

# SPRINGHIGH

PRODUCTS CC

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## Premium Rate SMS Terms & Conditions

01 November 2011

Springhigh uses BulkSMS as our SMS partner, and as such their General Terms and Conditions also apply - see [http://bulksms.2way.co.za/w/psms\\_terms\\_and\\_conditions.htm](http://bulksms.2way.co.za/w/psms_terms_and_conditions.htm)

Premium Rate SMS services we supply must conform to all the WASPA (Wireless Application Service Providers' Association) regulations;

1) Code of Conduct - obtainable here:

<http://www.waspa.org.za/code/index.shtml>

[http://www.waspa.org.za/code/waspa\\_coc\\_4.7.pdf](http://www.waspa.org.za/code/waspa_coc_4.7.pdf)

2) Advertising Rules

<http://www.waspa.org.za/code/advert-rules.shtml>

### **BULKSMS Premium Rated SMS Terms & Conditions**

**1. Definitions** - The words and phrases listed below shall bear the following meanings in these terms and conditions, unless the context clearly indicates otherwise:

1.1 "*customer*" and "*customers*" means any party to whom the premium rated SMS services are made available by Springhigh through Bulk SMS;

1.2 "*network operator*" means any party licensed to install, operate and maintain a cellular telephony network in the territory, and shall include CellC, MTN and Vodacom;

1.3 "*premium rated service numbers*" and "*PRS numbers*" means the five digit short code numbers (e.g. 34010) and includes both dedicated and shared short codes;

1.4 "*SMS*" means a short message service provided by means of a text or data message to the cellular handset either on request of the handset user or via a pre-configured batch process;

1.5 "*territory*" means the Republic of South Africa;

1.6 "*WASPA*" means the Wireless Application Service Providers' Association of South Africa.

### **2. Application of Bulk SMS general terms and conditions**

These premium rated SMS terms and conditions incorporate Bulk SMS general terms and conditions, located at [http://bulksms.2way.co.za/w/terms\\_and\\_conditions.htm](http://bulksms.2way.co.za/w/terms_and_conditions.htm). Should there be a contradiction between the premium rated SMS terms and conditions, and the general terms and conditions, the premium rated SMS terms and conditions shall apply.

### **3. Use of the premium rated SMS service**

3.1 Customers acknowledge and understand that Springhigh / Bulk SMS acts as a conduit for the provision of information and content. Customers shall ensure that all information and content provided through the premium rated SMS service conforms with the acceptable usage policies of the network operators that transmit or convey that information and content and it shall be the responsibility of customers to obtain and familiarise themselves with cellular network operators' acceptable usage policies.

3.2 Customers may not use, or knowingly allow others to use, the premium rated SMS service for any purpose that, in Springhigh's reasonable opinion, is improper, immoral or unlawful.

3.2 Customers shall not permit, do, nor omit to do, anything which might have the effect of prejudicing or impeding the bona fide activities of Bulk SMS or the interests or goodwill of Bulk SMS, or which might bring Bulk SMS into disrepute.

3.3 Customers shall observe all relevant legislation and regulations and shall furthermore ensure that all information and content produced or generated by a customer for transmission or delivery by means of the premium rated SMS service shall comply with any relevant code of conduct for the wireless industry to which Bulk SMS subscribes and is bound, including, but not limited to, the WASPA Code of Conduct located at <http://www.waspa.org.za/code/index.shtml>

Customers shall comply with the provisions of the WASPA code and shall not do, nor omit to do, anything that would result, directly or indirectly, in any breach by Springhigh / BulkSMS or by the customer of any requirement or provision of the code or any applicable legislation, regulations or network usage policies, failing which Bulk SMS shall be entitled to immediately suspend or terminate the provision of premium rated SMS services to the customer.

#### 4. Advertising

Springhigh / Bulk SMS requires customers to follow the advertising guidelines set out below:

4.1 All advertising containing PRS numbers must display the total cost of the premium rated service. If more than one SMS is required to be sent, the total cost needs to be displayed upfront as well as the cost per SMS. Where possible the customer must be referred to the advertising material of any PRS. The cost of the SMS should be displayed in a font size no less than 75 % of the font size of the PRS number that is advertised or minimum 11 Pt font size and be directly below or next to the advertised PRS number. All advertised SMS costs must include VAT. All subscription services must have a unsubscribe option which must be a non-premium rated charge number. See <http://www.waspa.org.za/code/advert-rules.shtml>

#### 5. Pricing

5.1 Premium rated SMS prices and the net amount due to customers after deduction of all network operator and Bulk SMS charges. This **excludes** any charges for the registration of premium rated service codes, cost of setup of any services and cost for use of key words. This also **excludes** any costs for Redirect- to-Email or SMS services. All rates **INCLUDE** VAT.

