

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

Revised and Effective: January 16, 2018

These Terms of Service and the Annexes attached hereto (the “Terms of Service”) govern your use of the Online SMS and/or MMS Service (the “Service”) offered by Text My Main Number, Inc. (“TMMN”).

BY COMPLETING THE REGISTRATION PROCESS, CHECKING THE APPLICABLE BOX, USING THE SERVICE AND/OR BROWSING TMMN’S WEBSITE, (1) YOU HEREBY REPRESENT AND WARRANT THAT (A) YOU HAVE READ AND UNDERSTAND THESE TERMS OF SERVICE AND (B) THAT YOU HAVE THE LEGAL AUTHORITY TO ENTER INTO THE TERMS OF USE ON BEHALF OF THE USER WHO IS TO USE THE SERVICE, WHETHER SUCH USER IS YOU AS AN INDIVIDUAL OR SUCH USER IS A LEGAL ENTITY WHOM YOU REPRESENT AND (2) YOU AGREE TO THESE TERMS OF SERVICE, INCLUDING THE LIMITATIONS ON USE AND PROVISIONS RELATING TO THE RESOLUTION OF DISPUTES PROVIDED HEREIN. THE TERM “YOU” (AND “YOUR”) REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, USER OF THE SERVICE, ANY REPRESENTATIVES OR AFFILIATES OF SUCH USER USING THE SERVICE ON THE USER’S BEHALF AND/OR THE PERSON REGISTERING TO USE THE SERVICE.

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 indicates 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 features of the Service in which you elect to enroll, a Multimedia Messaging Service (“MMS”) that enables you to send picture and/or video messages, in each case subject to certain limitations on message length and size.

1.2 Optional Network Features. You may elect to receive and pay for certain additional optional network features. You 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 your

enrollment and notify you of any applicable fees, including recurring and non-recurring charges, if any.

1.3 International Texting. Subject to these Terms of Service, you may use the Service to complete international SMS and/or MMS, subject to applicable fees and rates.

ARTICLE II RATES AND CHARGES.

Generally. Current rates and charges for the Service are described in the service agreement between you and TMMN, if any, and/or the invoice(s) delivered or to be delivered to you by TMMN. Rates and charges are subject to change as required by any federal, state or local regulation. You agree to make such payments in accordance with the instructions to be provided to you by TMMN via invoice, with respect to both the required timing of payments and acceptable methods of payment.

ARTICLE III SUPPORT AND MAINTENANCE

3.1 TMMN will have no obligation to conduct any maintenance of any equipment (whether or not supplied by TMMN under these Terms of Service), nor to 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-tickets will be handled on a commercially reasonable basis.

ARTICLE IV TERMS AND CONDITIONS

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

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

4.3 Customer-Obtained Facilities. Except as otherwise expressly agreed between you and TMMN (whether in a service agreement or otherwise), you are 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 interconnection with TMMN's network or otherwise for use in conjunction with the Service ("Facilities"). You are 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). Further, you are responsible for operation and configuration of your computer(s) and LAN/WAN. If you connect any Facilities to the Service that are not compatible with the Service, you hereby agree that you are solely responsible for any effects that arise from that connection on the Service or equipment, the software of TMMN or any third party or your equipment or software, and you waive any claims against TMMN relating to the performance of the Service.

4.4 Service Disclaimer. TMMN is not responsible for certain conditions or equipment that may affect the Service, including, without limitation:

- Failure or poor performance of your 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 your Internet access service and/or routers, switches, or other any of your other 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 your sites.

4.5 [Reserved.]

4.6 Service Restrictions. You understand and agree that use of the Service by you and on your behalf is restricted in the following manner:

- You shall use the Service in accordance with all applicable federal, state, and local laws and regulations.
- You shall use the Service only to contact recipients who have consented to receive SMS and/or MMS messages from you.

- You shall not modify the TMMN-installed configuration without the prior written consent of TMMN.
- You shall not, unless otherwise approved in writing by TMMN, utilize the Service in any outbound call center environment, telemarketing service or mass marketing service or in connection with any similar such application.
- You shall not, unless otherwise approved in writing by TMMN, utilize auto-dialers or any similar type of device in connection with the Service.
- You shall not use the Service in a volume that exceeds the applicable throughput limitation.
- You 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.
- You shall not use the Service in any other way that, in TMMN’s sole determination, is improper or jeopardizes the ability of TMMN or its service partners, suppliers and affiliates to provide services to other customers.

You expressly acknowledge and agree 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.

4.7 SMS/MMS Origination Information. You acknowledge 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 you provide TMMN with accurate information reflecting its SMS/MMS originating location. You shall defend, indemnify and hold TMMN harmless with respect to any third-party claims arising out of your delivery of SMS/MMS origination information to TMMN or to such third parties.

