

## **TXT180, INC. WEB SITES AND WHITE LABEL RESELLER PRODUCTS TERMS AND CONDITIONS OF USE**

PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY. THESE TERMS AND CONDITIONS OF USE MAY HAVE CHANGED SINCE YOUR LAST VISIT TO THIS WEB SITE AND TO THE PRODUCTS. YOU AGREE TO CHECK FOR UPDATES TO THESE TERMS AND CONDITIONS OF USE. BY USING THIS WEB SITE OR THE PRODUCTS, YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS OF USE. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS OF USE, THEN DO NOT USE THIS WEB SITE OR THE PRODUCTS.

TXT180, Inc. ("TXT180") provides small businesses and organizations with a variety of products and related tools and resources including TXT180's Text Message Marketing system (the "Text Messaging Product"). In addition, TXT180 provides a variety of related offerings and services, and any related offerings and services, along with the text messaging product, are referred to in these Terms and Conditions of Use as the "Products."

The following are the terms and conditions of use for access to this web site and use of the Products. By clicking the 'I accept' button on the sign-up page, by logging in to your TXT180 account, by accessing this web site or by accessing the TXT180 services via any API interface, you accept these Terms and Conditions of Use.

### **1. Copyright and Trademark Information**

Copyright © 2010 TXT180, Inc. All Rights Reserved.

This website, and the information which it contains, is the property of TXT180, Inc. and its affiliates and licensors, and is protected from unauthorized copying and dissemination by United States copyright law, trademark law, international conventions and other intellectual property laws. The absence of a product or service name or logo does not constitute a waiver of TXT180's intellectual property rights concerning that name or logo.

### **2. Site Access & User Conduct**

TXT180, Inc. provides its "Text Messaging Products" service solely to allow businesses and organizations a communication tool to collect user mobile numbers and to create, launch and manage text messaging services.

TXT180, Inc. grants you a limited license to access and make use only of the Site and related products. By accepting the "I accept these Terms of Use" button on the sign up page and by completing the registration process, you agree to be bound by and assure that your clients are bound to all of the Terms and Conditions herein. As a self-service application, you alone understand, acknowledge and agree, that you and your client's,

- Are not under the age of 18 and are in a position of authority to for legally binding contracts under applicable law. If you are using the Products in your capacity as an employee, you must have the ability to bind your employer by your use of the Products.
- Understand our Services are subject to subscription fees ("Paid Services") once your free trial period has lapsed or has exceeded the text message limit, if applicable.
- Are responsible for the contents of your text messages.
- Certify that the mobile numbers in your subscriber list, those subscribers have given you permission to send them text messages. Plus, you are responsible for your subscribers, the management of them and are solely responsible for not sending messages to un-authorized subscribers.
- MAY NOT use TXT180 products for the sending of unsolicited text messages (sometimes called "spam"), and that you will not use our service for chain letters, junk mail, or to send any message or material that (a) is libelous, defamatory, obscene, pornographic, threatening, invasive of privacy or publicity rights, abusive or illegal; (b) violates the copyright, patent, trade secret or any other rights of another party; or (c) otherwise gives rise to liability or violates any other applicable law. If

we become aware of or determine, in our sole discretion, that you are violating any of our Terms of Use, we may modify or terminate your privileges, with or without notice to you.

- Agree you will not access, upload, or otherwise use third party mobile phone lists or otherwise prepare or distribute unsolicited text messages using TXT180 Inc. Products.
- Agree to import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from you ("Permission Based Lists") in connection with your use of the Products. Consent to receive text messages from you is evidenced by the respondent or registrant opting into your text message marketing campaign in the course of responding to your advertisements and promotions regarding your text message marketing campaign. You hereby covenant that you shall not use any other lists in connection with your use of the Products.
- Acknowledge and agree that all email messages sent through use of the Products may not be received by their intended recipients.
- Acknowledge and agree that you are the sole or designated "sender" of any text messages sent by you using the Products.
- Agree that any text message sent by you using the Products will accurately and in a non-deceptive manner identify your organization, your product or your service to the extent possible.
- Will adopt and maintain the TXT180, Inc. Privacy Policy, which may be modified by TXT180, Inc. from time to time.
- Agree to not interfere with or disrupt this web site or any related TXT180, Inc. web sites or servers or networks connected to this web site or any related TXT180, Inc. web sites.
- That TXT180, Inc. will not use contacts listed in your contact section or any other customer information for any other purposes than those intended with the Service.
- Will adopt and maintain the best practice recommendations.
- Acknowledge and understand that delivery of text messages is not guaranteed, may not arrive by specific times, and is subject to carrier delays and maintenance.

