

Text My Main Number, Inc.
Online SMS Service
Terms of Service

These Terms of Service and the Annexes attached hereto, together with the Service Agreement (the “Agreement”), govern the relationship between you and Text My Main Number, Inc. (“TMMN”) and outline the rights and obligations of each party with respect to the Online SMS Service (the “Service”) to be provided by TMMN to the customer (“you” or “Customer”) during the term of the Agreement.

TMMN may, from time to time, revise or amend these Terms of Service. Such revisions or amendments (the “Revised Terms of Service”) shall be effective and binding upon you on the date the Revised Terms of Service are made available on TMMN’s website. Your continued use of the Service after TMMN has made the Revised Terms of Service available to you shall indicate your consent to the Revised Terms of Service.

ARTICLE I
SERVICE DESCRIPTION

1.1 General. The Service is a hosted Short Message Service (“SMS”) that enables you to send and receive text messages and/or, depending on the terms of the Agreement, a Multimedia Messaging Service (“MMS”; SMS and/or MMS, as applicable, the “Service”) that enables you to send picture and/or video messages, in each case subject to certain limitations on message length and size.

1.2 Automatic-Renewal. The Agreement will auto-renew after the initial term specified in the Agreement (the “Initial Term”) for an additional term of the same length as the Initial Term (each, an “Automatic Renewal Term”), unless and until Customer provides written notice of its intent to cancel the Service at least 30 days prior to the expiration of the Initial Term or Automatic Renewal Term, as applicable. TMMN shall have the right to determine “fixed for the term” rates and charges, MRCs, NRCs and such other charges and fees as it deems appropriate (the “Automatic Renewal Rates”). The Automatic Renewal Rates shall apply for the duration of the Automatic Renewal Term (other than as provided in Section 2.1); provided, that TMMN shall provide Customer with details regarding the Automatic Renewal Rates as soon as practicable once the Automatic Renewal Term begins.

ARTICLE II
RATES AND CHARGES.

2.1 Generally. Current rates and charges for the Service are described in the Agreement. Rates and charges are subject to change as required by any federal, state or local regulation. Monthly Recurring Charges (“MRCs”), Non-Recurring Charges (“NRCs”), and other charges, including features are set forth in the Agreement. You agree to pay the MRCs and NRCs as set forth in the Agreement and as supplemented or

modified by mutual agreement between TMMN, as well as any applicable taxes. You agree to make such payments in accordance with the instructions to be provided to you by TMMN via invoice or otherwise contemplated by these Terms and Conditions, with respect to both the required timing of payments and acceptable methods of payment.

2.2 Site Package Activation Charge. Customer will pay an NRC in an amount determined by TMMN for each site it establishes at which the Service shall be provided. This charge includes the provisioning of the network-based features.

2.3 Early Termination Fee. Depending on the Services offered and terms of the Agreement, Customer may be required to pay a fee (the “Early Termination Fee”) in the event Customer cancels or terminates the Agreement prior to the end of the agreed upon term of the Agreement.

2.4 Optional Network Features. Customer may elect to receive and pay for certain additional optional network features. Customer shall notify TMMN in writing (including via e-mail) or by creating a ticket online at support.textmymainnumber.com informing TMMN of its desire to receive such services, and TMMN shall confirm Customer’s enrollment and notify Customer of any applicable fees, MRCs or NRCs.

2.5 International Texting. The Service may be used by Customer to complete international SMS and/or MMS to the locations set forth in the international rate sheet at the rates set forth therein.

2.6 Taxes and Governmental Charges. Taxes and Governmental Charges based on the location at which the Service is used (which may also be referred to by such names as “taxes” or “surcharges”) will be determined by the Service location designated by Customer for its end-users at the time the Service is activated. At such time as TMMN has the ability to bill Taxes and Governmental Charges for each telephone number based on the location at which the Service is used in each individual month, then Taxes and Governmental Charges attributable to each telephone number during any particular month will be determined by the location designated by each end-user as its service location as of Customer’s monthly billing date. Customer further agrees and acknowledges that certain industry fees and carrier surcharge fees may be assessed and that such fees and/or surcharges are subject to change. TMMN shall make available to Customer the current level of fees and surcharges, either by invoice or by making them available on www.textmymainnumber.com.

2.7 Paper Invoice Charge. A \$5 monthly recurring charge applies to every paper invoice provided to a Customer (except invoices solely for intrastate telecommunications services) in lieu of, or in addition to, an online invoice. This charge does not apply where Customer has established to TMMN’s satisfaction, or TMMN determines on its own, that online invoicing is not a reasonable substitute for paper invoicing.

