

Agreement on cooperation in terms of premium services

Eurokoncept Sp. z o.o.

with its seat in Kraków, ul. Wielicka 72, 30-552 Kraków, registered into the National Court Register run by the Regional Court for Kraków-Śródmieście in Kraków, 11th Business Division of the National Court Register under number 0000270753, with REGON 120379073, NIP 676-233-99-70, capital of 1.176.000.00 and represented herein by:

1. Piotr Owczarek – President of the Management Board,
2. Marcin Traple – Vice President of the Management Board,

hereinafter referred to as the Eurokoncept
and

hereinafter referred to as the **“Partner”**

Eurokoncept and the Partner are referred to jointly as the **“Parties”**.

Preamble

Whereas:

- Eurokoncept has the infrastructure required to receive and process SMS Premium Rate and MMS Premium Rate messages sent by subscribers of mobile phone networks and to send response SMS/MMS to those subscribers, to Top-up the Pre-Paid phones on-line and to handle Pay Per Call phone calls,

and:

- Eurokoncept and the Partner are willing to cooperate as regards SMS/MMS Premium Rate, Topping-up and Pay Per Call services and the Partner, based on the infrastructure of Eurokoncept intends to provide access to the Services to its Customers,

The Parties hereby decide upon the following:

Art. 1.

Definitions

The expressions used herein shall read as follows:

“GSM Operators” – PTK Centertel Sp. z o.o., PTC Sp. z o.o., Polkomtel S.A. , P4 Sp. z o.o. and all mobile phone networks operators.

“Phone Operator” – Telekomunikacja Polska S.A. and all phone networks operators.

“Service” – services provided by the Partner with the use of Eurokoncept’s infrastructure, SMS, SMS Premium Rate, MMS, MMS Premium Rate, response SMS, Pay Per Call, Topping-up, based on the Notification of Service Launch hereunder.

“SMS” (Short Message Service) – a service consisting in sending from and to mobile phones short text messages of up to 160 signs in one SMS.

“SMS Premium Rate” (Short Message Service Premium Rate) – SMS charged at a higher rate – a service consisting in sending short text messages from mobile phones charged at a higher rate. SMS Premium Rate sent by a GSM user to a Short Code Number dedicated to handle a given Service allows the User to avail of that Service. The SMS Premium Rate charge depends on GSM Operators’ list of prices and the Short Code Number.

“MMS” (Multimedia Messaging Service) – a service consisting in sending from and to mobile phones multimedia messages (text messages with additional photos, music, video clips or graphics).

“MMS Premium Rate” (Multimedia Messaging Service Premium Rate) – MMS charged at a higher rate – a service consisting in sending multimedia messages (text messages with additional photos, music, video clips or graphics) from mobile phones charged at a higher rate. MMS Premium Rate sent by a GSM user to a Short Code Number dedicated to handle a given Service allows the User to avail of that Service. The MMS Premium Rate charge depends on GSM Operators’ list of prices and the Short Code Number.

“Short Code number” – dedicated GSM phone number developed by GSM Operators for the purpose of sending SMS, SMS Premium Rate, MMS and MMS Premium Rate. The list of Short Code Numbers which can be used to handle Services is presented in **Appendix 1** hereto.

“Response SMS” – SMS sent by the Partner to Service user as a response to SMS Premium Rate or MMS Premium Rate.

“Response MMS” – MMS sent by the Partner to Service user as a response to SMS Premium Rate or MMS Premium Rate.

“NSL” – Notification of Service Launch

“Topping up” – topping-up a Pre-Paid phone operating in the network and based on GSM Operators’ network.

“Pay Per Call” – a phone call charged as per the list of prices of Phone Operator.

Art. 2

Representations of the Parties

1. Eurokoncept hereby represents that based on concluded agreements it holds SMS and MMS Short Code Numbers allowing to provide SMS Premium Rate and MMS Premium Rate services, Top-Up Pre-Paid mobile phones and handle Pay Per Call phone calls.
2. Eurokoncept hereby represents that it conducts its operations in line with applicable legal regulations and any actions taken hereunder are and shall be compliant with those regulations.
3. The Partner hereby represents that it conducts its operations in line with applicable legal regulations, in particular as regards protection of personal property, personal data and intellectual property rights and that any actions taken hereunder are and shall be compliant with those regulations.
4. Eurokoncept hereby represents that it is VAT payer and holds NIP 676-233-99-70 (tax identification number).

Art. 3.