TXT180, Inc. or the partners of the company shall not be held liable for the content of the messages or the sending of the messages to un-authorized users. We have the right at any time to suspend your account if we believe you are in breach of the terms and conditions accepted by you or those you assign your password.

If you are accessing or using the Products through a third party service or web site (a "Third Party Service"), you will abide by this Agreement regardless of anything to the contrary in your agreement with such third party. You shall not use such Third Party Service to avoid the restrictions set forth in this Agreement. You also agree and acknowledge that TXT180, Inc. is not responsible or liable for any actions of such third party or for any aspect or result of such Third Party Service. You use such Third Party Service at your own risk. You further agree and acknowledge that TXT180, Inc. may terminate such Third Party Service's ability to interact with the Products at any time, with or without notice, and in TXT180's sole discretion, with no liability to you or to the third party.

### **3. Fees and Payment**

**3.1 Annual Access Fee**, You will be billed 12 months in advance for access to your control panel. This is a set fee and will automatically renew on your 12 month anniversary at the current rate, unless canceled 30 days prior to the renewal date. This fee is subject to change as the market requires. **Annual Access Fee is non-refundable.**

**3.2 Monthly Accounts,** You will be billed in advance one month's service for the use of the Text Message Marketing Products. The fees are based on the product package you select at time of initial registration or upon subsequent renewals. Depending on your usage of the system, you may purchase, in advance, text message bundles for the Text Message Marketing Product if the subscription plan's monthly allotted number of text messages is exceeded. TXT180 will keep your credit card information on file, and your accounts will automatically renew unless the account is canceled within 1 business day of the renewal date. Access to the Text Message Marketing Product will be disabled until payment is received upon account expiration. The Text Message Marketing Product may also be subject to per message and certain overage charges. The monthly subscription fee is billed at the rate shown at time of signup on the reseller page of the website, or at current pricing upon renewal. Your monthly subscription fee will not increase during the subscription period for the service subscribed to. All product prices, including but not limited to inbound and outbound text message rates are subject to change at any time without notice. Payment for Services will be made by a valid credit card or bank debit card. Fees are payable in US dollars. When signing up clients, you hereby authorize TXT180 to charge your credit card for such amounts. Amounts paid for the Services are not refundable. You acknowledge and agree that you are responsible for paying Fees for all text messages sent through TXT180 regardless of whether delivery of such messages to their intended recipients is delivered, prevented or possibly blocked by any third party. Additionally, you also acknowledge that additional compliance fees will apply based upon the spam complaint rate for each text message campaign you initiate as outlined in section 3.3.

### **3.3 Text Message Spam Complaint Rate Compliance Fee**

0 – 0.25% N/A

0.26 – 0.60% \$10 per complaint

0.61 – 1.0% \$25 per complaint

1.01 – 4.0% \$50 per complaint

4.01 – 100.0% \$100 per complaint (plus an account evaluation and possible account termination)

**3.4 Account Renewal Date,** accounts renew on the anniversary day of signup with the exception of any accounts that have an anniversary date on the 29th to 31st. Accounts with a sign-up date of the 29th through the 31st are automatically rolled back to the 28th. Replenishment of messages and subscription renewal costs will be made on this date.

**3.5 Integrated Billing System Accounts,** You agree to the above stated terms and conditions outlined in section 3.2 regarding the billing of monthly accounts. In addition to above stated terms and conditions, you also take responsibility for the billing of your customer accounts through the new Text Message Marketing integrated billing system. Any charges made to your customer accounts, refunds to be processed, or charges to be voided are handled through the white label reseller's Merchant account and Authorize.net. You agree that TXT180 Inc. claims no responsibility for the handling of the above stated transactions through the white label reseller's merchant account. It is also the white label reseller's responsibility to monitor customer accounts and handle any and all fraudulent charges which may occur. TXT180 claims no responsibility for fraudulent charges on reseller customer accounts. It is strongly encouraged that you monitor accounts on a daily basis and contact new customers who sign up to verify the validity of the customer account. If at any time you incur a charge back to a customer account (for fraudulent charges or otherwise), you are held responsible for such. TXT180 Inc. will not issue any refunds or credits for charge backs which are incurred by a white label reseller for customer accounts, fraudulent or otherwise.

