

SMS Promoter Terms of Service

Last Updated July 14, 2016

SMS Promoter provides its Services subject to the terms and conditions in this Terms of Service (“**Terms**” or “**Agreement**”). SMS Promoter “**Services**” include the platform services: phone numbers, enabling the ability to send SMS messages based on “**Triggers**” that automatically sends the message based on a specified action. Services include all programs, features, functions and report formats, instructions, code samples, technical documentation, website, account portal, technical support, add-ons as well as any upgrades or updates to any of these, made generally available, and includes any SDKs, APIs or software provided to you in connection with your use of our services, and our connectivity services.

To be eligible to register for as SMS Promoter account and use SMS Promoter’s Services, you must review and accept the terms of this Agreement by clicking on the “I Accept” button when prompted. PLEASE REVIEW THESE TERMS CAREFULLY. ONCE ACCEPTED, THESE TERMS BECOME A BINDING LEGAL COMMITMENT BETWEEN YOU AND SMS PROMOTER. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU SHOULD NOT CLICK THE “I ACCEPT” BUTTON AND YOU SHOULD NOT USE SMS PROMOTER’S SERVICES.

In this Agreement, “**we,**” “**us,**” “**our**” or “**SMS Promoter**” will refer to SMS Promoter 201 Starnes St, Grapevine, TX 76051. And, the terms “**you,**” “**your**” and “**Customer**” will refer to you. If you are registering for a SMS Promoter account or using SMS Promoter’s services on behalf of an organization, you are agreeing to these terms for that organization and promising SMS Promoter that you have the authority to bind that organization to these Terms.

IMPORTANT NOTE: SMS PROMOTER DOESN’T PROVIDE WARRANTIES FOR ITS SERVICES, AND THESE TERMS LIMIT OUR LIABILITY TO YOU.

IN ADDITION, DISPUTES ABOUT THESE TERMS OR RELATING TO YOUR SMS PROMOTER ACCOUNT OR SMS PROMOTER’S SERVICES GENERALLY MUST BE RESOLVED BY BINDING ARBITRATION AND ON AN INDIVIDUAL BASIS ONLY.

If you have any questions, you can reach the SMS Promoter team at SMSPromoterMarketing.com/contact.

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1. Changes to These Terms

We may revise these Terms from time to time, with the date of the most recent update provided. Unless stated, revisions will be effective upon the effective date indicated at the top of these Terms. Your continued access or use of our Services constitutes your acceptance of any revisions. If you don't agree to the revisions, you should stop using SMS Promoter's Services and we are not obligated to provide you with the Services.

2. Changes to Our Services

The features and functions of our Services, including our APIs may change over time. It is your responsibility to ensure that calls or requests you make to our Services are compatible with our then-current Services.

3. Your Account(s)

To use our Services, you will be prompted with an activation box as a first-time Customer. You may do this through the Location Settings portion of your point of sale software. As part of the account creation process, you'll be provided a telephone number from which you will send messages from. You will also be provided three (3) Triggers, as described in Exhibit A. You will then be able to purchase additional Triggers based on your SMS needs. Each account is connected to a specific Customer location. All subsequent locations will need accounts for Service created for them, as the Service is by location (not account).

You are solely responsible for all use (whether or not authorized) of our Services under your account(s) and subaccount(s), including for the quality and integrity of your Customer Data as defined below (Section 5) and each of your applications. You are also solely responsible for all use and for all acts and omissions of anyone that has access to your application ("**End Users**"). You agree to take all reasonable precautions to prevent unauthorized access to or use of our Services and will notify us promptly of any unauthorized access or use. We will not be liable for any loss or damage arising from unauthorized use of your account.

For the purchase of any phone number for which SMS Promoter is required to have an address for you on record, it is your responsibility to use the Service so as not to have your number blacklisted, and unable to send messages. If Customer's number is black listed, Customer will need to open a new/additional account with SMS Promoter in order to obtain a new phone number.

4. Access and Use of Our Services

You may use our Services, on a non-exclusive basis, solely in strict compliance with these Terms which may be updated from time to time, and applicable law, including:

- a) Making our Services available to End Users in connection with the use of each of your point of sale software, and
- b) Otherwise using our Services solely in connection with and as necessary for your activities under these Terms.