2.8 Convenience Payment Charge. A \$5 convenience payment charge applies to any Customer payment by credit card, debit card, ETF or ACH for Company service that is authorized by telephone. The charge will be made by the same payment

method the Customer selected. The charge does not apply to other payment options.

ARTICLE III SUPPORT AND MAINTENANCE

3.1 TMMN will not conduct any maintenance of any equipment (whether or not supplied by TMMN under these Terms of Service) nor conduct any trouble-shooting at any end user site.

3.2 Trouble tickets involving feature packages or remote users will be accommodated by calling 1-800-361-5230, e-mailing a TMMN representative or general support e-mail address (support@textmymainnumber.com), via online chat, or by creating a ticket online at support.textmymainnumber.com. All such trouble-ticket calls will be handled on a commercially reasonable basis.

ARTICLE IV TERMS AND CONDITIONS

4.1 Business Application. The Service is offered to commercial (non-government) business, government businesses, and residential customers.

4.2 No Resale Qualification. The Service is not available for resale.

4.3 Internet Access. The Service does not include Internet access, which must be purchased separately by Customer. The Service requires functioning and reliable Internet access. Failure by Customer to obtain and maintain adequate Internet access may limit or disrupt Service functionality or result in the Service being altogether unavailable.

4.4 Customer-Obtained Facilities. Except as otherwise expressly agreed upon by TMMN and Customer (whether in the Agreement or otherwise), Customer is responsible for obtaining, installing, configuring and maintaining all equipment (including, but not limited to, routers, switches, and firewalls), software, wiring, power sources, telephone connections and/or communications services necessary for inter-connection with TMMN's network or otherwise for use in conjunction with the Service ("Facilities"). Customer is responsible for ensuring that such Facilities are compatible with TMMN's requirements (including being certified by TMMN for use with the Service and that they continue to be compatible with subsequent TMMN-provided equipment, software and services). Customer is responsible for operation and configuration of its computer(s) and LAN/WAN. If Customer connects any Facilities to the Service that Customer reasonably should know may not be compatible with the Service, Customer is solely responsible for any effects that arise from that connection on the Service or equipment, or the software of TMMN, Customer, or any third party, and Customer waives any claims against TMMN relating to the performance of the Service.

4.5 Service Disclaimer. TMMN is not responsible for certain conditions or

equipment that may affect the Service, including, without limitation:

- Failure or poor performance of Customer's Domain Name Server ("DNS Server") and/or local area network ("LAN") upon which the Service relies. Network-related outages also may occur, and service restoration intervals may vary from those associated with traditional telecommunications service.
- Failure or poor performance of Customer's Internet access service and/or routers, switches, or other Customer equipment, with effects including but not limited to loss of circuit connectivity, high jitter, latency, or packet loss.
- Communications from analog modems may have protocol interaction issues when used over Service technology (due to their handshake and error-checking rules) and cannot be assured to be of the same quality as other communications.
- All inside wiring and special construction at each of Customer's sites.

4.6 Geographic Coverage. The Service described herein is provided only to Customer locations within the U.S. Mainland and Hawaii, though the Service may not be available at every location. Customer is prohibited from extending the Service beyond the U.S. Mainland and Hawaii.

4.7 Service Restrictions. Customer understands and agrees that its use of the Service is restricted in the following manner:

- Customer shall use the Service in accordance with all applicable federal, state, and local laws and regulations.
- Customer shall not modify the TMMN-installed configuration without the prior written consent of TMMN.
- Customer shall not, unless otherwise approved in writing by TMMN, utilize the Service in any outbound call center environment or telemarketing service or in connection with any similar such application.
- Customer shall not, unless otherwise approved in writing by TMMN, utilize auto-dialers or any similar type of device in connection with the Service.

- Customer shall not use the Service in a volume that exceeds the applicable throughput limitation, which is: (1) one megabyte per second for a standard 10-digit “long code” line and (2) twenty megabytes per second for a “short code” line.
- Customer shall not use the Service to make any solicitation for services, goods or products, to offer deals or discounts, or to otherwise engage in any type of marketing, telemarketing, or “mass blasting”, unless (1) TMMN has authorized the Customer to use the Service for such purpose and (2) TMMN has assigned the Customer a “short code” to be used in connection therewith.
- Customer shall not use the Service in any other way that, in TMMN’s sole and reasonable determination, is improper or jeopardizes the ability of TMMN or its service partners, suppliers and affiliates to provide services to other customers.

Customer expressly acknowledges that any violation of the foregoing restrictions on its use of the Service may result in the immediate suspension or termination of the Service without notice.