Scope of the Agreement

1. This Agreement shall define the rights and duties of the Parties as regards the Services launched and operating under GSM and Phone Operators' networks.
2. One or more Services shall be launched under this Agreement.

Art. 4

Notification of Service Launch

1. In order to launch the Service the Partner shall fill in the Notification of Service Launch form in the Internet. In the case of non-standard Services (at the discretion of Eurokoncept) the time between the notification and service launch can be extended up to fourteen business days.
2. If one GSM Operator refuses to launch Service based on the Notification of Service Launch, the Notification of Service Launch applicable to that Operator shall expire. However, the Parties shall have the right to decide that the Service will be launched only in the networks of those GSM Operators who did not refuse to launch the Service based on the Notification of Service Launch. The Parties shall not be held liable for the refusal to launch a Service by GSM Operator.
3. Each Notification of Service Launch shall include the following:
 - a. Service name and description
 - b. information on Short Code Numbers dedicated to the Service
 - c. content of SMS/MMS in the Service
4. Service Regulations shall be attached to each Notification of Service Launch
5. If consents or permissions from organs of public administration or third parties (e.g. the owners of intellectual property rights) are required to launch a Service, the Partner shall obtain and submit necessary consents or permissions. The Service shall not be launched until all necessary documents are submitted.

Art. 5.

Service Regulations

1. The Service Regulations shall define the manner of providing services by the Partner to Service Users.
2. The Service Regulations shall comply with legal regulations, this Agreement, the Notification of Service Launch and the principles of social co-existence.

Art. 6.

Rights and duties of the Partner

1. The Partner shall provide services for Service Users in line with legal regulations, this Agreement, the Notification of Service Launch, the Service Regulations and the principles of social co-existence. Specifically, the Partner undertakes:
 - a. to provide Users with the content compliant with Service profile defined in the Notification of Service Launch and the Service Regulations, in particular to send only response SMS/MMS in line with that profile,
 - b. not to send to mobile phone networks' subscribers messages in the form of SMS/MMS mass broadcasting (the so-called spam) or advertising and promotional SMS/MMS without a separate permission from Eurokoncept,
 - c. comply with the rights of third parties, incl. intellectual property rights and the principles of fair competition
2. The Partner shall promote and advertise the Service as per art. 7 below.
3. The Partner shall not provide third Parties with the services provided for the Partner by Eurokoncept (forwarding) unless Eurokoncept, the Partner and the third Party conclude a relevant agreement in writing defining the terms and conditions of forwarding and providing services.

4. The Partner shall protect all passwords, access codes, etc. and secure its IT systems against hacking.
5. The Partner shall comply with relevant legal regulations on personal data protection.

Art. 7.

Service Promotion and Information about the Service

1. The Partner shall promote and advertise the Service in line with applicable legal regulations, the stipulations hereof, the Notification of Service Launch and the principles of social co-existence.
2. The Partner shall:
 - a. inform Service Users about the fees and commissions related to sending SMS/MMS Premium Rate, and in particular about gross price for sending SMS/MMS or for Pay Per Call,
 - b. not mislead Service Users as to its consent
 - c. notify the Users in advance about the fact that the Service is addressed strictly to adults
 - d. provide Service Users with other material information related to Service content and its operations.

Art. 8.

Rights and duties of Eurokoncept

1. Eurokoncept shall provide IT system to handle a launched Service and a Service being launched.
2. Eurokoncept shall correct, as promptly as possible, any defects in the services provided by Eurokoncept signalled by the Partner.
3. Eurokoncept shall be entitled to the following separate breaks in providing its services:
 - a. one break per week, between 1:00a.m and 3:00a.m.
 - b. one break per months not longer than 6 hours
 - c. one break per year not longer than 12 hours
4. All SMS/MMS Premium Rate sent by Service Users at the time of the breaks specified in section 3 above shall be processed after the end of the break.
5. If art. 5 point 3 and/or 6 point 1 are violated, Eurokoncept shall have the right to call upon the Partner to remove all the defects within the timeframe set by Eurokoncept. Eurokoncept shall also have the right to block temporarily all the services provided by the Partner.
6. If the Partner does not react to the call referred to in point 5 above, Eurokoncept shall have the right to block the services provided by the Partner until the Partner removes the identified defects.
7. Eurokoncept shall not be liable for the damage suffered by the Partner due to a temporary blockade of the services provided by the Partner imposed in line with points 5 and 6 above.
8. Eurokoncept shall handle max. 2 SMS/MMS sent from a single phone number within 60 seconds regards SMS/MMS with net value of up to PLN 9 inclusive, as well as all SMS/MMS from international operators' networks, and max. 1 SMS/MMS sent from a single phone number within 20 minutes as regards SMS/MMS with net value in excess of PLN 9, unless set otherwise. The service provider shall have the right to impose additional restrictions and blockades in the case of identified attempted frauds and actions to the detriment of Eurokoncept.
9. The Partner hereby acknowledges that Eurokoncept has concluded agreements with GSM Operators and Phone Operators in line with which the Operators shall have the right to make unilateral data corrections in the provider's IT system and the Partner shall provide its consent to implement (based on such corrections) relevant changes to the reports referred to in art. 10 and to the amount of the commission due to the Partner and shall not lodge any claims against Eurokoncept in respect thereof.

