

# Terms of Service

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Revised and Effective: March 11, 2020

## Version 3.2

Please read this Terms of Use Agreement (the "**Terms of Use**") carefully. These Terms of Use govern your use of the website located at: <http://textel.net> (the "**Website**"), our downloadable software applications (each, an "**App**" and collectively "**Apps**"), the Software (as defined below), Textel Application Program Interfaces (collectively "**API**"), and hosted services enabled or available via the Website, Apps, Software (as defined below), and API (the "**Services**") that are offered by Textel LLC. (the "**Company**" or "**we**").

BY CHECKING THE BOX, COMPLETING THE REGISTRATION PROCESS, OTHERWISE AGREEING TO ACCEPTANCE, BROWSING THE WEBSITE, USING THE SERVICES, AND/OR DOWNLOADING THE APP, YOU REPRESENT THAT (i) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE AND OUR ACCEPTABLE USE POLICY (ii) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH THE COMPANY, AND (iii) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS OF USE PERSONALLY OR ON BEHALF OF THE COMPANY YOU HAVE NAMED AS THE USER, AND TO BIND THAT COMPANY TO THE TERMS OF USE. THE TERM "**YOU**" (AND ASSOCIATED "**YOUR**") REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE WEBSITE, ANY THIRD PARTY AFFILIATES UTILIZING THE SERVICE ON YOUR BEHALF, AND/OR THE PERSON SIGNING UP FOR SERVICE.

**IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE WEBSITE, APP, SOFTWARE (AS DEFINED BELOW), API, OR SERVICES. THE TERMS OF USE INCLUDE A CLASS ACTION WAIVER AND A WAIVER OF JURY TRIALS, AND REQUIRE BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES.**

Your use of, and participation in certain Services may be subject to additional terms ("**Supplemental Terms**") and such Supplemental Terms will either be listed in these Terms or will be presented to you for your acceptance when you sign up to use the supplement Service. If these Terms of Use are inconsistent with the Supplemental Terms, the Supplemental Terms will control with respect to such Service. These Terms of Use and any applicable Supplemental Terms are referred to herein as the "**Terms**".

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY THE COMPANY IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, the Company will make a new copy of the Terms of Use available at the Website. We will also update the "Last Updated" date at the top of the Terms of Use. If we make any material changes, and you have registered with us to create an Account (as defined in Section 2.1 below), we may also send an email to you at the last email address you provided to us pursuant to the Terms. Any changes to the Terms will be effective immediately for new users of the Service, and will be effective thirty (30) days after posting notice of such changes on the Website for existing users, provided that any material changes shall be effective for users who have an Account

with us upon the earlier of thirty (30) days after posting notice of such changes on the Website or thirty (30) days after dispatch of an email notice of such changes to Registered Users (defined in Section 2.1 below). The Company may require you to provide consent to the updated Terms in a specified manner before further use of the Service is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Services. Otherwise, your continued use of the Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

**1. The Services.** The Services enable Users to send and receive Short Message Service (SMS) and may allow (depending on type of Account and package) Multimedia Messaging Service (MMS) messages. SMS and MMS message length is technically limited, with specific capacities subject to change. MMS transmission through Company's Services is technically limited, with specific capacities subject to change. These limitations currently allow for picture and video transmission, but not other forms of media.

**1.1 Use of the Services.** The Website, App, the Software (as defined below), the API, the Services and the information and content available in the App, the Software (as defined below), the API, and the Services (collectively, the "**Company Properties**") are protected by copyright laws throughout the world. Unless otherwise specified by the Company in a separate license, your right to use any Company Properties is subject to the Terms.

**1.2 Application License.** Subject to your compliance with the Terms, the Company grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use the App on mobile devices or computers that you own or control solely for your own personal or business purposes, and not for further resale. Furthermore, with respect to any App accessed through or downloaded from the Apple App Store, Google Chrome Web Store, Google Play marketplace or any similar store or marketing place (each, an "**App Store**" and references to an App Store include the corporate entity and its subsidiaries making such App Store available to you), you agree to comply with all applicable third party terms of the relevant App Store (e.g. Apple App Store's "Usage Rules") (the "**Usage Rules**").

