



## STANDARD TERMS AND CONDITIONS

**1. SCOPE.** These terms and conditions apply to the provision of all services ("Services") by TEN DIGIT Communications LLC ("TEN DIGIT") to the Customer. A Customer is an end-user, reseller or any user of TEN DIGIT Services.

**2. TERM.** Unless otherwise specified by agreement, the term of Services shall commence upon provision of Services and shall continue in full force and effect on a month-to-month basis ("Term"). Customer shall be responsible for the early termination charges as set forth in Section 7 of these terms. After expiration of the Term, except where prohibited by state law, the Term shall renew automatically for the successive month unless the Customer serves TEN DIGIT with written notice of such intent not to renew the Term in the current month Services are being provided. TEN DIGIT's provision of Services is contingent upon Customer's compliance with TEN DIGIT's credit requirements, which requirements may be revised during the Term hereof in TEN DIGIT's sole and reasonable discretion.

**3. RATES AND CHARGES.** <sup>SEP</sup>The rates and charges for the Services shall be those set forth in the Standard Services and Rate Schedule ("Services and Rate Schedule"). For any TEN DIGIT service used by Customer for which a rate is not specified in an agreement, TEN DIGIT's Standard Services and Rate schedule shall apply.

**4. TAXES AND SURCHARGES.** In addition to the rates and charges for the

Service(s), Customer shall be responsible for payment of all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services. Customer shall be responsible for the payment of all surcharges, if any, in effect from time to time, as required or permitted by applicable law or regulation. To the extent a sale is claimed to be subject to a tax exemption, and Customer provides TEN DIGIT with a proper tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said tax exemption, TEN DIGIT agrees to exempt Customer from the collection of taxes to the extent warranted by such certificate(s). Failure to timely provide said certificate will result in no exemption being available to Customer for any period prior to the date that the Customer presents a valid certificate.

**5. BILLING AND PAYMENT.** Billing for Services provided will commence on the first day of the month of delivery of Services. The Customer's payment may be processed on an authorized credit card for the Services automatically on that first day for Services and such charge will be for the current month and in advance. In any event, all undisputed payments are due and payable by Customer to TEN DIGIT in United States dollars as of the date of receipt of the invoice. If the Customer payment is late the Customer also shall pay TEN DIGIT a monthly late charge amount equal to 1.5% of the unpaid balance due (or such lesser amount as is the maximum amount permitted under applicable law) which

## STANDARD TERMS AND CONDITIONS

shall be applied at each successive first day of the following month(s) until the charge is satisfied. Customer must provide TEN DIGIT with written notice of any disputed charge(s) within sixty (60) days after each charge date or the Customer shall be deemed to have waived its rights to dispute the charges. The dispute notice shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. TEN DIGIT and Customer shall attempt in good faith to promptly resolve any objection to the charged amount.

**6. TERMINATION.** Unless otherwise specified by agreement, a Customer may terminate Services in the current month of Service or if either party materially breaches these terms and such breaching party fails to cure the breach within such notice period, *provided that* the cure period for breach of any of Customer's payment obligations shall only be ten (10) days, or as provided by law. If Customer fails to cure any breach of its payment obligations with respect to amounts not disputed in accordance with the provisions of Section 5 above within such ten (10) business day period, in addition to TEN DIGIT's remedies under Section 5 above, TEN DIGIT shall have the right to immediately and without further notice suspend Services to Customer.

**7. TERMINATION LIABILITY.** Unless otherwise specified, a Minimum Monthly Fee equal to one month of service will apply to Customer. That fee shall be waived for the duration of the

Term provided the Customer abides by these Standard Terms and Conditions to and including Services ordered and with respect to the Term. If Services are terminated any time prior to the end of the Term, Customer shall pay to TEN DIGIT, immediately upon demand, all sums then due and unpaid for the current month Services are being provided. No termination liability will apply in the event that the Term is ended by Customer pursuant to Section 2 at the end of a Term or 6 above as the result of a TEN DIGIT breach, however, in such event Customer shall be responsible for payment of all charges incurred prior to the termination date.

**8. LIMITATIONS OF SERVICE.** Notwithstanding any other provision contained herein, these terms shall apply to Services provided directly to Customer for use only by Customer.