4.8 SMS/MMS Origination Information. Customer acknowledges that TMMN classifies local and long distance SMS/MMS to determine appropriate rate allocation (i.e., local or interstate). TMMN bases this classification on the information in TMMN’s systems identifying each call’s originating location. As accurate information regarding the origination point of SMS/MMS is necessary to make the appropriate rate allocation, it is a material condition of these Terms of Service that Customer provide TMMN with accurate information reflecting its SMS/MMS originating location. Customer shall defend, indemnify and hold TMMN harmless with respect to any third-party claims arising out of Customer's delivery of SMS/MMS origination information to TMMN or to such third parties.

4.9 LNP. Customer can arrange to port its numbers using LNP (Local Number Portability) at the same time the Service is made available for use, or delay LNP for up to 10 days afterwards. However, billing for the Service will commence in accordance with Section 4.11, below.

4.10 Billing Initiation. Subject to any trial period offered by TMMN, if and as applicable, billing for the Service will begin when the Service is available for use.

4.11 Content.

4.11.1 Responsibility for Content. You acknowledge that all information, data, text, software, music, photographs, graphics, video, messages, tags and/or other materials made accessible or distributed through the service (“Content”) is the sole responsibility of the party from whom such content originated. You and the other users of the Service are solely responsible for any Content distributed through the

service. You acknowledge that TMMN has no obligation to pre-screen and/or review the Content that is made available or distributed through the Service.

4.11.2 Limitations on Content. No content shall contain any nudity, violence, sexually explicit or offensive subject matter. You shall not post or submit for print services a photograph of another person without that person's permission. You shall not distribute or receive any Content in violation of applicable intellectual property laws. You shall not make available any Content that (a) is unlawful, tortious, defamatory, vulgar, obscene, libelous or racially, ethnically or otherwise objectionable; (b) violates or encourages any conduct that would violate any applicable law or regulation or could give rise to civil liability; (c) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (d) is violent or threatening, or promotes violence or actions that are threatening to any other person or (e) promotes illegal or harmful activities.

4.12 DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY. THE SERVICE IS PROVIDED AS-IS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT ALLOWED BY LAW, TMMN DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL TMMN, ITS SERVICE PARTNERS, SUPPLIERS OR AFFILIATES BE LIABLE (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL PUNITIVE OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES EVEN IF TMMN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT A COURT OF LAW OR ARBITRAL TRIBUNAL AWARDS DIRECT DAMAGES, WHETHER OR NOT IN ACCORDANCE WITH SECTION 4.17 BELOW, CUSTOMER HEREBY EXPRESSLY AGREES THAT DIRECT DAMAGES SHALL NOT EXCEED THE EQUIVALENT OF SIX MONTHS OF FEES AND RATES PAYABLE TO TMMN UNDER THE AGREEMENT.

4.13 DISPUTE RESOLUTION. TMMN AND CUSTOMER EXPRESSLY AGREE TO ARBITRATE ANY AND ALL DISPUTES ARISING FROM THE AGREEMENT, THESE TERMS AND SERVICES OR THE CPE TERMS. ANY SUCH ARBITRATION SHALL BE HELD IN NEW YORK, NEW YORK AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) IN ACCORDANCE WITH THE AAA RULES THEN IN FORCE. ANY ARBITRATION SHALL TAKE PLACE ON AN INDIVIDUAL BASIS. CUSTOMER HEREBY WAIVES ANY RIGHT TO SEEK OR PURSUE ARBITRATION ON A CLASS BASIS.

4.14 Neither party will be deemed to be negligent, at fault or liable in any respect for any delay or failure in performance, including the interruption of service,

resulting from acts of God, war, accidents, labor disputes, strikes, power interruptions or outages or any other cause beyond the reasonable control of the party delayed; provided, however, that such acts or events do not relieve Customer of its obligation to make payments for invoiced amounts. In no event will TMMN be obliged to provide credits for service interruptions to TMMN communication services provided to Customer as a result of any act or failure to act under these Terms and Conditions or the CPE Terms.

4.15 Indemnification. Customer agrees to hold harmless, indemnify and defend TMMN, its officers, directors, employees, service partners, suppliers and other affiliates from and against any losses, damages, fines and expenses (including reasonable attorneys' fees) arising out of or relating to any claim that Customer has violated the Agreement, these Terms and Conditions or the CPE Terms.

4.16 The parties expressly acknowledge that the limitations of liability, disclaimers and indemnification obligations set forth above reflect a conscious allocation of risk between the parties and that the price of TMMN's services would be higher if TMMN accepted greater obligations or risks.

4.17 No Assignment. Customer shall not assign the Agreement without TMMN's prior written consent. Any such purported assignment made without first obtaining the required consent shall be null and void.