

## Public Telecommunications Services Agreement (Bulk SMS)

This Public Agreement (the Agreement) defines the terms of the telecommunications services provided on the basis of alphanumeric identifiers used for the provision of Bulk SMS service by Kcell JSC, hereinafter referred to as "Operator", to any person who has joined and accepted the terms and conditions of this Agreement, hereinafter referred to as "Client". The Client and the Operator are hereinafter referred to as the "Parties" and individually as a "Party" or as stated above.

### 1. Definitions

1. In this Agreement and/or Annexes hereto the following terms as it may concern the application of the Agreement shall have the meaning as defined in this section, unless otherwise apparent from the context:

1. **Service** – services of Client, rendered to User through the provision by Operator of access to the service of Client via the communication network of Operator, applying the Technical solution.

2. **Content** – scope of the Service. SMS technology implemented within the scope of the Technical solution is used as a transport medium for the transmission of the Content from Client to User.

3. **Technical solution** – a complex of software and hardware facilities, developed and maintained by Operator, that enable data transfer from Client to User and/or from User to Client using the Service over the communication network of Operator and/or other telecommunications operators by means of Identifiers and SMS technology. User may use the Service through the use of subscriber terminals, compatible with the Technical solution.

The Technical solution for the provision of Telecommunication services may include the following components:

- a) Connection of Client to the Digital identifiers of Operator and/or other network operators;
- b) Provision of technical connection to allow Users to access the Client's Services through the use of Identifiers, or through other methods agreed between the Parties;
- c) Other, by agreement of the Parties.

4. **Digital identifier** – a designation that consists of a set of digits, letter and/or combination thereof and is used to identify the Client as the sender and/or recipient of SMS for the purpose of the Service.

5. **Unidentified SMS** are SMS sent from a Shared Identifier with no indication of the Client's name or its trademark, brand, etc., which allows identifying the SMS sender. Unidentified SMS detected in the Client's SMS traffic will be blocked by the Operator without prior notice.

Unidentified SMS are detected by means of certified equipment designed to control SMS spam (SMS Firewall) based on a set of parameters, such as: analysis of Shared Identifiers, sender of the incoming SMS; length of the original and received message; amount and nature of the SMS traffic received from the identifier, etc.

6. **User** – an individual or a legal entity who is a mobile network subscriber and uses a mobile end user terminal that is capable of using the Service and who has provided consent to receive the Service.

7. **Reporting period** – one calendar month, during which the Telecommunication services were rendered to Client.

8. **Telecommunication services or Services** – services of Operator relating to activation and

maintenance of the Identifier and setting up technical connection for the Users to access the Client's Service within the scope of this Agreement.

**Spam** – sending information/Content that has not been solicited by subscriber (User) and/or which is not directly related to the Service.

9. **Agent** – a person authorized by Operator to execute, modify and terminate this Agreement.
10. **International A2P SMS** are messages identified by the Operator's equipment as SMS messages, originally generated by Business application in any country, including Operator's country, and/or those sent from the territory of any country and related to international / foreign OTT services, international / foreign partners (organizations, companies, etc.), as well as any mention of such organizations or companies or their international / foreign brand (trademark, logo, etc.), even if they have a representative office and / or registered legal entity in the Operator's country.

International A2P SMS also include SMS sent from International Identifiers chosen by the Client for sending International A2P SMS.

International A2P SMS are identified by certified equipment that support SMS FW (SMS spam control) and on the basis of a set of parameters, such as: analysis of the numeric and alphabetic identifiers of the sender of SMS traffic; the length of the original and incoming message; the amount and nature of SMS traffic received from the identifier(s), etc.

**Business application** - exchange of SMS messages between application (an automated system, platform) and user(s).

**OTT** (Over the TOP) is a method of providing video services via the Internet. The term means delivering a video signal from a content provider to a user's device over data networks.

