

## TERMS OF SERVICE AGREEMENT

**Dated: May 30, 2010**

This Terms of Service Agreement (“Agreement”) is a legal agreement between TxtJet and you and this Agreement, including all amendments made to date, governs your use of the Services. If you do not agree to the terms and conditions of this Agreement, you should immediately cease all usage of the Services and the website ([www.txtjet.com](http://www.txtjet.com), hereinafter the “Site”). We reserve the right, at any time, to modify, alter, or update the terms and conditions of this Agreement without prior notice. Modifications shall become effective immediately upon being posted at the Site. Your continued use of the Services after amendments are posted constitutes an acknowledgement and acceptance of the Agreement and its modifications. Except as provided in this paragraph, this Agreement may not be amended.

Please read this Agreement carefully. By clicking on the “**Create my Account**” button, you are binding yourself or your company, academic institution and library, as the Licensee to the terms of this Agreement. If you do not agree to the terms of this Agreement, please leave the Site and do not use the Service.

### THE SERVICES

Subject to compliance with this Agreement, TxtJet provides email forwarding transmission services to your mobile telephone, PDA or other wired or wireless devices as a text message, as well as transmission of responding messages from your text message and conversion into an email message response (the “Services”). TxtJet retains all ownership of the computer software which makes the Services possible.

PLEASE NOTE: The Service includes forwarding email messages to you, via your mobile telephone text messaging capabilities (SMS) – therefore normal text messaging (SMS) charges will be applied by your mobile telephone service provider. TxtJet has nothing to do with your mobile telephone provider and the fees or rates it will charge you for receiving your email messages as a text message via the Services, or for the fees or rates your provider will charge you for sending text messages (SMS) which are converted into email messages via the Services. You agree that TxtJet is not liable for any fees or rates charged by your mobile telephone provider.

### REGISTRATION AND ACCESS TO THE SERVICES

**In order to access the Services, you must register and provide TxtJet your name, email address, email server address, email server user name and email server password. You agree to only use the Services via a secure transmission.**

During registration, you will choose a user name and a password in order to access the Services. You acknowledge and agree that (A) you alone are solely responsible for maintaining the confidentiality of your User name and password, and any other security measure(s) TxtJet initiates to protect and provide access to the Services, and (B) you are solely responsible for all activities occurring as a result of the use of your user name and password (such as but not limited to all damages or losses caused or arising by the use of your user name and password). Accordingly, TxtJet will reasonably assume that any communication from your user name, accessed via your password, is originally from you or your

authorized agent.

You acknowledge and agree that your name, email address and password, and any other personally identifiable information you provide may be used by TxtJet, its business partners and consultants to provide you with information about TxtJet's products, services and materials or to develop products, services and materials. Further, you acknowledge and agree that we may scan the content and text of your emails and text messages for identification of demographics information, trend or key words so as to better understand the advertising promotions you would be interested in. We may use a computer software program to scan the content of your private email(s) automatically, however no person at TxtJet themselves will read the email content and text. Please review the TxtJet Privacy Policy, which is incorporated in whole into this Agreement. Also, you acknowledge and agree that TxtJet may insert advertisements and content within any portion of the text message(s) sent to you as part of the Services.

## **COMMUNICATIONS**

You acknowledge and agree that TxtJet may communicate with you via the email address(es) you provide during registration, or update of your account, and the mobile telephone number you provide. These communications may occur in connection with the Services, or in regard to surveys, requests for feedback, advertisements, or the like.

There may be a lag in time between when an email communication is sent via the Services from the sender's time of delivery. This time represents, among other things, the transmission from your email account to TxtJet, and then from TxtJet to your mobile telephone, PDA or other wired or wireless device. Further, outside forces and third parties (such as your mobile telephone provider) may add to the lag time. Similarly, there may be a lag in time from when you respond to a message, and/or send a text message via the Services, and when it is received by the recipient via the Services.

