

TextGorilla Terms Of Use

1. Overview

Welcome to the family of sites provided by TextGorilla Inc. (“TextGorilla”). Use and access to the TextGorilla Sites (including any rebranded or white label version of the TextGorilla Sites), and the text message, hosted telemarketing, and voice broadcast services described below (the “Services”), are subject to these terms and conditions of use (the “Terms”) as well as our Privacy Policy located at <http://www.TextGorilla.com/privacy>

We reserve the right to change these Terms from time to time. Any updates to these Terms shall be posted on our website. You acknowledge your responsibility to review these Terms from time to time and to be aware of any such changes. By continuing to use any of the TextGorilla Sites or Services after we post any such changes, you accept these Terms, as modified. By accessing one of the TextGorilla Sites or our Services, you accept these Terms and certify that you have reviewed these Terms are within or have reached the age of majority or age 18 (whichever is greater) in your jurisdiction. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, PLEASE LEAVE THIS WEBSITE BY CLOSING YOUR INTERNET BROWSER WINDOW NOW. IF YOU DO NOT INTEND ON USING THE SERVICES IN ACCORDANCE WITH THESE TERMS, DO NOT UTILIZE THE SERVICES PROVIDED BY TextGorilla.

2. The Services

Services described on the TextGorilla Sites may or may not be available in all countries or regions of the world, may be available under different trademarks in different countries and, where applicable, may be approved or cleared by a government regulatory body for sale or use with different indications and restrictions in different countries. You agree to use the TextGorilla Services in accordance with all applicable guidelines as well as all state and federal laws that the Services are subject to.

The Services consist of one or more of the following: a web-based interface, access to incoming telephone number or keywords, messaging applications, voice broadcast applications, data encryption, data transmission, data access, data storage and, if applicable, synchronization software, as well as software maintenance and upgrades and customer support, that enable you to send text messages and/or voice broadcasts to recipients designated by you (collectively, the “Services”). We transmit messages initiated by you or sent to you by others through different routes, and the level of reliability and support for special features varies according to the route. You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Services, and for paying all access charges.

TextGorilla only provides that the Services are processed correctly and further transmitted by TextGorilla to the applicable network. TextGorilla is not responsible for the final delivery of any communication initiated through TextGorilla’s Services, as this is out of our control and is the responsibility of downstream communications carriers.

TextGorilla transmits and receives text messages and voice broadcasts via other major telecommunications companies and mobile network operators, and thus TextGorilla’s influence over the timing of the transmission of your messages and broadcasts is within the technical constraints imposed upon TextGorilla. While TextGorilla shall use commercially reasonable efforts to transmit your messages and broadcasts to the applicable network for final delivery to your designated recipients as fast as possible, we cannot commit to, and do not guarantee, a specific maximum delivery time.

Such times depend on various network and system-related factors among the various entities involved in the transportation of your messages and broadcasts across the public switched telephone network and/or Internet. You should know that communications carriers assign text messages and voice broadcasts with a default lifetime and any message or broadcast that cannot be delivered successfully within the lifetime assigned to it will be discarded by the communications carrier without any notice. TextGorilla is not liable for any loss incurred by the failure of a message or broadcast to be delivered, and you acknowledge that damages for financial or other loss resulting from delivery failure cannot be claimed from TextGorilla for any such non-deliveries. Furthermore, you agree that message and broadcast contents are deemed to have zero value.

3. Usage Policy

You represent and warrant that the owners of the phone numbers you initiate messages to through the TextGorilla services have consented or otherwise opted-in to the receipt of such messages and broadcasts as required by any applicable law or regulation. You agree that you will include clear opt-out/unsubscribe information on your messages or broadcasts when required to do so by any applicable law or regulation and otherwise adhere to the Consumer Best Practices Guidelines promulgated by the Mobile Marketing Association, if applicable to your messages. You further agree that any individuals requesting “Do-Not-Call” (“DNC”) status shall immediately be placed on your DNC accounts list and you further agree that you will not initiate any subsequent messages or broadcasts to any individuals after they request DNC status.