## 2. **Subject of the Agreement**

1. Under this Agreement, Operator provides Client with the Telecommunication services using the Technical solution of Operator subject to the list and conditions provided for herein.
2. Client accepts and pays for the Telecommunication services, rendered in accordance with the terms of this Agreement.
3. The list of tariffs available to the Client under the Service is provided on the Operator's website at <https://www.kcell.kz/ru/article/bulk-SMS>. The tariff terms and conditions provide that the Client may not transfer or resell, either on its own or on behalf of the Operator, the Telecommunication services and Identifier to third parties.
4. This Agreement is a connection agreement in accordance with the legislation of the Republic of Kazakhstan. The terms of this Agreement are established independently by the Operator in accordance with the laws of the Republic of Kazakhstan and are accepted by the Client only by connecting to this Agreement in whole. Should the Client refuse to accept the terms of this Agreement, the Client may terminate this Agreement by submitting a written application to the Operator to that effect.
5. This Agreement shall enter into force upon signing of the Registration Form by the Client and its acceptance by the Operator. By signing the Registration Form, the Client expresses its unconditional consent to the terms of the Agreement and connection thereto in whole.
6. This Agreement does not govern the relations of the Parties related to International A2P SMS and, if detected, such International A2P SMS will be blocked by Operator's network equipment. International A2P SMS include SMS related to International/foreign:
  - payment systems;
  - e-wallets and/or settlement systems;

- processing of e-payments;
- social media, international OTT applications;
- online gaming services;
- e-mail services, file hosting service, search engines;
- online booking systems;
- taxi services, car rental and car spare parts;
- bookmakers and online casinos;
- online media services, online cinemas, TV and music streaming services;
- online educational services;
- postal and delivery services;
- online stores;
- companies that develop, produce or sell cosmetics, medicines, sports nutrition and nutritional supplements;
- online consulting of brokerage companies and crypto-currency;
- smartphone manufacturers;
- recruitment services;
- airlines;
- web resources of the domain zone of a country other than the country of the Operator;
- mobile operators, except those registered in the Republic of Kazakhstan.

### **3. Rights and responsibilities of the Parties**

#### **3.1. Rights and responsibilities of Operator:**

1. Operator shall provide Client with access to Technical Solution in accordance with the terms of this Agreement. At the request of the Client, Operator shall within 5 (five) working days email the terms of reference to the Client for connecting the Client's equipment to the technical solution. Connection of Identifiers or change of conditions of their provision shall be carried out based on the Client's application within thirty (30) calendar days, on the 1st or the 15th of the respective month. Operator shall not be responsible for any delay in connection of Identifiers or change of conditions of their provision on the networks of other operators.
2. Operator shall to 24/7 availability of Technical solution, except in cases provided for in this Agreement. Operator is not responsible for any malfunctions and failures of the Technical solutions.
3. Operator may change the Technical solution specifications at its discretion. In which case, Operator shall give the Client at least ten (10) working days' notice of any planned changes to the Technical solution.
4. Operator has the right to immediately and without prior notice to Client, disconnect the Client from or make changes to the Technical solution in case of technical failures of its network or network accidents, faulty operation of the Client's equipment, incorrect connection to Operator's network, or when the Client's software causes interference to Operator's network, as well as in other cases in order to prevent or eliminate technical malfunctions. In this case the Operator shall, within three (3) business days after disconnection notify the Client in writing, via e-mail or telephone of the reasons of disconnection.
5. Operator has the right to deny Services to the Client for legal reasons (including, but not

limited to the inability to provide services due to the acts of third parties, enactments of state bodies, prohibitive acts of state bodies, suspected breach by the Client of this Agreement or laws requirements of this Agreement or the law while using the Service and other reasons). In this case the Operator shall, within three (3) business days after disconnection notify the Client in writing, via e-mail or telephone of the reasons of disconnection.

6. Operator has the right to suspend the provision of Services and disconnect the Client from the Technical solution, should the Client delay payments due hereunder for more than five (5) working days.
7. Operator has the right without prior notice to suspend the provision of Services and disconnect the Client from the Technical solution for planned maintenance or repair activities. Such being the case, Operator shall give the Client at least five (5) working days' notice in writing or via email.
8. Operator may at its own discretion terminate the provision and maintenance of any Digital identifier in connection with the requirements of public authorities or third parties, which were provided with the appropriate Digital identifier by the authorized state body, or in the case of technical impossibility to maintain the Digital identifier, providing Client with another Digital identifier of the same category. In case of refusal of Client to use the newly provided Digital identifier, Operator has the right to unilaterally cancel the Agreement in whole or terminate the provision of Telecommunication services in respect of one or several Digital identifiers.
9. Operator has the right to authorize Agent to perform any and all actions under this Agreement without prior notice to the Client.
10. Operator has a right to unilaterally block the Alphabetic identifiers that have not been in use by the Client over 6 months and make those available to other Clients.