Art. 9.

Remuneration for the Partner

1. The Partner shall receive a commission representing a given part of net income generated by GSM Operator from SMS/MMS Premium Rate sent by Services Users, Pay Per Call and Topping-Up services.
2. The commission referred to in point 1 above shall depend on the type of service provided as part of the Service. The Schedule of Fees represents **Appendix 1** hereto.
3. Based on the report referred to in art. 10, the Partner shall issue VAT invoice to Eurokoncept for the amount specified in the report. Due VAT shall be added to the net value of the invoice. Eurokoncept shall pay for the invoice within 7 business days of receiving the invoice.
4. The Partner shall provide Eurokoncept with IT tools (reports) allowing verification of the invoice amount.

5. Eurokoncept shall correct the report referred to in art. 10, if an accounting mistake is identified in the report, in particular discrepancy between the data from Eurokoncept's IT system and the data of GSM Operator or Phone Operator.
6. If the invoice referred to in section 3 was sent to Eurokoncept, the Partner shall issue, based on the correction referred to in point 5, VAT adjusting invoice for net value in the amount representing the difference between the Partner's total commission calculated in the report and the Partner's total commission calculated in the correction. Otherwise, the invoice referred to in section 3 shall be issued based on the report correction. If Eurokoncept paid for the invoice, the Partner shall return Eurokoncept the difference between the invoice amount and the amount based on the report correction.









Art. 10.

Settlement manner

1. The settlements between the Parties shall be made in monthly settlement periods. The month when first SMS/MMS Premium Rate, Topping-Up or Pay Per Call related to the Service are entered into Eurokoncept's IT system shall be the first settlement period.
2. Eurokoncept report on the number and value of SMS/MMS Premium Rate, Topping-Up and Pay Per Call services in a given settlement period shall be the basis for the settlement of a given settlement period.
3. The report developed by Eurokoncept shall:
 - a. identify the settlement period it refers to
 - b. calculate the income from SMS/MMS Premium Rate and specify the number and value of received SMS/MMS Premium Rate with a break down into particular Short Code Numbers, Schedule of Fees and data re. Topping-Up
 - c. list SMS/MMS Premium Rate recognised by GSM Operators as non-recoverable receivables from GSM users
 - d. list Topping-Up
 - e. detail Pay Per Call services
 - f. calculate the total for the Partner
4. Eurokoncept shall have the right to issue a single collective report covering all the Services launched by the Partner.
5. The date of rendering the service by Eurokoncept (as per art. 19 of VAT Act of 11 March 2004 - Dz. U. 2004, No. 54, it. 535) shall be the day of providing the Partner with the report.
6. Eurokoncept shall provide the report in electronic form not later than seven business days of completing the settlement period the report refers to.
7. Any settlements between the Parties can be mutually compensated for with mutual receivables of the Parties.

Art. 11.

Liability of the Parties

-   In the case of violation of the stipulations hereof by the Partner, and in particular art. 6 hereof, the Partner shall cover all the costs, incl. the costs of legal assistance, incurred by Eurokoncept in relation to any claims filed by third Parties, incl. GSM Operators, against Eurokoncept in relation to SMS/MMS sent by the Partner via Eurokoncept, and the Partner shall also repair all damage suffered by Eurokoncept under the terms and conditions defined in the Civil Code.
-   If any court or administrative proceedings are instituted against Eurokoncept in relation to the messages sent by the Partner via EE, the Partner shall replace Eurokoncept as a Party to such proceedings if possible based on relevant legal regulations. Otherwise, the Partner shall enter the proceedings on the side of Eurokoncept.
-   Eurokoncept shall not be liable for any damage suffered by the Partner as a result of data loss or delays in receiving or sending SMS/MMS and SMS/MMS Premium Rate, Topping-Up or Pay Per Call services due to lack of transmission, wrong transmission, delays or breaks in providing services beyond the power of Eurokoncept, in particular due to the acts of force majeure such as for example: outbreak of war, hurricane, fire, flood, earthquake, strike, actions or failures to act by government institutions, changes in law, failure of the Internet network or its part across the country, power grid failure, reasons on the part of GSM Operators or Phone Operators and other factors outside the control of Eurokoncept, hampering proper functioning of the Services.
-   Subject to point 3, if Eurokoncept violates the stipulations hereof, Eurokoncept shall repair all the damage to the detriment of the Partner, under the principles set in the Civil Code.

