



SMARTCARRIER

Smart Carrier SMS Terms Of Service

DESCRIPTION OF SERVICE:

Smart Carrier, provides an application ("Smart Carrier SMS/Texting") for managing mobile marketing campaigns including mobile messaging capabilities (the "Service") . Unless explicitly stated otherwise, any new features that augment or enhance the current Service shall be subject to this Agreement. You understand and agree that the Service is provided to you on an "AS-IS" basis and that Smart Carrier assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings. You are responsible for obtaining access to the Service and that access and subsequent usage may involve third party fees (such as Internet access to use the Service).

YOUR REGISTRATION OBLIGATIONS:

In consideration of your use of the Service, you represent that you are of legal age to form a binding contract and are not a person barred from receiving the Service under the laws of the United States or other applicable jurisdiction.

You also agree to the following:

- (a) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data");
- (b) maintain and promptly update the Registration Data to keep it true, accurate, current, and complete.

If you provide any information that is untrue, inaccurate, not current or incomplete, or Smart Carrier has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Smart Carrier has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof). People under the age of 18 may not sign up for an Smart Carrier account or use any Smart Carrier services.

PAYMENT AND FEES:

Payment by Credit Card: You hereby authorize Smart Carrier to charge your credit card as set forth in the Payment Method section of the Credit Cards and Auto Recharge section to a monthly Services fee, and overage fees to Smart Carrier.

MEMBER CONDUCT:

You understand that all information, data, text, software, music, sound, photographs, graphics, audio, video, messages or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content originated. This means that you, not Smart Carrier, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available via the Service. Smart Carrier does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will Smart Carrier be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

Smart Carrier is solely a facilitator of the message traffic and has no visibility into or control over individual Messages as they are transmitted through Smart Carrier and has no responsibility or liability with respect to the content of any individual Message. Except that Smart Carrier may use programmatic means to filter (pre-screen) your messages and block your campaigns or account due to message keywords that Smart Carrier has determined, in its sole discretion, may violate an applicable, rule, regulation, or law.

You agree to not use the Service to:

- Upload, post, text message, email, transmit or otherwise make available any illegal contests or gambling, unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, text message, email, transmit or otherwise make available any adult Content or Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, or 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 nondisclosure agreements, or which violates the intellectual property rights of a third party ("Rights"));

- Impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- upload, post, text message, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any mobile telephone, mobile device, computer software or hardware or telecommunications equipment;
- "stalk" or otherwise harass another; and/or collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs (i) through (vii) above.
- You acknowledge that Smart Carrier may or may not pre-screen Content, but that Smart Carrier and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or move any Content that is available via the Service. Without limiting the foregoing, Smart Carrier and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable.
- You acknowledge, consent and agree that Smart Carrier may access, preserve, and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with any subpoena or other legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of Smart Carrier SMS/Texting, its users and the public.
- You guarantee that the subscribers in your account have granted you express consent to send them messages of the type that you intend to send them. If for any reason Smart Carrier suspects that the subscribers have not given you express consent, it reserves the right to request a written explanation from you, the client, including the method of collecting the subscriber's phone numbers and a guarantee signed by you that all the people on your subscriber list agreed to receive text messages from you of the type that you had sent. Smart Carrier reserves the right to take any action it thinks appropriate in the case of non-compliance, including but not limited to cancellation of the account.

CONTENT SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE SERVICE:

Smart Carrier does not claim ownership of Content you submit or make available for inclusion on the Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant to Smart Carrier the following worldwide, royalty-free and non-exclusive license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service and elsewhere for the purpose for which such Content was submitted or made available and also for the purpose of providing and promoting the Service to which such Content was submitted or made available

TERMINATION:

You agree that Smart Carrier may, under certain circumstances and without prior notice, immediately terminate your Smart Carrier account, any associated text message address and/or email address, and access to the Service. Cause for such termination shall include, but not be limited to, (a) breaches or violations of this Agreement or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated account deletions), (d) discontinuance or material modification to the Service (or any part thereof), (e) unexpected technical or security issues or problems, (g) your engagement in fraudulent, illegal or improper activities, (h) third party operator requirement, and/or (i) nonpayment of any fees owed by you in connection with the Services. You may terminate your access and use of the Service upon prior written notice to Smart Carrier. In no event shall you be entitled to a refund of any fees paid to Smart Carrier hereunder.

SMART CARRIER SMS/TEXTING'S PROPRIETARY RIGHTS:

Title, ownership rights and all intellectual property rights in and to the Services shall remain the sole and exclusive property of Smart Carrier. Smart Carrier retains all rights not expressly granted to you in this Agreement. You are prohibited from attempting, or knowingly permitting or encouraging others to attempt, to reverse engineer, decompile, disassemble, or otherwise attempt to determine source code or protocols from the Services except and only to the extent permissible by applicable law despite such prohibition. You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purpose, any portion of the Service (including your Smart Carrier I.D., account, account designation, password, and other Smart Carrier information), use of the Service, or access to the Service.

LIMITATION OF LIABILITY.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT SMART CARRIER COMMUNICATIONS, LLC SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES {EVEN IF Smart Carrier HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; OR (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT.