

## TERMS AND CONDITIONS OF SERVICE

Last updated on December 21, 2020

Thank you for choosing ANI. By completing the account registration, electronically signing, and accepting service from ANI, you (“Customer”) select and appoint Affinity Network, Inc. d/b/a ANI Networks (“ANI”, “Company”, or “Our”) and its affiliate Affinity Network, Inc. d/b/a ANI Networks to act as Customer’s provider for the management and administration of Text Messaging matters with respect to the toll-free and landline numbers on Customer’s account. All Services are subject to the terms below and to any additional terms incorporated herein by reference. BY UTILIZING OR ALLOWING OTHER PERSONS TO UTILIZE THE SERVICE IN ANY WAY, CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS (THE “AGREEMENT”).

1. **Messaging Services.** The management and administration of Text Messaging Services for Customer’s Landline and/or Toll-Free numbers. This allows Customer to receive and send text messages using Customer’s Landline or Toll-Free number.
2. **On-demand (conversational, two-way) Texting.** Responses to one-time, on-demand texts from consumers are limited to answering the mobile user’s question and cannot contain marketing or any other information. These On-demand text message responses are defined as messages that (i) are requested by the consumer, (ii) are a one-time only message sent immediately in response to a specific consumer request; and, (iii) contains only the information requested by the consumer, with no other marketing or advertising information. On-Demand message responses are not text marketing campaigns, or text messages that have not been expressly requested by the consumer, they are only conversational, two-way texting.
3. **Marketing (mass message campaign) Texting.** Text Message marketing/ mass texting requires prior **written** consent from the mobile user. Verbal consent is not acceptable. **The recipient must “Opt-In” (give you permission to send messages) before you ever send them a marketing or mass text.** Your response to a consumer’s Opt-In request must clearly explain (i) the program’s name/description, (ii) Frequency of marketing texts, (iii) that they are not required to Opt-In to receive text messages as a condition of purchasing anything, (iv) a URL or link to Customer’s full terms and conditions and privacy policy, (v) “STOP” instructions-How a user can Opt-Out of the program, (vi) “HELP” instructions- Customer’s company name & a customer support contact (phone or email), and (vii) Additional carrier costs disclosure advising the consumer that message and data rates may apply.
  - a. Opt-In & Opt-Out records must be retained. A consumer’s Opt-In expires after 18 Months.
  - b. You may not require a consumer to consent to receiving texts as a condition to purchase anything from you.
  - c. You cannot text a number, even if provided to you by Customer’s customer, unless they specifically gave written permission to for you to text them. This means mobile numbers provided by your customer for any reason other than to specifically join Customer’s text marketing campaign may not be texted at all.
  - d. The STOP instructions and carrier costs disclosures outlined in (v) and (vii) above must be included in every text message. You cannot use the word “Free” in describing standard messaging rate campaigns. Mobile carriers prohibit the use of the word, in this context, because the message(s) may cost the consumer pursuant to their messaging plan.
  - e. Customer must add Customer’s Terms & Conditions and Privacy Policy to their website.
  - f. If Customer is made aware of any violations; they affirm that they will promptly fix the issues and document what changes were made to remedy the problem.
4. **Opting-Out/ Help.** Customer is required to comply with all compliance requirements, industry standards, and applicable law. To comply with industry standards, Consumers must be able to Opt-Out at any time. The Keyword STOP allows the mobile user to Opt-Out of marketing messages from Customer’s number. When an Opt-Out message is sent to a landline or Toll-Free number on Customer’s ANI account, the mobile number will be removed from all marketing or mass text Groups, and marked as Do Not Text and blocked from any outbound marketing message attempts. The consumer will receive one auto-response to the Opt-Out request stating: *"You have successfully been unsubscribed. You will no longer receive marketing messages from this number."* Industry standards also require that a compliant response is required whenever Customer’s recipient(s) text the keyword HELP to Customer’s number. Your response should include contact information for the recipient to contact you.
5. **Message Timing and Frequency.** The TCPA requires that marketing messages only be sent between the hours of 8:00 AM and 9:00 PM in the time zone recipient is in. Messages are also only allowed to be sent in the frequency you promised the mobile user in Customer’s Opt-In reply text. Messages sent more frequently than promised are considered “unsolicited” and subject to statutory damages as outlined in Section 8 below.
6. **Use of Service.** Customer agrees not to use the Service for any unlawful or abusive purpose or in any way that damages Company property or interferes with or disrupts Company system or other users or that is in any way unlawful, fraudulent or abusive. Customer warrants and represents that it will maintain producible records for a minimum of four (4) years documenting that a clear and conspicuous disclosure has been made to any text recipients that they may receive commercial text or email messages via the Texting Services, and that such recipients have unambiguously consented to receive such text or email messages as required by the

Applicable Consumer Protection Laws as defined below. Customer warrants and represents that it will comply with all Applicable Consumer Protection Law including, but not limited to, The Telephone Consumer Protection Act. Customer shall defend and indemnify Company, its affiliates, owners, officers, directors, and employees, and hold them harmless from and against any and all liabilities, damages, costs and expenses (including all legal and professional fees) arising out of or relating to any claim brought by a third party based on the conduct of Customer while using the Texting Services, or the failure of Customer to comply with the Applicable Consumer Protection Laws or any other applicable federal, state, or municipal law, Regulation, guideline or policy.

“Applicable Consumer Protection Laws” means all applicable industry standards, including but not limited to, the [Telephone Consumer Protection Act \(“TCPA”\), 47 U.S.C. § 227](#); the [Controlling the Assault of Non-Solicited Pornography and Marketing \(“CAN-SPAM”\) Act, 18 U.S.C. §1037](#); [CTIA](#), or any similar Federal or state laws prohibiting or regulating SMS, email, or other messages that may be transmitted via the Texting Services; and all FCC or other agency rules and regulations that implement the forgoing laws.

7. **Mobile Advertising and the Telephone Consumer Protection Act of 1991 (“TCPA”).** To protect Customer’s business, familiarize yourself with the [Telephone Consumer Protection Act](#) before you send any text messages as part of Customer’s marketing campaign. The TCPA states that anyone dialing a person’s mobile phone or sending a text message must have consent. This federal law prohibits unsolicited marketing or mass calls and text advertisements, and it gives recipients of those **unsolicited calls/texts the right to collect up to \$1,500 in statutory damages for each violation** (or each phone call or text message). Individuals who receive unsolicited messages to their cell phones do not have to prove any harm was done when they seek damages.
8. **Prohibited Message Content.** Below is a list of material that is prohibited by various rules, regulations, and laws. This list is not exhaustive so please make sure you know the laws about mass texting before you begin any campaign.
  - a. Misleading or confusing messages, or impersonation of others
  - b. Copyrighted or trademarked content that is not owned or licensed by Customer’s/you/your business
  - c. Non-age verified alcohol/tobacco messages (can send messages with age verification)
  - d. Confidential information
  - e. Anything promoting illegal drugs/tobacco/controlled substance abuse
  - f. Profanity, Nudity, or Sexually explicit material of any type
  - g. Hate/discriminatory speech, Threats of violence, or Graphic violence
  - h. Anything promoting or involving dangerous, unlawful, or illegal activities
9. **Cancellation.** ANI may cancel this Agreement for any reason, including Customer’s nonpayment, without further liability to ANI. Customer agrees to notify Company in advance if Customer intends to cancel service. After request for cancellation of Service, Service will continue to be provided through the end of the cycle for which it was prepaid, unless other restrictions apply. Customer is required to pay to ANI all monies owed for Services provided until the date of such cancellation. If applicable, Customer is responsible for making alternative arrangements for Services at time of cancellation.
10. **Texting Activation fee.** A per account Activation Fee may apply for customers who sign-up through a 3rd party vendor. Said Activation fee will be charged with 1<sup>st</sup> month’s plan fee.
11. **Service Plan Information.** Service Plans may include a Set-Up Fee, Monthly Minimum Messaging Fee, Message Fees, and pass-through taxes and Surcharges. If applicable, the Set-Up fee would be a One-time charge; the Monthly Minimum Messaging Fee for a given month is the greater of the Monthly Minimum Fee or the cumulative Messaging Service Fees. Connectivity Fees or Professional Service Fees are not counted towards the monthly minimum. Per Message Fees are per text. A text message is generated in each instance a mobile phone sends or receives a message (ex. a mobile to mobile message would generate 2 text messages).

