

## iTXT Messaging Services Terms and Conditions

THESE TERMS AND CONDITIONS are incorporated into and form a part of the Master Services Agreement upon the initiation of service by Customer and ITXT Messaging LLC (together, the Master Services Agreement and these Terms and Conditions are referred to herein as the "Agreement").

### 1 Definitions.

- 1.1 iTXT Gateway means the proprietary software and hardware that ITXT MESSAGING LLC has developed which allows the transmission of Messages from Customer to Carrier Networks and from Subscribers to Customer via the same Carrier Network.
- 1.2 iTXT Services means the Services described in the Agreement of which these Terms and Conditions form a part.
- 1.3 Carriers means Carriers with whom ITXT MESSAGING LLC may send and receive Messages.
- 1.4 Carrier Network means the communications network(s) offered by the applicable Carrier by which it provides its customers with wireless communications and data services, including, without limitation, the ability to send Messages from and receive Messages on, their Interactive Devices.
- 1.5 Confidential Information means any non-public information disclosed by one party to the other relating to the disclosing party's business or technology which is designated as confidential, or which, based on the nature of the information disclosed and/or the circumstances surrounding disclosure ought reasonably to be recognized as being confidential.
- 1.6 Connection means the direct connection established between the premises of Customer and the iTXT Gateway for purposes of transmitting the Data to and from a Carrier Network. This Connection will be established according to the standards and protocols set forth in the Connection Guide.
- 1.7 Data means any and all data transmitted by Customer to ITXT MESSAGING LLC under this Agreement via the Connection. This Data may consist of the alphanumeric characters that Customer includes in one or more Messages along with the Group(s) to which Customer wants to send the messages.
- 1.8 Group means one or more Interactive Devices assigned a common alias by Customer through the iTXT administrative website.
- 1.9 Interactive Devices means any and all devices capable of receiving Messages and displaying the content of those messages on the screens of those devices.
- 1.10 Messages means any and all messages (a) generated by Customer, delivered to the iTXT Gateway for delivery to the Interactive Devices of one or more Groups via the Carrier Network (b) sent by an Interactive Device of a Participant to the iTXT Gateway via a Carrier Network for delivery to a Customer; and (c) sent by an Interactive Wireless Device of a Participants to the iTXT Gateway via a Carrier Network for delivery to one or more Participants.
- 1.11 Messages Fee means the fees set forth in the Agreement and any amendments or supplements thereto.
- 1.12 Participant means a member of a Group who receives or sends one or more Messages via the iTXT Gateway.

### 2 Responsibilities of ITXT MESSAGING LLC.

- 2.1 Set-up. ITXT MESSAGING LLC will provide Customer with connection information ITXT MESSAGING LLC will further provide Customer a unique System ID and Password that will enable Customer to access the iTXT Gateway via the Connection.
- 2.2 iTXT Gateway. ITXT MESSAGING LLC will use commercially reasonable efforts to operate and maintain the iTXT Gateway in accordance with this Agreement.
- 2.3 Messages. ITXT MESSAGING LLC will use commercially reasonable efforts to deliver all Messages to the Carrier Network for delivery to the Interactive Devices of the Group(s) to whom the Message was addressed; provided that ITXT MESSAGING LLC shall bear no liability to Customer, Subscribers or any third parties for failing to so deliver any Messages.

2.4 Filtering. ITXT MESSAGING LLC reserves the right to filter the content of Messages, without assuming any obligation to filter such content, as necessary to comply with the content standards of any Carrier. To the extent such filtering reveals that one or more Messages does not comply with those requirements, ITXT MESSAGING LLC may block some or all Messages for as long as it deems necessary, in its sole discretion, to ensure compliance by Customer with the requirements.

### **3 Responsibilities of Customer.**

3.1 Connection. All costs associated with establishing and maintaining the Connection, from the premises of Customer to the iTXT Gateway will be borne exclusively by Customer. Customer will use the Connection only for the purposes set forth in this Agreement and in strict accordance the parameters, guidelines and technical requirements set forth in the Connection Guide.

