

# Terms and Conditions

Last updated: April 19th, 2023

Please read these terms and conditions carefully before using Our Service.

## Interpretation and Definitions

### Interpretation

The words of which the initial letter is capitalized have meanings defined under the following conditions. The following definitions shall have the same meaning regardless of whether they appear in singular or in plural.

### Definitions

For the purposes of these Terms and Conditions:

- **Affiliate** means an entity that controls, is controlled by or is under common control with a party, where "control" means ownership of 50% or more of the shares, equity interest or other securities entitled to vote for election of directors or other managing authority.
- **Account** means a unique account created for You to access our Service or parts of our Service.
- **Country** refers to: Florida, United States
- **Company** (referred to as either "the Company", "We", "Us" or "Our" in this Agreement) refers to Smarter Contact LLC, 1802 N Howard Ave Tampa, FL 33607.
- **Device** means any device that can access the Service such as a computer, a cellphone or a digital tablet.
- **Free Trial** refers to a limited period of time that limited functional of the Smartercontact.com may be free when purchasing a Subscription.
- **Service** refers to the Website.
- **Subscriptions** refer to the services or access to the Service offered on a subscription basis by the Company to You.

- **Terms and Conditions** (also referred as "Terms") mean these Terms and Conditions that form the entire agreement between You and the Company regarding the use of the Service.
- **Third-party Service** means any services or content (including data, information, products or services) provided by a third-party that may be displayed, included or made available by the Service.
- **Website** refers to Smarter Contact, accessible from <https://smartercontact.com/>
- **You** means the individual accessing or using the Service, or the company, or other legal entity on behalf of which such individual is accessing or using the Service, as Applicable.

## Acknowledgment

These are the Terms and Conditions governing the use of this Service and the agreement that operates between You and the Company. These Terms and Conditions set out the rights and obligations of all users regarding the use of the Service.

Your access to and use of the Service is conditioned on Your acceptance of and compliance with these Terms and Conditions. These Terms and Conditions apply to all visitors, users and others who access or use the Service.

By accessing or using the Service You agree to be bound by these Terms and Conditions. If You disagree with any part of these Terms and Conditions then You may not access the Service.

You represent that you are over the age of 18. The Company does not permit those under 18 to use the Service.

Your access to and use of the Service is also conditioned on Your acceptance of and compliance with the Privacy Policy of the Company. Our Privacy Policy describes Our policies and procedures on the collection, use and disclosure of Your personal information when You use the Application or the Website and tells You about Your privacy rights and how the law protects You. Please read Our Privacy Policy carefully before using Our Service.

# Subscriptions

## Subscription period

The Service or some parts of the Service are available only with a paid Subscription. You will be billed in advance on a recurring and periodic basis (such as daily, weekly, monthly or annually), depending on the type of Subscription plan you select when purchasing the Subscription.

At the end of each period, Your Subscription will automatically renew under the exact same conditions unless You cancel it or the Company cancels it.

## Subscription cancellations

You may cancel Your Subscription renewal either through Your Account settings page or by contacting the Company. You will not receive a refund for the fees You already paid for Your current Subscription period and You will be able to access the Service until the end of Your current Subscription period.

## Billing

You shall provide the Company with accurate and complete billing information including full name, address, state, zip code, telephone number, and a valid payment method Information.

Should automatic billing fail to occur for any reason, the Company will issue an electronic invoice indicating that you must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.

## Fee Changes

The Company, in its sole discretion and at any time, may modify the Subscription fees. Any Subscription fee change will become effective at the end of the then-current Subscription period.

The Company will provide You with reasonable prior notice of any change in Subscription fees to give You an opportunity to terminate Your Subscription before such change becomes effective.

Your continued use of the Service after the Subscription fee change comes into effect constitutes Your agreement to pay the modified Subscription fee amount.

## Refunds

Except when required by law, all fees and subscriptions are non-refundable.

Certain refund requests may be considered by the Company on a case-by-case basis and granted at the sole discretion of the Company.

## Free Trial

The Company may, at its sole discretion, offer a limited functional of the Smartercontact.com with a Free Trial for a limited period of time.

You may be required to enter Your billing information in order to sign up for the Free Trial.

If You do enter Your billing information when signing up for a Free Trial, You will not be charged by the Company until the Free Trial has expired. On the last day of the Free Trial period, unless You canceled Your Subscription, You will be automatically charged the applicable Subscription fees for the type of Subscription You have selected.

