



IPitomy SMS/Text Messaging Terms and Conditions

DESCRIPTION OF SERVICE. IPitomy Communications, LLC (IPitomy) provides an application (“IPitomy SMS/Texting”) for managing mobile marketing campaigns including mobile messaging capabilities (the “Service”). Unless explicitly stated otherwise, any new features that augment or enhance the current Service shall be subject to this Agreement. You understand and agree that the Service is provided to you on an “AS-IS” basis and that IPitomy assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings. You are responsible for obtaining access to the Service and that access and subsequent usage may involve third party fees (such as Internet access to use the Service).

YOUR REGISTRATION OBLIGATIONS. In consideration of your use of the Service, you represent that you are of legal age to form a binding contract and are not a person barred from receiving the Service under the laws of the United States or other applicable jurisdiction. You also agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service’s registration form (such information being the “Registration Data”) and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or IPitomy has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, IPitomy has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof). People under the age of 18 may not sign up for an IPitomy account or use any IPitomy services.

PAYMENT AND FEES

Payment by Credit Card. You hereby authorize IPitomy to charge your credit card as set forth in the Payment Method section of the Registration Form to a monthly Services fee, and overage fees to IPitomy at the rates set forth on <https://fs30.formsite.com/IPitomy/sms/index.html> or agreed upon rate.

IPitomy PRIVACY POLICY. Registration Data and certain other information about you are subject to our Privacy Policy. For more information, please review our full privacy policy at <https://www.ipitomy.com/index.php/support/legal>. You understand that through your use of the Service you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing, and use by IPitomy and its affiliates. IPitomy may reasonably use your name and logo for its investor relations and marketing purposes.

MEMBER ACCOUNT, PASSWORD AND SECURITY. You will receive a password and account designation upon completing the Service’s registration process. You are responsible for maintaining the confidentiality of the password and account designation and are fully

responsible for all activities that occur under your password or account designation. You agree to (a) immediately notify IPitomy of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. IPitomy cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 6.

MEMBER CONDUCT

1. You understand that all information, data, text, software, music, sound, photographs, graphics, audio, video, messages or other materials (“Content”), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content originated. This means that you, and not IPitomy, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available via the Service. IPitomy does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will IPitomy be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

IPitomy is solely a facilitator of the message traffic and has no visibility into or control over individual Messages as they are transmitted through IPitomy and has no responsibility or liability with respect to the content of any individual Message. Except that IPitomy may use programmatic means to filter (pre-screen) your messages and block your campaigns or account due to message keywords that IPitomy has determined, in its sole discretion, may violate an applicable, rule, regulation, or law.

1. You agree to not use the Service to:
2. upload, post, text message, email, transmit or otherwise make available any illegal contests or gambling, unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation;
3. upload, post, text message, email, transmit or otherwise make available any adult Content or 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, or that you do not have a right to make available 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, or which violates the intellectual property rights of a third party (“Rights”));
4. impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;

5. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
6. upload, post, text message, 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 mobile telephone, mobile device, computer software or hardware or telecommunications equipment;
7. “stalk” or otherwise harass another; and/or
8. collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs (i) through (vii) above.
9. You acknowledge that IPitomy may or may not pre-screen Content, but that IPitomy and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or move any Content that is available via the Service. Without limiting the foregoing, IPitomy and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable.
10. You acknowledge, consent and agree that IPitomy 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: (a) comply with any subpoena or other legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of IPitomy SMS/Texting, its users and the public.
11. You guarantee that the subscribers in your account have granted you express consent to send them messages of the type that you intend to send them. If for any reason IPitomy suspects that the subscribers have not given you express consent, it reserves the right to request a written explanation from you, the client, including the method of collecting the subscriber’s phone numbers and a guarantee signed by you that all the people on your subscriber list agreed to receive text messages from you of the type that you had sent. IPitomy reserves the right to take any action it thinks appropriate in the case of non-compliance, including but not limited to cancellation of the account.

DOWNTIME & REFUND Policy

1. For purposes of this Agreement, a Unit of Downtime is one period of at least 1 day during which access to IPitomy SMS/Texting.com is unavailable because of problems with hardware or system software. Downtime does not include:
 2. problems caused by factors outside of our reasonable control
 3. problems resulting from any actions or inactions by you or any third party
 4. problems resulting from your equipment and/or third party equipment not within our sole control, or
 5. network unavailability during scheduled maintenance of our network and/or web servers.
6. In any calendar month, we guarantee that Downtime will not exceed 1 Unit of Downtime excluding, however, regularly scheduled maintenance. Any regularly

scheduled maintenance will be performed during the hours of 6pm and 8am. We work to ensure the functioning of all web servers through continuous monitoring by our staff.