3.2 Use of iTXT Gateway. Customer shall comply with the terms and conditions of this Agreement, and Customer shall not use the iTXT Gateway, or allow any third parties (including Participants) to use the iTXT Gateway, to engage in any spamming, mail-bombing, spoofing or any fraudulent, illegal, unauthorized or improper use.

### **4 Content and Volume Restrictions.**

4.1 No Message shall be larger than 2 MB.

4.2 Volume in any 24 hour period shall not exceed 1,000 Messages (with each MO and MT being counted separately)

4.3 Each Participant's total storage shall be limited to 10 MB

### **5 Ownership.**

5.1 No Conveyance of Ownership; Trade Secrets. This Agreement does not convey any ownership or right to sublicense or grant any third party access or rights in or to the iTXT Gateway or any portion thereof. Title to all aspects of the iTXT Gateway shall remain with ITXT MESSAGING LLC. Client acknowledges that the iTXT Gateway constitutes ITXT MESSAGING LLC Confidential Information and is the valuable property of ITXT MESSAGING LLC.

5.2 Reverse Engineering. Client shall not decompile, or create or attempt to create, by reverse engineering or otherwise, the source code from any object code supplied under this Agreement.

### **6 Fees and Payment.**

6.1 Fees. Customer/Client shall pay to ITXT MESSAGING LLC those fees set forth in the iTXT Service Addendum or other form designated by ITXT MESSAGING LLC and/or any renewals or amendments thereto should Customer continue service post trial period. All financial obligations shall be waived should Customer discontinue service post trial period. Monthly fees will not be prorated for a partial month in the month the agreement is executed or terminated. All invoices shall be due within thirty (30) days of invoice. Any fees not timely paid will accrue interest at the rate of one and one-half percent (1.5%) per month.

6.2 Customer and Licensing Client agree the price per license is based upon the aggregate number of licenses under the entire Agreement and any subsequent addendum(s) between ITXT MESSAGING LLC, Customer (and any related entity to Customer).

6.3 Taxes. Client shall be solely responsible for any applicable sales, use, or any value added or similar taxes (collectively, "Sales Taxes") payable under, or arising out of or in connection with this Agreement. All fees or invoices provided by ITXT MESSAGING LLC are exclusive of any Sales Taxes. ITXT MESSAGING LLC may bill Customer for any applicable Tax and Customer will pay the Tax at the same time it remits payment for the fees.

### **7 Confidentiality.**

7.1 Protection of Confidential Information. Neither party shall disclose to any third-party during or after the termination of this Agreement, and each party shall keep strictly confidential, all Confidential Information of the other, protecting the confidentiality thereof with the same level of efforts that it employs to protect the confidentiality of its own proprietary and confidential information of like importance to it and in any event, by reasonable means.

7.2 Exceptions. The obligations of this Section 7 shall not apply to any Confidential Information that a party can demonstrate was: (i) at the time of disclosure to such party, in the public domain or commonly known in either party's industry; (ii) after disclosure to such party, published or otherwise entered the public domain through no fault of such party; (iii) in the possession of such party at the time of disclosure to it, if such party was not then under an obligation of confidentiality with respect thereto; (iv) received after disclosure to such party from a third-party who had a lawful right to disclose such Confidential Information to it; (v) independently developed by such party without reference to Confidential Information of the other party; (vi) disclosed with the prior written approval of the other party or (vii) required to be disclosed by law or by order of a court or governmental agency; provided, however, that the recipient of such Confidential Information shall give the owner of such Confidential Information prompt notice, and shall use commercially reasonable efforts to cooperate with the owner of such Confidential Information if the owner wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information.

## 8 Disclaimer of Warranties

8.1 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE IN THIS AGREEMENT, ALL PRODUCTS AND SERVICES PROVIDED BY ITXT MESSAGING LLC AND ITS PROVIDERS AND SUPPLIERS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ITXT GATEWAY, ARE PROVIDED "AS IS." THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

## 9 Limitation of Liability; Exclusion of Damages.

9.1 Exclusion of Certain Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES RELATING TO LOST DATA, LOSS OF PRIVACY, LOST PROFITS, OR BUSINESS INTERRUPTION.