At any time and without notice, the Company reserves the right to (i) modify the terms and conditions of the Free Trial offer, or (ii) cancel such Free Trial offer.

## A2P 10DLC

According to the new 10DLC regulation, starting April 1st, 2022, all customers should provide additional data about their business to fulfill carrier requirements. Below is a list of the information required to continue uninterrupted service.

- **First Name**
- **Last Name**
- **Contact Number**
- **Address/Street**
- **City**
- **State**
- **ZIP Code**
- **Country**
- **Email**
- **EIN (Tax ID Number)**
- **EIN Issuing Country**
- **Legal Company Name**
- **Volume Classification**

- **Vertical**
- **Describe your SMS campaign**
- **Campaign Alias/Title**
- **Sample Message**

According to the mobile carriers' regulation from October 20th, 2022, Smarter Contact no longer supports new registrations of the Starter 10DLC brand. From October 30th, 2022, all customers using the Starter brand must apply the Standard 10DLC form from their Smarter Contact account to avoid service interruption.

We would not cancel the subscription if the information is not provided. Keep in mind, NOT being 10DLC registered will result in negatively-impacted SMS delivery rates.

We are strongly advising our SMS users to apply for 10DLC as soon as possible to mitigate additional carrier filtering and continue with high throughput.

## The lifetime of the 10DLC approved brands and campaigns

We keep your approved Brand and Campaigns live as long your account is active in the Smarter Contact. But after two months of being inactive (unsubscribed from the Smarter Contact), we will eliminate your approved Brand and Campaign from the Carriers database. If you decide to reactivate your account after two months, you will need to restart the 10DLC Brand and Campaign registration procedure.

## Carrier fines associated with the 10DLC violations

Mobile carriers could impose additional fees on some violations:

**10DLC Long Code Messaging Program Evasion:** This fee is applied when businesses use evasion techniques like snowshoeing, unauthorized number replacement, and dynamic routing could be cause of fine \$1000 per accident

**Text Enablement:** \$10 000 fee is applied when a 10-digit NANP telephone number is provisioned for SMS and sends out messages before verification of message sender ownership is completed.

Content Violation: T-Mobile may charge a \$10 000 pass-through fee for each unique instance of the third or any subsequent notification of a content violation involving the same content provider. Content violation is defined as sending messages in violation of the rules in the Code of Conduct, and are usually SHAFT violations (sex, hate, alcohol, firearms, tobacco) but also include spam or phishing, or messaging that meets the threshold of a Severity 0 violation per the [CTIA Short Code Monitoring Handbook](#).

## User Content and Call Recording Responsibilities

Due to the nature of the Service and the volume of information submitted, we cannot and do not monitor all of the Materials posted or transmitted by you and other third-party information providers via the Service, including, without limitation, any Materials posted via the Service. You expressly agree that we will not be liable for Materials. We reserve the right, but are not obligated, to remove content from the Service for any reason, including content that we believe violates these Terms & Conditions mentioned in this document.

Smarter Contact offers the option for you to record calls and if you choose to use this service, then you must comply with all state and federal laws, regulations and rules prior to recording any telephone calls and you expressly warrant and represent to Smarter Contact that you shall comply at all times.

We make no representations or warranties with respect to call recording and recommend that always secure consent before recording any calls. You acknowledge that these representations and obligations are essential to the ability of Smarter Contact to provide you with access to call recordings and you further agree to indemnify, defend and hold Smarter Contact and its officers, directors, owners, employees, agents, consultants and vendors harmless from and against any and all liabilities, losses, claims, damages, causes of action, costs and expenses (including attorneys' fees) that may be incurred by Smarter Contact arising out of or related to your acts or omissions in connection with call recordings, whether such claims arise under contract, tort, statute or other legal theory.

## User Accounts

When You create an account with Us, You must provide Us information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of Your account on Our Service.

You are responsible for safeguarding the password that You use to access the Service and for any activities or actions under Your password, whether Your password is with Our Service or a Third-Party Social Media Service.

You agree not to disclose Your password to any third party. You must notify Us immediately upon becoming aware of any breach of security or unauthorized use of Your account.

You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than You without appropriate authorization, or a name that is otherwise offensive, vulgar or obscene.

## Intellectual Property

The Service and its original content (excluding Content provided by You or other users), features and functionality are and will remain the exclusive property of the Company and its licensors.