You agree to familiarize yourself with and abide by all applicable local, state, national and international laws and regulations and are solely responsible for all acts or omissions that occur under your account, including without limitation the content of the messages and broadcasts that you create and initiate through the TextGorilla Services. Without limiting the foregoing, you agree to familiarize yourself with the legalities of any messages, calls, broadcasts, and campaigns transmitted through the TextGorilla Services by visiting the following websites:

- Federal Trade Commission, <http://www.ftc.gov>
- Federal Communications Commission, <http://www.fcc.gov>
- DoNotCall Registry Info, <http://www.donotcall.gov>

The Telephone Consumer Protection Act (“TCPA”), the Federal Trade Commission, the Federal Communications Commission, the DNC list registry rules (<http://www.donotcall.gov>) and various state laws, rules and regulations place restrictions on certain types of phone calls and text messages. TextGorilla is in no way attempting to interpret any laws, rules, or regulations. This information is provided merely as a courtesy and is not intended to replace your responsibility to familiarize yourself with and abide by the legal requirements pertaining to your messages, broadcasts and campaigns prior to using the TextGorilla Sites or Services. You are ultimately responsible to make your own informed decisions regarding your messages, broadcasts, and campaigns.

You shall schedule campaigns responsibly and in a manner that is courteous to the recipients pursuant to local, state, national, and international calling time rules and regulations. You are solely responsible for obtaining any rights or licenses to any data, including without limitation sound files, for inclusion in any outbound messages, broadcasts, and campaigns. If you are unfamiliar or unclear on the legalities of any message, broadcast or campaign, you must consult with your attorney prior to your use of the TextGorilla Sites or Services.

You accept that the Services are provided for professional use only, and you agree that your use of the TextGorilla Sites or Services shall not include:

- Sending unsolicited marketing messages or broadcasts (i.e. spam);
- Sending any calls to life-line services, such as hospitals, fire, police, 911 or utility- related lephone numbers;
- Using strings of numbers as it is unlawful to engage two or more lines of a multi-line business;
- Harvesting, or otherwise collecting information about others, without their consent;
- Misleading others as to the identity of the sender of your messages or broadcasts, by creating a false identity, impersonating the identity of someone/something else or by providing contact details at do not belong to you;
- Transmitting, associating or publishing any unlawful, racist, harassing, libelous, abusive, treatening, demeaning, immoral, harmful, vulgar, obscene, pornographic or otherwise objectionable material of any kind;
- Transmitting any material that may infringe upon the intellectual property rights of third parties including trademarks, copyrights or other rights of publicity;
- Transmitting any material that contains viruses, trojan horses, worms, time bombs, cancel-bots or y other harmful/deleterious programs;
- Interfering with, or disrupting, networks connected to the Services or violating the regulations, policies or procedures of such networks;
- Attempting to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means;
- Interfering with another's use and enjoyment of the Services or TextGorilla Sites; or
- Engaging in any other activity that TextGorilla believes could subject it to criminal liability or civil penalty/judgment.

You agree to provide legal contact information in any outbound campaign within the initial greeting message. You further agree that TextGorilla is, under no circumstances, responsible for the contents and/or accuracy of your messages or broadcasts and TextGorilla will only transmit them on a basis of good faith that you use the Services in accordance with these Terms. You will provide your own sound files for all outbound campaigns. TextGorilla will not be liable for any misuse of the Services by you. TextGorilla is not responsible for the views and opinions contained in any of your messages or broadcasts.

Customer will not purposely route calls to high cost non-RBOC (Regional Bell Operating Company) areas for origination or termination of telecommunications traffic on the TextGorilla system. Calls may be monitored and reported upon each billing cycle to ensure sound traffic patterns. Excessive routing of high-cost calls will be addressed to customer by TextGorilla and fines may be assessed to recover excess charges from TextGorilla VoIP termination companies.