4.8 LNP. You 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 4.9, below.

4.9 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.

4.10 Content.

4.10.1 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, although TMMN reserves the right in its sole discretion to review, pre-screen, refuse or remove any Content. By agreeing to these Terms of Service, you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of any Content. In the event that TMMN prescreens, refuses or removes any Content, you acknowledge that TMMN will do so for its benefit, not yours.

4.10.2 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.

4.10.3 Usage. You represent and warrant that the owners of the phone numbers you initiate messages to through TMMN have consented or otherwise opted-in to the receipt of such messages and broadcasts as required by any applicable law or regulation. You agree that you will include clear opt-out and unsubscribe information on your messages when required to do so by any applicable law or regulation and otherwise adhere to the Consumer Best Practices Guidelines promulgated by the Mobile Marketing Association, if applicable to your messages. You further agree that any individuals requesting “do-not-call” status shall immediately be placed on your “do-notcall” accounts list and you further agree that you will not initiate any subsequent messages with such individuals. You also agree to familiarize yourself with and abide by all applicable local, state, national and international laws and regulations, including, but not limited to, the Telephone Consumer Protection Act and the Federal Trade Commission and Federal Communications Commission rules. You agree to be solely responsible for all acts or omissions that occur under your account, including, without limitation, the content of the messages that you create and initiate through TMMN.

4.10.4 Records. You agree and acknowledge that maintenance of appropriate records is critical to your compliance with applicable laws and regulations, and you agree to undertake your best efforts to maintain records relating to (i) the consent by each recipient of messages from you using the Service to receive such messages from you, (ii) the Content that you have distributed through the Service and (iii) any requests from any recipient of Content sent by you using the Service to no longer receive messages through the Service. Further, you agree to provide such accurate and complete records to TMMN without undue delay upon TMMN's request therefore. You acknowledge and agree that failure to comply with these requirements may result in TMMN terminating your Service. Additionally, you agree and acknowledge (x) that TMMN has no obligation to retain or store records of communications or Content distributed through the Service on your behalf and (y) that TMMN may establish general practices and limits on any such retention of records relating to such communications or Content in its sole discretion.

4.11 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.

4.12 DISPUTE RESOLUTION. YOU AND TMMN EXPRESSLY AGREE TO ARBITRATE ANY AND ALL DISPUTES ARISING FROM YOUR USE OF THE SERVICE AND YOUR BUSINESS RELATIONSHIP WITH TMMN. 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.

4.13 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 you of your 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 you as a result of any act or failure to act under these Terms of Service.

4.14 Indemnification. You agree to hold harmless, indemnify and defend TMMN, its officers, directors, employees, service partners, suppliers and other affiliates from and against any losses, damages, fines, costs and expenses (including reasonable attorneys' fees) arising out of or relating to (a) your use of, or inability to use, the Service, (b) your violation of these Terms of Service or (c) your violation of any applicable laws, rules or regulations.

4.15 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.

Appendix I
Designation of Customer Service Administrator(s) with CPNI Authorization

Customer
Signature: _____

Name: Title:

Date:

- A. Administrator Access to CPNI and Designation as CPNI Authorizer for Users. On behalf of itself and its affiliates, the customer named above (the "Customer"), through its authorized representative's signature, hereby designates the individuals listed below or in an attachment containing the same data elements, as Service Administrators, with the authority to designate end users authorized to access CPNI of Customer and its affiliates, as specified below (collectively "Administrators") for Text My Main Number, Inc. ("TMMN") Business Services and Residential Services. Customer will so designate as Administrators all representatives who are authorized to manage Customer's use of TMMN Service, including through the online applications made available by TMMN to Customer for its use. This designation, and any subsequent additions or removals of Administrators, will be effective within a reasonable period after TMMN has received a signed writing with the content set out above. Administrators are authorized to access the Customer Proprietary Network Information ("CPNI") * of Customer and its affiliates.
- B. User Access to CPNI via Online Applications. Customer representatives ("Users") designated by Administrators as authorized to access online applications made available by TMMN in connection with the Service are also authorized to access the CPNI of Customer and its affiliates through those online applications. This Service-specific CPNI access authorization is independent of any general CPNI authorization or deauthorization, and this authorization is not withdrawn by the withdrawal of a general CPNI authorization. In order to withdraw the Service-specific CPNI authorization established hereby, a Customer Administrator must permanently withdraw the User(s) access to ICP and all other Service-related online applications that may provide access to CPNI.

* CPNI includes information about the quantity, technical configuration, type, destination, location, and amount of use of telecommunications or interconnected voice over Internet Protocol services purchased from TMMN or its affiliates that is made available to TMMN or its affiliates solely by virtue of your relationship with TMMN or its affiliates and related local exchange or toll billing information.