## **4. Opt-Out, Permission Practices and Prohibited Content**

**4.1 Subscriber Opt Out.** You must, in connection with the use of TXT180's Products, provide an opt-out procedure that allows subscribers to remove themselves from your text messaging list. You must also maintain a link to the then current Privacy Policy. You acknowledge that you are responsible for maintaining and honoring the list of unsubscribe requests following termination of your account and this Agreement.

**4.2 Permission Practices.** You agree to import access or otherwise use only Permission Based Lists in connection with your use of the Products. You hereby covenant that you shall not use any other lists in connection with your use of the Products. Without limiting the foregoing, you agree that you shall not utilize the Product to send any

commercial text message to any person who has opted out or otherwise objected to receiving such messages from you or another sender on whose behalf you may be acting. You cannot send text messages to distribution lists, publicly available press or media phone numbers or unsolicited phone numbers. Text messages that you send through the Products may generate spam complaints from recipients. As a matter of privacy, TXT180 cannot share with you the phone numbers of those who complain about your text messages. You are responsible for ensuring that your text messages do not generate a number of spam complaints in excess of industry norms. TXT180, in its sole discretion, shall determine whether your level of spam complaints is within industry norms, and its determination shall be final, binding and conclusive for all purposes under this Agreement. TXT180 will terminate your use of its Products if TXT180 determines that your level of spam complaints is higher than industry norms (as determined by TXT180). TXT180 reserves the right to require that you utilize a “double opt in” feature which will require newly added users to verify their assent to receiving your communications after they have been added to your database(s).

**4.3 Prohibited Content.** TXT180 prohibits the use of the Products or web site by any person or entity that:

- Provides, sells or offers to sell any of the following products or content (or services related to the same): pornography or illicitly pornographic sexual products, including but not limited to magazines, video and software; escort services; dating services; adult “swinger” promotions; illegal goods; illegal drugs; illegal drug contraband; pirated computer programs; instructions on how to assemble or otherwise make bombs, grenades or other weapons.
- Displays or markets material that exploits children, or otherwise exploits children under 18 years of age.
- Provides, sells or offers products, services or content frequently associated with unsolicited commercial email, a.k.a. spam, such as online and direct pharmaceutical sales, including but not limited to health and sexual well-being products, work at home businesses, credit or finance management, including but not limited to credit repair and debt relief offerings and stock and trading tips, and mortgage finance offers, DJ/nightclub, event/club promotions/party lists, and odds making and betting/gambling services, including but not limited to poker, casino games, horse and dog racing and college and pro sporting events.
- Provides material that is grossly offensive, including blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity or post any obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable content.
- Posts or discloses any personally identifying information or private information about children without their consent (or their parents’ consent in the case of a minor).
- Sells or promotes any products or services that are unlawful in the location at which the content is posted or received.
- Introduces viruses, worms, harmful code and/or Trojan horses on the Internet or on mobile phone applications.
- Promotes, solicits or participates in pyramid schemes or multi-level channel and/or network marketing (MLM) businesses, including but not limited to personal work-at-home offers promoting “get rich quick”, “build your wealth” and “financial independence” offerings.
- Engages in any libelous, defamatory, scandalous, threatening, or harassing activity.
- Posts any content that advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information or assistance in causing or carrying out such violence.
- Markets to third party voter registration lists.

- Provides content, including images, of authors, artists, photographers or others without the express written consent of the content owner.

TXT180, at its own discretion, may immediately disable your access to the Products or remove all or a portion of your content, without refund, if TXT180 believes in its sole discretion that you have violated any of the policies listed above or in this Agreement.

## 5. Usage and Monitoring

You may use the Site only as intended by TXT180. While TXT180 has no obligation to monitor the site and is not responsible for your conduct, TXT180 reserves the right to suspend, prohibit, deny access, edit, or take other appropriate action with respect to the Services it believes may be (or is alleged to be) in violation of the terms and conditions foregoing to anyone at any time. All persons are hereby notified that use of the Site constitutes consent to such actions, monitoring and auditing.

**5.1 Use of the widget is free and at your discretion.** TXT180 is not responsible or liable for any issues that may arise from placement of the widget onto a website. TXT180 is not responsible for any non-deliveries of messages to numbers entered into the widget. Any uses of the widget that are found fraudulent may result in deactivation of your TXT180 account.