## **2. Rights and responsibilities of Client:**

- 2.1. Client agrees to promptly and fully pay for the Telecommunication services rendered by Operator.
- 2.2. Client agrees to comply with the requirements of the Operator or Agent to ensure proper and safe connection to and use of the Technical solution throughout the term of this Agreement.
- 2.3. Client shall provide the Operator or Agent with a detailed description of the Service thirty (30) calendar days prior to the connection to the Technical solution. The Client shall notify Operator or Agent, within thirty (30) calendar days in advance, of any changes or amendments to the Service and / or Content, or the need to change the terms of Identifier provision.
- 2.4. The Client shall within 3 (three) business days notify the Operator of any changes in their details.
- 2.5. If the national laws require that the Service be provided on the basis of a license, permit, patent, the Client shall obtain the required license, permit, patent from the competent authority, and in the absence thereof, resolve any claims brought against the Operator at its own expense.
- 2.6. Client may send SMS-messages only in the period from 09.00 to 21.00 hours, according to the time at the User's place of registration. In the period after 21.00 and up to 09.00 hours SMS-messages can be sent only in cases when the request of User was sent within the specified time interval or if the transmitted to User information was requested by User was received within the specified time, or in cases of notification of Client's employees of emergencies, failures in processes, immediate notification of the traffic flow.
- 2.7. In case of receipt of the request from Operator or Agent about failure in provision of Users with the Service, incorrect provision of the Service or provision of the Service, not being requested by User, Client shall not later than the current working day confirm Operator or Agent about

acceptance of the query for processing and within 5 (five) working days shall provide the final answer on the merits of the query.

- 2.8. Client may contact Operator at [Partnes\\_SMS@kcell.kz](mailto:Partnes_SMS@kcell.kz) (Tariff 1) and [email@kcell.kz](mailto:email@kcell.kz) (Tariff 2) for clarifications on the telecommunication services provided by Operator.
- 2.9. Client is responsible to ensure that his traffic is free of Unidentified SMS.

#### **4. Cost and payment procedure**

**4.1.** The cost of Telecommunication services shall be based on the rates established by Operator and published on its website at <https://www.kcell.kz/ru/article/bulk-SMS> and <https://www.kcell.kz/ru/article/for-partners>.

**4.2.** The cost of Telecommunication services includes the One-off charge for the connection of Digital identifiers, the cost of Operator's services relating to their maintenance and transfer of data by means of the Service.

**4.3.** Client shall pay for the connection to Digital identifiers within 10 (ten) banking days from receipt of the invoice from Operator or Agent, unless he Parties have agreed otherwise. Should the number of connected Identifier increase, the Client shall pay the cost of each newly connected Identifier within 10 (ten) business days from receipt of invoice from Operator or Agent.

**4.4.** Operator has the right to grant the Client a grace period for payment of the One-off charge for Identifiers for up to twelve (12) months. In this case, Client shall apply to Operator or Agent with a written request to that effect including a schedule of payment of the One-off charge for connection of Identifiers, subject to approval by Operator or Agent.

**4.5.** Settlements between the Parties shall be based on Operator's billing data. The Client agrees to be charged for all attempts to send messages to the Operator's SMS Center, including each attempt to send messages which were returned by the Operator's SMS Center with error report.

**4.6.** Operator or Agent shall by the 15<sup>th</sup> of the month following the Accounting period provide the Client with the Work Completion Certificate, Reconciliation statement in respect of the services provided by Operator as well as invoice for the past Accounting period.

**4.7.** Client shall within 10 (ten) working days from the date of receipt of the certificates from Operator or Agent sign the certificates and send them back to Operator or Agent.

**4.8.** In the event of any inconsistency in the reporting data of the Parties, constituting less than 5%, the settlement payments shall be considered resolved and the data of Operator shall be accepted as the estimated value.