Art. 12.

Notifications and Authorised Individuals

1. Any notifications defined herein or in relation to the delivery hereof shall be made in writing and addressed to the individuals appointed by each Party or served personally or sent to the addresses below:

Notifications for Eurokoncept:

Eurokoncept Sp. z o.o.
ul. Wielicka 72, 30-552 Kraków, Poland

2. Inadequate functioning of the services provided by Eurokoncept and any other complaints shall be sent to fax number (012) 6882699 or to the e-mail address: bok@dotpay.pl.
3. The Parties shall immediately notify each other about any changes to their data referred to in points 1-2 above. If a Party does not notify the other one about the changes, any notifications sent to the previous address, fax or telephone number or e-mail address shall be considered as effectively delivered.

Art. 13.

Lifetime and Termination of the Agreement

1. The Agreement shall be concluded for indefinite period of time and shall become effective on the day of its conclusion by both Parties.
2. The Parties shall have the right to terminate the Agreement or any Notification of Service Launch hereunder subject to a three-month-termination notice at the end of a calendar month, by way of a unilateral written statement submitted to the other Party on pain of invalidity, sent by a registered letter or served personally (return receipt requested).
3. Eurokoncept shall have the right to terminate this Agreement immediately in the case the Partner does not remove the break referred to in art. 8 point 6 within seven days of suspending by Eurokoncept the services provided by the Partner under one break per year no longer than 12 hours regarding art. 8 point 6.
4. Regardless of the lapse of the termination period, the stipulations hereof shall remain valid as regards currently delivered Services until they are completed.

Art. 14

Confidentiality

1. The Parties shall keep the stipulations hereof and all written and oral agreements reached by the Parties confidential.
2. The Information referred to in point 1 above shall not be transferred, indirectly or directly, to any third Party, whereas under the organisational structures of the Parties, the Information shall be accessible only to those employees, subcontractors and representatives of the Parties, whose access is justified by their business position or participation in the delivery hereof.
3. Disclosure of any confidential information by any Party to natural or legal persons other than the ones referred to above, shall require each time a written consent of the other Party, unless it is publicly available information and its disclosure was not triggered by the violation of the stipulations hereof.
4. The confidentiality obligation referred to in this paragraph shall remain applicable over the entire lifetime of the Agreement as well as three years after its expiry.
5. The confidentiality obligation shall not refer to the cases of information disclosure based on strictly applicable legal regulations, and in particular the Accounting Act and the Act on Public Trade in Securities. The Parties shall immediately notify each other about information disclosure, the organ to which it was disclosed, scope of disclosed information and shall deliver the copies of documents related to information disclosure.
6. Eurokoncept shall have the right to publish in its materials and advertisement information about the service provided for the benefit of the Partner and to include the Partner in its reference list.

Art. 15

Settlement of disputes and jurisdiction

1. This Agreement shall be governed by the Polish law. The court having jurisdiction over the venue of Eurokoncept shall be the competent court.
2. Before filing a suit with the court, the Parties shall attempt to reach an out-of-court agreement, acting in good faith and respecting the interests of the other Party. If it is not possible to reach an out-of-court agreement within thirty days of notifying a Party about the intention to commence relevant negotiations, each Party shall have the right to file a suit with the Arbitrary Court.

