

# TextMarks Terms of Service

(Last Updated July 26, 2018)

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If you are a customer of TextMarks or otherwise access the Site (as defined below), these Terms of Service (“**Terms**”) apply to your access and use of the website located at [www.textmarks.com](http://www.textmarks.com) (the “**Site**”), and any applications, online products, software and services, including a notification and messaging service that allows users to contact and send information to their subscribers and groups through text messaging services and other mobile communication systems (collectively, the “**Services**”) provided by TextMarks, Inc. (“**TextMarks**,” “**our**,” or “**we**”). If you interact with the Services via text messaging, please see the End User Terms and Conditions.

BY ACCESSING THE SERVICES, YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, INCLUDING THE MANDATORY ARBITRATION PROVISION AND CLASS ACTION WAIVER IN SECTION 18, DO NOT ACCESS OR USE THE SERVICES. If you have any questions about these Terms or the Services, please contact us at [tmsupport@textmarks.com](mailto:tmsupport@textmarks.com) or using our account contact information in Section 24 below.

## 1. Eligibility.

You must be at least 18 years of age to access or use the Services. By using the Services, you represent that you are of legal age to form a binding contract and are not a person barred from receiving the Services under the laws of the United States or other applicable jurisdiction. Use of the Services is limited to one account per person, and you may not create an account for multiple users.

## 2. User Accounts and Account Security.

You are required to register and create an account to access the Services. When creating an account, you will be required to provide certain personal information about yourself and establish a username and password. You agree to provide accurate, current, and complete account information, and it is your responsibility to keep this information up to date and accurate. TextMarks reserves the right to suspend or terminate your account if any of the information you provided turns out to be inaccurate, false, or misleading. You are responsible for maintaining the confidentiality of your password and username and/or email address and the activities or actions that occur under your account, whether or not you have authorized such activities or actions. You must promptly notify TextMarks if you discover or suspect that someone has accessed your account without your permission.

## 3. Electronic Communications.

By creating a TextMarks account, you also consent to receive electronic communications from TextMarks (e.g., via email or by posting notices through the Services), which may include notices about your account (e.g., payment authorizations, password changes, technical communications and other transactional information) and marketing communications.

## 4. Privacy.

Please refer to our Privacy Policy for information about how we collect, use, and disclose information about you and your customers, including the account registration information you provide.

## 5. Services.

Subject to the terms and conditions of these Terms, TextMarks grants you a limited, non-exclusive, non-transferable, revocable right to use the Services. TextMarks may make additions or modifications to the Services at its sole discretion, and they will be subject to these Terms.

The TextMarks Service allows you to create keywords for your various products and services. The use of such keywords does not grant you ownership of them. TextMarks retains ownership of all keywords on our Services and reserves the right to reclaim, suspend or change keywords associated with your TextMarks account.

## 6. Account Fees, Billing, and Cancellation.

(a) If you do not provide credit card or other payment information to us before the expiration of your free trial period, your account will be suspended until payment information and charge authorization are provided. We use a third-party payment processor to bill you for use of the paid Services. The processing of payments will be subject to the terms, conditions and privacy policies of the payment processor in addition to these Terms. Both Standard Monthly Service as well as Extended Prepaid Terms are available.

(b) Standard Monthly Service. TextMarks charges a monthly service fee that is billed monthly in advance. We will bill you monthly in arrears for any overage fees such as additional keywords or messages.

Starting from the date you begin a paid service plan and on each monthly renewal thereafter, we will automatically bill your credit card on file. You acknowledge that the amount billed may vary for reasons that include overage fees, pass-through surcharges, changes due to promotional offers, changes in your account, or changes in the amount of applicable taxes. You authorize us to charge your credit card for such varying amounts as well as for any collection fees or disputed fees. TextMarks may also periodically pre-authorize your credit card in anticipation of account or related charges.

Your TextMarks account will continue in effect unless and until you cancel your paid account or we terminate it. You must cancel your paid account before it renews each month in order to avoid invoicing or credit card billing of the next month's fees.

(c) Extended Prepaid Terms. TextMarks offers longer term service agreements that can be prepaid in advance serving as a declining balance. TextMarks charges a monthly service fee that is debited monthly in advance from your balance. We will debit your balance monthly in arrears for any overage fees such as additional keywords or messages.