## 6. Unavailability of Service

TXT180 may require short periods of unavailability of services for numerous reasons such as to implement changes, upgrades and maintenance. We will use reasonable endeavors to perform the activities which requires the unavailability of the services, or which is reasonably likely to have an adverse effect upon the services during hours that TXT180 believes will have the least impact on users of the products. In the case of un-planned maintenance or server related problems, TXT180 shall provide as much advance notice to clients as is reasonably practicable, if possible. TXT180 shall use its reasonable endeavors to conduct these activities under this paragraph so as to minimize adverse impact on users.

## 7. Restrictions, Responsibilities and Supported Carriers

TXT180 will not use customer list or any other customer information for any other purposes than those intended with the service. Your customer information will not be shared with any other parties unless required by law.

The TXT180 text messaging system supports the following carriers: AT&T, CBW, nTelos, Sprint, Nextel, Boost, Virgin Mobile, Verizon Wireless, T Mobile, US Cellular and Alltel.

**7.1 No Rights in Software.** This is an Agreement for services and access to this web site, and you are not granted a license to any software by this Agreement. You will not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Products or any software, documentation, or data related to the Products ("Software"); remove any proprietary notices or labels from the Products or any Software, modify, translate, or create derivative works based on the Products or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Products or any Software.

Unless you are an authorized reseller of the Products, you may not display, copy, reproduce, or distribute the Software, any component thereof, any documentation provided in connection with the Products or the Software, or any content, including but not limited to newsletters, distributed to you by TXT180 in connection with the Products. Violation of these restrictions may result in the termination of this Agreement.

**7.2 Intellectual Property Matters.** You acknowledge and agree that the Services and the TXT180, Inc. company names and logos and all related product and service names, design marks and slogans, are the property of TXT180 or its affiliates or suppliers. You are not authorized to use any of the Names and Logos in any advertising, publicity or any other commercial manner without the prior written consent of TXT180. Your use of the Services confers no title or ownership in the Services,

The Software or the Names and Logos and is not a sale of any rights in the Services, the Software or the Names and Logos.

**7.3 Permitted Use of the Products.** The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates the Code of Conduct, the United States federal, state or other laws that may apply in this jurisdiction or your local area is prohibited.

**7.4 Your Information.** In using the varied features of the Products, you may provide information about yourself or your employer (such as name, contact information, or other registration information) to TXT180. TXT180 may use this information and any technical information about your use of the Products to tailor its presentations to you, facilitate your movement through the Product, or communicate separately with you. If you accessed the Products as a result of solicitation by a marketing partner of TXT180, TXT180 may share your information with the marketing partner and the marketing partner may share related information with TXT180. Except as described above, TXT180 will not provide your information, including your contact and account information, to third parties who you have not authorized to receive such information, except (i) as required by law or court order, including without limitation judicial process and law enforcement, or in the good-faith belief that such action is necessary to comply with law or a court order or (ii) if your TXT180 account was terminated due to unsolicited commercial text messages being sent from your TXT180 account. TXT180 will never sell or rent your contact lists to anyone without your permission, and will never utilize your subscriber or contact list for internal marketing or promotional purposes or for any purpose other than providing the service. TXT180 acknowledges your ownership right in your subscriber lists. In the event TXT180 amends or revises the policy described in the immediately preceding sentence, it will provide advance notice of such amendment or revision.

## **8. Eligibility**

The Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to individuals under the age of 18. If you do not qualify, you are not permitted to use the Services. TXT180 is only available to customers whose principal business matters and subscribers reside in the United States.

## **9. Termination & Refunds**

This subscription agreement is effective until terminated by either party. You may terminate this Agreement at any time, with 30-day notice by calling TXT180 Customer Support. Client accounts must be cancelled 1 business day prior to renewal to keep from being charged the automated renewal fee. **YOU ARE RESPONSIBLE FOR TERMINATING THE ACCOUNTS AND THIS AGREEMENT AND TXT180 IS NOT RESPONSIBLE FOR YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND THIS AGREEMENT AND ANY CREDIT CARD CHARGES AND FEES YOU INCUR AS A RESULT OF YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND THIS AGREEMENT.** Refunds will not be issued on any portion of prepaid monthly subscription fees. There are no refunds for any fees paid for prepaid message bundles, annual access fees, or any other products or services provided by TXT180. Prepaid message bundles will never expire as long as your account is active, but upon termination all prepaid message bundles and any related fees paid will be forfeited by the user. TXT180 may terminate this Agreement or the Products, disable your account or put your account on inactive status, in each case at any time with or without cause, and with or without notice. TXT180 shall have no liability to you or any third party because of such termination or action. TXT180 will delete any of your archived data within 60 days after the date of termination. TXT180 will provide upon request the list of unsubscribe requests from your last campaign. All sections of this Agreement that by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability. If your account is classified (at TXT180's sole discretion) as inactive for over 60 days, TXT180 has the right to permanently delete your subscriber data. TXT180 will use good faith efforts to contact you via email prior to taking any permanent removal actions.