5. Our Use and Storage of Customer Data

You acknowledge that you understand that we will collect, store, and use your Customer Data. “**Customer Data**” consists of information made available to us through your use of our Services under these Terms, which includes information such as your name, contact information, billing records, call or messaging logs, and traffic routing information, as well as the content of communications sent through or integrated with our Services.

Data storage is not guaranteed by us and you agree that we will not have any liability whatsoever for any damage, liabilities, losses, or any other consequences that you may incur relating to the loss or deletion of Customer Data.

You further acknowledge and agree that we may access or disclose Customer Data, including the content of communications, if: (i) we believe that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process or government request, (ii) to enforce our agreements and policies, (iii) to protect the security or integrity of our services and products, (iv) to protect ourselves, our other customers, or the public from harm or illegal activities, or (v) to respond to an emergency which we believe in good faith requires us to disclose data to assist in preventing a death or serious bodily injury.

6. Restrictions

The following are Service restrictions:

- a) Except as provided in Section 4 (Access and Use of Our Services), you agree not to transfer, resell, lease, license or otherwise make available our Services to third parties or offer them on a standalone basis.
- b) You will not attempt to use our Services to access or allow access to emergency services.
- c) You will ensure that our Services are used in accordance with all applicable Law and third party rights, as well as these Terms as amended from time to time.
- d) You will ensure that we are entitled to use your Customer Data, including content of communications, as needed to provide our Services and will not use our Services in any manner that violates any applicable country or state law.
- e) You will not reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any software provided in connection with our Services.
- f) If you have purchased a short code, then you will not change your use of that short code from the use stated in your application to the carrier for approval of the short code without first obtaining an amendment to your application or re-applying to the carrier for approval of the short code under the new use.
- g) We reserve the right to reclaim phone numbers from accounts suspended for failure to pay and/or suspended for suspected fraud for more than thirty (30) days.
- h) You acknowledge that we are the customer of record for all phone numbers provided as part of our Services. As the customer of record, SMS Promoter has certain rights with respect to porting phone numbers. You understand and agree that you may use the phone numbers provided as part of our Services subject to these Terms and until the end of the Terms Period (as defined in Section 14.1 (Terms Period)). Unless otherwise required by law, we reserve the right to refuse to allow you to port away any phone number in our sole discretion. We reserve the right to allow you to port away phone numbers, so long as you (1) have an upgraded account in good standing, and (2) have either ported in or purchased the phone number more than 90 days prior to the port-away date.

7. Export Controls

Our Services, including any software we may provide in connection with those Services, may be subject to applicable U.S. export control laws and economic sanctions regulations. In receiving this software or our Services, you agree to comply strictly with all domestic and international export laws and economic sanctions regulations as they apply to this software and our Services, and to the extent consistent with these Terms, to obtain any necessary license or other authorization to export, re-export, or transfer such software or our other aspects of our Services. These laws include restrictions on destinations, End Users, and end use. Without limitation, you may not transfer any such software or other aspect of our Service without U.S. government authorization to any entity on a U.S. government exclusion list (e.g., the Department of Commerce’s List of Denied Persons, Entity, or Unverified List, and the Treasury Department’s

List of Specially Designated Nationals and Consolidated Sanctions List). You represent that you are not on a U.S. government exclusion list or under the control of or an agent for any entity on such a list, and you further warrant that you will immediately discontinue use of our software and Services if you become placed on any such list or under the control of or an agent for any entity placed on such a list.

8. Affiliates

Affiliates are any entity or person that controls you, is controlled by you, or under common control with you, such as a subsidiary, parent company, or employee. Similarly, if we refer to our affiliates, we mean an entity or person that controls us, is controlled by us or is under common control with us. If applicable to you, your affiliates may order Services directly from us under these Terms, provided that all of your affiliate's activities are subject to these Terms. You will be responsible for the acts and omissions of your affiliates in connection with each affiliate's use of our Services.

9. Fees and Payment Terms

9.1 Fees. You agree to pay the usage fees set forth in your "Rate Schedule" found in Exhibit A (which is either our standard schedule of fees, as may be updated from time to time, and/or any other order forms for our Services ordered by you and accepted in writing by us). In addition, you agree to pay any applicable support fees in connection with your order of any support services pursuant to SMS messaging charges.

9.2 Taxes. Unless otherwise stated in your Rate Schedule, you are responsible for and shall pay all applicable taxes. This includes all federal, state and local taxes, fees, charges, surcharges or other similar exactions, imposed on or with respect to our Services whether these taxes are imposed directly on you or on SMS Promoter and include, but are not limited to, sales and use taxes, utility user's fees, excise taxes, VAT, any other business and occupations taxes, 911 taxes, franchise fees and universal service fund fees or taxes. For purposes of this section, taxes do not include any taxes that are imposed on or measured by the net income, property tax or payroll taxes of SMS Promoter. You understand and agree that the detail of taxes charged will be made available to you through SMS Promoter's customer portal as a csv file for download for a period of twelve (12) months after such taxes are incurred.

9.3 Payment Terms. Subject to certain credit requirements as determined by us, SMS Promoter accepts payment amounts due under these Terms via credit card. In accordance with Exhibit A, you will be charged by the fifth day of the subsequent month based on the usage of the preceding month.

Unless you and SMS Promoter agree otherwise in writing, all fees due under these Terms are payable in United States dollars. Payment obligations can't be canceled and fees paid are non-refundable. Subject to Section 9.4 (Fee Disputes), if you are overdue on any payment and fail to pay within ten (10) business days of a written notice of your overdue payment, SMS Promoter will subtract payment from Customer's deposit. If you are overdue on any payment and fail to pay within twenty (20) business days, Customer forfeits entire deposit amount. Subject to Section 9.4 (Fee Disputes) and following the overdue notice, we may also suspend our Services to your account until you pay the amount you are overdue. SMS Promoter also reserves the right to subtract fees from the deposit amounts of other locations residing within the account.

9.4 Fee Disputes. You must notify us in writing if you dispute any portion of any fees paid or payable by you under this Agreement. You must provide that written notice to us within sixty (60) days of the applicable charge and we will work together with you to resolve the applicable dispute promptly. If you do not provide us with this written notice of your fee dispute within this 60-day period, you will not be entitled to dispute any fees paid or payable by you.

9.5 Suspension. If your use of our Services exceeds the amounts prepaid by you or of if you fail to pay any amounts due by you under Section 9 of the Agreement, we may suspend our Services associated with your account without prior notice to you. We will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur with connection with any suspension of our services pursuant to this section.

10. Ownership and Confidentiality

10.1 General. As between you and SMS Promoter, we exclusively own and reserve all right, title and interest in and to our Services. As between you and SMS Promoter, you exclusively own and reserve all right, title and interest in Your Applications and the content of any communications sent through integration with our Services.

10.2 Suggestions and Contributions. We welcome your feedback on our Services. But please know that by submitting suggestions or other feedback about our Services ("**Contributions**") you agree that:

1. we are not under any obligation of confidentiality with respect to your Contributions;
2. we may use or disclose (or choose not to use or disclose) your Contributions for any purpose and in any way;
3. you irrevocably, non-exclusively license to us rights to exploit your Contributions; and
4. you are not entitled to any compensation or reimbursement of any kind from us under any circumstances for your Contributions.

10.3 Use of Marks. Subject to these Terms, we both grant each other the right to use and display each other's name and logo (the "**Licensor Marks**") on our respective websites and in other promotional materials solely in connection with each of our respective activities under these Terms. All of this use of the Licensor Marks will be in accordance with each other's applicable usage guidelines and will inure to the benefit of Licensor. The one of us using the other's Licensor Marks under this subsection will not use, register or take other action with respect to any of the Licensor Marks, except to the extent allowed in advance in writing by the one of us whose Licensor Marks are being used. In using the Licensor Marks under this subsection, the one of us using the other's Licensor Marks will always use the then-current Licensor Marks and will not add to, delete from or modify any of Licensor Marks. The one of us using the other's Licensor Marks will not, at any time, misrepresent the relationship between us. The one using the other's Licensor Marks will not present itself as an affiliate or other legal agent of the one of us whose Licensor Marks are being used. The rights to use and display each other's Licensor Marks under this subsection will end automatically in the event these Terms terminate.

10.4 Confidentiality. "**Confidential Information**" means any information or data, regardless of whether it is in tangible form, disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding disclosure. Confidential Information does not include any information which: (i) is publicly available through no fault of receiving party; (ii) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (iii) was properly disclosed to receiving party, without restriction, by another person without violation of disclosing party's rights; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information

Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose such information to any third party without the other party's prior written consent, except as otherwise permitted hereunder. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Each party may disclose the Confidential Information of the other party, in whole or in part to its employees, representatives, actual or potential investors and subcontractors who have a need to know and are legally bound to keep such information confidential consistent with the terms of this Section. Either party may disclose the Confidential Information of the other party as required by law, upon prior written notice to the other party (where allowed by law); provided that such party will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law.