Starting from the date you begin a paid service plan and on each monthly anniversary thereafter throughout the term, we will automatically debit your balance. You acknowledge that the amount debited may vary for reasons that include overage fees, pass-through surcharges, changes due to promotional offers, changes in your account, or changes in the amount of applicable taxes.

In the event your usage exceeds projected levels and your pre-paid balance is depleted prior to the expiration of the service term, you agree to settle any overages or unpaid service fees within fifteen days of depletion.

Your TextMarks account will continue in effect until the subscription term completes, your prepayment is depleted, you cancel your paid account, or we terminate it. At this time, if you have not agreed to, made arrangements for, and prepaid for an additional term, your services may be terminated.

(d) Miscellaneous. If there is any change in fees and charges, except for certain pass-through surcharges, we will give you 30 days advance notice of these changes by email. If you want to use a different credit card, or if there is a change in your credit card validity or expiration date, you may edit your information by contacting us directly or by updating your billing profile under your TextMarks account. If your credit card reaches its expiration date, your continued use of the Services constitutes your authorization for us to continue billing that credit card, and you remain responsible for any uncollected amounts. It is your responsibility to keep your contact information and payment information current, accurate and updated.

(e) Account Cancellation. You may cancel your TextMarks paid account at any time, and cancellation will be effective immediately. If you wish to cancel your paid account, you may do so via your online account dashboard, by contacting us by phone or email using our account contact information in Section 24 below, or through our Chat function. **ALL FEES INCURRED INCLUDING Overage charges are due at cancellation. All fees and charges are non-refundable and TextMarks does not provide refunds or credits for any partial months or years of service, plan downgrades, refunds for unused time, or refunds of prepaid balances if you cancel your account before the end of your subscription term.**

(f) Responsibility for Ongoing Usage. If your account is cancelled or terminated, you must remove all public text calls-to-action (digital and physical) related to the Services. You agree that you remain responsible, and will continue to be charged, for ongoing end user usage at your previous subscription contract rates in any month where end user usage exceeds one percent (1%) of your subscription term monthly message pool.

(g) SMS Fees. You are solely responsible for any fees, charges, and expenses incurred by you in accessing and using the Services, including, but not limited to, standard text messaging rates. Standard text message charges will depend on the plan that you have with your wireless carrier and may appear on your wireless bill or be deducted from a prepaid balance.

## 7. Restrictions on the Use of the Services.

By using the Services you agree you will not:

(a) Transfer, resell, lease, license, or otherwise make available the Services to third parties unless explicitly permitted to do so by TextMarks;

(b) Disassemble, reverse engineer, decompile, otherwise attempt to derive source code from the Services or do anything that might bypass or circumvent measures employed to prevent or limit access to any part of the Services;

(c) Transmit Content (as defined below) that you do not own or do not have the right to publish or distribute;

(d) Create fictitious businesses or persons or impersonate others (or imply that you are affiliated with other businesses that are not affiliated with you);

(e) Gather and use information, such as other users' names, email addresses, and telephone numbers available through the Services to transmit any unsolicited advertising, junk mail, spam, unsolicited text messages, or other form of solicitation;

(f) Upload, post, email, transmit, or otherwise make available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;

(g) Interfere with or disrupt (or attempt to interfere with or disrupt) the Services or the servers or networks connected to the Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the Services; or

(h) Use the Services for any unauthorized purpose or in violation of applicable law.

## 8. Content.

(a) All materials displayed on or through the Services by you including, but not limited to, text, graphics, news articles, charts, presentations, user communications, photographs, images and illustrations, and other materials, is referred to herein as "**Content**." You are responsible for the Content that you post, upload, or otherwise submit through the Services and the consequences of posting or publishing it. Except for the license you grant below, you retain all rights in and to your Content, as between you and TextMarks. By submitting Content, you grant TextMarks a perpetual, irrevocable, nonexclusive, royalty-free, worldwide, fully-paid, and sub-licensable license to use, copy, process, reproduce, modify, adapt, publish, transmit, translate, create derivative works from, distribute, publicly perform and display your Content (including all related intellectual property rights).

(b) By submitting Content, you also affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to use and to authorize TextMarks to make available your Content in the manner contemplated by the Services and these Terms. TextMarks has no obligation to screen, edit, or monitor Content. TextMarks may access, preserve, and disclose your account information and Content if required to do so by law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to (i) comply with legal process; (ii) enforce these Terms; (iii) respond to claims that any Content violates the rights of third-parties; (iv) respond to your requests for customer service; or (v) protect the rights, property, or personal safety of TextMarks, its users and the public.