Text Bundle Plans: Plan pricing, promotions, and terms are subject to change and may be modified or terminated at any time without notice. MMS messaging is not included in monthly SMS Text Bundle Plans. All MMS messages will be billed per message. Overage charges occur when Customer exceeds Plan’s monthly SMS message allowance. See Plan Terms posted at [www.aninetworks.com](http://www.aninetworks.com) for per text overage pricing.

When messages break into multiple texts, each text message generated (inbound and outbound) shall count as a text message. ANI will pass any Wireless Carrier or other Surcharges imposed on ANI for Company’s texting services on to Customer as a separate line item without an additional mark-up.

12. **SMS/MMS Distribution Variance.** If Customer is offered a blended per message rate for SMS and MSS messages, an MMS threshold may apply. If so, the Price per text is contingent upon Company’s MMS messages accounting for 15% or less of the overall total messages during a given billing period. Should Company’s MMS messages exceed 15% of the overall total messages during a given billing cycle, ANI reserves the right to modify MMS pricing with five (5) day written notice to Company.

13. **Charges and Taxes.** Customer is responsible for paying all charges to Customer's Account, including but not limited to any applicable state, local and federal taxes, surcharges, fees, assessments, or recoveries, determined by Company to be imposed on Customer as a result of use of the Services on Customer's account or the purchase of Goods.
14. **Customer Service.** If you have an inquiry or billing question, you can call or text Our Customer Service Department at 877.264.7264.
15. **Registration information/ Username and password.** In order to access Customer's account, Customer will be required to create a user ID and password. Customer agrees that the information Customer provides in connection with establishing any account is accurate and that Customer will keep information up-to-date. Customer is responsible for the security of all of user names, passwords and registration information (such as unique account identifiers or historical billing information), and Customer is solely responsible for any use (authorized or not) of Customer's accounts. Customer agrees to notify ANI immediately of any unauthorized activity regarding any of Customer's accounts or other breach of security. ANI may in its discretion suspend or terminate any of Customer's user names and passwords at any time with or without notice.
16. **Management of Customer's data.** Customer is solely responsible for obtaining, installing, and maintaining suitable equipment and software, including any necessary system or software upgrades, patches or other fixes, which are or may become necessary to access the ANI portal. Minimum systems requirements apply to the use of the Portal and it is Customer's responsibility to ensure Customer's computer system complies with these requirements. Customer agrees that Customer is solely responsible for maintaining the security of Customer's computer(s) and all personal and other data, including without limitation, encryption of data. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE. ANI is not responsible for back-up or restoration of Customer's information or for any loss of or disablement of access to Customer's information, including without limitation, email and address book information. We reserve the right to: (a) store data added to Customer's account and distribute such content to multiple ANI servers for back-up and maintenance purposes; and (b) block or remove any unlawful content you store on or transmit to any ANI server. We do not guarantee the protection of Customer's content or data located on our servers against loss, alteration or improper access.
17. **Proprietary Rights.**
  - a. **Software License.** ANI hereby grants Customer a non-exclusive, non-transferable license to use the Software in object code form only on a server controlled by ANI for the sole purpose of providing the Service. Customer is not being granted any right to copy the Software or to use it on computers other than a server controlled by ANI. Customer may not use Web pages or parts of Web pages generated by means of the Software, other than content that originates from and is proprietary to Customer, on any server other than the servers controlled by ANI without ANI's express written agreement.
  - b. Customer also acknowledges and agrees that the Software is intended for access and use by means of web browsing software and that ANI does not commit to support any particular browsing platform. ANI reserves the right at any time to revise and modify the Software, release subsequent versions thereof and to alter features, specifications, capabilities, functions, and other characteristics of the Software, without notice to Customer. If any revision or modification to the Software materially changes Customer's ability to conduct business, Customer's sole remedy is to terminate the Agreement.
  - c. **ANI Intellectual Property.** Customer acknowledges and agrees that content available from ANI or the Service, including but not limited to text, software, music, sound, logos, trademarks, Service marks, photographs, graphics, or video, is protected by copyright, trademark, patent, or other proprietary rights and laws and may not be used in any manner other than as specified in 1 above.
  - d. **Unauthorized Access.** Customers shall not attempt to gain unauthorized access to any servers controlled by ANI.
18. **Privacy and Data Protection.** ANI is firmly committed to protecting the privacy of our customer's personal information and the personal information of its customers. By using the Service, you acknowledge and agree that ANI's collection, usage, and disclosure of this personal information is governed by our Privacy Policy. Additionally, if: (a) Customer is established in the European Economic Area (EEA); (b) Customer provides goods or Services to customers in the EEA; or (c) Customer is otherwise subject to the requirements of the EU General Data Protection Regulation, ANI's collection and use of personal information of any European residents is also subject to our Data Processing Addendum.
18. **Indemnification.** CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD ANI, ITS AFFILIATES AND AGENTS, AND ANY OTHER RELATED SERVICE PROVIDER, HARMLESS FROM THIRD PARTY CLAIMS OR DAMAGES RELATING TO THIS AGREEMENT OR PROMISES OR STATEMENTS MADE IN IT AND USE OF THE EQUIPMENT OR SERVICE UNLESS DUE TO OUR GROSS NEGLIGENCE. IT IS CUSTOMER'S RESPONSIBILITY TO CONFORM TO ALL LAWS OR REGULATIONS GOVERNING THE USE OF SERVICES AND CUSTOMER WILL INDEMNIFY ANI FROM CLAIMS ARISING FROM ANY SUCH USE WHETHER LAWFUL OR NOT. THIS PARAGRAPH WILL SURVIVE TERMINATION OF CUSTOMER'S SERVICE WITH ANI.