**4.9.** In case of discrepancies in the reported data of the Parties by more than 5%, Client shall, not later than three (3) working days from the date of receipt of the Report, send a written complaint to Operator or Agent by registered letter with acknowledgment of receipt, enclosing the detailed report on the Service. If Operator agrees with the claim of Client, the Parties shall amend the Report and/or the invoice payable. In case Operator disagrees with the claim of Client, the Parties shall reconcile to determine the cause of discrepancies and subsequent approval of the amount of services. After mutual reconciliation of data for the Reporting period, Operator or Agent shall invoice Client to effect the payment.

**4.10.** In case Operator failed to receive the claim and detailed objections from Client within the terms defined above, the services shall be considered to be rendered and accepted by Client in full.

**4.11.** Money for the Telecommunication services shall be transferred by Client before the end of the month following the Reporting period, except as provided by paragraphs 4.3 and 4.12 of this Agreement.

**4.12.** If Operator requests Client to pay the penalty as prescribed by this Agreement, such penalty will be paid by Client within 10 (ten) banking days from receipt of the invoice from Operator or will be deducted from monies, payable to Client by Operator, if any.

**4.13.** Terms and procedure of payment may be changed on the initiative of Operator.

**4.14.** Operator has the right to change the rates specified in this Agreement subject to notifying the Client within 15 (fifteen) calendar days prior to the date such changes enter into force. The actual use of the telecommunications services by the Client after the new rates become valid shall be deemed as the Client's express acceptance of such new tariffs. If the Client does not agree with the new rates, the Client shall notify Operator or Agent of termination of this Agreement prior to the date the new rates become effective.

**4.15.** Where connection of Identifiers is performed through the Agent, Client shall pay for the Telecommunications services to the settlement account of the Agent, except for the cases when Operator directly instructs the Client to transfer funds directly to Operator's account.

## **5. Content of the Service and/or Content**

1. Client agrees to comply with generally accepted standards of the moral and ethical nature in the preparation of texts/information/content, designed for User.
2. Client ensures that the Service, content of the information provided within the scope of the Service meets the conditions of this Agreement and Annexes and does not contradict the current legislation of the Republic of Kazakhstan. If the content of information provided by Client in the Service does not match the Agreement, Operator has the right to terminate the provision of Telecommunication services to Client as on the whole as in the corresponding to them part.
3. Should any third party claim/lawsuit be brought against Operator in respect of the Service, Client's SMS, content of information in the Service, Client must independently settle such claims/lawsuits and bear on its own all associated costs, including legal costs. Operator or Agent shall inform Client on any claims referred to in this paragraph in writing within ten (10) working days after receipt of the notice of such claims.
4. If, notwithstanding the provisions of this Agreement, Operator is responsible for the Service, content of the Service to third parties, including but not limited to, public authorities of the Republic of Kazakhstan, Client agrees to indemnify Operator for all costs and damages incurred by Operator in connection with the actions of such third parties, within three (3) banking days based on the invoice received from Operator.

## **6. Marketing**

1. Client has the right to publish any information on the Service as well as to mention the trademarks and product names of Operator, related to the Service, in any electronic and print media as well as in its own marketing materials (outdoor advertising, leaflets, booklets, etc.), only by prior agreement (via e-mail) with the authorized employee of Operator or Agent.
2. Client shall, using the comprehensible for Users way, provide Users in all promotional and informational materials with full information regarding the use of the Service. All the above information should be presented in an easily accessible form in order User would be capable to read the terms of the Service before its use.
3. All marketing activities upon the Service shall be carried out by Client at its own expense.
4. Operator has the right to disclose the name of the Service in its information materials published for Users. Operator in consultation with Client has the right to use the trademarks of Client relating to the Service and to post information about Client, the Service, mandatory indicating Client, for example, in the magazine for consumers, in leaflets for buyers, or on WEB/WAP-sites of Operator or a third party.
5. Sending of advertising messages in the cellular networks is permitted only with the consent of User.