4. Content Submission / Discussion Areas

You agree that any information or materials that you or individuals acting on your behalf provide to TextGorilla (other than information required for your use of the Services as contemplated herein) will not be considered confidential or proprietary. By providing any such information or materials to TextGorilla (other than information required for your use of the Services as contemplated herein), you grant to TextGorilla an unrestricted, irrevocable, worldwide, royalty-free, perpetual license to use, reproduce, display, publicly perform, transmit, make derivative works of, and distribute such information and materials, and you further agree that TextGorilla is free to use any ideas, concepts or know-how that you or individuals acting on your behalf provide to TextGorilla. In connection with

such information and materials, you warrant and represent to TextGorilla that you have all rights, title and interests necessary to provide such content to TextGorilla, and that your provision of the content to TextGorilla shall not infringe any third party's proprietary or personal rights, including but not limited to any trademark, copyright, patent, or trade secret.

TextGorilla may at its option provide you with one or more areas within the TextGorilla Sites for online discussions (e.g. message boards, wikis, chat rooms, or blogs). Should you choose to participate in such a forum, you agree not to utilize the forum for illegal or inappropriate purposes. TextGorilla reserves the right but will not be obligated to edit or delete postings to its forums at any time and for any reason. TextGorilla shall also have no responsibility or liability for any content created or posted by you or other third parties within any online forum.

5. Username / Password

As part of the registration process you will need a login handle and/or password. You shall provide TextGorilla with accurate, complete, and regularly updated member profile information. You agree to notify TextGorilla of any known or suspected unauthorized use(s) of your user account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your username or password. You shall be responsible for maintaining the confidentiality of your password. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your user account, in TextGorilla's sole discretion, and you may be reported to appropriate law-enforcement agencies.

6. Intellectual Property

You are permitted to access the TextGorilla Sites, the Services, and any content provided by TextGorilla (which may include text, images, hosted software, sound files, video or other content, and may be provided via the TextGorilla Sites or otherwise) solely for the purpose of receiving information about TextGorilla's business and products, purchasing and utilizing the Services, communicating with TextGorilla, entering prize promotions offered by TextGorilla, or otherwise as stated on the TextGorilla Sites. TextGorilla hereby grants a worldwide, fully paid-up, perpetual, non-exclusive, non-transferable license to you to use the TextGorilla Sites and Services solely for the purpose of operating the TextGorilla Sites and using the Services.

We may have copyrights, trademarks, patents, trade secrets, or other intellectual property rights covering subject matter in the Services, including the web pages that are part of the Services and the TextGorilla Sites. Except as expressly provided in these Terms, the availability of the Services and the TextGorilla Sites does not give you any license to these patents, trademarks, copyrights, or other intellectual property. All copyrights, trademarks, patents, trade secrets and other intellectual proprietary rights contained in the TextGorilla Sites are the sole property of TextGorilla or its licensors, each of whom reserves all rights with regard to such materials. You acknowledge and agree that you may not copy, reproduce, retransmit, modify, alter, create any derivative works, reverse engineer, decompile, or disassemble any portion of the Services or TextGorilla Sites, including any proprietary communications protocol used by the Services or the TextGorilla Sites without the express written permission of TextGorilla. All other trademarks or trade names are the property of their respective owners, and such material may not be copied, downloaded, redistributed, modified or otherwise exploited, in whole or in part, without the permission of the owner.

TextGorilla abides by the federal Digital Millennium Copyright Act (DMCA) by responding to notices of alleged infringement that comply with the DMCA and other applicable laws. As part of our response, we may remove or disable access to material residing on a site that is controlled or operated

by TextGorilla that is claimed to be infringing, in which case we will make a good-faith attempt to contact the person who submitted the affected material so that they may make a counter notification, also in accordance with the DMCA. TextGorilla does not control content hosted on third party websites, and cannot remove content from sites it does not own or control. If you are the copyright owner of content hosted on a third party site, and you have not authorized the use of your content, please contact the administrator of that website directly to have the content removed.

Before serving either a Notice of Infringing Material or Counter-Notification, you may wish to contact a lawyer to better understand your rights and obligations under the DMCA and other applicable laws. The following notice requirements are intended to comply with TextGorilla's rights and obligations under the DMCA and, in particular, section 512(c), and do not constitute legal advice.

