the Services supplied by AmiCell SMS to the Company, the Company shall effect payment to AmiCell SMS of the applicable Charges, as detailed in the Schedule, and whether or not the Services have been, or are being utilized by the Company.

4.2 AmiCell SMS may, on written notice to the Company, vary any Charges, either in whole or in part, with effect from the date specified in such notice.

4.3 Unless otherwise agreed to by AmiCell SMS in writing, the Company shall effect payment to AmiCell SMS

4.3.1 in advance of an amount equal to the full Service Fee inclusive of Hosting, Usage and Value Added Tax for the full period before commencement of the Service upon presentation of an Invoice;

4.3.2 of all other Service Charges, in full, on presentation of an Tax Invoice and against such provision

4.3.3 in arrears of an amount equal to the full Service Fee inclusive of Hosting, Usage and Value Added Tax for the full period by means of debit order authorization as set out in the schedule.

4.3.4 at the premises of AmiCell SMS or at the bankers of AmiCell SMS. Where payment is made by the Company through a debit order, other electronic means or any other intermediary, the Company's bankers or other intermediaries shall act as the Company's agents and the Company shall have discharged its obligations only upon payment being received by AmiCell SMS at AmiCell SMS's Premises or by the bankers of AmiCell SMS and such payment has been identified by AmiCell SMS as the Company's payment for the relevant Company's Account.

4.4 Notwithstanding the provisions of Clause 4.3., AmiCell SMS may at any time on reasonable written notice to the Company vary its invoicing and payment procedures and requirements.

4.5 A Tax Invoice shall be sent by AmiCell SMS to the Company to the Email addresses supplied by the Company in the Schedule or in writing to AmiCell SMS.

4.6 Subject to any contrary provisions of the Price List from time to time:-

4.6 SMS requests sent to any surcharged gaming or information bulletins will carry a twenty percent (20%) surcharge on the actual cost per SMS sent to such a gaming or information bulletin MSISDN number.

## 5. SUSPENSION

5.1 AmiCell SMS may at any time, without notice to the Company and in any manner whatsoever, suspend access to the SMS / Network Services in the event that:-

5.1.1 any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever, to the SMS Network Services or the Network;

5.1.2 the Company fails to perform any of his obligations, or breaches any terms of this Agreement;

5.2 AmiCell SMS reserves the right to effect payment of applicable re-setup Charges pursuant to the restoration of Services suspended in the circumstances described in Clause 5.1.2.

## 6 LIMITATION OF LIABILITY

Without detracting from any of the other provisions of this Agreement, AmiCell SMS shall not be liable to the Company for any loss or damage suffered by the Company, and whether same is direct or consequential, in the event that:-

6.1 AmiCell SMS fails for any reason whatsoever to provide any Services, either on the required date, or at all; and/or

6.2 The SMS Network Services are interrupted, suspended or terminated, for whatsoever reason; and/or

6.3 AmiCell SMS fails to suspend the provision of the Services to the Company in terms of an arrangement between AmiCell SMS and the Company or after the Company has specifically requested AmiCell SMS to do so.

## 7. BREACH

7.1 In the event that the Company breaches any term of this Agreement, or any warranty given by him hereunder, or fails to fulfill any obligation resting upon him, including a failure to pay any amount owing to AmiCell SMS on due date, then without prejudice to AmiCell SMS's rights, AmiCell SMS may forthwith and without notice to the Company, either terminate this Agreement, or call for specific performance of all the Company's obligations and immediate payment of all sums of money owing by the Company, whether or not then due, in either event without prejudice to AmiCell SMS's right to seek such damages as it may have suffered by reason of such breach or failure. Notwithstanding the foregoing, and pending AmiCell SMS's election in terms of this clause, AmiCell SMS shall not be obliged to perform any of its obligations under this Agreement and the Company shall remain liable for the payment of all amounts owing by the Company in terms of this Agreement, whether or not such amounts are then due.

7.2 AmiCell SMS shall be entitled forthwith without notice, to terminate this Agreement in the event that the Company is sequestrated, liquidated, or placed under judicial management, whether provisionally or finally, and whether voluntarily or compulsory.

