



TEXT-CALIBUR
SLAY YOUR NEXT SMS CAMPAIGN

Text Messaging Platform Agreement

This Text Messaging Platform Agreement (“Agreement”) is made on _____, by and between Text-Calibur Inc., with its principal business office located at 956 3 Mile Road N.W., Grand Rapids, MI 49544, hereinafter referred to as “Text-Calibur” and _____ with its principal business offices located at _____ hereinafter referred to as “Client”. Text-Calibur and Client may sometimes be referred to individually as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS Text-Calibur is in the business of providing SMS text message platforms for their clients; and,

WHEREAS Client desires to engage Text-Calibur to provide such platform for their outgoing SMS text messaging campaigns.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

- Pre-Pay Account:** Text-Calibur agrees to provide Client with a SMS text messaging platform at no cost. To get a free account, Client must go to <https://text-calibur.com/site/sign-up-today> and sign up to create an account. The account shall operate on a pre-payment basis in which Client must fund the account before sending any SMS text messages and must replenish funds as needed. If Client’s account contains insufficient funds, Text-Calibur may suspend use of the SMS text messaging platform and in doing so, shall not be liable for any damages, losses or liabilities that may arise out of such suspension.
- Price Per Message:** Client shall pay, from its pre-funded account, _____, for each SMS text message sent using the Text-Calibur platform. In no event will any payment under this Agreement be contingent on receipt of any monies or other compensation associated with or generated by any message(s) sent by or on behalf of Client. Use of the Text-Calibur platform provided to the Client is conditioned on Text-Calibur’s receipt of full payment by Client.
- Lease of Short Code:** Text-Calibur has obtained the rights to certain short code(s), which Client may lease (“Leased Short Code”) monthly at the lease rate of fifty dollars (\$50.00) per month. Client will assume all liability for SMS text messages sent by Client or any entity on behalf of Client using the Leased Short Code. The short code to be leased by Client, if any, shall be _____.
- Legal Compliance and Indemnification:** Client understands and acknowledges that Text-Calibur is a service provider who provides the platform necessary to allow Client to send SMS text messages. Under no circumstance shall Text-Calibur be liable for any SMS text messages sent by Client or any entity on behalf of Client that violates any federal, state or local, laws, acts and/or regulations including, but not limited to the Telephone Consumer Protection Act (TCPA), and any and all requirements of any national, state and/or local do not call lists.

Client hereby understands and agrees that the TCPA and Federal Communications Commission rules implementing the TCPA makes it unlawful to use any automatic telephone dialing system to make any call or send any SMS text message to any telephone number assigned to a cellular telephone service, unless the call is made with the prior express consent of the

called party. See 47 USC § 227(b)(1)(a); 47 C.F.R. § 1200(a). Client is solely responsible for ensuring its compliance with the TCPA and any other laws and regulations that may apply to SMS text messaging in any jurisdiction.

Client shall, at its expense, indemnify and reimburse Text-Calibur for any loss or expense relating to any claim brought against Text-Calibur by a third party, including any governmental agency, to the extent such claim arises from Client's alleged or actual violation of any of federal, state or local, laws, acts and/or regulations. Client agrees to pay any and all damages, including reasonable attorneys' fees, fines, penalties or other amounts (a) imposed by any governmental agency, (b) awarded against Text-Calibur by any state or federal court, or (c) payable in settlement to the extent attributable to such claim.

5. **Consent Requirement:** Client may only send SMS text messages to individuals who have provided Client with prior express written consent ("Consent"), as that term is defined by the TCPA, to receive SMS text messages from or on behalf of Client. In obtaining Consent, Client must clearly communicate to the individual that the individual is agreeing to receive messages of the type to be sent. Client agrees to keep, and produce if requested, records that conclusively show that Consent was given. Client agrees to make such records of Consent available to Text-Calibur upon request.

6. **Opt-Out:** Client agrees to include clear opt-out/unsubscribe information on the SMS text messages sent by Client or any entity on behalf of Client when required to do so by any applicable law or regulation.

7. **Limitation of Liability:** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES EVEN IF THE PARTIES KNOW ABOUT THE POSSIBILITY OF THESE DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, LOSS OF BUSINESS, PROFITS OR OTHER LOSS, THAT RESULT FROM THIS AGREEMENT, EVEN IF SUCH PARTY OR ITS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SET FORTH HEREIN AND THAT THE SAME IS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. WITH THE EXCEPTION OF THE INDEMNITY OBLIGATIONS, BREACH OF WARRANTY OBLIGATIONS, AND CONFIDENTIALITY PROVISIONS SET FORTH HEREIN, NEITHER PARTY'S TOTAL LIABILITY TO THE OTHER PARTY FOR ANY DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE) EXCEED THE PAYMENTS MADE BY CLIENT TO TEXT-CALIBUR IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8. **Confidentiality and Non-Disclosure:** The Parties mutually agree to hold in confidence all confidential and proprietary information and trade secrets disclosed to them, either directly or indirectly, whether in writing or done so orally ("Confidential Information") and agree that such information shall not be used for any purpose other than those contemplated by this Agreement. These restrictions shall remain in place for a term of two (2) years after the termination of this Agreement. Confidential Information includes but is not limited to the monetary value of Text-Calibur business with Client, rates and fees, business models, business practices, revenue sources, software code, software designs, hardware designs, and network architecture designs. Confidential Information shall not include information that is publicly known and made generally available in the public domain by a third party. If required by law to disclose Confidential Information, either Party may do so provided that prompt written notice of such requirement is given prior to such disclosure and any such disclosure is limited to the minimum extent necessary to comply with the legal requirement.