**9. COMPLIANCE WITH LAWS.** Each party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services.

**10. UNAUTHORIZED USE OF SERVICES.** Except as provided below, Customer, and not TEN DIGIT, shall bear the risk of loss arising from any unauthorized or fraudulent usage of Services provided under the Agreement to Customer to include spamming and other provisions of the Telecommunications Consumer Protection Act ("TCPA") and the Controlling the Assault of Non-Solicited Pornography And Marketing Act ("CAN-



## STANDARD TERMS AND CONDITIONS

SPAM ACT”). TEN DIGIT is not a telecommunications or information services provider. TEN DIGIT does not route text messages. It is incumbent upon the Customer to report fraud and abuse to appropriate authorities or, alternatively, resolve such matters with the violating third party. Regardless, TEN DIGIT reserves the right, but is not required, to take any and all action it deems appropriate to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof, provided, however, that any such action shall be consistent with applicable federal and state laws, rules, and regulations. Notwithstanding the foregoing, Customer shall not be liable for unauthorized or fraudulent usage to the extent that the problem was within TEN DIGIT’S reasonable ability to correct or prevent and TEN DIGIT negligently or willfully fails to correct or prevent such unauthorized or fraudulent usage. In order to access certain Services or use them on an ongoing basis, the Customer may be required to provide information about him or herself (such as mobile number or contact details) as part of the registration process for the Service, or as part of your continued use of the platform. The Customer agrees that any registration information given to TEN DIGIT will always be accurate, correct and up to date. Failure to provide the correct information shall result in account deactivation. The Customer accepts and agrees that for any reason TEN DIGIT may disable an account and prevent a Customer from accessing the platform, account details or any data (i.e., messages, etc.) contained or associated

with any account. The Customer agrees not to access (or attempt to access) any of the Services by any means other than through the interface that is provided by TEN DIGIT, unless the Customer has been specifically allowed to do so in a separate agreement with TEN DIGIT. The Customer specifically agrees not to access (or attempt to access) any of the Services through any automated means (including use of any scripts, web crawlers, spiders, robots, site/search retrieval application) especially for the creation of user accounts.

**11. WARRANTY.** THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH MESSAGE SERVICES INDUSTRY STANDARDS AND SOUND BUSINESS PRACTICES. TEN DIGIT MAKES NO OTHER WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TEN DIGIT DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON TEN DIGIT’S BEHALF AND THE CUSTOMER MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF TEN DIGIT. THIS SECTION SURVIVES TERMINATION OF THE SERVICES.

**12. LIMITATIONS OF**

## STANDARD TERMS AND CONDITIONS

**LIABILITY.** IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM SERVICE PROVISION AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY AND TERMINATION OF ANY AGREEMENT. TEN DIGIT'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE INSTALLATION, DELAY, PROVISION, TERMINATION, MAINTENANCE, REPAIR, INTERRUPTION, OR RESTORATION OF ANY SUCH SERVICE) OR BREACH OF ANY AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, INDEMNITY OR STRICT LIABILITY, SHALL BE AS

FOLLOWS: (I) FOR A SERVICE FAILURE CLAIM AN OUTAGE CREDIT CALCULATED AS THREE PERCENT (3%) OF THE MONTHLY BILLING AS SPECIFIED IN TEN DIGIT'S SERVICES AVAILABILITY GUARANTEE; (II) FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY TEN DIGIT'S NEGLIGENT ACTS OR OMISSIONS, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF TEN DIGIT, THE AMOUNT OF PROVEN DIRECT DAMAGES; AND (III) FOR ALL OTHER CLAIMS NOT COVERED BY THE FOREGOING SUBSECTIONS, THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE CHARGE APPLICABLE UNDER ANY AGREEMENT FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED. IN NO EVENT SHALL TEN DIGIT'S CUMULATIVE LIABILITY FOR ALL CLAIMS (EXCLUDING (II) ABOVE) ARISING OUT PROVISION OF SERVICES EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO TEN DIGIT HEREUNDER. THIS SECTION SURVIVES TERMINATION OF ANY AGREEMENT.

TEN DIGIT ALSO SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR

## STANDARD TERMS AND CONDITIONS

NETWORKS NOT PROVIDED BY TEN DIGIT NOR WILL TEN DIGIT BE LIABLE FOR SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S, USER'S OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

**13. FORCE MAJEURE.** Except with respect to Customer's payment obligations for Services rendered prior to the commencement of a Force Majeure event, notwithstanding any other provision of any agreement, neither Party shall be liable to the other Party for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control. Any such delay or failure shall suspend these terms until the Force Majeure ceases.

**14. RELATIONSHIP OF PARTIES.** Neither any agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between TEN DIGIT and Customer. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create

liability for the other by its intentional or negligent act. You understand that TEN DIGIT uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Services.

**15. NOTICES.** All notices and communications shall be in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, by regular U.S. mail, or by facsimile transmission, addressed to the respective Party as provided via TEN DIGIT's terms here and as designated by the Customer on any agreement, Letter of Agency or service order or to such other address as may be designated in writing by such Party. Notice shall be deemed given upon mailing or sending.