The Service is protected by copyright, trademark, and other laws of both the Country and foreign countries.

Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of the Company.

## Links to Other Websites

Our Service may contain links to third-party web sites or services that are not owned or controlled by the Company.

The Company has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party web sites or services. You further acknowledge and agree that the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection

with the use of or reliance on any such content, goods or services available on or through any such web sites or services.

We strongly advise You to read the terms and conditions and privacy policies of any third-party web sites or services that You visit.

## Termination

We may terminate or suspend Your Account immediately, without prior notice or liability, for any reason whatsoever, including without limitation if You breach these Terms and Conditions. It is prohibited to use Smarter Contact for any illegal activity restricted by the laws of the USA.

Upon termination, Your right to use the Service will cease immediately. If You wish to terminate Your Account, You may simply discontinue using the Service.

## Limitation of Liability

Notwithstanding any damages that You might incur, the entire liability of the Company and any of its suppliers under any provision of this Terms and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You through the Service or 100 USD if You haven't purchased anything through the Service.

To the maximum extent permitted by applicable law, in no event shall the Company or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, loss of data or other information, for business interruption, for personal injury, loss of privacy arising out of or in any way related to the use of or inability to use the Service, third-party software and/or third-party hardware used with the Service, or otherwise in connection with any provision of this Terms), even if the Company or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

Some states do not allow the exclusion of implied warranties or limitation of liability for



incidental or consequential damages, which means that some of the above limitations may not apply. In these states, each party's liability will be limited to the greatest extent permitted by law.

## "AS IS" and "AS AVAILABLE" Disclaimer

The Service is provided to You "AS IS" and "AS AVAILABLE" and with all faults and defects without warranty of any kind. To the maximum extent permitted under applicable law, the Company, on its own behalf and on behalf of its Affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Service, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, the Company provides no warranty or undertaking, and makes no representation of any kind that the Service will meet Your requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected.

Without limiting the foregoing, neither the Company nor any of the company's provider makes any representation or warranty of any kind, express or implied: (i) as to the operation or availability of the Service, or the information, content, and materials or products included thereon; (ii) that the Service will be uninterrupted or error-free; (iii) as to the accuracy, reliability, or currency of any information or content provided through the Service; or (iv) that the Service, its servers, the content, or e-mails sent from or on behalf of the Company are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.

Some jurisdictions do not allow the exclusion of certain types of warranties or limitations on applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to You. But in such a case the exclusions and limitations set forth in this section shall be applied to the greatest extent enforceable under applicable law.

## Governing Law

The laws of the Country, excluding its conflicts of law rules, shall govern this Terms and Your use of the Service. Your use of the Application may also be subject to other local, state, national, or international laws.

## Disputes Resolution

If You have any concern or dispute about the Service, You agree to first try to resolve the dispute informally by contacting the Company.

## For European Union (EU) Users

If You are a European Union consumer, you will benefit from any mandatory provisions of the law of the country in which you are resident in.

## United States Federal Government End Use Provisions

If You are a U.S. federal government end user, our Service is a "Commercial Item" as that term is defined at 48 C.F.R. §2.101.

## United States Legal Compliance

You represent and warrant that (i) You are not located in a country that is subject to the United States government embargo, or that has been designated by the United States government as a "terrorist supporting" country, and (ii) You are not listed on any United States government list of prohibited or restricted parties.

## Severability and Waiver

### Severability

If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the

greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## Waiver

Except as provided herein, the failure to exercise a right or to require performance of an obligation under this Terms shall not effect a party's ability to exercise such right or require such performance at any time thereafter nor shall be the waiver of a breach constitute a waiver of any subsequent breach.

## Translation Interpretation

These Terms and Conditions may have been translated if We have made them available to You on our Service. You agree that the original English text shall prevail in the case of a dispute.

## Changes to These Terms and Conditions

We reserve the right, at Our sole discretion, to modify or replace these Terms at any time. If a revision is material We will make reasonable efforts to provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at Our sole discretion. By continuing to access or use Our Service after those revisions become effective, You agree to be bound by the revised terms. If You do not agree to the new terms, in whole or in part, please stop using the website and the Service.

## Contact Us

If you have any questions about these Terms and Conditions, You can contact us:

- By email: [sales@smartercontact.com](mailto:sales@smartercontact.com)