If your account is classified (at TXT180's sole discretion) as inactive for over 60 days, TXT180 has the right to permanently delete your subscriber data. TXT180 will use good faith efforts to contact you via email prior to taking any permanent removal actions.

## **9.1 Integrated Billing System Refunds**

As state above in section 3.5, any charges made to your customer accounts, refunds to be processed, or charges to be voided are handled through the white label reseller's Merchant account and Authorize.net. You agree that TXT180 holds no responsibility for any such charges and will not issue any refunds or credits for customer account related charges.

## **10. Non-Payment Suspension**

If at any time, a renewal payment is not completed for your white label reseller account because of billing errors, both the account that did not renew and your reseller account will be suspended. If the billing issues are not resolved in a timely manner, (which TXT180 will deem) TXT180 reserves the right to contact the client and suggest a transfer to a separate reseller to keep their service active.

### **10.1 Integrated Billing System Non-Payment Suspension**

Due to the nature of the integrated billing system, if renewal payment is not completed by your white label reseller client/customer, the customer account will be suspended. The billing issues must then be resolved by the client and appropriate means are provided them to do so. White label reseller accounts, upon billing failure of a customer, do not incur renewal charges. If renewal payment is not completed for your white label reseller account, your white label reseller account will be suspended and all customer accounts will be restricted from purchasing any addition to the Text Message Marketing Product. Any customer renewals that attempt while the white label reseller is in billing suspension will fail and deactivation of the customer accounts will take place until the white label reseller applies valid billing information.

## **11. Suspended/Canceled Accounts**

You have the right to suspend or cancel your client's accounts at any time. A suspended account will remain active in the billing department and will continue to be charged renewal fees and messages will still renew, however, the client will not be given access to their account. Canceled accounts will not be charged renewal fees and will not receive message renewals and the client will not be permitted access to the account. In both cases, keywords and associated contacts will remain intact. Canceled accounts will hold the keywords and contacts until the account is reactivated which will keep them on the account or it has been in cancelation status for 60 days, which will delete and free up the keywords and release all contacts. If a canceled account is reactivated within the 60 days the renewal date will be set 30 days after the reactivation date with the exceptions outlined in section 3.4.

## **12. Security**

You are solely responsible for maintaining the confidentiality of your password, account and files. You are also solely responsible for any and all activities that occur under your account. You may change your password, or any other account information, at any time available in the account settings section of the TXT180 application. TXT180 will accept the instructions of any individual who claims to be authorized to direct changes to your account so long as such person presents your username and password or provides other appropriate account identifying information as determined by TXT180 in its discretion, by email or by phone, or through a Third Party Service, if any, through which you access the Products. TXT180 has no knowledge of your organizational structure, if you are registering for the Products as an entity, or your personal relationships, if you are a person. You agree to notify TXT180 immediately of any unauthorized use of your account or any other breach of security known to you. You must promptly inform TXT180 Customer Service of actual or apparent breaches of security, such as loss, theft, or an authorized disclosure or use of a User Account or password. Until TXT180 is notified by you of a breach in security, you will remain liable for any unauthorized use of the TXT180 Service through your account. In consideration for using TXT180's Services, you agree to: (1) provide certain current, complete, and accurate information about you and (2) maintain and update this information as required to keep it current, complete and accurate. If any information provided by you during your original registration or subsequently added to your account is inaccurate, TXT180 reserves the right to terminate your account immediately and your right to use the TXT180 Service.

## **13. No Endorsement**

Links to other web sites do not imply an endorsement of the materials disseminated by publishers at those web sites, nor does the existence of a link to another site imply that the organization, person publishing at that site, or any of the content at that site is endorsed by TXT180. TXT180 is not responsible for the materials contained at any website linking to this site.