7. If Downtime exceeds 1 Units of Downtime in any calendar month, we will, upon your written request, credit your account (a "Downtime Credit") in an amount equal to the pro-rata price for one (1) day of service, for each instance of Downtime as that term is defined herein.
8. To receive Downtime Credit, you must request such credit by sending an email to support@IPitomy SMS/Texting.com within seven (7) days after the occurrence of Downtime. The aggregate maximum number of Downtime Credits to be issued for any and all instances of Downtime occurring in a single calendar month will not exceed seven (7). Downtime Credits will be applied upon issue of the first invoice following the request for Downtime Credit, unless the Downtime occurs in your final month of service. In such case, a refund for the dollar value of the Downtime Credit will be mailed to you within thirty (30) days of the expiration of your service agreement.
9. If you are unhappy with any aspect of our service, please contact us and we will attempt to rectify the situation. Because we are providing a service, which starts when you create the account, we can not provide a refund except when the service has not been acceptable. This is at our discretion only. No refunds will be made if we terminate your account due to violation of our Acceptable Use Policy or any other violation of our Terms and Conditions, except as may be provided therein. This does not affect your statutory rights. No bill credit will be given for a period of suspension.

CONTENT SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE SERVICE. IPitomy does not claim ownership of Content you submit or make available for inclusion on the Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant to IPitomy the following worldwide, royalty-free and non-exclusive license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service and elsewhere for the purpose for which such Content was submitted or made available and also for the purpose of providing and promoting the Service to which such Content was submitted or made available.

INDEMNITY. You agree to indemnify and hold IPitomy, and its subsidiaries, affiliates, officers, agents, attorneys, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or make available through the Service, your use of the Service, your connection to the Service, your violation of this Agreement, your violation of any rights of another, or your violation of any law.

GENERAL PRACTICES REGARDING USE AND STORAGE. You acknowledge that IPitomy may establish general practices and limits concerning use of the Service but that IPitomy has no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Service.

MODIFICATIONS TO SERVICE. IPitomy reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that IPitomy shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

TERMINATION. You agree that IPitomy may, under certain circumstances and without prior notice, immediately terminate your IPitomy account, any associated text message address and/or email address, and access to the Service. Cause for such termination shall include, but not be limited to, (a) breaches or violations of this Agreement or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated account deletions), (d) discontinuance or material modification to the Service (or any part thereof), (e) unexpected technical or security issues or problems, (g) your engagement in fraudulent, illegal or improper activities, (h) third party operator requirement, and/or (i) nonpayment of any fees owed by you in connection with the Services. You may terminate your access and use of the Service upon prior written notice to IPitomy. In no event shall you be entitled to a refund of any fees paid to IPitomy hereunder.

IPITOMY SMS/TEXTING'S PROPRIETARY RIGHTS. Title, ownership rights and all intellectual property rights in and to the Services shall remain the sole and exclusive property of IPitomy. IPitomy retains all rights not expressly granted to you in this Agreement. You are prohibited from attempting, or knowingly permitting or encouraging others to attempt, to reverse engineer, decompile, disassemble, or otherwise attempt to determine source code or protocols from the Services except and only to the extent permissible by applicable law despite such prohibition. You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purpose, any portion of the Service (including your IPitomy I.D., account, account designation, password and other IPitomy information), use of the Service, or access to the Service.

DISCLAIMER OF WARRANTIES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

1. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. IPitomy EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
2. IPitomy MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED (vi) THAT THE INTERNET WILL BE AVAILABLE AND WILL PERFORM.

3. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM IPitomy OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

LIMITATION OF LIABILITY. YOU EXPRESSLY UNDERSTAND AND AGREE THAT IPITOMY COMMUNICATIONS, LLC SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF IPitomy HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; OR (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT.

EXCLUSIONS AND LIMITATIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 18 AND 19 MAY NOT APPLY TO YOU.

NOTICE. IPitomy may provide you with notices, including those regarding changes to the Agreement, by either text message, e-mail, regular mail, or postings on the Service.

TRADEMARK INFORMATION. The trademarks, service marks, logos and product and service names of IPitomy are trademarks of IPitomy Communications, LLC (the "IPitomy Marks"). You agree not to display or use in any manner, the IPitomy Marks without IPitomy's express prior written consent.

NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT OR INTELLECTUAL PROPERTY INFRINGEMENT. IPitomy respects the intellectual property of others, and we ask our users to do the same. IPitomy may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide the following information to IPitomy:

1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. a description of the copyrighted work or other intellectual property that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on the site;
4. your address, telephone number, and email address;

5. 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;
6. a statement by you, made under penalty of perjury, that the above information in your Notice 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.

Notice of claims of copyright or other intellectual property infringement should be addressed to: **info@ipitomy.com**.

GENERAL INFORMATION

Choice of Law and Forum. This Agreement and the relationship between you and IPitomy shall be governed by the laws of the State of Florida without regard to its conflict of law provisions. You and IPitomy agree to submit to the personal and exclusive jurisdiction of the courts located within Sarasota County, Florida.

Waiver and Severability of Terms. The failure of IPitomy to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

Non-Transferability. You agree that your IPitomy account is non-transferable, and this Agreement may not be assigned by you without IPitomy's prior written consent.

Entire Agreement. This Agreement constitutes the entire agreement between you and IPitomy and governs your use of the Service, superseding any prior agreements between you and IPitomy with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other services from IPitomy.

Effective September 1, 2018