(c) You will not transmit any Content which, in our sole opinion or that of any applicable regulatory bodies or mobile carriers, may be defamatory, discriminatory, obscene, lewd, offensive, threatening, abusive, harassing, harmful, hateful, or which may contain any pornography, religious or racial slurs or may threaten or encourage bodily harm or the like, or which may violate any person's

rights regardless of whether such Content is accessed, transmitted, propagated, distributed, created, or stored in a public or private context.

## 9. Representations and Warranties.

You represent and warrant to TextMarks that:

- (a) You will use the Services only for lawful purposes and in accordance with these Terms. You will comply with all applicable local, state, national, foreign and international laws and regulations, including but not limited to, any privacy laws, laws regarding the transfer or transmission of data, or laws applicable to telemarketing and telecommunication business practices (including, but not limited to, the federal Telephone Consumer Protection Act ("**TCPA**")). As between you and TextMarks, you are solely responsible for your compliance with all applicable laws and regulations, and TextMarks will have no obligation to enforce TCPA consent or to audit your compliance with such laws and regulations;
- (b) You will not send unsolicited text (SMS) messages, spam, or any other unsolicited messages (commercial or otherwise);
- (c) You will not harvest or collect information about others, including email addresses and phone numbers, without their consent, for any reason;
- (d) You will not harass or violate the privacy of any person;
- (e) You will not import or incorporate (into any contact list, message, social campaign) or upload as part of Content any of the following information: social security numbers, credit card numbers, passwords, or security credentials;
- (f) You will not promote another text messaging service - or any other commercial venture - that is competitive with the Services;
- (g) You will keep confidential all non-public TextMarks pricing information; and
- (h) You understand that TextMarks cannot control the data you transmit through your use of the Services, and you will be solely responsible for compliance with all laws related to the data you transmit to your end users through the Services. You acknowledge and agree that TextMarks is not acting as a Business Associate (as defined under HIPAA) and has made no representations that the Services are designed or intended to secure Protected Health Information (PHI) as defined under HIPAA. It is your obligation to not create, receive, transmit or process PHI with the TextMarks Services until the parties enter into a Business Associate Agreement to address such Services. If you use the Services to create, receive, transmit or process PHI, it is your responsibility to determine if a reportable breach under HIPAA has occurred. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented.

## 10. Compliance With Laws and Consents.

You may not use the Services to send any unsolicited messages (commonly known as spam). By using the Services, you certify that each phone number owner has explicitly given you permission, either previously or through our Services, to be contacted for marketing and/or communication purposes. If you will be using the Services for advertising or marketing purposes, you further certify that you have obtained "prior express written consent" under TCPA rules, 47 C.F.R. 64.1200(f)(8), from each of the people you are contacting to do so and have otherwise satisfied your obligations under the TCPA. Violation of this Section will be cause for immediate termination of your account. All mobile messages must conform to the latest available best-practice guidelines published by the Mobile Marketing Association, which you must review before using the Services. You further agree to periodically, in compliance with all regulations, remind end users how to opt out of receiving text messages by replying "STOP".

**IMPORTANT for mobile keywords:** In addition to disclosures necessary to comply with the TCPA, you must include opt-in disclosures required by applicable law in all of your promotional materials in all media: website, printed material, digital and event promotions, broadcasts, and any other material promoting your mobile keyword. TCPA and Cellular Telephone Industries Association ("**CTIA**") strictly prohibit omission of opt-in disclosures in whole or in part. You remain responsible for complying with all applicable law and regulations, including TCPA and the CTIA Short Code Monitoring Handbook, and TextMarks will not be responsible for assessing your compliance with such laws and regulations. Failure to include such opt-in disclosures may result in suspension of your mobile keyword without warning as well as third-party legal action.