## **SECURITY**

As the Services are accessed via the internet, mobile telephone transmissions and wireless transmission, as with any such transmission and service, they are susceptible to hackers, hacker attacks and security breaches. It is your responsibility to ensure that the servers, computers, PDAs, mobile telephones and any other devices using the Services are in a secure environment with appropriate firewalls, database encryption, virus protection, security patches, including Windows® updates and the like, are in place. TxtJet is not liable for any loss of data or any other damages from security breaches, denial of service or other hacker attacks.

## **MODIFICATIONS AND INTERRUPTION TO SERVICE**

TxtJet reserves the right to modify or discontinue the Services with or without notice to you. TxtJet shall not be liable to you or any third party should TxtJet exercise its right to modify or discontinue the Services. You acknowledge and accept that if you use the Services or the Site, that TxtJet does not guarantee continuous, uninterrupted or secure access to the Services or the Site and operation of the Services and the Site may be interfered with or adversely affected by numerous factors or circumstances outside of our control, including but not limited to your internet provider, mobile telephone provider, scope of mobile transmission coverage, and any other third party factors.

## **REPRESENTATIONS**

**TxtJet represents and warrants to you that (A) it is duly organized, validly existing and in good standing; (B) it has the full power and authority to enter into and perform this Agreement; (C) this Agreement does not conflict with any other agreement or obligation of TxtJet; and (D) this Agreement is a legal, valid, and binding obligation of TxtJet, enforceable in accordance with its terms.**

You represent and warrant to TxtJet that (A) you are over the age of 18 years old; (B) you have the power and authority to enter into and perform this Agreement; (C) this Agreement does not conflict with any other agreement or obligation you have; (D) this Agreement is a legal, valid, and binding obligation of you, enforceable in accordance with its terms; and (E) you will not use the Services to transmit, either directly or indirectly, any unsolicited bulk email or unsolicited commercial e-mail, or use the Services for any unlawful activity.

## **DISCLAIMER OF WARRANTIES.**

The Services are provided by TxtJet on an “AS IS” and on an “AS AVAILABLE” basis. To the fullest extent permitted by applicable law, TxtJet makes no representations or warranties of any kind, express or implied, regarding the use or the results of the Services or its Site in terms of its correctness, accuracy, reliability, ability or failure to operate as intended, or incomplete or incorrect information, or otherwise. TxtJet shall have no liability for the use of the Services or its Site.

TXTJET DISCLAIMS ALL WARRANTIES WITH REGARD TO THE SERVICES AND INFORMATION PROVIDED, INCLUDING BUT NOT LIMITED TO (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT, CONDITION OF QUALITY, DESCRIPTION, OPERATION, ADEQUACY, TITLE, INTERFERENCE WITH USE OR ENJOYMENT OF USE, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE; (B) ANY AND ALL CONTENT, INCLUDING BUT NOT LIMITED TO INCORRECT, INACCURATE, OBSCENE, INDECENT, THREATENING, OFFENSIVE, DEFAMATORY, TORTIOUS, OR ILLEGAL CONTENT, AND/OR (C) ANY THIRD PARTY CONDUCT, INCLUDING BUT NOT LIMITED TO ANY THIRD PARTY'S UNAUTHORIZED ACCESS TO OR ALTERATIONS OF YOUR USER NAME, PASSWORD, ACCOUNT, TRANSMISSIONS OR DATA. FURTHER, YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT TXTJET HAS NO LIABILITY FOR (A) ANY VIRUSES OR OTHER DISABLING FEATURES THAT AFFECT YOUR ACCESS TO OR USE OF THE SERVICES, (B) ANY INCOMPATIBILITY BETWEEN THE SERVICES AND OTHER SERVICES, SOFTWARE AND HARDWARE OR YOUR MOBILE TELEPHONE, PDA OR OTHER DEVICE, AND/OR (C) ANY DELAYS OR FAILURES YOU MAY EXPERIENCE IN INITIATING, CONDUCTING OR COMPLETING ANY TRANSMISSIONS OR TRANSACTIONS IN CONNECTION WITH THE SERVICES, INCLUDING THOSE IN AN ACCURATE OR TIMELY MANNER.

