

1UP Solar, LLC

Terms of Use

Last updated August 26, 2024

These Terms of Use, together with the privacy policy available at <https://www.1upsolar.com> ("Privacy Policy") and the rules, policies, terms, and conditions set forth in, referred to, and/or linked herein, all of which are incorporated herein by reference, are collectively the "Agreement".

IMPORTANT: THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION CLAUSE THAT LIMITS YOUR RELIEF. READ THE MANDATORY ARBITRATION SECTION CAREFULLY.

This Agreement constitutes a legal agreement between you ("you" or "User") and 1UP Solar, LLC (collectively, "1UP Solar" or "us"). This Agreement governs your use of our website, online services, and SMS messaging program (collectively, the "Platform"). This Agreement applies solely to your use of our Platform, including all enhancements, versions, and modifications of the Platform.

By accessing, using, or registering with the Platform or any portions thereof, you hereby expressly acknowledge and agree to be bound by the terms and conditions of this Agreement, and any future amendments and additions to this Agreement as we may publish from time to time. Please read this Agreement carefully. If you do not agree to accept and be bound by this Agreement, you must immediately stop using the Platform. 1UP Solar's acceptance is expressly conditioned upon your assent to this Agreement in its entirety.

By selecting the "I accept" check box or button, signing (including via electronic signature), or other mechanisms designed to acknowledge acceptance of this Agreement, (a) you accept and agree to be bound by this Agreement on behalf of yourself and, if applicable, the entity for which you are acting, and (b) you represent and warrant that you have the right, power, and authority to act on behalf of and bind yourself and, if applicable, the entity for which you are acting (you or any such entity, the "1UP Solar User").

1. DEFINITIONS

1.1 **"1UP Platform"** or the **"Platform"** means <https://www.1upsolar.com>, SMS messaging program, and any software, application, portal, web application, or similar tool that 1UP Solar provides to customers, potential customers, the public, or any service providers or other partners.

1.2 **"Platform Content"** or **"Content"** means any information, data, content, and materials that Platform User or any other Authorized Users access or receive through the 1UP Solar Platform, which may include 1UP Solar Data and other 1UP Solar Confidential Information.

1.3 **“User”** means an individual Platform user who accesses and uses the Platform on behalf of themselves as an individual.

1.4 **“SMS Service”** means the service through which 1UP Solar sends SMS messages to Users who have opted into receiving such communications.

1.5 **“Account”** means the registered account through which a User accesses the password-protected portions of the Platform.

2. CONDITIONS OF USE

2.1 By using the Platform, you represent and warrant that: (i) you are at least 18 years old, are at least of the legally required age in the jurisdiction in which you reside and are otherwise capable of entering into binding contracts; and (ii) you have the right, authority, and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement, and that you will so abide. Where you enter into this Agreement on behalf of a company or other organization, you represent and warrant that you have authority to act on behalf of that entity and to bind that entity to this Agreement.

2.2 By downloading, accessing, or using the 1UP Solar Platform, including the SMS Service, you are indicating your: (i) acceptance of, and agreement to be legally bound by, all of the terms and conditions of this Agreement; and (ii) consent to the installation of any software including, but not limited to, scripts, browser plugins, applets, and mobile applications as part of the Platform on the computer or mobile device you are using to access the Platform. If you do not accept and agree to this Agreement, you must not install, access, or use the Platform.

3. SMS MESSAGING TERMS

3.1 **Program Description:** 1UP Solar’s SMS messaging program provides updates, promotions, and other information regarding our services. By opting in, you agree to receive SMS messages from us.

3.2 **Opt-Out:** You can cancel the SMS service at any time. Simply text “STOP” to [shortcode]. Upon sending “STOP,” we will confirm your unsubscribe status via SMS. Following this confirmation, you will no longer receive SMS messages from us. To rejoin, sign up as you did initially, and we will resume sending SMS messages to you.

3.3 **Customer Support:** If you experience issues with the SMS messaging program, reply with the keyword “HELP” for more assistance, or reach out directly to [support email address] or call [toll-free number].

3.4 **Carrier Disclaimer:** Carriers are not liable for delayed or undelivered messages.