9.2 Limitation of Liability. WITHOUT LIMITING THE FOREGOING, ITXT MESSAGING LLC'S TOTAL LIABILITY TO ANY PERSON UNDER THIS AGREEMENT WILL BE LIMITED TO PAYMENTS RECEIVED FROM CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO SUCH DAMAGES. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

10 **Indemnification.** Customer and ITXT MESSAGING LLC, upon either parties written request will indemnify and hold, its respective Affiliates and employees, representatives and agents harmless against any and all third party claims, costs, damages and fees reasonably incurred, including, without limitation, the fees of attorneys and other professionals ("Claims") that are attributable to breach of this Agreement. The party receiving indemnification (the "Indemnified Party") will promptly notify the party providing indemnification (the "Indemnifying Party") of any Claim to which the foregoing indemnity obligations apply.

## 11 Term and Termination.

11.1 Term. This Agreement shall become effective as of the date Customer initiates service or other form designated by ITXT MESSAGING LLC and will remain in effect on a month-to-month basis until terminated.

11.2 Termination. Notwithstanding the foregoing, either party may terminate this Agreement upon written notice to the other party in the event the other party: (a) becomes insolvent, files a petition in bankruptcy or makes an assignment for the benefit of its creditors; or (b) breaches its obligations under this Agreement and fails to cure the breach within three (3) days after receiving written notice.

11.3 Survival. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this section and Sections 1, 5, 6, 7, 8, 9, 10.3) and 11 shall survive the termination of this Agreement. Further, all accrued payment obligations, and any other provisions that by their nature are intended to survive, also will survive termination of this Agreement.

## 12 Miscellaneous.

- 12.1 Mutual Representations and Warranties. Each party to this Agreement represents and warrants that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it under this Agreement; (b) its actions undertaken in connection with this Agreement will be performed in compliance with all applicable laws, rules and regulations; (c) its execution of this Agreement and performance of its obligations under this Agreement do not and will not violate any other agreement to which it is a party; and (d) this Agreement will constitute the legal, valid and binding obligation of such party when executed and delivered.
- 12.2 Amendments. Except as otherwise expressly provided herein, this Agreement may not be modified, amended, or in any way altered except by a written agreement signed by the parties hereto.
- 12.3 Assignment. This Agreement will be binding on both parties and their successors and assigns. Customer shall not assign this Agreement or delegate its duties, in whole or in part, without the prior written consent of ITXT MESSAGING LLC
- 12.4 Entire Agreement. These Terms and Conditions, together with the Master Services Agreement and Service Addendum(s) constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.
- 12.5 Governing Law: Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the state of Washington. The parties agree that all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Washington, and the parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves.
- 12.6 Independent Contractor. ITXT MESSAGING LLC is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties.
- 12.7 Notices. Any notice or other communication required or permitted to be given under this Agreement shall be given in writing and delivered in person, sent via registered mail, sent via facsimile with machine generated confirmation of transmission or delivered by recognized courier service, without charge to the receiving Party at its address set forth on the signature page of this Agreement, and shall be deemed effective upon receipt. Either Party may from time to time change the individual to receive notices or its address by giving the other Party notice of the change in accordance with this section.
- 12.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect.
- 12.9 Waiver. No purported waiver by any party of any default by any other party of any term or provision contained herein (whether by omission, delay or otherwise) shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving party. No such waiver shall in any event be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.
- 12.10 Subcontractors. ITXT MESSAGING LLC shall have the right to contract with third parties to provide products and services under this Agreement.
- 12.11 Force Majeure. Neither party will be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, floods, storms, explosions, unavailability of equipment or transmission capacity (including, without limitation, the unavailability of any Carrier Network) or any other cause beyond the reasonable control of such party ("Force Majeure Event").