**1.3 Company Software.** Use of any software and associated documentation, other than the App or API, that is made available via the Website or the Services ("**Software**") is governed by the terms of the license agreement that accompanies or is included with the Software, or by the license agreement expressly stated on the Website page(s) accompanying the Software. These license terms may be posted with the Software downloads or at the Website page where the Software can be accessed. You shall not use, download or install any Software that is accompanied by or includes a license agreement unless you agree to the terms of such license agreement. At no time will the Company provide you with any tangible copy of our Software. The Company shall deliver access to the Software via the cloud, electronic transfer, or download and shall not use or deliver any tangible media in connection with the (i) delivery, installation, updating or problem resolution of any Software (including any new releases); or (ii) delivery, correction or updating of documentation. For the purposes of this section tangible media shall include, but not be limited to, any tape disk, compact disk, card, flash drive, or any other comparable physical medium. Unless the accompanying license agreement expressly allows otherwise,

any copying or redistribution of the Software is prohibited, including any copying or redistribution of the Software to any other server or location, or redistribution or use on a service bureau basis. If there is any conflict between the Terms and the license agreement, the license agreement shall take precedence in relation to that Software (except as provided in the following sentence). If the Software is a pre-release version, then, notwithstanding anything to the contrary included within an accompanying license agreement, you are not permitted to use or otherwise rely on the Software for any commercial or production purposes. If no license agreement accompanies use of the Software, use of the Software will be governed by the Terms. Subject to your compliance with the Terms, the Company grants you a non-assignable, non-transferable, non-sublicensable, revocable non-exclusive license to use the Software for the sole purpose of enabling you to use the Services in the manner permitted by the Terms. Some Software may be offered under an open source license that we will make available to you. There may be provisions in the open source license that expressly override some of these terms.

**1.4 Company API.** Subject to your compliance with the Terms, including the Service Subscription Fees outlined in section 6, Company hereby grants to you the right to access and use the Company API made available by Company to you, solely for the purpose of accessing the Services and for no other purpose. This right specifically excludes Company's Provisioning API, which is used for text enabling phone numbers. We may limit: (i) the number of network calls that you may make via the API; (ii) the maximum file size; and (iii) the maximum Content that may be accessed, or anything else about the API and the Content it accesses that we deem appropriate, in our sole discretion. We may impose or modify these limitations without notice. We may utilize technical measures to prevent over-usage or stop usage of the API by you or any other user after any usage limitations are exceeded or suspend your access to the API with or without notice to you in the event you exceed any such limitations.

**1.5 Updates.** You understand that the Company Properties are evolving. As a result, the Company may require you to accept updates to the Company Properties that you have installed on your computer or mobile device. You acknowledge and agree that the Company may update the Company Properties with or without notifying you. You may need to update third-party software (e.g. your device's operating system) from time to time in order to use the Company Properties.

**1.6 Certain Restrictions.** The rights granted to you in the Terms are subject to the following restrictions: (i) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Company Properties or any portion of the Company Properties, (ii) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other Company Properties (including images, text, page layout or form) of the Company; (iii) you shall not use any metatags or other "hidden text" using Company's name or trademarks; (iv) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Company Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law; (v) access the Company Properties in order to build a similar or competitive website, application or service; (vi) except as expressly stated herein, no part of the Company Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (vii) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Company Properties. Any future

release, update or other addition to the Company Properties shall be subject to the Terms. The Company, its suppliers and service providers reserve all rights not granted in the Terms. Any unauthorized use of the Company Properties terminates the licenses granted by the Company pursuant to the Terms.

**1.7 Necessary Equipment and Software.** You must provide all equipment, internet or mobile connectivity, and software necessary to connect to the Company Properties, including but not limited to, a mobile device that is suitable to connect with and use the Company Properties, in cases where the Services offer a mobile component. You are solely responsible for any fees, including Internet connection or mobile fees, that you incur when accessing the Company Properties.

## **2. Registration**

**2.1 Registering Your Account.** In order to access certain features of the Company Properties you may be required to become a Registered User. For purposes of the Terms, a **"Registered User"** is a user of the Services (**"User"**) who has registered an account on the Website, API, Software, or App (**"Account"**).

**2.2 Administrative Logins.** You shall be solely responsible for creating an administrative login (**"Admin Login"**) associated with your Account. Once an Admin Login has been created, you will be permitted to create up to the total number of additional user logins for which the applicable fees have been paid (each, a **"User Login"**), if any. You will be solely responsible for all activities that occur under User Logins, as each will be associated with your Account. User Login subscriptions can be used concurrently by and up to the number of User Logins for which the applicable fees have been paid.