10.5 Injunctive Relief. The parties expressly acknowledge and agree that no adequate remedy exists at law for an actual or threatened breach of this Section 10 and that, in the event of an actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Section.

11. Warranties and Disclaimers

11.1 NO WARRANTY. WITHOUT LIMITING SMS PROMOTER'S EXPRESS WARRANTIES AND OBLIGATIONS UNDER THESE TERMS, SMS PROMOTER HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND

WARRANTIES RELATED TO THIRD-PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 11, SMS PROMOTER'S SERVICES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE EXTENT THIS DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER THAT LAW.

11.2 BETA SERVICES. FROM TIME TO TIME, YOU MAY HAVE THE OPTION TO PARTICIPATE IN A PROGRAM WITH SMS PROMOTER WHERE YOU GET TO USE ALPHA OR BETA SERVICES, PRODUCTS, FEATURES AND DOCUMENTATION ("BETA SERVICES") OFFERED BY US. THESE BETA SERVICES ARE NOT GENERALLY AVAILABLE AND MAY CONTAIN BUGS, ERRORS, DEFECTS OR HARMFUL COMPONENTS. ACCORDINGLY, WE ARE PROVIDING THE BETA SERVICES TO YOU "AS IS." WE MAKE NO WARRANTIES OF ANY KIND WITH RESPECT TO THE BETA SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NOTWITHSTANDING ANY PUBLISHED DOCUMENTATION THAT STATES OTHERWISE, SMS PROMOTER DOES NOT WARRANT THAT THE BETA SERVICES WILL BE ERROR-FREE OR THAT THEY WILL MEET ANY SPECIFIED SERVICE LEVEL, OR WILL OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

12. Indemnification

You will defend, indemnify and hold SMS Promoter and its affiliates harmless against any actual or threatened claim, loss, liability, proceeding, third-party discovery demand, governmental investigation or enforcement action arising out of or relating to your activities under these Terms or your acts or omissions in connection with the provision of Your Application, including, without limitation, any intellectual property claims relating to the Your Application and any violation by you or your End Users of the terms of Section 6 (Restrictions) ("Claim"). We and our affiliates will cooperate as fully as reasonably required in the defense of any Claim, at your expense. We reserve the right, at your expense, to retain separate counsel for ourselves in connection with any Claim or, if you have not responded reasonably to the applicable Claim, to assume the exclusive defense and control of any Claim in which you are a named party and that is otherwise subject to indemnification under this Section 12 (Indemnification). You will pay all costs, reasonable attorneys' fees and any settlement amounts or damages awarded against us in connection with any Claim. You will also be liable to us for any costs and attorneys' fees we incur to successfully establish or enforce our right to indemnification under this Section.

13. Exclusion of Damages; Limitations of Liability

EXCEPT FOR LIABILITY ARISING FROM VIOLATIONS OF SECTIONS 6 (RESTRICTIONS), 10 (OWNERSHIP) OR 12 (INDEMNIFICATION), UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL SMS PROMOTER BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF WE HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS DESCRIBED IN THIS SECTION 13, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL SMS PROMOTER BE LIABLE TO YOU FOR ANY DIRECT DAMAGES, COSTS OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID BY YOU DURING THE TWELVE (12) MONTHS PRECEDING THE INCIDENT OR CLAIM.

THE PROVISIONS OF THIS SECTION 13 ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE LIMITATIONS SET FORTH HEREIN IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

SMS PROMOTER'S SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS OR SMS MESSAGES TO ANY EMERGENCY SERVICES. NEITHER SMS PROMOTER NOR ITS REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE, OR LOSS (AND CUSTOMER WILL HOLD SMS PROMOTER HARMLESS AGAINST ANY AND

ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE OUR SERVICES TO CONTACT EMERGENCY SERVICES.

14. Termination of These Terms

14.1 Terms Period. The period of these Terms will commence on the date these Terms are accepted by you and continue for one month. This is called the Initial Period. These Terms will automatically renew for additional one-month periods (each, a “**Renewal Period**”), unless either you or SMS Promoter provides notice of non-renewal at least one (1) business day prior to the end of the Initial Period or a Renewal Period. The Initial Period and all Renewal Periods will be referred to in this agreement as the “**Terms Period**”.