Notice of Infringing Material

To file a notice of infringing material on a site owned or controlled by TextGorilla, please provide a notification containing the following details:

1. Reasonably sufficient details to enable us to identify the work claimed to be infringed or, if multiple works are claimed to be infringed, a representative list of such works (for example: title, author, any registration or tracking number, URL);
2. Reasonably sufficient detail to enable us to identify and locate the material that is claimed to be infringing (for example a link to the page that contains the material);
3. Your contact information so that we can contact you (for example, your address, telephone number, email address);
4. A statement that you have a good faith belief that the use of the material identified in (2) is not authorized by the copyright owner, its agent, or the law;
5. A statement, under penalty of perjury, that the information in the notification is accurate and that you are authorized to act on behalf of the owner of the exclusive right that is alleged to be infringed.
6. Your physical or electronic signature.

Then send this notice via email to: support@TextGorilla.com

7. Data Protection & Privacy

In order to ensure your compliance with these Terms and to ensure that TextGorilla complies with national and international laws, we may, from time to time, randomly check the messages and broadcasts that you send. Nonetheless, we are committed to maintaining the privacy of your information, pursuant to our Privacy Policy, located at <http://www.TextGorilla.com/legal/privacy>. Except as otherwise required for your use of the Services as contemplated herein, TextGorilla does not want you to, and you should not, send any confidential or proprietary information to TextGorilla via the TextGorilla Sites or the email addresses referenced on the TextGorilla Sites.

You further recognize that TextGorilla does not want you to, and you warrant that you shall not, provide any information or materials to TextGorilla that is defamatory, threatening, obscene, harassing, or otherwise unlawful, or that incorporates the proprietary material of another.

8. Payments

Your use of the Services is contingent on your paying for such use (whether paid in advance or through the purchase of credits on the TextGorilla Sites), in the amounts and using the methods indicated on the TextGorilla Sites. Your payment for the Services, Credits (as defined below in Section 10), keywords,

DIDs, usage-sensitive fees and/or plans (a portion of which also includes software maintenance and upgrades, as well as customer support) shall be deemed completed when TextGorilla receives the full amount of payment owed for such Services, Credits, keywords, DIDs and/or plans. You are responsible to pay for any message or broadcast you attempt to send to any number, regardless of whether the message is actually received by the intended recipient. As TextGorilla is dependent on other entities for the delivery of your messages and broadcasts, our price per credit may require adjustment in order to account for costs that are not in our control. Accordingly, we may adjust our prices from time to time without prior notice.

TextGorilla will charge your indicated method of payment for the Services, Credits, keywords, DIDs and/or plans immediately upon your confirming the payment method and amount. Amounts to be charged may include sales and other taxes where applicable and any other amounts indicated on the Site. TextGorilla will assess an additional charge based on the costs TextGorilla incurs for porting each DID number assigned to you that you request to be ported within six months of the original assignment by TextGorilla and TextGorilla may further restrict the ability to port telephone numbers assigned to you by TextGorilla consistent with FCC regulations. Your account will be credited within 24 hours of TextGorilla verifying receipt of your payment. If you have elected to make a payment by credit card and we do not receive payment from the credit card issuer, you agree to pay all amounts due immediately upon demand by TextGorilla.

TextGorilla cannot readily or accurately ascertain your location when you request to use the Services. You therefore agree that your use of the Services occurs in California and is subject to any applicable California taxes. To the extent that you are responsible for any additional taxes or fees beyond those collected by TextGorilla, you agree that you will pay them when due to any applicable taxing authority, including any interest or penalties assessed.

TextGorilla shall not be responsible for any errors or transmission failures with regard to the charging and collection of funds from your indicated payment method, nor for any actions taken by the provider of the payment method you choose (which could include refusal to authorize the charge). In addition to these Terms, any payments made by you may be subject to the agreement between you and the provider of the payment method.