## **7. Guarantee of compliance with the intellectual property rights**

1. The Parties hereby guarantee that while performing the obligations under this Agreement they will not infringe the intellectual property rights in relation to each other and with respect to third parties.
2. If Client provides Users with the Service, using the items of the intellectual property, including copyright items, Client warrants that it has all necessary rights, including but not limited to permits, licensing agreements, copyright agreements properly concluded between Client and right holders/ authors. Client shall be solely responsible to the listed persons, including for the payment of royalties.
3. If, notwithstanding the provisions of this Agreement, Client violated the copyright of the above third parties, Client shall be solely responsible to them.
4. If the claims/lawsuits are lodged against Operator in respect of items of the intellectual property and/or copyright items, Client undertakes to settle such claims/lawsuits and reimburse for the material damage and costs of Operator, if any. Operator or Attorney, in turn, shall notify Client of relevant claims within ten (10) working days.

## **8. Confidentiality**

1. The term “Confidential Information” includes without limitation technical, financial, commercial, banking secrets, know-how and other information related to the activities of Operator and Client, their counterparties, and non-public information, which became known in the process of conclusion or performance of this Agreement.
2. Information, transferred by Client to User and by User to Client through Operator, information on User (phone number, identification number, email address, mailing address, passport details, taxpayer identification number for individuals and particulars (details of the certificate of state registration, statistical card, certificate of registration as a value added tax payer for legal entities), all numbers of phones of Users, to which Client transmits information in connection with the provision of the Service, billing information and information about the services provided to Users, addresses of Users in the data transmission network, Internet resource identifiers, protocols of the data transmission network, information about the balance of User, volume and traffic of transmission of data between Client and User through the Technical solution of Operator, personal data of Users, shall also constitute confidential information and be available only with the consent of User.
3. Each Party undertakes not to disclose and/or otherwise make available to third parties confidential information of the other Party, access to which it has or may get in the negotiation and/or execution of this Agreement without the prior written consent of the other Party, except as provided for by legislation.
4. Information will not be considered confidential, if it is obtained from the public, official source.
5. Transfer of confidential information to third parties, publication or its other disclosure during the term of this Agreement and after five (5) years on its termination may take place only by written agreement of the Parties, or in cases expressly stipulated by the current legislation of the Republic of Kazakhstan.
6. All data of the confidential nature, provided on the tangible medium, should be marked: “confidential information”, “confidential” or otherwise.
7. Confidential information shall be communicated to only those employees of the Parties, who are directly involved in the execution of this Agreement.
8. The Party that breached the confidentiality obligations shall be liable in accordance with the current legislation of the Republic of Kazakhstan.

The Client gives consent to the disclosure of his personal data and the terms and conditions of this Agreement to the Operator and its affiliates, including but not limited to their employees, contractors, consultants, providers of various services, including supply of software and IT systems.

## **9. Liabilities of the Parties**

1. The Parties shall be liable for failure and/or improper performance of obligations under this Agreement in accordance with the current legislation of the Republic of Kazakhstan and the terms of this Agreement.
2. Operator does not guarantee timely delivery of SMS-messages and assumes no liability to Client and third parties for any direct or indirect damages in case of technical failures in the SMS-center and/or other equipment of Operator, and, consequently, impossibility to deliver messages
3. Operator is not responsible for the inability of User to receive the SMS-messages
4. In the case of non-compliance with the terms of payment by Client, Operator has the right to recover a penalty of 0.1% of the amount billed for each day of delay, but not more than 10% of the outstanding amount.
5. Operator may claim a penalty from Client in the amount of 1 000 000 (one million) tenge in case the Client commits the following violations:
  - a) Violation of the obligation not to transfer the Telecommunication services and Identifier provided by Operator to third parties without the prior written consent of the Operator (paragraph 2.3 of the Agreement);
  - b) Unilateral modification or amendment of the Service and / or Content without notice to Operator (paragraph 3.2.3 of the Agreement);
  - c) Exceeding the bulk SMS limit (paragraph 3.2.6 of the Agreement);
  - d) Failure to comply with the procedure for processing requests from Operator or Agent regarding Service quality (paragraph 3.2.7 of the Agreement);
  - e) Use of Operator's trademarks and product names without the consent of Operator that has caused damage to the image and reputation of Operator (paragraph 6.1 of the Agreement);
  - f) Sending unsolicited SMS-messages to the User and / or messages that are not directly related to the Service (Spam), as well as sending advertising messages without User's consent (paragraph 6.5 of the Agreement);
  - g) Violation of the terms relating to service content (incl. par. 5.1 hereof);
  - h) Violation of the terms and schedule for sending SMS to the Users (par. 3.2.6 hereof).