9. **Notices:** All notices to be given under this Agreement shall be either by e-mail, personal delivery, overnight mail or certified mail to the addresses of the Parties as set forth on the first page of this Agreement. If either Party should change its address, said Party shall notify the other Party of such change.

Client Initials: _____

Text-Calibur Initials: _____

10. **Refund Policy:** No refunds will be made, once SMS text messages have been sent. Text-Calibur is not responsible for text messages generated by Client or any entity on behalf of Client.

11. **Term:** The term of this Agreement will commence on the date set forth in the first sentence of this Agreement and shall automatically renew every calendar month unless terminated earlier, by either Party. Either Party may terminate this Agreement for any reason upon thirty (30) day's written notice. Either Party may immediately terminate this Agreement for cause if there is a material breach of this Agreement by the other Party.

12. **Disclaimer of Warranties:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TEXT-CALIBUR MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TEXT-CALIBUR SHALL NOT BE LIABLE FOR ANY ISSUES WITH ANY MESSAGES SENT BY OR ON BEHALF OF CLIENT, ANY ISSUES RELATED TO THE UNAVAILABILITY OR INOPERABILITY OF THE INTERNET, OR ANY TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION RELATED TO OR ARISING OUT OF CLIENTS USE OF THE TEXT-CALIBUR SMS TEXT MESSAGE PLATFORM, PROVIDED SUCH ISSUES ARE NOT DUE TO TEXT-CALIBUR'S WILLFUL MISCONDUCT OR NEGLIGENCE. TEXT-CALIBUR DOES NOT WARRANT OR GUARANTEE CONVERSION RATES, PAY-UP RATES, RESPONSE RATES, THE ABILITY TO CONVERT RESPONSES INTO SALES OR ANY BENEFIT CLIENT MAY RECEIVE FROM ITS USE OF THE TEXT-CALIBUR SMS TEXT MESSAGING PLATFORM. THE TEXT-CALIBUR MESSAGING PLATFORM IS PROVIDED ON AN "AS IS" BASIS WITH NO WARRANTY.

13. **Warranties and Representations:** Both Party acknowledges the binding effect of this Agreement and represents and warrants that: (a) it has full right and power to enter into and perform this Agreement without the consent of any third party; (b) it has obtained and shall maintain throughout the term of this Agreement all necessary licenses, authorizations, approvals and consents to enter into and perform its obligations hereunder; and (c) it shall comply with all federal, state and local, laws, acts and regulations.

Client represents and warrants that no part of any SMS text message distributed through the use of the SMS text messaging platform provided by Text-Calibur will: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary or intellectual property rights; (b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing false advertising, Children's Online Privacy Protection Act, the Can-Spam Act, the Federal Trade Commission Act and the Digital Millennium Copyright Act or result in unfair competition; (c) be defamatory or libelous; (d) be pornographic or obscene; or (e) contain trojan horses, worms, time bombs, cancelbots or other similar harmful viruses or deleterious programming routines.

14. **Intellectual Property.** Client shall retain all right, title and interest in and to all documents, messages, graphics, images, files, data, Client's logos and related marketing designs, and other information transmitted by Client through the use of the Text-Calibur SMS text message platform (collectively, the "Client-Provided Data"), provided however, that Client hereby grants to Text-Calibur a worldwide, revocable, royalty-free, non-exclusive license to use the Client-Provided Data solely for the purposes of fulfilling its obligations hereunder. Text-Calibur hereby grants to Client, and Client hereby accepts, a non-exclusive, non-transferable (except as expressly provided in this Agreement), and limited right for Client to access and use the Text-Calibur SMS text message platform specified in the Agreement in accordance with this Agreement solely during the term and solely for its internal business purposes.

15. **Applicable Law:** This Agreement and any action arising out of it shall be governed by the laws of the State of Michigan and the United States, without regard to the conflicts of law provisions thereof. The exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement shall be the state courts of the State of Michigan

Client Initials: _____

Text-Calibur Initials: _____

or the United States District Court for the Western District of Michigan and each party hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action.

16. **No Waiver:** The failure of any Party to enforce, at any time, the provisions of this Agreement, or to insist upon the strict performance of any covenant or condition of this Agreement, or to exercise any option provided herein, shall in no way be construed to be a waiver of such provision; nor in any way affect the validity of this Agreement, or the right of such Party thereafter to enforce each and every provision of this Agreement.

17. **Non-Assignment:** Neither Party may assign this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

18. **Severability:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and the remaining terms, provisions and restrictions of the Agreement will remain in full force and effect.

19. **Relationship of the Parties:** The relationship of the parties under this Agreement is that of independent contractors, and no Party is an employee, agent, partner or joint venture of the other.

20. **Entire Agreement:** This Agreement embodies the entire agreement and supersedes all prior oral and written agreements and may not be amended unless in writing and signed by both Parties. This Agreement may be executed in any number of parts and facsimile copies, each of which shall be deemed the original, and all of which together shall be deemed one and the same instrument.

ACCORDINGLY, the Parties have executed this Agreement as of the date first written above and agree to all terms and statements made herein.

Text-Calibur, Inc

Client

Authorized Signature _____

Authorized Signature _____

Print Name: _____

Print Name: _____

Email: _____

Email: _____

Client Initials: _____

Text-Calibur Initials: _____