## 11. Mobile Contests and Sweepstakes.

If you use the Services to conduct contests or sweepstakes (such as “text-to-win”), you agree that you will be solely responsible for ensuring that the sweepstakes or contest complies with all applicable laws. Further, you are solely responsible for compiling and administering the sweepstakes or contest rules. You acknowledge that messages are distributed via third-party mobile network providers and, therefore, TextMarks cannot control certain factors relating to message delivery. You acknowledge that, depending on the recipient’s mobile provider service, it may not be possible to transmit the message to the recipient successfully. TextMarks does not claim or guarantee availability or performance of the Services, and TextMarks hereby disclaims any liability for transmission delays or message failures.

## 12. TextMarks Intellectual Property Rights.

All trademarks, brands, and service marks used in conjunction with the Services by TextMarks are the property of TextMarks. TextMarks is the owner of the Services and the text, graphics, images, photographs, videos, logos, slogans, and other content contained therein and all intellectual property rights, including copyright and database rights therein. You may not publish, distribute, extract, or reproduce any such content in any form, except as it relates to the personal use of the Services. You may not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, or otherwise exploit the Services or the Site, except as expressly permitted in these Terms. Any feedback, comments, and suggestions you may provide about improvements to the Services or the Site (collectively, “**Feedback**”) will be the sole and exclusive property of TextMarks, and you hereby irrevocably assign to TextMarks all of your right, title, and interest in and to all Feedback.

## 13. Copyright Policy.

TextMarks respects the intellectual property rights of others. If you believe that your intellectual property rights have been infringed by another party, please contact TextMarks’ copyright agent via the email address below, and we will remove any such content if we are properly notified that such content infringes your intellectual property rights.

Please provide:

- (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- (b) a description of the copyrighted work or other intellectual property that you claim has been infringed;
- (c) description of where the material that you claim is infringing is located on the Site;
- (d) your address, telephone number, and email address;
- (e) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and
- (f) a statement by you, made under penalty of perjury, that the above information provided by you is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner’s behalf.

You can contact our copyright agent at the account contact information listed below in Section 24, addressed to copyright agent.

## 14. Term and Termination.

- (a) Your account will continue for the length of your subscription term and will automatically renew for the same period. You may terminate your account at any time by contacting us as described in Section 6. If you choose to terminate your account, termination will be immediate and you will no longer be able to use your account.

(b) TextMarks may at any time, suspend, disable, or terminate your access to or use of the Services (i) if you violate or breach any provision of these Terms (or have acted in a manner which shows that you do not intend to, or are unable to comply with the provisions of these Terms); (ii) if TextMarks in its sole discretion believes it is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful); or (iii) immediately upon notice, to the e-mail address provided by you as part of your account information. We also reserve the right to terminate any inactive account.

(c) TextMarks will not be liable to you or to any third party for the suspension or termination of your access or use of the Services (including the forfeiture of any pre-paid amounts). Upon any termination or suspension, TextMarks will have no obligation to maintain any information that was stored in our database related to your account or to forward any information to you (or to any third party). Any suspension or termination will not affect your obligations to TextMarks under these Terms.

## 15. Indemnification.

You agree to defend, indemnify, and hold harmless TextMarks and its subsidiaries and other affiliated companies, and their employees, officers, directors, contractors, agents, licensors and suppliers, from all liabilities, losses, damages, claims, costs, and expenses, including reasonable attorneys' fees, that arise from or relate to (i) access to or use of the Services through your account; (ii) your violation of any of these Terms; (iii) your Content; (iv) your violation, misappropriation, or infringement of any rights of any other party (including intellectual property rights or privacy rights); (v) any actual or alleged breach or violation of applicable law by you, including, but not limited to, TCPA or HIPAA; or (vi) any of your products, services, messages, or other communications to your customers, prospective customers, employees, or users. TextMarks reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to defense by you, in which event you will cooperate with TextMarks and its counsel in the conduct of such defense.

You agree that TextMarks has the right to seek and recover all of its damages caused by you through any use of the Services in an unlawful manner, in a manner that violates TextMarks' privacy policy, anti-spam policies, or in a manner inconsistent with these Terms. You acknowledge that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance, and consequential damages. You acknowledge and agree that this provision will apply to all TextMarks Services and its affiliates whether or not TextMarks is notified of any possibility of such damages. The terms of this Section shall survive the termination of these Terms regardless of the cause or nature of such termination.