**9.6.** Operator may claim damage from Client incurred and documented by the Operator as a result of the following violations committed by the Client:

- a) Violation of the obligation to use Technical solution in accordance with the terms of the Agreement (paragraph 3.2.2 of the Agreement);
- b) Provision of Service without a license, permit, patent required by law (paragraph 3.2.4 of the Agreement);
- c) Violation of the terms of Service and/or Content provision (clause 5 of the Agreement);
- d) Violation of the obligation to provide full information about the Service (paragraph 6.2 of the Agreement);
- e) Violation of intellectual property rights, copyright and related rights of third parties (paragraph 7.2 of the Agreement);
- f) Violation of confidentiality obligation (paragraphs 8.2 and 8.3 of the Agreement);

g) Violation stipulated by par 9.5 hereof, provide the real damage caused to Operator exceeds the amount of fine stipulated in the relevant paragraph. In this case the Client shall pay Operator the real damage without a fine.

**9.7.** In case of the above-mentioned violations on the part of the Client, Operator has the right to immediately disconnect the Client from the Technical solution and unilaterally terminate this Agreement.

## **9. Force majeure circumstances**

1. The Parties are not responsible for partial or complete failure to fulfill obligations under this Agreement, if such failure was caused by force majeure, arose after the conclusion of this Agreement and which the Parties could not foresee or prevent. These circumstances in this Agreement include natural disasters (earthquakes, floods, fires, typhoons, etc.), acts of war, mass diseases (epidemics), failures in the public telephone networks or the Internet and other not dependent (unavoidable and unforeseen) on the Parties circumstances.
2. In case of approach of circumstances specified in paragraph 10.1 of this Agreement, each Party shall promptly notify of them in writing the other Party. The notice must include information on the nature of circumstances.
3. In the event of circumstances specified in paragraph 10.1 herein, the deadline of performance by the Party of obligations under this Agreement shall be suspended in proportion to the time during which these circumstances are in effect.
4. If circumstances listed in paragraph 10.1 of this Agreement and their consequences continue for more than 2 (two) months, the Parties shall hold additional negotiations to find acceptable alternative ways to execute this Agreement.
5. The Party, which failed to notify or which delayed to notify of untimely fulfillment or improper fulfillment of obligations under this Agreement because of force majeure, may not refer to them in the future, except in cases where such notice or untimely notice was directly resulted from the above circumstances.

## **11. Disputes settlement**

1. Disputes of the Parties under this Agreement or in connection with it shall be resolved by negotiations, and if no agreement is reached they shall be referred to the judicial authorities of the Republic of Kazakhstan in accordance with the current legislation of the Republic of Kazakhstan at the place of location of Operator.
2. The Parties agree to accept the information, transferred electronically and/or on paper as the evidences to resolve the disputes and disagreements, including in case of resolution of disputes in the courts in accordance with the current legislation of the Republic of Kazakhstan.

## **12. Special conditions**

1. Operator may inform User on the main issues related to the provision of the Service, or to submit the questions received from User to Client, in which case Client is obliged to provide the requested information to User and/or Operator within 5 (five) working days.
2. Client shall immediately inform Operator or Agent on any inadequacy in the provision of the Service and actively participate in its remedy.

## **13. Duration of the Agreement**

- 13.1. This Agreement shall come into force after the Client signed the Registration Form and its acceptance by Operator or Agent and is valid till its termination in accordance with the laws of the Republic of Kazakhstan and/or this Agreement.

- 13.2. This Agreement may be terminated by either Party, in which case the latter shall send a written notice of early cancellation to the other Party thirty (30) calendar days before the date of disconnection of Client from the Technical solution and cancellation thereof.
- 13.3. All Client's requests, appendices and other documents relating to this Agreement form an integral parts hereof. The invalidity or unenforceability of any part of this Agreement shall not affect the validity or enforceability of the other parts.
- 13.4. Any changes or amendments to this Agreement shall be published on Operator's website at <https://www.kcell.kz/ru/article/for-partners> and <https://www.kcell.kz/ru/article/bulk-SMS> and valid from the date of publication, unless otherwise determined by Operator.
- 13.5. Except as provided herein, the laws of the Republic of Kazakhstan shall apply.