#### **14. Indemnity**

You agree to indemnify, defend and hold harmless TXT180 and their respective officers, directors, owners, agents, information providers and licensors (collectively "TXT180 Parties") from and against any claims, liability, losses, costs and expenses (including but not limited to attorneys' fees) incurred by any TXT180 Party in connection with any use or alleged use of this website under your password by any person, whether or not authorized by you, or any other violation of this Agreement by you. TXT180 reserves the right to assume the exclusive defense and control, at its own expense, of any matter otherwise subject to indemnification by you. In such case, you agree to cooperate with TXT180 in the defense of such claims.

#### **15. Disclaimer**

TXT180, INC. MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THIS WEBSITE OR ITS CONTENTS, WHICH ARE PROVIDED FOR USE "AS IS" AND "AS AVAILABLE." TXT180 DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THIS WEBSITE, ANY WEBSITE WITH WHICH IT IS LINKED AND ANY PRODUCTS OR SERVICES SOLD THROUGH OR RECOMMENDED BY THIS WEBSITE. TXT180 DOES NOT WARRANT THE FUNCTIONS, INFORMATION OR LINKS CONTAINED ON THIS WEBSITE OR THAT ITS CONTENTS WILL MEET YOUR REQUIREMENTS, THAT THIS WEBSITE, OR ITS CONTENTS, ARE FIT FOR ANY PARTICULAR PURPOSE OR THAT THE OPERATION OF THIS WEBSITE OR ITS CONTENTS, WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES, WORMS, TROJAN HORSES, CANCELBOTS OR OTHER HARMFUL COMPONENTS. YOU (AND NOT TXT180) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. TXT180 DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE MATERIALS ON THIS WEBSITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU EXPRESSLY AGREE THAT THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS WEBSITE AND THE ACCURACY OR COMPLETENESS OF THE CONTENT IS ASSUMED SOLELY BY YOU. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

Any reliance upon any advice, opinion, statement or other information displayed or distributed through the Site, or by TXT180 agents or employees, is at your sole risk. TXT180 reserves the right, in its sole discretion and without notice, to correct any errors or omissions in any portion of the Site or to deny access to the Site to anyone at anytime. Neither TXT180 nor its affiliates shall have any liability arising from your reliance upon the information provided on the Site.

TXT180 reserves the right to change any and all content contained on this Site at any time without notice. Reference to any products, services, processes, or other information, by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by TXT180.

**YOUR RESPONSIBILITY AND RISK.** It is solely your responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, merchandise and other information provided on—or—through the Site or on the Internet generally.

Neither TXT180 nor any of its affiliates shall have any liability to you for usage charges related to any device that you use to access the Site or use of TXT180's Services, including, without limitation, usage charges for mobile telephones, Palm OS devices, Windows CE devices, car navigation systems, pagers, Smartphones, Bluetooth and other devices, whether wireless, wireline, requiring cradle synchronization or otherwise.

#### **16. Jurisdiction**

This website is controlled and operated by TXT180, Inc. from its offices in St. George, Utah, United States of America. TXT180 makes no representation that materials on this website are appropriate or available for use outside



the United States of America. Those who choose to access this website from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. The Agreement shall be governed by the laws of the State of Utah, USA without regard to its choice of law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in St. George, Utah.

## **17. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL TXT180 OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, OFFICERS, DIRECTORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "TXT180") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF DATA OR PROFIT, ARISING OUT OF THE USE, OR THE INABILITY TO USE, THE TXT180 PRODUCTS OR MATERIALS ON THIS SITE, EVEN IF TXT180 SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, TXT180 IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE MAXIMUM AGGREGATE LIABILITY OF TXT180 TO YOU ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE PRODUCTS IN THE TWELVE (12) MONTHS PRIOR TO THE ACCRUAL OF THE APPLICABLE CLAIM, LESS ANY DAMAGES PREVIOUSLY PAID BY TXT180 TO YOU IN THAT TWELVE (12) MONTH PERIOD. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

## **18. Miscellaneous**

**18.1** If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**18.2** TXT180 and you agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy. Communications made through TXT180's messaging system shall in no way be deemed to constitute legal notice to TXT180 or any of its officers, employees, agents or representatives, with respect to any existing or potential claim or cause of action against TXT180 or any of its agencies, officers, employees, agents or representatives, where notice to TXT180 is required by contract, or any federal, state or local laws, rules or regulations.

**18.3** No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind TXT180 in any respect whatsoever.

**18.4** In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

**18.5** For questions or help with your text messaging needs, please contact TXT180 at 1-877-9-TXT180 or email [support@txt180.com](mailto:support@txt180.com).