As between you and TextGorilla, you are responsible for all charges related to purchases made using your account and payment method, whether or not you authorized such purchases. Standard charges apply to any test call sent originating from your account or initiated using your API key. In the event of accidental under billing in favor of a customer, a non-payment by customer under these Terms, TextGorilla shall be entitled to immediately proceed with collection remedies and shall be entitled to recover any and all costs, fees, and expenses of such collection efforts, including but not limited to: collection agencies, court costs, filing and service of process fees, attorneys' fees incurred from counsel of TextGorilla's choosing, or any other costs, fees, and expenses incurred in the pursuit of collection on all customer accounts and receivables due and payable under these Terms.

Notwithstanding any contrary provisions in this section of this site or the Payments sections of the other TextGorilla Sites, TextGorilla offers a free texting service on EZTexting.com whereby subscribers to this service (the "Freemium Service") can send a specified number of outbound text messages per month free of charge under the terms contained in this paragraph. The number of free monthly text messages a subscriber to the Freemium Service can send per month will be indicated in the Pricing Page after enrolling in the Freemium Service. TextGorilla reserves the right to change this number from month to month, and the total number of free text messages a subscriber to the Freemium Service can send may differ based on the destination country of the text messages sent by the

subscriber. After a Freemium Service subscriber has sent the designated number of free outbound text messages in a given month, the subscriber will not be able to send additional text messages until the next month's renewal date, unless the subscriber upgrades its account to a paid service. Freemium Service subscribers will be assigned an auto-generated Keyword for their use in the outbound text messages that they send. Not all features of TextGorilla's paid services will be available to Freemium Service subscribers, the available features are subject to change at any time without notice to the subscriber, no phone support will be available and such subscribers agree to take this service "as is." Existing subscribers may downgrade their service to the Freemium Service one time only. All of the remaining Terms set forth herein unrelated to payment apply to the Freemium Service.

9. Credits

Credits are paperless vouchers that you purchase and which facilitate the transmission of the TextGorilla Services selected by you. The chosen route as well as the destination of a message or broadcast causes the amount of credits required to either increase or decrease but, in either case, will always be made known beforehand through the Pricing Page of our TextGorilla Sites. The submission of a seemingly-valid message or broadcast will cause an associated quantity of credits to be debited from your account and you can obtain the real-time status of your account at any time through the online interface.

Expiration of Credits and Prepaid Minutes

Credits purchased as a part of a package or monthly plan, including any additional credits purchased during your monthly billing cycle as part of an upgrade to your plan, and not used within the month of purchase, expire at the end of the month, unless the plan explicitly provides for roll-over of credits. Individual anytime, non-monthly plan credits purchased through your account expire after 18 months from the date of purchase, at which point such credits shall expire automatically, unless otherwise stated at the time of purchase. Credits are purchased on a first-bought, first-to-expire basis. Additionally, the value of credits may change over time as the cost of transmission changes, and thus you acknowledge that the number of credits needed to utilize the Services may change correspondingly. You may request a full refund of any unused, non-monthly plan credits within one (1) business day of purchase. No other refunds will be given. Any unused value shall be forfeited upon expiration. All prices, per-minute rates, and billing increments are subject to change at any time due to fluctuations in market conditions. Notwithstanding the above, TextGorilla may, in its sole discretion, offer customized plans that provide for individualized terms concerning credit expiration, billing cycles, account maintenance fees and/or other agreed upon terms. The terms of such customized plans will be made known and governed by the Pricing Page of our TextGorilla Sites.

10. No Warranty; Limitation of Liability

TextGorilla reserves the right to modify, suspend, or discontinue the offering of any of the TextGorilla Sites or Services at any time for any reason without prior notice. Further, while TextGorilla utilizes electronic and physical security to reduce the risk of improper access to or manipulation of data during transmission and storage, it cannot guarantee the security or integrity of the data and shall have no liability for breaches of security or integrity or third-party interception in transit, nor for any damage which may result to your computer or other property by your use of the TextGorilla Sites or Services.

You acknowledge that text messages and voice broadcasts are transmitted unencrypted and that eavesdropping of communications by third parties is possible. TextGorilla recommends that you ensure sensitive and valuable information is communicated by a protected and/or encrypted method.