**16. ENTIRE AGREEMENT.** The Standard Terms and Conditions, End User License and Services Agreement ("EULA"), Acceptable Use Policy ("AUP"), Privacy Policy, Legal Notices or other schedules at [www.tendigitcommunications.com](http://www.tendigitcommunications.com) are applicable to the Services purchased by the Customer and are expressly incorporated to any agreement or condition of service by reference. TEN DIGIT's Standard Terms and Conditions, EULA, AUP and other applicable schedules may be modified from time to time. The information exchanged between Customer and TEN DIGIT concerning Services as well as information about Customer, constitutes proprietary information. Both Parties agree to keep any such information confidential unless either is obligated by

## STANDARD TERMS AND CONDITIONS

law to disclose information contained herein.

**17. REGULATORY CHANGE.** TEN DIGIT may amend any term or pricing in response to a regulatory change that materially changes the technical feasibility or economics of providing service. TEN DIGIT will notify Customer in writing when exercising this right, after which Customer will have thirty (30) days from the date of the notice to terminate the adversely affected Services for cause by notifying TEN DIGIT in writing. If Customer does not respond in writing to TEN DIGIT within thirty (30) days, Customer waives its right to terminate. For avoidance of doubt, Customer's remedy pursuant to this section shall not apply for rates otherwise subject to change on the Services and Rate Schedule whether standard or negotiated.

**18. WAIVER.** No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.

**19. PARTIAL INVALIDITY.** If any provision of any agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render any agreement unenforceable, but rather the agreement shall be construed as if not containing the

invalid or unenforceable provision. However, if such provision is an essential element of any agreement, the Parties shall promptly attempt to negotiate a substitute.

**20. ASSIGNMENT.** Customer may not assign any agreement without the written consent of TEN DIGIT, which consent shall not unreasonably be withheld or delayed; *provided* that no such consent shall be required for any assignment by a party to an entity that either controls or is controlled by or is under common control with that party; or to an entity which succeeds to all or substantially all of such party's assets whether by merger, sale or otherwise; or to any institutional lender to whom any agreement is assigned as collateral security for any indebtedness of the assignor or any affiliate of the assignor. In the event of any assignment by Customer as permitted hereunder, the assignee must comply with TEN DIGIT'S credit and security requirements.

**22. GOVERNING LAW.** Any agreement between the Customer and TEN DIGIT shall be interpreted, construed and enforced in accordance with the laws of the state of Connecticut, without regard to its conflict of laws principles. Each party consents to personal jurisdiction in the state and federal courts of the state of Connecticut.

**23. TELEPHONE NUMBERS.** In no event shall TEN DIGIT be liable for any telephone numbers published or distributed by Customer prior to delivery of Services or for any directory

## STANDARD TERMS AND CONDITIONS

publishing error or for any network or routing issues on the public switched telephone or information services networks.

**24. SERVICES AVAILABILITY GUARANTEE.** TEN DIGIT agrees that the Services will be maintained at a 99.9 level. If, in a given month, TEN DIGIT fails to maintain this level (“Service Failure”), TEN DIGIT will provide, upon request of the Customer, a monetary credit equal to three percent (3%) of the charges for such calendar month. “Service Failure” means a failure of Services measured in increments of whole minutes, and rounded down to the nearest whole minute, which begins when TEN DIGIT receives notice, either from the Customer, or its own monitoring, that the Services are non-operational. The time period ends when the Services are restored. Notwithstanding the foregoing, if the Customer is in violation of the terms of its agreement or the Standard Terms and Conditions, no credit or right to immediate termination shall be available to the Customer. If it is found that a third party unaffiliated with TEN DIGIT or its vendor partners is responsible for any other service interruption it shall not be deemed a Service Failure. Multiple attempts to access the TEN DIGIT’s Services during a given service interruption shall be deemed a single Service Failure. The Customer acknowledges and agrees that the remedies stated in these Standard Terms and Conditions are the Customer’s sole and exclusive remedies with respect to TEN DIGIT’s failure to meet the availability guarantee. Notwithstanding

the foregoing, (i) any scheduled updates or maintenance (ii) issues caused by factors outside of reasonable control, including, without limitation, any force majeure event, carrier/provider/network related problems or issues or Internet access or related problems beyond the demarcation point of TEN DIGIT or its vendor partners; (iii) interruptions resulting from any actions or inactions of the Reseller or any third party (other than TEN DIGIT vendor partners) shall be excluded from the calculation of the Service Failure. In the event of any scheduled updates or maintenance, which will result in a service interruption, TEN DIGIT shall provide adequate notice to the Customer. In this event, this guarantee and associated credits do not apply.