14.2 Termination and Suspension of Services. Either party may terminate your account for any reason upon 60 days’ notice to the other party. Either party may also terminate or suspend your account in the event the other party commits any material breach of these Terms and fails to fix that breach within 5 days after written notice of that breach. If we terminate these Terms due to your material breach, we may terminate or suspend of your account(s) as well.

In addition to suspension of our services for non-payment of fees as described in Section 9.5 (Suspension), we may also suspend our Services immediately for cause if: (a) you violate (or give us reason to believe you have violated) the SMS Promoter Terms and Conditions; (b) there is reason to believe the traffic created from your use of our Services or your use of our Services is fraudulent or negatively impacting the operating capability of our Services; (c) we determine, in our sole discretion, that providing our Services is prohibited by law, or it has become impractical or unfeasible for any legal or regulatory reason to provide our Services; or (d) subject to applicable law, upon your liquidation, commencement of dissolution proceedings, disposal of your assets or change of control, a failure to continue business, assignment for the benefit of creditors, or if you become the subject of bankruptcy or similar proceeding. If we suspend our Services to your account, we will make a reasonable attempt to notify you.

15. Survival

Upon termination or expiration of these Terms, your payment obligations, the terms of this Section 15, and the terms of the following Sections will survive (i.e. still apply): Section 5 (Our Use and Storage of Customer Data), Section 6 (Restrictions), Section 10 (Ownership and Confidentiality), Section 11 (Warranties and Disclaimer), Section 12 (Indemnification), Section 13 (Exclusion of Damages; Limitation of Liability) and Section 16 (General).

16. General

16.1 Compliance with Laws. Both you and SMS Promoter will comply with the applicable law relating to each of our respective activities under these Terms, including privacy and data protection laws and applicable rules established by the Federal Communications Commission.

16.2 No Waiver. SMS Promoter’s failure to enforce at any time any provision of these Terms does not waive our right to do so later. And, if we do expressly waive any provision of these Terms, that does not mean it is waived for all time in the future. Any waiver must be in writing and signed by and us to be legally binding.

16.3 Assignment. You will not assign or otherwise transfer these Terms, in whole or in part, without our prior written consent. Any attempt by you to assign, delegate, or transfer these Terms will be null and void. Subject to this Section 16.3, these Terms will be binding on both you and SMS Promoter and each of our successors and assigns.

16.4 Relationship. You and SMS Promoter are independent contractors in the performance of each and every part of these Terms. Nothing in these Terms is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. You and SMS Promoter will be solely responsible for all of our respective employees and agents and our respective labor costs and expenses arising in connection with our respective employees and agents. You and SMS Promoter will also be solely responsible for any and all claims, liabilities or damages or debts of any type that may arise on account of each of our respective activities, or those of each of our respective employees or agents, in the performance of these Terms. Neither you nor SMS Promoter has the authority to commit the other of us in any way and will not attempt to do so or imply that it has the right to do so.

16.5 Unenforceability. Except as described in Section 17 (Agreement to Arbitrate), if any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be limited or eliminated to the minimum extent necessary to make it enforceable and, in any event, the rest of these Terms will continue in full force and effect.

16.6 Notices. Any notice required or permitted to be given under these Terms will be given in writing to the receiving party by personal delivery, certified mail, return receipt requested, overnight delivery by a nationally recognized carrier or by email upon confirmation of receipt. Notices to SMS Promoter shall be copied to Management@SMS PromoterMarketing.com, Attn: General Counsel.

16.7 Entire Agreement. Except as provided in these Terms and any attachments to these Terms, these Terms supersede all prior and contemporaneous proposals, statements, sales materials or presentations and agreements, oral and written. No oral or written information or advice given by SMS Promoter, its agents or employees will create a warranty or in any way increase the scope of the warranties in these Terms.

16.8 Force Majeure. No failure, delay or default in performance of any obligation of a party shall constitute an event of default or breach of these Terms to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood, terrorist act; war; riot; theft; earthquake and other natural disaster. The party affected by such cause shall take all reasonable actions to minimize the consequences of any such cause.

16.9 Government Terms. We provide our Services, including related software and technology, for ultimate federal government end use solely in accordance with the terms of these Terms. If you (or any of your End Users) are an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of our services, or any related documentation of any kind, including technical data, software, and manuals, is restricted by these Terms. All other use is prohibited and no rights other than those provided in these Terms are conferred. Our services were developed fully at private expense.

16.10 Governing Law and Venue. The enforceability and interpretation of Section 17 (Agreement to Arbitrate) will be determined the Federal Arbitration Act (including its procedural provisions). Apart from Section 17, these Terms will be governed by and interpreted according to the laws of the State of Texas without regard to conflicts of laws and principles that would cause laws of another jurisdiction to apply. These Terms will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Except as provided in Section 17 (Arbitration), any legal suit, action or proceeding arising out of or related to these Terms or our Services shall be instituted in either the state or federal courts of Dallas, Texas, and we each consent to the personal jurisdiction of these courts.

17. Agreement to Arbitrate

17.1 We Both Agree to Arbitrate. If we can't resolve our dispute through our customer support, you or any of your affiliates on one hand and SMS Promoter and any of SMS Promoter's affiliates on the other hand, all agree to resolve any dispute arising under these Terms, or Privacy Notices, or in relation to our Services by binding arbitration in Dallas, Texas.

This applies to all claims under any legal theory, unless the claim fits in one the exceptions below in Subsection 17.2 (Exceptions to Agreement to Arbitrate). It also applies even after you have stopped using your SMS Promoter account or have deleted it. If we have a dispute about whether this agreement to arbitrate can be enforced or applies to our dispute, we all agree that the arbitrator will decide that, too.

17.2 Details of Arbitration Procedure. Prior to filing any arbitration, both parties jointly agree to seek to resolve any dispute between us by mediation conducted by the American Arbitration Association (AAA), with all mediator fees and expenses paid equally by the parties. If mediation is not successful, either party may initiate an arbitration proceeding with AAA. Procedures may be found on the website <http://www.adr.org> and by contacting the AAA at 1-800-778-7879.

The arbitration will be governed by the then-current version of AAA's Commercial Arbitration Rules (the "**Rules**") and will be held with a single arbitrator appointed in accordance with the Rules. To the extent anything described in this Section 17 conflicts with the Rules, the language of this Section 17 applies.

Each of us will be entitled to get a copy of non-privileged relevant documents in the possession or control of the other party and to take a reasonable number of depositions. All such discovery will be in accordance with procedures approved by the arbitrator. This Section 17 does not alter in any way the statute of limitations that would apply to any claims or counterclaims asserted by either party.

The arbitrator's award will be based on the evidence admitted and the substantive law of the State of Texas and the United States, as applicable, and will contain an award for each issue and counterclaim. The award will provide in writing the factual findings and legal reasoning for such award. The arbitrator will not be entitled to modify these Terms.

Except as provided in the Federal Arbitration Act, the arbitration award will be final and binding on the parties. Judgment may be entered in any court of competent jurisdiction.

17.4 Class Action Waiver. Both you and your affiliates and SMS Promoter and its affiliates, agree that any claims or controversies between us must be brought against each other on an individual basis only. Claims may be filed as a plaintiff or class member in a class action, consolidated action, or representative action. The arbitrator cannot combine more than one person's or entity's claims into a single case, and cannot preside over any consolidated, class or representative proceeding (unless we agree otherwise). And, the arbitrator's decision or award can only impact the person or entity that brought the claim, not other SMS Promoter customers, and cannot be used to decide other disputes with other customers.

If a court decides that this Subsection 17.4 (Class Action Waiver) is not enforceable or valid, then the entire Section 17 (Agreement to Arbitrate) will be null and void (i.e., go away). All other Terms still apply.

Exhibit A: Rate Schedule

Service	Description	Fee
Account Deposit	Refundable deposit due upon system activation	\$100
System Activation	Includes phone number for SMS messaging, and the following 3 triggers: 1) Customer First Purchase 2) Thank You for your Purchase 3) Create Your Own	\$24.99
SMS/Text	Using service to send promotional SMS messages	\$.10/message

Additional Triggers	Description	Fee
	The following triggers will be available for purchase:	
	Birthday Gift	\$10
	Customer First Purchase	\$5
	High Spender	\$5
	We Miss You	\$10
	Special Events	\$5
	You Are Running Late	\$5
	Frequent Buyer	\$10
	Thank You for your Purchase	\$5
	VIP Club	\$10
	Survey	\$5
	Make Your Own	\$5
	Hey Big Spender	\$10

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