TextGorilla shall use commercially reasonable efforts to make access to the Services available through the required access protocols, but makes no warranty or guarantee that (i) the Services will be available at any particular time; or (ii) you will be able to access the Services at any particular time or from any particular location. TextGorilla will not be liable for any act or omission of any other company or companies furnishing a portion of the Services (including, without limitation communications carriers or ISPs), or from any act or omission of a third party, including those vendors participating in TextGorilla offerings made to you, or for equipment that it does not furnish, or for damages that result from the operation of customer-provided systems, equipment, facilities or services that are interconnected with the Service.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE TextGorilla SITES AND SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT ANY WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESSED OR IMPLIED. NOTWITHSTANDING THE FOREGOING OR ANY STATEMENT TO THE CONTRARY CONTAINED IN THESE TERMS, TextGorilla DOES NOT WARRANT THAT THE USE OF THE TextGorilla SITES OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, INCLUDING, BUT NOT LIMITED TO ANY INTERRUPTIONS TO THE SERVICES CAUSED BY THE INTENTIONAL AND/OR MALICIOUS ACTS OF THIRD PARTIES (E.G., “HACKING”) NOR SHALL TextGorilla BE RESPONSIBLE FOR ANY DATA LOSS OR LOSS OF ANY INFORMATION IN YOUR ACCOUNT, REGARDLESS OF THE CAUSE. FURTHERMORE, TextGorilla MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR THAT THE TextGorilla SITES OR SERVICES WILL MEET ANY OF YOUR SPECIFIC REQUIREMENTS OTHER THAN AS MAY BE EXPRESSLY SET FORTH IN THESE TERMS. TextGorilla MAKES NO REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE MATERIAL, SERVICE, SOFTWARE, TEXT, GRAPHICS OR LINKS, AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. TextGorilla SHALL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM LOSS OF USE OR LOST BUSINESS, LOSS OF OPPORTUNITY, LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF DAMAGE TO OR CORRUPTION OF DATA OR LOSS OF GOODWILL), OR FOR ANY COST OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING IN CONNECTION WITH THESE TERMS, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE, OR OTHER ACTIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOUR USE OF THE TextGorilla SITES OR SERVICES RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT, SOFTWARE, OR DATA, TextGorilla IS NOT RESPONSIBLE FOR THOSE COSTS. TextGorilla'S TOTAL LIABILITY ARISING OUT OF YOUR USE OF THE TextGorilla SITES OR SERVICES FOR DIRECT DAMAGES SHALL NOT, IN THE AGGREGATE, EXCEED AN AMOUNT EQUAL TO THE MONTHLY TRANSACTION FEE PAID BY YOU TO TextGorilla HEREUNDER.

11. User Warranties; Indemnification

You warrant and represent to TextGorilla that you have all necessary rights, power, and authority to agree to these Terms and perform your obligations hereunder, and nothing contained in these Terms or in the performance of such obligations will place you in breach of any other contract or obligation. You further warrant and represent that you are and shall at all times remain in full compliance with all applicable laws, rules and regulations with regard to your use of the TextGorilla Sites and Services, including without limitation the Telephone Consumer Protection Act, the Telemarketing Sales Rule, the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act) of 2003, and all other laws and regulations concerning privacy, telemarketing, and Internet marketing.

You agree to indemnify and hold harmless TextGorilla and its affiliates and each of their respective officers, directors, shareholders, employees, agents, contractors, representatives, content providers and service providers, from and against any and all losses, claims, obligations, liabilities, damages, settlements, costs and expenses (including, but not limited to, consequential damages, incidental damages, special damages, disbursements and attorneys' fees, including attorneys' fees incurred from counsel selected by TextGorilla in its sole discretion) arising from or relating to any actual or threatened claim, suit, action, proceeding, governmental investigation or enforcement action based upon or arising out of: (i) your breach of the above warranties; or (ii) any use by you, or an account or computer owned by you, of the TextGorilla Sites or Services. You agree to cooperate as fully as reasonably required in the defense of any claim, suit, action, proceeding, governmental investigation or enforcement action, but we reserve the right, at your expense, to assume the exclusive defense and control of any matter in which you are a named party and that is otherwise subject to indemnification by you. You acknowledge and agree to be held liable for any and all damages caused to TextGorilla by you as a direct result of a violation of local, state, national or international laws and regulations, including but are not limited to those damages that may arise from your fraudulent, intentional or unintentional harm, disability, unauthorized use of, or destruction to any and all equipment, licensing and/or services provided by TextGorilla to you.

