

AMS USER AGREEMENT (TERMS OF USE)

(Last Updated: June 30, 2020)

1. Introduction

American Messaging Services, LLC (“we” or “us” or “our”) provides our website, applications, online services, and certain functionality with respect to our AMSConnect, SECUREConnect, SMS Short Code, and other secure text messaging services via our online platform (collectively, the “Services”) to the user (“you” or “your”) pursuant to the terms and conditions of this AMS User Agreement (Terms of Use) (“Agreement”). By using the Services, you are accepting this Agreement. If your right to use the Services is based on you being an authorized user of the entity (“Customer”) that has entered a customer agreement with us for use of the Services (“Customer Agreement”) on whose behalf you access and use the Services, you affirm that you (a) have been authorized by Customer to access and use the Services for the benefit of Customer; (b) are 18 years of age or older; (c) are otherwise able and competent to enter into and to abide by and comply with this Agreement; and (d) are a resident of the United States of America.

We may change this Agreement from time to time without notice to you. In addition, when using particular Services, you will be subject to any posted additional terms, policies, guidelines, or rules applicable to such Services that may be posted from time to time, including the AMS Privacy Policy found at the following link https://americanmessaging.net/wp-content/uploads/2019/09/Website_Use.pdf. All such policies, guidelines, and rules are hereby incorporated by reference into this Agreement. The collection and use of personal information is governed by this Agreement and the AMS Privacy Policy. If in connection with your use of the Services, we create or receive Protected Health Information (“PHI”) from or on behalf of you or Customer as a “Covered Entity” under the Privacy and Security Regulations of the federal Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and related applicable state regulations, you must agree that the terms set forth in the HIPAA Business Associate Addendum, which is referenced in the AMS Privacy Policy referenced above, which govern such PHI.

The Services are owned and operated by us and our licensors and contains material that is derived in whole or in part from us and other sources and is protected by international copyright, trademark, and other intellectual property laws. You may not modify, copy, reproduce, republish, upload, post, transmit or distribute in any way any material from the Services, including code and software, except as permitted by this Agreement or otherwise consented to by us in writing. You may download material from the Services for your personal, non-commercial use, or your employer-company’s internal use only, provided you keep intact all copyright, trademark, and other proprietary notices and, if applicable, maintain attribution to the author. You agree not to sell or resell any portion of the Services and/or Content without our express written consent. No other right or license is granted to any materials on the Services.

The Services may only be used by you for lawful purposes. Transmission, distribution, or storage of Content (as defined below) or other material in violation of any applicable local, state, federal, foreign, or international laws, rules, or regulations is prohibited. You understand that the technical processing and transmission of the Services, including information you provide, may involve (a) transmissions over various networks, and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

2. User Credentials

If you receive sign-in credentials, you must maintain the privacy and security of your sign-in credentials for the Services, and you shall, without limitation: (a) keep your login password secure and confidential; (b) not obtain other users’ login credentials or use their accounts; (c) not allow others to use your login credentials to access your account; (d) not sell or transfer in any way your account, or any portion of information therein, to a third party; (e) not sell or transfer in any way information of another user to a third party; and (f) keep your computer password confidential. Any activity occurring under your user name and account is deemed to have been done by you, unless your account has been terminated prior to such activity, or unless there has been a security breach of your account through no fault of your own. If you believe that your account security has been compromised for any reason, you must notify us promptly.

3. User Conduct

You understand that all information, advertising, data, text, articles, software, music, sound, photographs, graphics, video, messages, postings, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not us, are entirely responsible for all Content that you upload, post, email, or otherwise transmit via the Services, and that you must evaluate, and bear all risks associated with, the use of any Content posted or transmitted by you or other users. We do not control the Content posted by users via the Services and, as such, do not guarantee the usefulness, accuracy, integrity, or quality of such Content. Under no circumstances will we be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, or otherwise transmitted, whether by us, you, or others.

You agree to not use the Services to: (a) upload, post, email, or otherwise transmit any 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; (b) harm minors in any way; (c) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with any person or entity; (d) post any incomplete, false, or inaccurate biographical information; (e) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Services; (f) upload, post, email, or otherwise transmit any Content that you do not have a right to transmit 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); (g) upload, post, email, or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright, or other proprietary right of any party; (h) upload, post, email, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other similar solicitations not permitted by law; (i) upload, post, email, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (j) disrupt the normal flow of dialogue, cause a screen to scroll faster than other users of the Services are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges; (k) modify, intercept, monitor, or damage any communication that is not intended for you; (l) interfere with or disrupt the Services or servers or networks connected to the Website, or disobey any requirements, procedures, policies, or regulations of networks connected to the Website; (m) intentionally or unintentionally violate any applicable local, state, federal, foreign, or international laws, rules, and regulations; (n) stalk or otherwise harass another; or (o) collect, store, or use personal data about other users of the Services, except as may be necessary to complete a communication or transaction offered or accepted by such users.