3.5 Message and Data Rates: As always, message and data rates may apply for messages sent to you from us and to us from you. Message frequency varies. For questions about your text plan or data plan, contact your wireless provider.

4. THIRD-PARTY SERVICE PROVIDERS

4.1 You acknowledge that some or all the services, including SMS services, may be provided by one or more service providers (individually and/or collectively “Service Provider”), where any Service Provider is a third party to this Agreement. This Agreement is between you and 1UP Solar, not Service Provider. To use the Platform, you may also be required to agree to be bound by terms and conditions specified by the Service Provider. You represent and warrant to 1UP Solar that as a condition of using the Platform you will abide by any required terms and conditions specified by the Service Provider.

4.2 In addition to other disclaimers and exclusions contained in this Agreement, 1UP Solar expressly disclaims to the maximum extent permitted by law: (i) any and all liability related to the Platform involving “content,” as defined in the 1UP SOLAR SERVICES AND CONTENT section herein, which belongs to Service Provider; (ii) any and all liability related to maintenance or support with respect to the Platform provided by Service Provider; and (iii) any and all liability related to claims with respect to product liability, intellectual property rights, consumer protection, privacy, or failure to conform to any applicable legal or regulatory requirement involving Service Provider’s conduct or content.

5. PRIVACY AND DATA USE

5.1 **Privacy Policy:** For privacy-related inquiries, please refer to our privacy policy: <https://www.1upsolar.us/privacy-policy>.

5.2 **Information Sharing:** We do not share, sell, or disclose mobile information to third parties for marketing or promotional purposes. Information sharing to subcontractors in support services, such as customer service, is permitted. Text messaging originator opt-in data and consent will not be shared with any third parties.

6. ADDITIONAL TERMS

6.1 **Compliance with Law:** Beyond these standards, there may be additional compliance requirements under applicable law based on the nature of your text messaging campaign. It is advisable to consult with your legal counsel to ensure that your terms of service and privacy policy are compliant with applicable law and consistent with standards for your specific campaign and industry.

7. DISPUTE RESOLUTION AND GOVERNING LAW

7.1 **Arbitration:** The parties agree to refer all disputes between them to final and binding arbitration in the State of New York (“Arbitration”). The AAA Commercial Arbitration Rules (most

recent edition) are to govern this Arbitration. The Arbitration will take place in the State of New York. The arbitrator will be bound to follow the applicable Agreement provisions and New York Law in adjudicating the dispute. It is agreed by both parties that the arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the arbitrator may be entered in any court having jurisdiction thereof. Pending any decision, appeal or judgment referred to in this provision or the settlement of any dispute arising under this Agreement, Platform User will proceed diligently with the performance of this Agreement. The arbitrator will have the authority to award attorney's fees to the prevailing party in the Arbitration.

7.2 Class Action Waiver: EACH PARTY EXPRESSLY WAIVES ANY RIGHT TO PURSUE ANY CLAIMS IN A CLASS ACTION AND/OR A REPRESENTATIVE ACTION. Except for representative claims which cannot be waived under applicable law and which are therefore excluded from this provision ("Excluded Claims"), the parties expressly intend and agree that: (a) class action and representative action procedures are hereby waived and will not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (b) each will not assert class action or representative action claims against the other in arbitration or otherwise; and (c) the parties will only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. To the extent that the parties' dispute involves both timely filed Excluded Claims and claims subject to this Agreement, the parties agree to bifurcate and stay for the duration of the arbitration proceedings any such Excluded Claims.

7.3 Jury Trial Waiver: EACH PARTY EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL IRRESPECTIVE OF THE NATURE OF THE CLAIMS ASSERTED.

8. GENERAL

8.1 Changes: 1UP Solar reserves the right, in its sole and absolute discretion, to modify all or any portion of this Agreement at any time without incurring any liability or obligation whatsoever to you or any other person or entity. If we modify the Agreement, we will post the changes to the Agreement and will indicate the date this Agreement was last revised. Your continued use of the Platform after any such changes constitutes your acceptance of, and agreement to be legally bound by, this Agreement, as revised. It is your sole responsibility to regularly check the Agreement to determine if there have been any changes to the Agreement and to review such changes.