You acknowledge that the Services may contain bugs, errors and other problems that could cause system failures or that the Services may not perform all functions for which it is intended or represented and the use of the Services is entirely at your sole risk.

Some jurisdictions do not allow the exclusion of implied warranties, therefore the above-referenced exclusion may be inapplicable. Further, TxtJet is NOT responsible for typographical errors or omissions of any kind. The information provided in the Services is provided for informational purposes only. You bear the entire risk of using the Services, including any content on the TxtJet Site. All materials and content contained within the Services and the TxtJet Site are subject to change, without notice.

### **LIMITATION OF LIABILITY**

TXTJET SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, AND IN PARTICULAR TXTJET SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOSS OF REVENUE, OR LOSS OF USE, ARISING OUT OF OR RELATED TO THE SERVICES, THE TXTJET SITE OR THE INFORMATION CONTAINED IN IT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW, OR OTHERWISE, EVEN IF TXTJET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREFORE SOME OF THE ABOVE LIMITATIONS ARE INAPPLICABLE, HOWEVER, TXTJET'S TOTAL LIABILITY TO YOU FOR BREACH OF ANY AND/OR ALL SUCH WARRANTIES SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SERVICES.

### **INDEMNIFICATION**

You agree to indemnify and hold TxtJet, its parents, subsidiaries, affiliates, officers and employees, agents, and contractors harmless from any claim or demand, including reasonable attorneys' fees and costs, made by any third party due to or arising out of your use of the Services or the Site, the violation of this Agreement, or infringement by you, or other user of the Services using your email address, of any intellectual property or any other right of any person or entity.

### **THIRD-PARTY SITES**

Our Site and any email content or text you receive as part of the Services may include links to other sites on the Internet that are owned and operated by online merchants and other third parties. You acknowledge that TxtJet is not responsible for the availability of, or the content located on or through, any third-party site and you hereby release TxtJet of any liability regarding such third party sites and their services. You should contact the site administrator or webmaster for those third-party sites if you have any concerns regarding such links or the content located on such sites. Your use of those third-party sites is subject to the terms of use and privacy policies of each site, and TxtJet is not responsible therein. We encourage you to review said privacy policies of third-parties' sites.

### **GOVERNING JURISDICTION OF THE COURTS IN OHIO**

The TxtJet website is operated and provided in the State of OHIO. The Services and any claim related to the website are subject to the laws of the State of OHIO, and such laws will govern this Agreement, without giving effect to any choice of law rules. We make no representation that our Services, Site or other services are appropriate, legal or available for use in other locations. Accordingly, if you choose to access our Services and/or Site, you agree to do so subject to the internal laws of the State of OHIO.

Any action against TxtJet in connection with this Agreement and the Services must be brought within 12 months after the cause of action arises. In all events, we each waive trial by jury. In any proceeding to enforce the terms hereof, the prevailing party shall be entitled to recovery of an attorney fee, in addition to other costs of suit.

### **COMPLIANCE WITH LAWS.**

You assume all knowledge of applicable law and are responsible for compliance with any such laws. You may not use the Services in any way that violates applicable state, federal, or international laws, regulations or other government requirements. You further agree not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national, or international law or regulation.

### **COPYRIGHT AND TRADEMARK INFORMATION**

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### **TERMINATION**

TxtJet may discontinue the Services at any time without liability to you. Further, TxtJet may terminate the Services to you if you (A) are in breach of this Agreement, (B) engage in any unlawful, illegal or immoral activity via the Services, or (C) use the Services in a way which, in our sole opinion, may tarnish or affect the reputation and/or goodwill of TxtJet.