Art. 16

Final Provisions

1. The provisions of the Civil Code shall apply to the matters not regulated herein.
2. This Agreement shall cover all the arrangements between the Parties. Any previous arrangements between the Parties shall become invalid and shall not supplement this Agreement.
3. This Agreement shall be binding for legal successors of the Parties.
4. The Appendices hereto shall represent an integral part hereof.
5. The General Terms and Conditions of Agreements applied by the Parties shall not apply hereto

Appendix 1

1. Provisions re. SMS/MMS Premium Rate:

a) Short Code Numbers dedicated to SMS Premium Rate and limits for response SMS for a given number

No.	Net price per SMS PR	Plus GSM	ERA	Orange
1.	PLN 0.5	1	1	1
2.	PLN 1	1 or 2 (*)	1 or 2 (*)	1 or 2 (*)
3.	PLN 2	1 or 2 (*)	1 or 2 (*)	1 or 2 (*)
4.	PLN 3	1 or 10 (*)	1 or 10 (*)	1 or 10 (*)
5.	PLN 4	1 or 14 (*)	1 or 14 (*)	1 or 14 (*)
6.	PLN 5	1 or 14 (*)	1 or 14 (*)	1 or 14 (*)
7.	PLN 6	1 or 14 (*)	1 or 14 (*)	1 or 14 (*)
8.	PLN 9	1 or 30 (*)	1 or 30 (*)	1 or 30 (*)
9.	PLN 10	1 or 30 (*)		
10.	PLN 17	1 or 30 (*)		
11.	PLN 19	1 or 30 (*)		
12.	PLN 20	1 or 30 (*)		
13.	PLN 25	1 or 30 (*)		
14.		All networks of German operators		
15.	EUR 1.99	1		

(*) – higher limit in case of Infoservice (newsletter)

- b) The Partner's fee from the total net turnover for standard SMS/MMS Premium Rate services, Topping-up, Pay Per Call services from all numbers shall total for services not included adult content.

Service Value	Net commission for the Partne
Premium SMS of PLN 0.50 (PLN 0.62 with VAT)	from 50% net
Premium SMS of PLN 1 (PLN 1.23 with VAT)	from 50% net
Premium SMS of PLN 2 (PLN 2.46 with VAT)	from 50% net
Premium MMS of PLN 2 (PLN 2.46 with VAT)	from 50% net
Premium SMS of PLN 3 (PLN 3.69 with VAT)	from 50% net
Premium SMS of PLN 4 (PLN 4.92 with VAT)	from 50% net
Premium SMS of PLN 5 (PLN 6.15 with VAT)	from 50% net
Premium SMS of PLN 6 (PLN 7.38 with VAT)	from 50% net
Premium SMS of PLN 9 (PLN 11.07 with VAT)	from 50% net
Premium MMS of PLN 9 (PLN 11.07 with VAT)	from 50% net
Premium SMS of PLN 10 (PLN 12.30 with VAT)	from 50% net
Premium SMS of PLN 17 (PLN 20.91 with VAT)	from 50% net
Premium SMS of PLN 19 (PLN 23.37 with VAT)	from 50% net
Premium SMS of PLN 20 (PLN 24.60 with VAT)	from 50% net
Premium SMS of PLN 25 (PLN 30.75 with VAT)	from 50% net
Premium SMS of EUR 1.99 with Vat (Germany)	3,1 PLN
PayPerCall 0704 1,16 zł (1,43 zł with VAT)	PLN 0,60 zł
PayPerCall 0704 2,03 zł (2,50 zł with VAT)	PLN 0,91 zł
PayPerCall 0704 3,19 zł (3,92 zł with VAT)	PLN 1,60 zł
PayPerCall 0704 4,06 zł (4,99 zł with VAT)	PLN 1,83 zł
PayPerCall 0704 5,22 zł (6,42 zł with VAT)	PLN 2,61 zł
PayPerCall 0704 8,12 zł (9,99 zł with VAT)	PLN 4,06 zł
PayPerCall 0704 10,15 zł (12,48 zł with VAT)	PLN 5,08 zł
Topping-up Pre-Paid phone	2% of topping-up net value

- c) Short Code Numbers dedicated to SMS Premium Rate and limits for response SMS for a given number for adult content:

No.	Net price per SMS PR	Plus GSM	ERA	Orange
1.	PLN 1	1 or 2 (*)	1 or 2 (*)	1 or 2 (*)
2.	PLN 2	1 or 2 (*)	1 or 2 (*)	1 or 2 (*)
3.	PLN 3	1 or 10 (*)	1 or 10 (*)	1 or 10 (*)
4.	PLN 4	1 or 14 (*)	1 or 14 (*)	1 or 14 (*)
5.	PLN 5	1 or 14 (*)	1 or 14 (*)	1 or 14 (*)
6.	PLN 6	1 or 14 (*)	1 or 14 (*)	1 or 14 (*)
7.	PLN 9	1 or 30 (*)	1 or 30 (*)	1 or 30 (*)
8.	PLN 19	1 or 30 (*)		
9.	PLN 25	1 or 30 (*)		

(*) – higher limit in case of Infoservice (newsletter)