**2.3 Registration Data.** In registering for use of the Services you agree to (i) provide true, accurate, current and complete information about yourself as prompted by the App's registration form (the **"Registration Data"**); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (x) at least thirteen (13) years old; (y) of legal age to form a binding contract; and (z) not a person barred from using the Company Properties under the laws of your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You agree to (a) notify the Company immediately of any unauthorized use of your password or any other breach of security at support@textel.net; and (b) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or the Company has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the Company has the right to suspend or terminate your Account and refuse any and all current or future use of the Company Properties (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree not to create an Account or use the Company Properties if you have been previously removed by the Company, or if you have been previously banned from any of the Company Properties.

**2.4 Your Phone Numbers.** You represent and warrant that (i) you have procured all rights and licenses and have all power and authority necessary to use and text enable those phone numbers you register or associate with your Account without the consent of any third party, (ii) you will not use the services

on a phone number that has been exchanged, rented, or purchased from a third party without the permission of the phone number owner, (iii) the phone number is not a mobile subscriber phone number and (iv) you will use the Services for legal purposes only.

### **3. Responsibility for Content**

**3.1 Types of Content.** You acknowledge that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials accessible through the Company Properties ("**Content**") is the sole responsibility of the party from whom such Content originated. This means that you, and not the Company, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available ("**Make Available**") through the Company Properties ("**Your Content**"), and that you and other Users of the Company Properties, and not the Company, are similarly responsible for all Content they Make Available through the Company Properties ("**User Content**").

**3.2 No Obligation to Pre-Screen Content.** You acknowledge that the Company has no obligation to pre-screen Content (including, but not limited to, User Content), although the Company reserves the right in its sole discretion to pre-screen, refuse or remove any Content. By entering into the Terms, you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content, including without limitation chat, text, or voice communications. In the event that the Company pre-screens, refuses or removes any Content, you acknowledge that the Company will do so for the Company's benefit, not yours. Without limiting the foregoing, the Company shall have the right to remove any Content that violates the Terms or is otherwise objectionable.

**3.3 Storage.** Unless expressly agreed to by the Company in writing elsewhere, the Company has no obligation to store any of Your Content that you Make Available on the Company Properties. The Company has no responsibility or liability for the deletion or accuracy of any Content, including Your Content; the failure to store, transmit or receive transmission of Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of the Company Properties. Certain Services may enable you to specify the level at which such Services restrict access to Your Content. You are solely responsible for applying the appropriate level of access to Your Content. If you do not choose, the system may default to its most permissive setting. You agree that the Company retains the right to create reasonable limits on the Company's use and storage of the Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described in the web pages accompanying the Services and as otherwise determined by the Company in its sole discretion.

### **4. Ownership**

**4.1 Company Properties.** You agree that the Company and its suppliers own all rights, title and interest in the Company Properties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Company Properties. Company's stylized name and other related graphics, logos, service marks and trade names used on or in connection with the Company Properties are the trademarks of the Company and may not be used

without permission in connection with any third-party products or services. Other trademarks, service marks and trade names that may appear on or in the Company Properties are the property of their respective owners.

**4.2 Your Account.** Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and shall forever be owned by and inure to the benefit of the Company.

**4.3 Your Profile.** Any Content posted by you in your profile may not contain nudity, violence, sexually explicit, or offensive subject matter. You may not post or submit for print services a photograph of another person without that person's permission.

**4.4 License to Your Content.** In order to enable the Company to send and deliver your messages and otherwise provide you the Services, you grant the Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, royalty-free, non-exclusive and fully sublicensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, adapt, publicly perform, and publicly display, Your Content (in whole or in part) for the purposes of operating and providing the Company Properties to you and to our other Users. You warrant that the holder of any worldwide intellectual property right, including moral rights, in Your Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You agree that you, not the Company, are responsible for all of Your Content that you Make Available on or in the Company Properties.

**4.5 Feedback.** You agree that submission of any ideas, suggestions, documents, and/or proposals to the Company through its suggestion, feedback, wiki, forum or similar pages ("**Feedback**") is at your own risk and that the Company has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to the Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Company Properties. You also acknowledge and agree that the Company may use your name and logo(s) to identify you as a customer of the Company Properties, and, with your consent, publish your Feedback in connection with your name and logo(s) on the Company Properties.