12. Termination, Cancellation and/or Suspension by TextGorilla

If at any time you breach these Terms, we may elect to suspend, terminate, and/or cancel your use of the Services and/or recover any damages from you arising from the event(s) giving rise to the suspension, termination, or cancellation. We reserve the right to suspend the Services at any stage for any reason we may deem necessary to continue to provide our Services in a way that may be hindered by your status as being our client, your financial status or the content of the messages or broadcasts originating from you.

Upon any such termination, cancellation, and/or suspension, you are still responsible for any obligations then accrued. Your obligation to pay all amounts accrued and owed by you shall continue even after any suspension or cancellation of your access to the Services (in whole or in part). Upon termination, for any reason, you agree to immediately cease using the Services and TextGorilla shall have no obligation to you after any termination or cancellation of these Terms.

Should such a termination take place when you still have credits in your account, you shall receive back, at our discretion, a fair monetary value of such credits, save any expenses that may be incurred by TextGorilla, including, without limitation, for payment of transfer duties, legal costs, third-party costs, or penalties.

The provisions regarding ownership, payments, warranties, and indemnifications will survive any suspension, termination, or cancellation of your use of the Services or TextGorilla Sites.

13. Termination by the User

You are free to terminate or cancel your use of the Services at any time, and for any reason. If you are on a monthly plan or pay for monthly Keywords or DIDs, login to your account, downgrade to Pay & Go and cancel any Keyword or DID subscriptions you may have. Notwithstanding the foregoing, unless due to a breach solely by TextGorilla that it fails to cure within thirty (30) days of its receipt of your notice, in no event shall TextGorilla be obligated to refund to you the reasonable value of any unused credits previously purchased by you.

14. Links to other Websites

The TextGorilla Sites may contain links to third party websites. These links are provided solely as a convenience to you and not as an endorsement by TextGorilla of the contents on such third-party websites. TextGorilla is not responsible for the content of linked third-party websites and does not make any representations regarding the content or accuracy of materials on such third-party websites. If you decide to access linked third-party websites, you do so at your own risk.

TextGorilla cannot ensure that you will be satisfied with any products or services that you purchase from a third party website that links to or from the TextGorilla Sites, since these websites are owned and operated by independent third parties. TextGorilla does not endorse any of the products/services, nor has TextGorilla taken any steps to confirm the accuracy or reliability of any of the information contained in such third party websites. TextGorilla does not make any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against us with respect to such websites. TextGorilla strongly encourages you to make whatever investigation you feel necessary or appropriate before proceeding with any online or off-line transaction with any of these third parties.

TextGorilla consents to links to the TextGorilla Sites which conform to the following: the appearance, position, and other aspects of any link to the TextGorilla Sites may neither create the false appearance that an entity or its activities or products are associated with or sponsored by TextGorilla nor be such as to damage or dilute the goodwill associated with the name and trademarks of TextGorilla or its affiliates. TextGorilla reserves the right to revoke this consent to link at any time in its sole discretion, without notice.

15. Security Rules

You are prohibited from violating or attempting to violate the security of the TextGorilla Sites and Services and from using the TextGorilla Sites and Services to violate the security of other websites by any method, including, without limitation: (a) accessing data not intended for you or logging into a server or account which you are not authorized to access; (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (c) attempting to interfere with service to any user of the TextGorilla Sites or Services, host or network, including, without limitation, via means of submitting a virus to the TextGorilla Sites, overloading, "flooding," "spamming," "mailbombing," or "crashing"; (d) sending unsolicited e-mail, including promotions and/or advertising of products or services; or (e) forging any TextGorilla packet header or any part of the header information in any e-mail, instant message, text message or newsgroup posting. Violations of system or network security may result in civil or criminal liability. TextGorilla may investigate violations of these Terms, and may involve and cooperate with law enforcement authorities in prosecuting users of the TextGorilla Sites who are involved in such violations.