When retrieving information from the Services, you are prohibited from (a) using or attempting to use spiders, crawlers, robots, avatars, intelligent agents, or any other extraction or navigation search except for a normal browser; (b) aggregating, copying, or duplicating any of the materials or information except for the small amount of materials and information temporarily required for an ordinary single use of the Services; and (c) accessing data not intended for you.

Recognizing the global nature of the Internet, you acknowledge that what may legally be done on or through the Internet in the jurisdiction of your residence may not be permissible in every jurisdiction in the world. Therefore, you specifically agree to comply with all local laws, rules, and regulations of the jurisdiction of the recipient regarding online conduct and acceptable Content. In addition, you agree to comply with all applicable laws, rules, and regulations regarding the transmission of technical data exported from the United States of America. The foregoing obligation shall survive termination of this Agreement.

Third parties not within our control may make Content available via the Services. We are under no obligation to, and do not, scan such Content for the inclusion of illegal or impermissible content. However, we respect the intellectual property of others, and we require that you and all of our other users to do the same. It is our policy not to permit materials known by us to infringe another party's copyright to remain on the Services.

If you believe any materials on the Services infringe a copyright, you should provide us with written notice that at a minimum contains: (a) a physical or electronic signature of a person authorized to act on behalf of

the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (c) identification of the material that is claimed to be infringing or to be the subject of infringing activity that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (d) information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an email address at which the complaining party may be contacted; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

All DMCA notices should be sent to our designated agent as follows:

Name: Copyright Agent

Address: American Messaging Services, LLC

1720 Lakepointe Drive, Suite 100

Lewisville, TX 75057

Email: copyright@americanmessaging.net

4. AMS's Rights to Content

With respect to Content you post for inclusion in publicly accessible areas of the Website, you grant us the worldwide, royalty-free, and non-exclusive license to reproduce, modify, adapt, and publish such Content in connection with the Services solely for the purpose of displaying and distributing the Content for the purpose for which such Content was submitted to us. This license exists only for as long as you elect to continue to include such Content on the Services and will be terminated 30 days after you delete or give us written notice to delete such Content from the Services.

You acknowledge that we may, but do not have the obligation to pre-screen Content. We have the right, in our sole discretion, to refuse or remove any Content that is available through the Services. Without limiting the foregoing, we have the right to remove any Content that we, in our sole discretion, deem violates this Agreement or is otherwise objectionable. In addition, we may pursue any of our other legal remedies, including, but not limited to, the immediate cancellation of your account, the exclusion from the Website of you and anyone else who may have violated this Agreement, and pursuing violators under various criminal and/or civil laws under the relevant jurisdiction. We will cooperate with any investigation by any federal, state, or local body or any court or tribunal legitimately exercising its rights. Such cooperation may be without notice to you. You acknowledge and agree that we may preserve Content and user information and may disclose Content and user information in accordance with the AMS Privacy Policy, if required to do so by law, or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) protect the rights, property, or personal safety of us, users of the Services, or the public; or (e) minimize or eliminate our potential liability.

We encourage you to provide us information about your experience using the Services, which will enable us to improve the Services. This includes any ideas or suggestions pertaining to new products, services, and other items. You give us the unencumbered right to use such ideas or suggestions. We will not provide any compensation for the ideas or suggestions, but they may make the Services better or more useful for you and other users.

5. Modification and Termination

You acknowledge that we may establish general practices and limits concerning use of the Services. You agree that we have no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Services. You further acknowledge that

we reserve the right to change these general practices and limits at any time, in our sole discretion, with or without notice, including, without limitation, adding or deleting fees associated with the Services. If any charge is applicable to any Services, we will notify you in advance.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services, in whole or in part, with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services or removal of Content.

You agree that we, in our sole discretion, may terminate your use of the Services, in whole or in part, for any reason without notice. Further, you agree that we are not liable to you or any third party for any termination of your access to the Services.

In addition, if applicable, your right to access and use the Services shall automatically terminate upon termination of the Customer Agreement.

6. Links

The Services may provide, or third parties may provide, links to other websites or resources. Because we have no control over such sites and resources, you agree that we are not responsible for the availability of such sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, services, or other materials on or available from such sites or resources. You further acknowledge and agree that we are not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content or products or services available on or through any such sites or resources.

7. Proprietary Rights

You acknowledge and agree that the Services and any necessary software used in connection with the Services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property laws and other laws. You further acknowledge and agree that Content, as well as any other information presented to you through the Services, is protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws. Except as authorized in this Agreement or otherwise expressly authorized in writing by us or the applicable retail partners, advertisers, Content authors, or other users, you agree not to distribute or otherwise transfer, modify, or create derivative works based on the Services, the Software, or the Content, in whole or in part. We grant you a personal, non-exclusive, non-sublicensable, and non-transferable license to use the object code of the Software; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code, or distribute, grant a security interest in, or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including, without limitation, for the purpose of obtaining unauthorized access to the Services. You agree not to access the Services by any means other than through the interface that is provided by us for use in accessing the Services.