## **5. User Conduct**

**5.1 General.** In connection with your use of the Company Properties, you shall not: **(i)** Make Available any Content that (a) is unlawful, tortious, defamatory, vulgar, obscene, libelous, or racially, ethnically or otherwise objectionable; (b) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (c) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (d) is violent or threatening, or promotes violence or actions that are threatening to any other person; or (e) promotes illegal or harmful



activities; **(ii)** Harm minors in any way; **(iii)** Impersonate any person or entity, including, but not limited to, the Company personnel, or falsely state or otherwise misrepresent your affiliation with a person or entity; **(iv)** Make available any Content that you do not have a right to Make Available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements); **(v)** Make Available any Content that infringes the rights of any person or entity, including without limitation, any patent, trademark, trade secret, copyright, privacy, publicity or other proprietary or contractual rights; **(vi)** Intentionally or unintentionally violate any applicable local, state, provincial, national or international law, treaty, or regulation, or any order of a court; **(viii)** Send Protected Health Information unless allowed under applicable law; **(ix)** Register for more Accounts or associated Admin Logins or User Logins than for which fees have been paid or register for an Account on behalf of an individual other than yourself; **(x)** Stalk or otherwise harass any other User of our Company Properties; **(xi)** Advocate, encourage or assist any third party in doing any of the foregoing activities in this section; **(xii)** Use the Company Properties in violation of consumer protection laws/regulations as applicable to your country/region, including, without limitation, the United States' Telephone Consumer Protection Act (TCPA) 47 USC 227 (as amended) and Canada's Anti-SPAM Legislation (S.C. 2010, c. 23) (as amended).

**5.2 Unauthorized Applications.** You understand that the Company Properties are not designed, intended, authorized or warranted to be suitable for use in the following "**Unauthorized Applications**": life support applications, devices or systems; the operation of nuclear facilities; aircraft navigation systems; aircraft communication systems; air traffic control; direct life support machines; weapons systems; military or space equipment requiring radiation hardened components; and Enhanced 911 or the E911 emergency calling system. You warrant that you will not use the Company Properties for Unauthorized Applications.

**5.3 Acceptable Use Policy.** You agree that your use of the Services is subject to, and you agree to abide by, our Acceptable Use Policy available at <https://signup.textel.net/use>.

## **6. Fees and Taxes**

**6.1 Generally.** If you purchase any of our paid Services, you agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. You must provide the Company with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"), ACH payment information, or elect to pay by check. Your Payment Provider agreement governs your use of the designated credit card account, and you must refer to that agreement and not the Terms to determine your rights and liabilities. By providing the Company with your credit card number account and associated payment information, you agree that the Company is authorized to immediately invoice your Account for all fees and charges due and payable to the Company hereunder and that no additional notice or consent is required. You agree to immediately notify the Company of any change in your billing address or the credit card or billing information, used for payment hereunder. The Company reserves the right at any time to change its prices and billing methods, either immediately upon posting on the Company Properties or by email delivery to you.

**6.2 Service Subscription Fees.** You will be responsible for payment of the applicable fees for any Services (each, a "**Service Subscription Fee**") at the time you create or upgrade your Account and select your monthly package and associated features (each, a "**Service Commencement Date**"). Service Subscription Fees may include an initial, one-time activation fee. Service Subscription Fees for Software include recurring monthly subscription fees. Service Subscription Fees for Company API may include recurring monthly minimum Fees, per SMS and/or per MMS message Fees, as well as recurring monthly Fees for each text-enabled Phone Number being utilized. Except as set forth in the Terms, all fees for the Services are non-refundable. No contract will exist between you and the Company for the Services until the Company accepts your order by confirmatory email, SMS/MMS message, or other appropriate means of communication.

**6.3 Automatic Renewal.** Your subscription will continue indefinitely until terminated in accordance with the Terms. **After your initial subscription period, and again after any subsequent 30 day subscription period, your subscription will automatically commence on the first day following the end of such period (each a "Renewal Commencement Date") and continue for an additional equivalent period, at the Company's then-current price for such subscription. You agree that your Account will be subject to this automatic renewal feature unless you cancel your subscription at any time prior to the Renewal Commencement Date via the instructions in section 11.3 of these Terms of Use.** If you cancel your subscription, your ability to use the service will terminate immediately. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. By subscribing, you authorize the Company to charge your Payment Provider now (or after the expiration of your free trial if applicable), and again at the beginning of any subsequent subscription period. Upon renewal of your subscription, if the Company does not receive payment from your Payment Provider, (i) you agree to pay all amounts due on your Account upon demand, and/or (ii) you agree that the Company may either terminate or suspend your subscription and continue to attempt to charge your Payment Provider until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day Account is activated).