16. Force Majeure

TextGorilla shall not be liable for any failure or delay in performing its obligations hereunder, which such failure or delay is caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, insurrection, terrorism, strike, failure or downtime of any telecommunications line and/or unavailability of any telecommunications or Internet facilities, power failure, governmental restrictions, any court order, compliance with any law, regulation, or order of any governmental authority, or any other cause beyond the reasonable control of TextGorilla. In addition, TextGorilla shall be so excused in the event it is unable to acquire from its usual sources, and on terms it deems to be reasonable, any material necessary for the performance of the Services.

17. Choice of Law and Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of the State of California notwithstanding its laws governing conflicts of laws. Except as hereinafter provided, any dispute arising under these Terms shall be settled and determined by binding arbitration in Santa Monica, California in accordance with the provisions of the Federal Arbitration Act, 9. U.S.C. §§1-16, as amended (the "Federal Arbitration Act"), to the exclusion of state laws inconsistent therewith. The terms of the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect shall apply except to the extent they conflict with the express provisions of this paragraph. A single independent arbitrator shall conduct the arbitration. The parties shall endeavor to select the independent arbitrator by mutual agreement. If such agreement cannot be reached within thirty (30) days after a dispute has arisen which is to be decided by arbitration, the selection of the arbitrator shall be made in accordance with the Rules as then in effect. The arbitrator shall be a member of a state bar engaged in the practice of law in the United States or a retired member of a state or the federal judiciary in the United States. The award of the arbitrator shall be based on the evidence admitted and the substantive law of the State of California (subject to any applicable preemption or supersedence by U.S. federal substantive law) and shall contain an award for each issue and counterclaim. The award shall be made within thirty (30) days following the close of the final hearing and the filing of any post-hearing briefs authorized by the arbitrator, and such award shall set forth in writing the factual findings and legal reasoning for such award. The arbitrator may, in his/her discretion, award to any party specific performance or injunctive relief (the foregoing is not intended to limit TextGorilla's access to the courts to the extent provided below). The arbitrator may not change, modify, or alter any express condition, term, or provision of these Terms or the extent the scope of their authority is expressly limited. Except as provided in the Federal Arbitration Act, the arbitration award will be final and binding upon the parties and no appeal of any kind may be taken. Judgment may be entered thereon in any court having jurisdiction thereof. Each party shall be entitled to inspect and obtain a copy of non-privileged relevant documents in the possession or control of the other party. All such discovery shall be in accordance with procedures approved by the arbitrator. Unless otherwise provided in the award, each party shall bear its own costs of discovery. The statute of limitations applicable under California law to the commencement of a lawsuit shall apply to the commencement of arbitration hereunder.

Anything in the foregoing paragraph to the contrary notwithstanding, TextGorilla may seek injunctive relief in any court having jurisdiction over the parties to enjoin or prevent any action you take or threaten to take in violation of these Terms.

These Terms are only those stated herein, which shall constitute the complete agreement between the parties. No terms and conditions stated in or attached to your communications to TextGorilla are

applicable to these Terms in any way and are not to be considered your exceptions to the provisions of these Terms.

18. Miscellaneous

The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms will otherwise remain in full force and effect and enforceable. No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind TextGorilla in any respect whatsoever. In any action or proceeding to enforce rights under these Terms, TextGorilla will be entitled to recover costs and attorneys' fees if it substantially prevails.

All notices required hereunder shall be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. TextGorilla may give notice to you by means of a general notice on the TextGorilla Sites or Services, electronic mail to your e-mail address on record in TextGorilla's account information, or by written communication sent by personal delivery, fax, overnight courier, or certified or registered mail to your address on record in TextGorilla's account information.