US. Government Rights. The Software and related materials are commercial in nature and developed solely at private expense. The Software and related materials are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

8. Disclaimer of Warranties, Indemnities and Liabilities

YOU AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. WE PROVIDE THE SERVICES "AS IS" AND "AS AVAILABLE" AND MAKE NO WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER. WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF TITLE, ACCURACY OF DATA, TIMELINESS OF COMMUNICATIONS, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR FROM USAGE OF TRADE.

You shall indemnify and hold us harmless from any claims whatsoever resulting from your use of the Services or your breach of this Agreement, except to the extent such claims arise from our gross negligence or willful misconduct.

Our total liability for all claims, whether in contract, tort (including negligence), or otherwise, arising out of, connected with, or resulting from the Services or anything else under this Agreement shall not exceed the amount of \$50.00.

WE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY ANY ERRORS, DELAYS, OR OMISSIONS IN ANY COMMUNICATIONS, DATA, CONTENT, OR OTHER INFORMATION PROVIDED THROUGH THE WEBSITE OR SERVICES. IN NO EVENT SHALL WE OR OUR LICENSORS, SUPPLIERS, OR SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUE, OR LOST SAVINGS, INCURRED BY CUSTOMER OR ANY THIRD PARTY, EVEN IF AMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The indemnification obligations and the limitations and exclusions of liability under this Agreement shall survive the termination of this Agreement.

9. SMS Short Code Terms

Our SMS short code service ("Short Code") is a standard-rate SMS program which provides subscribers SMS notification of your messages. If you opt into our Short Code service, we will send you an SMS message to confirm your signup. Upon sign-up, end-users agree to receive SMS messages from or on behalf of us via our short code, [~ Short Code Applied For (*****) ~], of your messages provided with the Services. You can cancel this service at any time by texting "STOP" to our short code. After you send the message "STOP" to us, we will send you a reply message to confirm that you have been unsubscribed. After this, you will no longer receive SMS messages from us. If you want to join again, just sign up as you did the first time and we will start sending messages to you again. As always, message and data rates may apply for any SMS messages sent to you from us and to us from you. If you have any questions about your text plan or data plan, it is best to contact your wireless provider. For all questions about the services provided by our short code, you can send an email to our email address listed below. Carriers are not liable for delayed or undelivered messages. Our Short Code service is available on the following carriers: AT&T, Sprint, T-Mobile, Verizon Wireless, and others. Please reach out to us to confirm whether your carrier supports our Short Code services. Delivery of SMS messages is subject to effective transmission from your wireless service provider/network operator.

10. Miscellaneous

You may not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement to any third party without our prior written consent. The failure of either party to act upon any right, remedy, or breach of this Agreement will not constitute a waiver of that or any other right, remedy, or breach. No waiver will be effective unless made in writing and signed by the waiving party. Neither party will be liable for any delay in or failure of performance resulting from any cause or condition beyond the party's reasonable control, whether foreseeable or not, including vandalism that disrupts or corrupts the Website or the Services. The provisions of this Agreement are severable. If any provision is held to be invalid, unenforceable, or void, the remaining provisions will not as a result be invalidated. Any claim or controversy arising out of or relating to this Agreement, including any anticipatory breach or disagreement as to interpretation of this Agreement, shall be resolved in accordance with the dispute resolution provisions of the Customer Agreement, which provisions are hereby incorporated by reference. This Agreement and any claim arising out of this Agreement will be governed by and construed in accordance with the laws of the State of Delaware, excluding its conflict of laws principles. This Agreement constitutes the entire agreement and understanding between the parties relating to the object and scope of this Agreement. Any representation, statement or warranty not expressly contained in this Agreement, will not be enforceable by the parties. ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT THAT IS NOT RESOLVED BY YOU AND US DIRECTLY WILL BE SETTLED BY MEDIATION AND, IF MEDIATION IS UNSUCCESSFUL, BY BINDING ARBITRATION. THE MEDIATION AND ARBITRATION WILL TAKE PLACE IN THE DALLAS, TEXAS METROPOLITAN AREA, AND WILL

BE PURSUANT TO AMERICAN ARBITRATION ASSOCIATION RULES AND PROCEDURES IN EFFECT AT THE TIME THE DISPUTE IS SUBMITTED, BY MEDIATOR(S) AND ARBITRATOR(S) MUTUALLY SELECTED BY YOU AND US IN ACCORDANCE WITH SUCH RULES.

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