**6.4 Taxes.** The Company's fees are net of any applicable Sales Tax. If any Services, or payments for any Services, under the Terms are subject to Sales, Tax, or in any country/jurisdiction and you have not remitted the applicable Tax to the Company, you will be responsible for the payment of such Tax and any related penalties or interest to the relevant tax authority, and you will indemnify the Company for any liability or expense we may incur in connection with such Taxes. Upon our request, you will provide us with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, "**Sales Tax**" shall mean any sales or use tax, and any other tax measured by sales proceeds, that the Company is permitted to pass to its customers, that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

**6.5 Withholding Taxes.** You agree to make all payments of fees to the Company free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments of fees to the Company will be your sole responsibility, and you will provide the Company with official receipts issued



by the appropriate taxing authority, or such other evidence as we may reasonably request, to establish that such taxes have been paid.

**6.6 Free Trials and Other Promotions.** Any free trial or other promotion that provides Registered User level access to the Services must be used within the specified time of the trial. At the end of the trial period, unless specifically stated otherwise by the Company, your subscription will automatically continue on a paid subscription basis, subject to Service Subscription Fees, unless you take action to cancel the subscription. If you are inadvertently charged for a subscription, please contact the Company to have the charges reversed.

**7. App Stores.** You acknowledge and agree that the availability of the App is dependent on the App Store from which you received the App license. You acknowledge that the Terms are between you and the Company and not with the App Store. The Company, not the App Store, is solely responsible for the Company Properties, including the App, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the App, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with the Company Properties, including the App. You agree to comply with, and your license to use the App is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store's terms and policies) when using the Company Properties, including the App. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Terms and will have the right to enforce them.

**8. Indemnification.** You agree to indemnify and hold the Company, its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the "**Company Parties**") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of: (i) your use of, or inability to use, the Company Properties; (ii) your violation of the Terms; or (iii) your violation of any applicable laws, rules or regulations. The Company reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with the Company in asserting any available defenses. You agree that the provisions in this section will survive any termination of your Account, the Terms or your access to the Company Properties.

## **9. Disclaimer of Warranties.**

**9.1 As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE COMPANY PROPERTIES IS AT YOUR SOLE RISK, AND THE COMPANY PROPERTIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. COMPANY PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. **(i)** THE COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (A) THE COMPANY PROPERTIES WILL MEET YOUR REQUIREMENTS; (B) YOUR USE OF THE COMPANY PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE COMPANY PROPERTIES WILL BE ACCURATE OR RELIABLE;

OR (D) ANY ERRORS IN THE COMPANY PROPERTIES WILL BE CORRECTED. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR THROUGH THE COMPANY PROPERTIES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. (ii) THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. COMPANY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES. CONNECTIVITY, FEATURES, OR DELIVERY CAPABILITY MAY VARY, MAY BE LIMITED, AND MAY CHANGE OVER TIME. CAPACITY IS CURRENTLY LIMITED TO COMMUNICATION BETWEEN +1 NORTH AMERICAN NUMBERING PLAN NUMBERS. (iii) YOUR CONTENT MAY BE TRANSMITTED VIA UNENCRYPTED METHODS OVER VARIOUS THIRD PARTY NETWORKS.

**9.2 No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT THE COMPANY PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE COMPANY PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF TELECOMMUNICATIONS NETWORKS AND MOBILE CARRIERS, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

**9.3 No Liability for Conduct of Other Users.** YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE COMPANY PROPERTIES. YOU UNDERSTAND THAT COMPANY DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE COMPANY PROPERTIES.