7.3 Without detracting from any of the other provisions of this Clause 7, in the event of the Company breaching of any provisions of this Agreement or the Company prematurely terminating this Agreement and AmiCell SMS electing to cancel same, the Company shall be liable to effect payment to AmiCell SMS of all the Service Charges which would have been payable to AmiCell SMS.

## 8. GENERAL

8.1 In the event of the Company failing to effect payment of any amount owing by him to AmiCell SMS on due date, then without derogating from AmiCell SMS's rights in terms of Clause 7, the Company shall be liable to effect payment of interest to AmiCell SMS on the amount so owing, at the Prime Rate from due date to date of payment.

8.2 All prices and Charges set out in this Agreement and any Price List are exclusive of Value Added Tax and any other applicable tax or duty, the liability for which shall vest with the Company.

8.3 The rights and obligations of the Company in terms of this Agreement may not be ceded or delegated to any third party without AmiCell SMS's prior written consent. The rights and obligations of AmiCell SMS in terms of this Agreement, may be ceded, assigned and/or delegated by it to any other party on written notice to the Company.

8.4 AmiCell SMS may change the terms and conditions of this Agreement as a result of changes in taxes, laws, regulations, the terms and conditions of the license issued by the Operator, the terms and conditions of any Agreement between the network service provider and AmiCell SMS or any circumstances or events similar to the aforesaid. AmiCell SMS shall notify the Company of any changes in writing.

8.5 This document contains the entire Agreement between the Parties contained herein, and no other warranties or undertakings have been made by AmiCell SMS or any dealer or agent of AmiCell SMS.

8.6 This Agreement and all matters or disputes arising there from or incidental thereto shall be governed and construed in accordance with the laws of the Republic of South Africa.

8.7 The Company, by his signature hereto and in terms of the provisions of Section 45 of the Magistrate's Court Act, No 32 of 1944, as amended, consents to the jurisdiction of the Magistrate's Court in relation to any actions or proceedings instituted against the Company in terms of, or arising out of the provisions of this Agreement, provided that AmiCell SMS, in its sole and absolute discretion shall be entitled to institute any such actions or proceedings, in any division of the High Court of South Africa possessed of the requisite jurisdiction.

8.8 A certificate under the hand of any manager of AmiCell SMS certifying the sum of any amount owing by the Company to AmiCell SMS shall be prima facie proof of its contents and sufficient proof for the purposes of enabling AmiCell SMS to obtain any judgment or order against the Company.

8.9 If any term, condition, requirement or provision contained in this Agreement is held by any court having jurisdiction to be unenforceable, illegal, void or contrary to public policy, such term, condition, requirement or provision shall be of no effect whatsoever upon the binding force or effectiveness of any of the remainder of this Agreement, it being the intention and declaration of the parties that had they or either of them known of such unenforceability, illegality, invalidity or that the provision was contrary to public policy, they would have entered into a contract, containing all other terms and conditions.

8.10 Each of the Parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any purposes arising from this Agreement at their respective addresses set forth in Clause 1.2 and/or the Schedule.

8.11 Each of the Parties shall be entitled from time to time, by written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante. Such address shall become the domicilium of that party within fifteen (15) days of the other party receiving such notification.

8.12 Any notice given and any payment made by a Party to the other ("the addressee") which:-

8.12.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery; provided that if the delivery is effected by or on behalf of the Company at AmiCell SMS's domicilium, the presumption shall only apply as regards AmiCell SMS if proof of receipt is obtained by the party effecting such delivery and duly produced as may be required to prove such delivery;

8.12.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the seventh day after the date of posting.

8.13 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile and Email. Communication by facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 48 (FORTY EIGHT) hours after the time of transmission and communication by Email shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (TWENTY FOUR) hours after the time of transmission.

8.14 In the event of AmiCell SMS instituting legal proceedings against the Company to recover amounts due to AmiCell SMS or take any other legal steps arising out of this Agreement, the Company shall be liable for legal costs on the scale as between attorney and own client and/or any collection costs.

8.15 AmiCell SMS shall be entitled to charge the Company for any banking, and/or administration fees incurred by it in the event of the Company defaulting in its payment or any other of its obligations.

Initial