**25. Website and Platform Use.** By using [www.tendigitcommunications.com](http://www.tendigitcommunications.com) or [www.tendigittext.com](http://www.tendigittext.com) (“Websites”), our, or our vendor partner, mobile, desktop, tablet apps (“Apps”) and all related end clients, widgets, tools, applications, data, software, application programming interfaces and other Services provided by TEN DIGIT (“Services”), the Customer represents that he or she is of legal age to form a contract with TEN DIGIT, he or she is a person or entity not barred from receiving Services under the laws of the United States or other countries in which the Services are being used. Accounts registered by “bots” or other automated methods are not permitted. TEN DIGIT’s, or its trusted vendor partner’s, platform is a text messaging cloud service. Registered users of the platform

## STANDARD TERMS AND CONDITIONS

can send, receive, and backup text messages and contacts ("Content"), which will be stored by TEN DIGIT or its trusted vendor partners. Content created or uploaded to TEN DIGIT's platform will be made available to end clients or Services associated with the platform. Content available on TEN DIGIT's platform can be shared with other registered users or non-registered users at the Customer's discretion.

**26. Account Level Security.** The Customer is responsible for maintaining the security of his or her account and password. TEN DIGIT cannot and will not be liable for any loss or damage from your failure to comply with security obligation. The Customer agrees and understands that he or she is responsible for maintaining the confidentiality of TEN DIGIT passwords and is solely responsible to TEN DIGIT for all activities that occur under the respective account. The Customer is required to notify TEN DIGIT immediately if he or she becomes aware of any unauthorized use of a password or of an account.

**27. Changes.** TEN DIGIT, or its trusted vendors, continuously make changes to the platform in order to provide the best possible experience for its users. The Customer accepts and agrees that the form and nature of the Services that TEN DIGIT provides may change without prior notice. Continued use of the platform after any such changes shall constitute Customer consent to such changes.

**28. Message Delivery.** Messaging is not limited for inbound and outbound

messages. Message flow, inbound and outbound, is throttled as defined by the Services package purchased. In addition, message ratio must be no more than three outbound messages to one inbound message. The Customer accepts and agrees that limits may be set at any time, at TEN DIGIT's discretion. Messages shall be deemed to have been delivered when TEN DIGIT delivers the messages to the immediate destination, including mobile telephone networks, or any other intermediary server, applications programming interface that is designated as the point of delivery for the message. TEN DIGIT does not guarantee delivery on behalf of mobile carriers. Although TEN DIGIT, via its trusted vendor partners, provides extensive text messaging coverage including all major U.S. mobile carriers, TEN DIGIT makes no guarantees to its network coverage. The Customer accepts and agrees that TEN DIGIT messaging Services act only as a platform for users to send text messages to a contact(s) mobile phone and that TEN DIGIT does not itself verify the content of messages sent by users or messages received by users. TEN DIGIT cannot and does not assume responsibility for the accuracy, completeness, safety, reliability, timeliness, innocuousness, legality or applicability of any text message sent to a mobile number or received by any user. Text message at your own risk.

**Spam.** Using the TEN DIGIT Service for spam will result in a Customer account being deactivated immediately. We take spam and unsolicited messaging very seriously. Text messaging (SMS and MMS) is a regulated medium. There are





## STANDARD TERMS AND CONDITIONS

a number of governing bodies that help to protect the consumer from spam. TEN DIGIT builds safeguards into our Service to protect consumers. As a user of the Services, the Customer is responsible for respecting the governing laws. TEN DIGIT believes that message content must be age appropriate for all audiences, that Customers should opt-in to receive messages from an entity if that entity will be advertising to them or will be sending promotional material to them, that customers should be able to opt-out of your marketing campaigns or promotional material. That is until the user opts back into the service. On the initial message to the Customer, it is best to provide information on how they can opt out of the service. In an effort to protect all users, TEN DIGIT, through its trusted vendor partners, looks for keywords that denote a user's intention to opt-out of receiving text messages. Those keywords include, but are not limited to: stop, stop all, block, end, unsubscribe, and quit. Understand that if TEN DIGIT receives a message from the customer and their response contains one of these values, you will not see the customer's response. The Customer will receive an informational text message from TEN DIGIT, letting them know that your number has been blocked from texting. It will also give them away to undo their action if it was unintentional. As a user of TEN DIGIT the Customer can easily reach a large quantity of customers very quickly. Similar to the spam policies in place, TEN DIGIT will throttle message volume on accounts deemed to be sending spam messages.