South African Premium Rate SMS	Number	Network	Cost to User	Credits provided	LESS cost of service	Payout Credits @30c	Payout R.c. to Provider
R1-00 Premium Line	32010	All SA	R 1.00	1	1	0	= R0.00
R1-50 Premium Line	33280	All SA	R 1.50	2	1	1	= R0.30
R2-00 Premium Line	34010	All SA	R 2.00	3	1	2	= R0.60
R3-00 Premium Line	35010	All SA	R 3.00	5	1	4	= R1.20
R5-00 Premium Line	36010	All SA	R 5.00	9	1	8	= R2.40
R10-00 Premium Line	apply	All SA	R 10.00	16	1	15	= R4.50
R15-00 Premium Line	apply	All SA	R 15.00	22	1	21	= R6.30
R20-00 Premium Line	apply	All SA	R 20.00	32	1	31	= R9.30
R30-00 Premium Line	apply	All SA	R 30.00	48	1	47	= R14.10

Network service providers' charges for premium rated SMS services may differ in respect of individual network operators and may be varied by network operators from time to time and without prior notice to Bulk SMS or its customers. Bulk SMS may vary its charges for premium rated SMS messages and PRS number and keyword registrations from time to time and without prior notice to customers. Network operators may also vary their charges for use of their cellular networks, in which event Springhigh / Bulk SMS may be required to adjust their charges and the net amount due to customers after deduction of all charges. Springhigh / Bulk SMS shall not be liable for any costs incurred by a customer who is required to adjust the advertised price of a premium rated SMS service as a result of any adjustment in the overall price of the premium rated service.

#### 6. Payment by Springhigh for SMS delivered

6.1 Within **90** days of the end of a calendar month, Springhigh shall account to the customer for all of its charges in respect of that calendar month and shall make payment of the net amount due to the customer in respect of that calendar month. Springhigh shall be entitled to retain and deduct its service charges from the revenue due to a customer in respect of the premium rated SMS service.

6.2 Should the amount due to a customer be queried or disputed by a customer, Springhigh / Bulk SMS shall endeavour to make the necessary investigations to the best of its abilities and attempt to resolve the query or dispute, but should such investigations prove to be inconclusive, the SMS message transaction logs maintained by Springhigh / Bulk SMS shall be deemed to be true and accurate for accounting purposes.

6.3 Failing resolution of any dispute within 30 days of accounting the dispute may be referred by Bulk SMS for investigation and determination by BulkSMS auditors who will recommend appropriate corrective action and will determine the amount payable. The customer shall co-operate in any such investigation and any sum found to be due or overpaid shall promptly be paid or refunded within 30 (thirty) days of the date of such determination. The auditors' costs shall be paid by the customer if it is found to have incorrectly disputed the accounting by Bulk SMS.

#### 7. Responsibility for customer username and passwords

7.1 In order to use the premium rated SMS service, the customer will be allocated a username and password by Springhigh. No further verification or authentication of the identity of the customer will be undertaken by Springhigh and all activities that can be traced to the customer's username and password shall be deemed to have been undertaken by the customer, or persons duly authorised by the customer, and the customer shall therefore be legally bound for all transactions resultant from such activities. It is therefore the customer's responsibility to ensure that the username and password are handled with care and not subjected to negligent or unauthorised usage.

#### 8. Service interruption, failure or termination

8.1 The delivery of SMS messages is largely dependent on the effective functioning of network operators' cellular networks and the SMS recipient's mobile handset and Bulk SMS cannot guarantee the delivery of SMS messages. Bulk SMS shall make all reasonable endeavours to ensure uninterrupted and continued use of the service.

8.2 Network operators may modify, enhance, develop or discontinue components of their premium rated SMS services at any time without prior notice, in which event Springhigh / Bulk SMS shall be entitled to modify, enhance, develop or discontinue its services to customers without notice.

8.3 Bulk SMS shall use its reasonable endeavours to provide the customer with advance notice of any modification, suspension or termination of its services and shall endeavour to minimise the duration of any suspension thereof in so far as this is reasonably practicable.

## **9. Limitation of liability, warranties and indemnities**

9.1 The provisions of this section specify the entire liability of Springhigh / Bulk SMS whether arising in contract, direct or otherwise and shall survive termination of this agreement for any reason.

9.2 Customers make use of the service at their own risk and customers hold Springhigh / Bulk SMS harmless and indemnify Springhigh / Bulk SMS fully against any claim by any party as a result of any systems failure, interruption or termination of services, breach of privacy or data security. Customers are fully and exclusively liable for any and all risk resultant from the use of the premium rated services.

9.3 Customers indemnify and hold Springhigh / Bulk SMS harmless against all damages, awards, penalties or legal costs claimed or imposed by any party as a result of any action, commission or omission by a customer that constitutes a breach or contravention of any legislation, regulations, code of conduct (including the WASPA Code of Conduct) or network provider codes of practice or acceptable usage policies.

9.4 Customers indemnify and hold Springhigh / Bulk SMS harmless against any claims, actions or damages from any party as a result of the fraudulent or unauthorised use of the customer's username and password or loss thereof.

9.5 Springhigh / Bulk SMS shall not be liable to customers in any circumstances for any indirect, contingent or consequential loss (including, but without being limited to, loss of revenue, loss of business or loss of profits) sustained or incurred by the customer, howsoever arising.

9.6 Springhigh / Bulk SMS premium rated services are provided "as is" and are subject to change at any time without notice to customers. To the fullest extent permitted by law, Springhigh / Bulk SMS disclaims all representations and warranties (express, implied and statutory, including but not limited to the warranties of merchantability and fitness for a particular purpose, and non-infringement of proprietary rights) as to the premium rated services.

9.7 Without derogating from the foregoing, in no event shall Springhigh / Bulk SMS be liable for any damages whatsoever, including but not limited to any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, or the cost of procurement of substitute goods and services, arising out of or related to the use, inability to use or unauthorised use of the premium rated services, whether such damages arise in contract, under statute, in equity, at law or otherwise.

## **10. Suspension and termination of services**

10.1 In addition to any other rights it may have, Springhigh / Bulk SMS shall have the right at any time, and without liability to customers or any third party, to suspend or terminate its provision of the premium rated services or any part thereof in the case of any breach by a customer of any of the provisions of these terms and conditions.

## **11. Intellectual property**

11.1 No intellectual property right, including any right of ownership of any **short code** or **KEYword** or **short number**, shall vest in the customer in terms of this agreement save for those rights specifically provided for in terms hereof.

## **12. Changes to Agreement**

12.1 Springhigh / Bulk SMS may, in its sole discretion, change this agreement or any part thereof at any time without notice.

## **13. Disputes**

13.1 In the event of any dispute of any nature whatsoever arising between the parties on any matter provided for in, or arising out of this agreement, and not resolved by Springhigh, then such a dispute shall be submitted to confidential arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa. Arbitration proceedings shall be conducted in Cape Town in English. The arbitration rules may be downloaded from: [http://www.arbitration.co.za/Pages/docs/expedited\\_rules.pdf](http://www.arbitration.co.za/Pages/docs/expedited_rules.pdf)

## **14. Domicilium**

Springhigh Products cc chooses as its domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature, 19 Staff St, Rondebosch East, 7780, South Africa.

## **15. Term and Termination**

This agreement shall come into effect when the user makes use of any shortcode for any SMS service provided by Springhigh and through the [titbits.co.za](http://titbits.co.za) website and shall continue indefinitely until terminated by Springhigh for any reason.

## **16. Contact**

Users may contact Springhigh as follows:

e-mail: [mike@springhigh.co.za](mailto:mike@springhigh.co.za)

Tel: +27 021 697-1553 or +27 083 268 6000

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Fax 08660 69715

The Company using Springhigh / BulkSMS Premium Rate SMS Products

\_\_\_\_\_

Their customer who makes use of the Springhigh / BulkSMS Premium Rate SMS Products

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ Post Code \_\_\_\_\_

Company Registration \_\_\_\_\_ VAT Reg \_\_\_\_\_

PremiumSMS code \_\_\_\_\_ to short number \_\_\_\_\_ (max R1.50 for competitions in terms of the CPA)

I have read and understood the attached Terms and Conditions relating to the Premium Rate SMS service we are signing up for, and agree to abide by all the Terms and Conditions listed above, together with those contained in the BulkSMS.com General Terms and Conditions and the WASPA Code of Conduct.

In addition with regards to CompetitionSMS we agree that we are running these in terms of the Consumer Protection Act and the CPA Regulations.

Name of Company Representative \_\_\_\_\_

Position \_\_\_\_\_

Signed \_\_\_\_\_ at \_\_\_\_\_ date \_\_\_\_\_

Witness Name \_\_\_\_\_

Witness Signed \_\_\_\_\_