19. **Limitation of Liability.** ANI'S LIABILITY AND THE LIABILITY OF ANY OF ITS UNDERLYING CARRIERS SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AGGREGATE AMOUNT NO TO EXCEED THE SERVICE CHARGES ACTUALLY PAID BY CUSTOMER FOR THE AFFECTED SERVICE DURING THE AFFECTED PERIOD. ANI IS NOT LIABLE FOR ANY INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE SERVICES AND FACILITIES FURNISHED BY ANI, EVEN IF ANI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS AGREEMENT AND ITS TERMS CONTROL AND THAT NO DIFFERENT OR ADDITIONAL TERMS MAY BE MADE BETWEEN CUSTOMER AND ANY ANI AGENT OR REPRESENTATIVE. THIS PARAGRAPH WILL SURVIVE TERMINATION OF CUSTOMER'S SERVICE WITH ANI.

ANI SHALL NOT BE LIABLE FOR SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER OR ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS, OR LICENSES; OR INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS.

20. **Availability/Interruption.** Company does not warrant or represent that the Service will operate without interruption or that it will operate continuously. The Service Company offers is subject to necessary facilities and equipment being available from other carriers. Company may have to make operational adjustments to the technical specifications of the Service, or interrupt the Service to perform tests, updates, inspections, or for operational or emergency reasons, or to install equipment, or provide information we view as necessary for health or safety, or concerning the quality of the Services Company provides.
21. **Changes to Terms and Conditions.** Company reserves the right to change its terms and conditions from time to time. These changes will be posted at [www.aninetworks.com](http://www.aninetworks.com) before they become effective. Notice of these changes also may be obtained by calling Customer Service at 877.264.7264. CUSTOMER'S CONTINUED USE OF THE SERVICES CONSTITUTES ITS AGREEMENT TO ANI'S TERMS AND CONDITIONS IN EFFECT AT THE TIME CUSTOMER USE THE SERVICES.