## **10. Limitation of Liability**

**10.1 Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL COMPANY PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE COMPANY PROPERTIES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE OR EMOTIONAL DISTRESS, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE COMPANY PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (I) THE USE OR INABILITY TO USE THE COMPANY PROPERTIES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE COMPANY PROPERTIES; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE COMPANY PROPERTIES; OR (V) ANY OTHER MATTER RELATED TO THE COMPANY PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

**10.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL THE COMPANY PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT RECEIVED BY THE COMPANY AS A RESULT OF YOUR USE OF THE COMPANY PROPERTIES IN THE SUBSCRIPTION PERIOD DURING WHICH YOU FIRST ASSERT A CLAIM. IF

YOU HAVE NOT PAID THE COMPANY ANY AMOUNTS IN THE SUBSCRIPTION PERIOD DURING WHICH YOU FIRST ASSERT ANY SUCH CLAIM, COMPANY'S SOLE AND EXCLUSIVE LIABILITY SHALL BE LIMITED TO FIFTY DOLLARS (\$50).

**10.3 User Content.** THE COMPANY PARTIES ASSUME NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**10.4 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU. CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

## **11. Term and Termination**

**11.1 Term.** The Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use the Company Properties, unless terminated earlier in accordance with the Terms.

**11.2 Termination of Services by Company.** You will have thirty (30) days from the Service Commencement Date, or any Renewal Commencement Date, for any Services hereunder, to cancel such Service. Any Service Subscription Fee for any Service shall be non-refundable. If timely payment cannot be charged to your Payment Provider for any reason, if you have materially breached any provision of the Terms, or if the Company is required to do so by law (e.g., where the provision of the Website, the App, Software or the Services is, or becomes, unlawful), the Company has the right to, immediately and without notice, suspend or terminate any Services provided to you. You agree that all terminations for cause shall be made in the Company's sole discretion and that the Company shall not be liable to you or any third party for any termination of your Account.

**11.3 Termination of Services by You.** If you want to terminate the Services provided by the Company, you may do so by notifying the Company at any time. Your notice may be (i) sent, in writing, to the Company's address set forth below, (ii) emailed to [support@textel.net](mailto:support@textel.net) or (iii) via phone at 844-483-9835. If you need assistance, please contact [support@textel.net](mailto:support@textel.net)

**11.4 Effect of Termination.** Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services may include deletion of your password keys and all related information, files and Content associated with or inside your Account (or any part thereof). Upon termination of any Service, your right to use such Service will automatically terminate immediately. You understand that any termination of Services may involve deletion of Your Content associated therewith from our live databases. The Company will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of the Terms which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

## 12. Remedies

**12.1 Violations.** If the Company becomes aware of any possible violations by you of the Terms, the Company reserves the right to investigate such violations. If, as a result of the investigation, the Company believes that criminal activity has occurred, the Company reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. The Company is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in the Company Properties, including Your Content, in the Company's possession in connection with your use of the Company Properties, to (i) comply with applicable laws, legal process or governmental request; (ii) enforce the Terms, (iii) respond to any claims that Your Content violates the rights of third parties, (iv) respond to your requests for customer service, or (v) protect the rights, property or personal safety of the Company, its Users or the public, and all enforcement or other government officials, as the Company in its sole discretion believes to be necessary or appropriate.

**12.2 Breach.** In the event that the Company determines, in its sole discretion, that you have breached any portion of the Terms, or have otherwise demonstrated conduct inappropriate for the Company Properties, the Company reserves the right to: **(i)** Warn you via email (to any email address you have provided to the Company) that you have violated the Terms; **(ii)** Delete and/or discontinue delivery or transmission of any of Your Content provided by you or your agent(s) to the Company Properties; **(iii)** Discontinue your registration(s) with the any of the Company Properties; **(iv)** Discontinue your subscription to any Services; **(v)** Notify and/or send Content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or **(vi)** Pursue any other action which the Company deems to be appropriate.

**12.3 No Subsequent Registration.** If your registration(s) with or ability to access the Company Properties is discontinued by the Company due to your violation of any portion of the Terms or for conduct otherwise inappropriate for the community, then you agree that you shall not attempt to re-register with or access the Company Properties or any Company community through use of a different member name or otherwise, and you acknowledge that you will not be entitled to receive a refund for fees related to those Company Properties to which your access has been terminated. In the event that you violate the immediately preceding sentence, the Company reserves the right, in its sole discretion, to immediately take any or all of the actions set forth herein without any notice or warning to you.

**13. International Users.** The Company Properties can be accessed from countries around the world and may contain references to services and content that are not available in your country. These references do not imply that the Company intends to announce such services or content in your country. The Company Properties are controlled and offered by the Company from its facilities in the United States of America. The Company makes no representations that the Company Properties are appropriate or available for use in other locations. Those who access or use the Company Properties from other jurisdictions do so at their own volition and are responsible for compliance with local law.