## 16. DISCLAIMERS.

YOUR ACCESS TO AND USE OF THE SERVICES IS AT YOUR SOLE RISK. TEXTMARKS EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR YOUR USE OF THE SERVICES, ANY CONTENT, AND ANY THIRD-PARTY CONTENT AVAILABLE ON OR LINKED TO BY THE SERVICES. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, AND TEXTMARKS EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TEXTMARKS MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES REGARDING THE ACCURACY, AVAILABILITY, RELIABILITY, OR COMPLETENESS OF THE SERVICES OR ANY OF THE CONTENT THEREIN. TEXTMARKS DOES NOT REPRESENT OR WARRANT THAT THE SERVICES ARE ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE. YOUR ACCESS AND USE OF THE SERVICES MAY BE INTERRUPTED FROM TIME TO TIME FOR ANY OF SEVERAL REASONS, INCLUDING, WITHOUT LIMITATION, THE MALFUNCTION OF EQUIPMENT, PERIODIC UPDATING, MAINTENANCE OR REPAIR OF THE SERVICES OR OTHER ACTIONS THAT TEXTMARKS, IN ITS SOLE DISCRETION, MAY ELECT TO TAKE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TEXTMARKS OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

## 17. LIMITATION OF LIABILITY.

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, WILL TEXTMARKS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY TYPE, INCLUDING, WITHOUT

LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST REPUTATION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES (EVEN IF TEXTMARKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). UNDER NO CIRCUMSTANCES WILL TEXTMARKS' TOTAL AGGREGATE LIABILITY TO YOU UNDER THESE TERMS FOR ALL CLAIMS EXCEED THE AMOUNTS PAID BY YOU DURING THE SIX (6) MONTHS PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE FIRST CLAIM.

THE PROVISIONS OF THIS SECTION 17 ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE LIMITATIONS SET FORTH HEREIN IN DETERMINING WHETHER TO ENTER INTO THESE TERMS.

DELIVERY OF EMERGENCY MESSAGES MAY NOT BE AVAILABLE WHEN USING THE SERVICES OR MAY BE LIMITED, SUCH AS A RESULT OF DISRUPTION OR IMPAIRMENT OF MOBILE CONNECTIONS, LOSS OF POWER, AND/OR NETWORK DELAYS. YOU ACKNOWLEDGE THAT ANY EMERGENCY RESPONSE CONTACT SERVICE INCLUDED AS PART OF THE TEXTMARKS' SERVICES OR YOUR ABILITY TO SEND EMERGENCY MESSAGES IS NOT INTENDED TO REPLACE OR SERVE AS A SUBSTITUTE FOR TRADITIONAL 911 SERVICE OR CONTACTING A POLICE OR SECURITY FORCE OR OTHER EMERGENCY PERSONNEL DIRECTLY. YOU ARE SOLELY RESPONSIBLE FOR DETERMINING WHETHER TO USE TEXTMARKS' SERVICES TO SEND EMERGENCY MESSAGES OR A TRADITIONAL 911 SERVICE, OR WHETHER TO CONTACT THE POLICE OR EMERGENCY RESPONDERS DIRECTLY. TEXTMARKS' SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY SMS MESSAGES TO ANY EMERGENCY SERVICES. NEITHER TEXTMARKS NOR ITS REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE OR LOSS (AND YOU WILL HOLD TEXTMARKS HARMLESS AGAINST ANY AND ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE THE SERVICES TO CONTACT EMERGENCY SERVICES OR TO SEND EMERGENCY MESSAGES.

TEXTMARKS MAY, FROM TIME TO TIME, PROVIDE INFORMATION TO YOU ABOUT USE OF THE SERVICES. NO INFORMATION PROVIDED, WRITTEN OR ORAL, BY US, OUR EMPLOYEES, REPRESENTATIVES, OR CONTRACTORS, IS TO BE CONSTRUED AS LEGAL ADVICE AND SHALL NOT RELIEVE YOU OF YOUR OBLIGATION TO ENSURE COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REGULATIONS. NOTWITHSTANDING ANY INFORMATION PROVIDED BY TEXTMARKS, YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH ALL LAWS, REGULATIONS, CONSENTS AND PERMISSIONS RELATED TO SMS MESSAGING OR THE SERVICES, INCLUDING WITHOUT LIMITATION, TCPA AND THE FEDERAL COMMUNICATIONS COMMISSION'S RULES, ORDERS, AND DECLARATORY RULINGS PROMULGATED OR ISSUED PURSUANT TO TCPA, AS WELL AS WITH CTIA'S SHORT CODE MONITORING HANDBOOK. TEXTMARKS WILL HAVE NO LIABILITY RELATING TO ANY INFORMATION OR DECISIONS, ACTIONS, OR OMISSIONS MADE BY YOU BASED ON ANY INFORMATION PROVIDED BY TEXTMARKS.