## 14. General Provisions

**14.1 Electronic Communications.** The communications between you and the Company may use electronic means, whether you visit the Company Properties or send the Company emails, or whether

the Company posts notices on the Company Properties or communicates with you via email. For contractual purposes you (i) consent to receive communications from the Company in an electronic form or through phone calls to any number associated with Your Account; and (ii) agree that all terms and conditions, agreements, notices, disclosures, and other communications that the Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

**14.2 Release.** You hereby release the Company Parties and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from your use of the Company Properties, including but not limited to, any interactions with or conduct of other Users or third-party websites of any kind arising in connection with or as a result of the Terms or your use of the Company Properties. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

**14.3 Assignment.** The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without the Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**14.4 Force Majeure.** The Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**14.5 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Company Properties, please contact us at: <http://www.textel.net/contact>. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

**14.6 Limitations Period.** YOU AND THE COMPANY AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TERMS, THE COMPANY PROPERTIES OR THE CONTENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**14.7 Arbitration Agreement; Class Waiver; Waiver of Trial by Jury.** *Please read this Arbitration Agreement carefully. It is part of your contract with Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

**(i) Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement.



This Arbitration Agreement applies to you and the Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

**(ii) Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("**Notice**") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to: Textel, 1120 South 6th St., Suite 120, Saint Louis, MO 63104. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within 30 days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

**(iii) Arbitration Rules.** Arbitration shall be initiated through the American Arbitration Association ("**AAA**"), an established alternative dispute resolution provider ("**ADR Provider**") that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of this arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The AAA Consumer Arbitration Rules governing the arbitration are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your place of business, unless the parties agree otherwise. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the ADR Provider.

**(iv) Additional Rules for Non-appearance Based Arbitration.** If non-appearance arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties.

**(v) Time Limits.** If you or the Company pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

**(vi) Authority of Arbitrator.** If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and the Company, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary

damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and the Company.

**(vii) Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

**(viii) Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

**(ix) Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This Paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

**(x) Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

**(xi) Right to Waive.** Any or all of the rights and limitations set forth in this Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or effect any other portion of this Agreement.

**(xii) Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Company.

**(xiii) Small Claims Court.** Notwithstanding the foregoing, either you or the Company may bring an individual action in small claims court.

**(xiv) Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration.

A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

**(xv) Claims Not Subject To Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement.

**(xvi) Courts.** In any circumstances where the foregoing Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within St. Louis County, Missouri, for such purpose.

**14.8 Governing Law.** The Terms and any action related thereto will be governed and interpreted by and under the laws of the State of Missouri, consistent with the Federal Arbitration Act, without giving effect to any principles that provide for the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**14.9 Notice.** Where the Company requires that you provide an email address, you are responsible for providing the Company with your most current email address. In the event that the last email address you provided to the Company is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Terms, the Company's dispatch of the email containing such notice will nonetheless constitute effective notice. You may give notice to the Company at the following address: Textel, 1120 South 6th St., Suite 120, Saint Louis, MO 63104. Such notice shall be deemed given when received by the Company by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

**14.10 Waiver.** Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**14.11 Severability.** If any provision of the Terms is, for any reason, held to be invalid or unenforceable, the other provisions of the Terms will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**14.12 Export Control.** You may not use, export, import, or transfer the Company Properties except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Company Properties, and any other applicable laws. In particular, but without limitation, the Company Properties may not be exported or re-exported (i) into any United States embargoed countries, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Company Properties, you represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (b) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Company Properties for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Company are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not,

without prior U.S. government authorization, export, re-export, or transfer the Company products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

**14.13 Accessing and Download the Application from iTunes.** The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

**(i)** You acknowledge and agree that (a) the Terms are concluded between you and the Company only, and not Apple, and (b) the Company, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

**(ii)** You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

**(iii)** In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between the Company and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of the Company.

**(iv)** You and the Company acknowledge that, as between the Company and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (a) product liability claims; (b) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.

**(v)** You and the Company acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between the Company and Apple, the Company, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.

**(vi)** You and the Company acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

**(vii)** Without limiting any other terms of the Terms, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

**14.14 Consumer Complaints.** In accordance with California Civil Code 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

**14.15 Entire Agreement.** The Terms are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.