## 18. Dispute Resolution; Binding Arbitration.

**Please read the following section carefully because it requires you to arbitrate certain disputes and claims with TextMarks and limits the manner in which you can seek relief from us.**

Except for small claims disputes in which you or TextMarks seek to bring an individual action in small claims court located in the county of your billing address or disputes in which you or TextMarks seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and TextMarks waive your rights to a jury trial and to have any dispute arising out of or related to these Terms or the Services resolved in court. Instead, all disputes arising out of or relating to these Terms or the Services will be resolved through confidential binding arbitration held in Los Angeles, California in accordance with the Streamlined Arbitration Rules and Procedures ("**Rules**") of the Judicial Arbitration and Mediation Services ("**JAMS**"), which are available on the JAMS website and hereby incorporated by reference. You either acknowledge and agree that you have read and understand the rules of JAMS or waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

**You and TextMarks agree that any dispute arising out of or related to these Terms or the Services is personal to you and TextMarks and that any dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding.**

You and TextMarks agree that these Terms affect interstate commerce and that the enforceability of this Section 18 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the “**FAA**”), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual. You and TextMarks agree that the state or federal courts of the State of California and the United States sitting in Los Angeles, California have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

ANY CLAIM ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES MUST BE FILED WITHIN ONE YEAR AFTER SUCH CLAIM AROSE; OTHERWISE, THE CLAIM IS PERMANENTLY BARRED, WHICH MEANS THAT YOU AND TEXTMARKS WILL NOT HAVE THE RIGHT TO ASSERT THE CLAIM.

You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section 18 by mailing us at our account contact address provided below. In order to be effective, the opt out notice must include your full name and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 20.

## 19. Publicity.

You agree that TextMarks may reference, display, or include your name and logo in a list of TextMarks customers, online or in marketing materials.

## 20. Governing Law; Venue.

These Terms and any dispute relating to them or to the Services, shall be governed and construed in accordance with the laws of the State of California, without regard to conflict of law principles. You expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to these Terms or your use of the Services shall be filed only in the federal courts located in Los Angeles, California, and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action.

## 21. Export Compliance.

All or part of the Services may be subject to U.S. export control and economic sanctions laws (“**Export Controls**”). You agree to abide by all Export Controls as they relate to your access and use of the Services. You may not access or use the Services if you are located in a jurisdiction where the provision of the Services is prohibited by law (a “**Prohibited Jurisdiction**”), and you may not provide access to the Services to any government, entity or individual located in any Prohibited Jurisdiction. You represent and warrant that: (a) you are not named on any U.S. government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) you are not a national of, or a company registered in, any Prohibited Jurisdiction; and (c) you will comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which you are located.

## 22. Changes to these Terms.

We may make changes to these Terms from time to time. If we make changes, we will post the amended Terms to the Services and update the “Last Updated” date above. We may also notify you by sending an email notification to the address associated with your account or by providing notice through the Services. Your continued access to and use of the Services after such changes confirms your acceptance of the changes. Your only right with respect to any dissatisfaction with any revisions to these Terms is to cancel your paid subscriptions to the Services and stop accessing and using the Services.



## 23. Miscellaneous.

These Terms constitute the entire agreement between you and TextMarks relating to your access to and use of the Services. The failure of TextMarks to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third party beneficiary rights upon any other person or entity. If any provision or part of a provision of these Terms is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.

## 24. TextMarks Account Contact Information.

Email: [tmsupport@textmarks.com](mailto:tmsupport@textmarks.com)

Phone: (800) 696-1393

Address: 87 N Raymond Ave. #810, Pasadena CA 91103

Stay In Touch

Text **TEXTMARKS** to **41411**.

Receive important SMS updates about our service, approx 1-2 msgs/month. Message & data rates may apply. Your phone number will never be sold. Reply STOP to opt-out at any time. Reply HELP for help.



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Service available on the following wireless networks: AT&T, Verizon Wireless, Sprint, T-Mobile, Virgin, Cricket, Alltel.

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